

**PROJECT AGREEMENT
(REDACTED VERSION)**

**HURONTARIO LIGHT RAIL TRANSIT
PROJECT**

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION 2

 1.1 Definitions and Interpretation 3

 1.2 Conflict of Terms 4

 1.3 Conflict of Documents 6

 1.4 Compliance with regard to Vehicle Supplier Activities 6

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE 6

 2.1 Effective Date 6

 2.2 Standby Letter of Credit 7

 2.3 Financial Close 7

 2.4 Disruption in Financial Markets 8

3. SCOPE OF AGREEMENT 9

 3.1 Scope of Agreement 9

4. BUSINESS OPPORTUNITIES, ADVERTISING AND PLANNED CLOSURE EVENTS 9

 4.1 Business Opportunities 9

 4.2 Planned Closure Events 10

5. REPRESENTATIONS AND WARRANTIES 11

 5.1 Project Co Representations and Warranties 11

 5.2 Contracting Authority Representations and Warranties 14

6. BACKGROUND INFORMATION 17

 6.1 No Liability 17

 6.2 No Warranty 18

 6.3 No Claims 18

 6.4 Technical Reports 19

7. PROJECT DOCUMENTS 19

 7.1 Project Documents 19

 7.2 Ancillary Documents 19

 7.3 Changes to Lending Agreements and Refinancing 20

 7.4 Compliance with Lending Agreements 20

8. CONTRACTING AUTHORITY’S RESPONSIBILITIES 21

 8.1 General 21

 8.2 Contracting Authority Permits, Licences and Approvals 21

9. PROJECT CO RESPONSIBILITIES 22

 9.1 Other Business 22

 9.2 General 22

| | | |
|------|--|----|
| 9.3 | Project Co Parties | 24 |
| 9.4 | Project Co Permits, Licences and Approvals | 25 |
| 9.5 | Safety and Security..... | 28 |
| 9.6 | Health and Safety Certification | 31 |
| 9.7 | Protest and Trespass | 34 |
| 9.8 | Additional Works and Third Party Works..... | 36 |
| 9.9 | Adjacent Developments | 40 |
| 9.10 | System Extension | 40 |
| 9.11 | [Intentionally Deleted] | 41 |
| 9.12 | Demolition Requirements..... | 41 |
| 9.13 | Tracking System..... | 42 |
| 10. | REPRESENTATIVES | 44 |
| 10.1 | The Contracting Authority Representative..... | 44 |
| 10.2 | The Project Co Representative | 45 |
| 10.3 | Communications to Representatives | 45 |
| 10.4 | Key Individuals | 46 |
| 11. | WORKS COMMITTEE | 47 |
| 11.1 | Establishment | 47 |
| 11.2 | Function and Role | 48 |
| 11.3 | Term of Works Committee..... | 49 |
| 11.4 | Replacement of Committee Members | 49 |
| 11.5 | Procedures and Practices | 49 |
| 11.6 | Proceeding at Risk..... | 50 |
| 12. | SYSTEM MANAGEMENT COMMITTEE | 52 |
| 12.1 | Establishment | 52 |
| 12.2 | Function and Role | 53 |
| 12.3 | Replacement of Committee Members | 54 |
| 12.4 | Procedures and Practices | 54 |
| 13. | QUALITY MANAGEMENT..... | 55 |
| 14. | ACCESS TO THE LANDS | 57 |
| 14.1 | Licence | 57 |
| 14.2 | Non-exclusive Licence to Metrolinx Lands / Development of Lands..... | 59 |
| 14.3 | Naming and Signage | 60 |
| 14.4 | No Interest in Land, Facilities or Infrastructure | 60 |
| 14.5 | Non-Disturbance Agreement..... | 61 |
| 14.6 | Adjustments to Metrolinx Lands Available to Project Co | 61 |
| 14.7 | Changes to Lands | 63 |
| 15. | ENCUMBRANCES..... | 64 |
| 15.1 | Project Co Shall Perform Obligations Under Encumbrances..... | 64 |
| 15.2 | No Encumbrances..... | 64 |

| | | |
|-------|--|----|
| 15.3 | <i>Construction Act (Ontario)</i> | 66 |
| 16. | SITE CONDITION..... | 67 |
| 16.1 | Acceptance of Site Condition..... | 67 |
| 16.2 | Contamination..... | 68 |
| 16.3 | Items of Geological, Historical Heritage or Archaeological Interest or Value..... | 72 |
| 16.4 | Species-at-Risk..... | 74 |
| 16.5 | Defects – Major Existing Third Party Infrastructure..... | 75 |
| 16.6 | Mislocated or Unknown Utilities..... | 76 |
| 17. | GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS..... | 77 |
| 17.1 | Governmental, Railway and Utility Company Fees..... | 77 |
| 18. | CHANGE IN STANDARDS..... | 78 |
| 19. | COORDINATION AND NO DISRUPTION..... | 78 |
| 20. | DESIGN AND CONSTRUCTION OBLIGATIONS..... | 80 |
| 20.1 | Overall Responsibility..... | 80 |
| 20.2 | Completion of Project Co System Infrastructure and New Third Party Infrastructure..... | 81 |
| 20.3 | Development of Design..... | 81 |
| 20.4 | Start-Up Meeting..... | 83 |
| 20.5 | Design Review Meetings..... | 84 |
| 20.6 | Testing..... | 86 |
| 20.7 | Performance of Design Obligations..... | 86 |
| 20.8 | General Construction Obligations..... | 87 |
| 20.9 | Substitutions..... | 88 |
| 20.10 | Works Submittals..... | 88 |
| 20.11 | [Intentionally Deleted]..... | 88 |
| 20.12 | Liquidated Damages and Construction Period Deductions..... | 88 |
| 20.13 | Apprenticeship Declaration..... | 88 |
| 20.14 | Apprenticeship Plan and Program..... | 88 |
| 20.15 | Community Benefits and Liaison Plan..... | 90 |
| 20.16 | [Intentionally Deleted]..... | 91 |
| 20.17 | Executive Project Meetings..... | 91 |
| 21. | ACCESS AND MONITORING..... | 92 |
| 21.1 | Access for Province Persons..... | 92 |
| 21.2 | Increased Monitoring..... | 93 |
| 21.3 | Right to Uncover..... | 93 |
| 21.4 | No Relief from Obligations..... | 94 |
| 21.5 | Access by Others..... | 94 |
| 21.6 | Public Use..... | 96 |
| 22. | WORKS SCHEDULE REQUIREMENTS AND WORKS REPORT REQUIREMENTS..... | 97 |
| 22.1 | Completion of the Works..... | 97 |

| | | |
|-------|--|-----|
| 22.2 | Works Schedule Requirements | 97 |
| 22.3 | Notification of Early Substantial Completion | 97 |
| 22.4 | Works Report | 98 |
| 23. | LEED, ENERGY AND ENVIRONMENTAL REQUIREMENTS | 99 |
| 23.1 | Environmental Management / Contamination and Hazardous Substances | 99 |
| 23.2 | Energy Matters | 99 |
| 23.3 | LEED Design and Construction Obligations | 99 |
| 23.4 | Mandatory Prerequisites and Credits..... | 99 |
| 23.5 | LEED Progress Reports..... | 100 |
| 23.6 | LEED Silver Rating..... | 100 |
| 23.7 | Greenhouse Gas Credits | 100 |
| 24. | INDEPENDENT CERTIFIER..... | 100 |
| 24.1 | Appointment..... | 100 |
| 24.2 | Role of Independent Certifier..... | 101 |
| 24.3 | Changes to Terms of Appointment..... | 101 |
| 24.4 | Right to Change Appointment..... | 101 |
| 24.5 | Cooperation | 101 |
| 24.6 | Payment of Independent Certifier | 102 |
| 24.7 | Replacement | 102 |
| 25. | COMMISSIONING AND COMPLETION..... | 102 |
| 25.1 | Commissioning Activities | 102 |
| 25.2 | Commencement of Commissioning | 102 |
| 25.3 | Substantial Completion Certificate..... | 103 |
| 25.4 | [Intentionally Deleted] | 106 |
| 25.5 | Contracting Authority Commissioning | 106 |
| 25.6 | Substantial Completion Countdown Notice and Substantial Completion Deliverables..... | 106 |
| 25.7 | Minor Deficiencies | 107 |
| 25.8 | Rectification of Minor Deficiencies | 108 |
| 25.9 | Failure to Rectify Minor Deficiencies..... | 109 |
| 25.9A | Final Completion Countdown Notice..... | 109 |
| 25.10 | Final Completion Certificate | 109 |
| 25.11 | Effect of Certificates/Use | 111 |
| 25.12 | Project Co System Infrastructure Reference Plans and Surveyor’s Real Property Reports .. | 112 |
| 25.13 | Inspection, Commissioning and Handover of New Third Party Infrastructure..... | 112 |
| 25.14 | Intentionally Deleted | 120 |
| 25.15 | Warranties on New Third Party Infrastructure..... | 120 |
| 25.16 | Disputes Regarding Handover of the New Third Party Infrastructure | 125 |
| 26. | PROJECT CO SERVICES | 125 |
| 26.1 | Overall Responsibility | 126 |
| 26.2 | Commencement of Project Co Services | 127 |
| 26.3 | Equipment for Project Co Services | 127 |

| | | |
|-------|---|-----|
| 26.4 | No Closure of the Project Co System Infrastructure | 127 |
| 26.5 | Maintenance Plans..... | 127 |
| 26.6 | Revisions to Maintenance Plan | 127 |
| 26.7 | Operations Services..... | 128 |
| 26.8 | Operations Plan | 128 |
| 26.9 | Revisions to Operations Plan | 128 |
| 26.10 | Operational Response and Project Co’s Obligations..... | 128 |
| 26.11 | Revenue Service Commencement..... | 130 |
| 27. | [INTENTIONALLY DELETED] | 130 |
| 28. | HUMAN RESOURCES | 130 |
| 28.1 | Admittance of Personnel | 130 |
| 28.2 | Confirmation of Action | 130 |
| 28.3 | Finality as to Admission..... | 131 |
| 28.4 | Staff Competency | 131 |
| 28.5 | Employee Training..... | 131 |
| 28.6 | Convictions..... | 132 |
| 28.7 | Disciplinary Action | 133 |
| 28.8 | Human Resources Policies | 133 |
| 28.9 | Management Organizations..... | 133 |
| 28.10 | Governmental Authority..... | 133 |
| 29. | GOODS, EQUIPMENT, CONSUMABLES AND MATERIALS | 134 |
| 29.1 | Standards | 134 |
| 29.2 | Stocks | 134 |
| 30. | DAMAGE AND DESTRUCTION | 134 |
| 30.1 | Protection of Works and Property and Reinstatement Work | 134 |
| 30.2 | Reinstatement Plan | 135 |
| 30.3 | Conduct of Reinstatement Work | 136 |
| 31. | MONITORING AND PERFORMANCE AUDITS | 136 |
| 31.1 | Performance Audits..... | 136 |
| 31.2 | Monitoring of Performance | 138 |
| 31.3 | Failure Points..... | 138 |
| 31.4 | Warning Notices..... | 138 |
| 31.5 | Monitoring Notices..... | 139 |
| 32. | CONTRACTING AUTHORITY’S REMEDIAL RIGHTS | 140 |
| 32.1 | Exercise of Remedial Rights | 140 |
| 32.2 | Emergency..... | 142 |
| 32.3 | Rectification | 143 |
| 32.4 | Costs and Expenses | 144 |
| 32.5 | Reimbursement Events..... | 144 |
| 32.6 | Reimbursement if Improper Exercise of Rights..... | 145 |

| | | |
|-------|--|-----|
| 33. | VEHICLES | 145 |
| 34. | PAYMENT | 145 |
| 34.1 | Payments During the Construction Period | 145 |
| 34.2 | Monthly Service Payments..... | 146 |
| 34.3 | Payment Adjustments..... | 146 |
| 34.4 | Payment Commencement..... | 147 |
| 34.5 | Adjustments to Payment Periods..... | 147 |
| 34.6 | Invoicing and Payment Arrangements | 147 |
| 34.7 | Electronic Invoicing | 149 |
| 34.8 | Final Payment Periods..... | 150 |
| 34.9 | Disputes..... | 150 |
| 34.10 | Payments | 151 |
| 34.11 | Manner of Payment | 151 |
| 34.12 | Set-Off..... | 151 |
| 34.13 | Effect of Payment..... | 152 |
| 34.14 | Audit of Performance and Payment | 152 |
| 34.15 | No Other Entitlement | 153 |
| 35. | TAXES..... | 153 |
| 35.1 | Taxes | 153 |
| 35.2 | Changes in Scope of Taxation..... | 154 |
| 35.3 | Changes in Recoverability of Tax Credits..... | 154 |
| 35.4 | Information and Assistance Provided by Project Co..... | 155 |
| 35.5 | Residency – <i>Income Tax Act</i> (Canada)..... | 155 |
| 35.6 | Taxes – General..... | 155 |
| 35.7 | Taxes – Indemnity | 155 |
| 36. | FINANCIAL MODEL..... | 157 |
| 36.1 | Appointment of Custodian | 157 |
| 36.2 | Delivery and Use of Financial Model | 157 |
| 37. | RECORDS, INFORMATION AND AUDIT | 157 |
| 37.1 | Records Provisions | 157 |
| 37.2 | Information and General Audit Rights | 158 |
| 37.3 | Delivery of Reports to Contracting Authority..... | 159 |
| 37.4 | Right to Disclose Intellectual Property..... | 160 |
| 38. | CHANGES IN LAW | 160 |
| 38.1 | Performance after Change in Law..... | 160 |
| 38.2 | Works Change in Law..... | 160 |
| 38.3 | Relevant Change in Law | 161 |
| 38.4 | VSC Change in Law..... | 163 |

| | | |
|------|--|-------------------------------------|
| 39. | VARIATIONS | 165 |
| 39.1 | Variation Procedure..... | 165 |
| 39.2 | Innovation and Value Engineering..... | 165 |
| 39.3 | 407 ETR Lane Shifting and Diversion | Error! Bookmark not defined. |
| 40. | DELAY EVENTS..... | 167 |
| 40.1 | Definition | 167 |
| 40.2 | Consequences of a Delay Event | 172 |
| 40.3 | Mitigation..... | 176 |
| 41. | COMPENSATION EVENTS..... | 177 |
| 41.1 | Definition | 177 |
| 41.2 | Consequences of a Compensation Event..... | 177 |
| 41.3 | Mitigation..... | 178 |
| 41.4 | Insured Exposure..... | 178 |
| 41.5 | [Intentionally Deleted] | 179 |
| 41.6 | Special Compensation Regarding Category 1 Utility Companies..... | 179 |
| 41.7 | Compensation for Delay in Supply of Revenue Vehicles | 179 |
| 42. | EXCUSING CAUSES | 179 |
| 42.1 | Definition | 180 |
| 42.2 | Consequences of an Excusing Cause | 181 |
| 42.3 | Mitigation..... | 182 |
| 42.4 | Insured Exposure..... | 182 |
| 43. | RELIEF EVENTS..... | 182 |
| 43.1 | Definition | 183 |
| 43.2 | Consequences of a Relief Event | 184 |
| 43.3 | Mitigation and Process | 185 |
| 43.4 | Insured Exposure..... | 186 |
| 44. | FORCE MAJEURE | 186 |
| 44.1 | Definition | 186 |
| 44.2 | Consequences of Force Majeure | 186 |
| 44.3 | Mitigation and Process | 188 |
| 44.4 | Insured Exposure..... | 189 |
| 44.5 | Modifications..... | 189 |
| 45. | PROJECT CO DEFAULT | 189 |
| 45.1 | Project Co Events of Default..... | 189 |
| 45.2 | Notification of Occurrence..... | 194 |
| 45.3 | Right to Termination | 195 |
| 45.4 | Remedy Provisions..... | 195 |
| 45.5 | Replacement of Non-Performing Service Provider..... | 196 |
| 45.6 | Contracting Authority’s Costs..... | 197 |

| | | |
|------|---|-----|
| 45.7 | No other Rights to Terminate | 198 |
| 46. | CONTRACTING AUTHORITY’S DEFAULT | 198 |
| 46.1 | Contracting Authority Events of Default | 198 |
| 46.2 | Project Co’s Options | 199 |
| 46.3 | Project Co’s Costs | 199 |
| 46.4 | No Other Rights to Terminate | 199 |
| 47. | RELIEF EVENT AND NON-DEFAULT TERMINATION | 199 |
| 47.1 | Termination for Relief Event..... | 199 |
| 47.2 | Termination for Force Majeure | 200 |
| 47.3 | Termination for Convenience..... | 200 |
| 47.4 | Automatic Expiry on Expiry Date..... | 200 |
| 47.5 | Termination for Delay in Supply of Revenue Vehicles | 200 |
| 47.6 | Termination for Failure to Obtain System Extension Lenders’ Consent | 201 |
| 48. | EFFECT OF TERMINATION AND TRANSITIONAL ARRANGEMENTS..... | 201 |
| 48.1 | Termination | 201 |
| 48.2 | Continued Effect - No Waiver..... | 201 |
| 48.3 | Continuing Performance..... | 201 |
| 48.4 | Effect of Notice of Termination | 201 |
| 48.5 | Ownership of Information | 204 |
| 48.6 | Provision in Subcontracts..... | 204 |
| 48.7 | Transitional Arrangements | 204 |
| 48.8 | Termination upon Aforesaid Transfer | 205 |
| 48.9 | Survival | 206 |
| 49. | COMPENSATION ON TERMINATION | 206 |
| 49.1 | Compensation on Termination | 206 |
| 49.2 | Full and Final Settlement | 206 |
| 50. | EXPIRY TRANSITION PROCEDURE | 207 |
| 50.1 | Expiry Transition..... | 207 |
| 51. | INTELLECTUAL PROPERTY | 207 |
| 51.1 | Ownership of Intellectual Property or LRV Intellectual Property | 207 |

| | | |
|-------|---|-----|
| 51A | LRV INTELLECTUAL PROPERTY | 207 |
| 51A.1 | OWNERSHIP OF LRV INTELLECTUAL PROPERTY | 207 |
| 51A.2 | LICENCE TO USE..... | 208 |
| 51A.3 | SUBLICENSE RIGHTS | 208 |
| 51A.4 | COPYRIGHT..... | 209 |
| 51A.5 | UPDATES | 209 |
| 51A.6 | OTHER LRV INTELLECTUAL PROPERTY PROVISIONS..... | 210 |
| 51.2 | Licenses to Intellectual Property | 210 |
| 51.3 | Representation and Warranty | 211 |
| 51.4 | Jointly Developed Materials..... | 211 |
| 51.5 | Maintenance of Data | 214 |
| 51.6 | Contracting Authority Trade-Marks..... | 214 |
| 51.7 | Confidential Information..... | 215 |
| 51.8 | Government Use of Documents | 215 |
| 51.9 | Restrictions..... | 215 |
| 52. | CONFIDENTIALITY/COMMUNICATIONS | 216 |
| 52.1 | Disclosure..... | 216 |
| 52.2 | Redaction..... | 216 |
| 52.3 | Disclosure to Government..... | 217 |
| 52.4 | <i>Freedom of Information and Protection of Privacy Act (Ontario)</i> | 217 |
| 52.5 | Use and Disclosure of Confidential Information..... | 217 |
| 52.6 | Exceptions | 219 |
| 52.7 | Survival of Confidentiality | 220 |
| 52.8 | Communication and Public Engagement Protocol..... | 220 |
| 52.9 | Confidentiality of Intellectual Property..... | 220 |
| 53. | PERSONAL INFORMATION..... | 220 |
| 53.1 | General | 220 |
| 53.2 | Protection of Personal Information | 221 |
| 53.3 | Personal Information | 222 |
| 54. | INSURANCE AND PERFORMANCE SECURITY | 222 |
| 54.1 | General Requirements | 222 |
| 54.2 | No Relief from Liabilities and Obligations | 222 |
| 55. | TITLE | 222 |
| 55.1 | Title | 223 |
| 56. | INDEMNITIES..... | 223 |
| 56.1 | Project Co Indemnities to Contracting Authority..... | 223 |
| 56.2 | Contracting Authority Indemnities to Project Co..... | 227 |

| | | |
|------|---|-----|
| 56.3 | Conduct of Claims | 228 |
| 56.4 | Mitigation - Indemnity Claims | 230 |
| 57. | LIMITS ON LIABILITY | 231 |
| 57.1 | Indirect Losses..... | 231 |
| 57.2 | No Liability in Tort | 231 |
| 57.3 | Sole Remedy..... | 231 |
| 57.4 | Maximum Liability..... | 234 |
| 57.5 | Maximum Liability for Liquidated Damages and Total Construction Period Deductions ... | 235 |
| 58. | DISPUTE RESOLUTION PROCEDURE | 236 |
| 59. | ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL | 236 |
| 59.1 | Project Co Assignment..... | 236 |
| 59.2 | Contracting Authority Assignment..... | 236 |
| 59.3 | Subcontractors | 237 |
| 59.4 | Changes in Ownership and Control..... | 238 |
| 59.5 | Contracting Authority’s Due Diligence..... | 239 |
| 59.6 | Gain Share | 240 |
| 60. | PROHIBITED ACTS..... | 240 |
| 60.1 | Definition | 240 |
| 60.2 | Remedies | 241 |
| 60.3 | Permitted Payments | 242 |
| 60.4 | Notification..... | 242 |
| 60.5 | Replacement of Project Co Party | 242 |
| 61. | NOTICES..... | 242 |
| 61.1 | Notices to Parties..... | 242 |
| 61.2 | Notices to Representatives | 243 |
| 61.3 | Facsimile | 244 |
| 61.4 | Change of Address | 244 |
| 61.5 | Deemed Receipt of Notices | 244 |
| 61.6 | Service on Contracting Authority..... | 245 |
| 62. | EMERGENCY MATTERS | 245 |
| 62.1 | Emergency..... | 245 |
| 63. | CONTRACTING AUTHORITY’S DESIGNATE..... | 245 |
| 63.1 | Right to Designate | 245 |
| 64. | GENERAL..... | 246 |
| 64.1 | Amendments..... | 246 |
| 64.2 | Waiver..... | 246 |
| 64.3 | Relationship Between the Parties | 247 |
| 64.4 | General Duty to Mitigate..... | 247 |

| | | |
|-------|--|-----|
| 64.5 | Actual Knowledge..... | 247 |
| 64.6 | Entire Agreement | 248 |
| 64.7 | No Reliance | 248 |
| 64.8 | Severability..... | 248 |
| 64.9 | Enurement | 248 |
| 64.10 | Governing Law and Jurisdiction | 249 |
| 64.11 | Cumulative Remedies..... | 249 |
| 64.12 | Further Assurance..... | 249 |
| 64.13 | Costs | 249 |
| 64.14 | Language of Agreement | 249 |
| 64.15 | Proof of Authority | 250 |
| 64.16 | Counterparts | 250 |
| 64.17 | Province Persons as Third Party Beneficiaries..... | 250 |
| 64.18 | Copyright Notice | 251 |

SCHEDULES

| Schedule No. | | Description |
|---------------|---|--|
| Schedule 1 | - | Definitions and Interpretation |
| Schedule 2 | - | Completion Documents |
| Schedule 3 | - | Custody Agreement |
| Schedule 4 | - | Lenders’ Direct Agreement |
| Schedule 5 | - | Direct Agreements |
| Schedule 6 | - | Independent Certifier Agreement |
| Schedule 7 | - | Mobility Matters |
| Schedule 8 | - | Energy Matters |
| Schedule 9 | - | Key Individuals |
| Schedule 10 | - | Review Procedure |
| Schedule 11 | - | Quality Management |
| Schedule 12 | - | Works Schedule Requirements |
| Schedule 13 | - | Project Co Proposal Extracts |
| Schedule 14 | - | Commissioning |
| Schedule 15 | - | Output Specifications |
| Schedule 15-1 | - | Technical Terms and Reference Documents |
| Schedule 15-2 | - | Design and Construction Requirements |
| Schedule 15-3 | - | Operations and Maintenance Requirements |
| Schedule 16 | - | Encumbrances |
| Schedule 17 | - | Environmental Obligations |
| Schedule 18 | - | Communication and Public Engagement Protocol |
| Schedule 19 | - | Liquidated Damages |
| Schedule 20 | - | Payment Mechanism |
| Schedule 21 | - | Construction Period Payments |
| Schedule 22 | - | Variation Procedure |
| Schedule 23 | - | Compensation on Termination |

| | | |
|-------------|---|---|
| Schedule 24 | - | Expiry Transition Procedure |
| Schedule 25 | - | Insurance and Performance Security Requirements |
| Schedule 26 | - | Record Provisions |
| Schedule 27 | - | Dispute Resolution Procedure |
| Schedule 28 | - | Refinancing |
| Schedule 29 | - | Construction Safety |
| Schedule 30 | - | Insurance Trust Agreement |
| Schedule 31 | - | Project Co Information |
| Schedule 32 | - | Financial Model Extracts |
| Schedule 33 | - | Works Report Requirements |
| Schedule 34 | - | Contracting Authority Permits, Licences and Approvals |
| Schedule 35 | - | Lands |
| Schedule 36 | - | [Intentionally Deleted] |
| Schedule 37 | - | Intellectual Property |
| Schedule 38 | - | Apprenticeship Declaration |
| Schedule 39 | - | System Extension |
| Schedule 40 | - | Property Access Matters |
| Schedule 41 | - | [Intentionally Deleted] |
| Schedule 42 | - | Rail Corridor Access and Flagging |
| Schedule 43 | - | Revenue Vehicles |
| Schedule 44 | - | Form of Revenue Vehicle Supply Contract |

THIS PROJECT AGREEMENT is entered into as of the 17th day of October, 2019

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended

AND: METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency within the meaning of the *Crown Agency Act*, R.S.O. 1990, c. 48, as amended in accordance with Section 3 of the *Metrolinx Act, 2006* (Ontario)

(collectively, “**Contracting Authority**”)

AND: MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED]

(“**Project Co**”)

WHEREAS:

- A. Contracting Authority intends to develop a new light rapid transit system in the Region of Peel, Ontario, which includes:
- (a) approximately 18 kilometres of new semi-exclusive at-grade guideway within the Hurontario Street right-of-way from the Port Credit GO Station in the City of Mississauga to the Brampton Gateway Terminal in the City of Brampton and along Rathburn Road in the City of Mississauga;
 - (b) 1 Station;
 - (c) 18 at-grade Stops;
 - (d) the Hurontario OMSF, which will be located at the lands more particularly described in Schedule 35 - Lands; and
 - (e) the supply, integration, maintenance, operation and storage of Revenue Vehicles.
- B. Contracting Authority commenced the procurement process for the Project, as hereinafter defined, by issuance of a Request for Qualifications for the Project on October 18, 2016.
- C. Project Co will provide the Project Operations, which Project Operations include the design, construction, financing, supply, operation, maintenance and rehabilitation of the Project Co System Infrastructure and design, construction and financing of the New Third Party Infrastructure (the “**Project**”).

- D. Contracting Authority and Project Co wish to enter into this project agreement (the “**Project Agreement**”), which sets out the terms and conditions upon which Project Co shall perform the Project Operations.
- E. This Project involves the development of one of several phases in Metrolinx’s regional transportation plan “*The Big Move*”. The Project will have a positive impact on the Greater Toronto & Hamilton Area by, (i) offering higher order transit to promote usage of transit and increase transit modal share in the corridor, (ii) improving access and connectivity to inter-regional transportation links, (iii) stimulating land development and supporting intensification at Urban Growth Centres (as defined in the Province’s “*Growth Plan for the Greater Golden Horseshoe*”), and (iv) reducing greenhouse gas emissions by increasing transit modal share.
- F. The Project will proceed as an alternative financing and procurement project approved by the Ministry of Infrastructure (“**MOI**”).
- G. As a result, the Project shall follow 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
1. The public interest is paramount.
 2. Value for money must be demonstrable.
 3. Appropriate public control / ownership must be preserved.
 4. Accountability must be maintained.
 5. All processes must be fair, transparent and efficient.
- H. Consistent with the principle of appropriate public ownership / control, public ownership of assets will be preserved in the public sector.
- I. With a view to ensuring that the Parties are able to properly and effectively discharge their respective duties, functions, and responsibilities under Applicable Law, it is the intent that Contracting Authority and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.
- J. Contracting Authority intends to be liable, on a joint and several basis, for all of the obligations of Contracting Authority pursuant to this Project Agreement, save and except as provided for in this Project 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 Project Agreement shall be interpreted in accordance with Schedule 1 - Definitions and Interpretation.
- (b) This Project 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 Project Agreement.

| Schedule No. | Description |
|---------------|---|
| Schedule 1 | - Definitions and Interpretation |
| Schedule 2 | - Completion Documents |
| Schedule 3 | - Custody Agreement |
| Schedule 4 | - Lenders' Direct Agreement |
| Schedule 5 | - Direct Agreements |
| Schedule 6 | - Independent Certifier Agreement |
| Schedule 7 | - Mobility Matters |
| Schedule 8 | - Energy Matters |
| Schedule 9 | - Key Individuals |
| Schedule 10 | - Review Procedure |
| Schedule 11 | - Quality Management |
| Schedule 12 | - Works Schedule Requirements |
| Schedule 13 | - Project Co Proposal Extracts |
| Schedule 14 | - Commissioning |
| Schedule 15 | - Output Specifications |
| Schedule 15-1 | - Technical Terms and Reference Documents |
| Schedule 15-2 | - Design and Construction Requirements |
| Schedule 15-3 | - Operations and Maintenance Requirements |
| Schedule 16 | - Encumbrances |
| Schedule 17 | - Environmental Obligations |
| Schedule 18 | - Communication and Public Engagement Protocol |
| Schedule 19 | - Liquidated Damages |
| Schedule 20 | - Payment Mechanism |
| Schedule 21 | - Construction Period Payments |
| Schedule 22 | - Variation Procedure |
| Schedule 23 | - Compensation on Termination |
| Schedule 24 | - Expiry Transition Procedure |
| Schedule 25 | - Insurance and Performance Security Requirements |
| Schedule 26 | - Record Provisions |
| Schedule 27 | - Dispute Resolution Procedure |
| Schedule 28 | - Refinancing |
| Schedule 29 | - Construction Safety |
| Schedule 30 | - Insurance Trust Agreement |
| Schedule 31 | - Project Co Information |
| Schedule 32 | - Financial Model Extracts |
| Schedule 33 | - Works Report Requirements |

| | | |
|-------------|---|---|
| Schedule 34 | - | Contracting Authority Permits, Licences and Approvals |
| Schedule 35 | - | Lands |
| Schedule 36 | - | [Intentionally Deleted] |
| Schedule 37 | - | Intellectual Property |
| Schedule 38 | - | Apprenticeship Declaration |
| Schedule 39 | - | System Extension |
| Schedule 40 | - | Property Access Matters |
| Schedule 41 | - | [Intentionally Deleted] |
| Schedule 42 | - | Rail Corridor Access and Flagging |
| Schedule 43 | - | Revenue Vehicles |
| Schedule 44 | - | Form of Revenue Vehicle Supply Contract |

- (c) The documents comprising this Project 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 ambiguities, conflicts or inconsistencies, in which case Section 1.2 shall apply.
- (d) Except for those parts of Project Co’s proposal which are, in the sole discretion of Contracting Authority, incorporated by explicit reference into this Project Agreement by the Project Co Proposal Extracts, on Financial Close, the Request for Proposals and Project Co’s proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by Project Co, Contracting Authority or anyone else (including anyone pursuant to Schedule 27 - Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Project Operations, any obligations or liabilities of Project Co, or anything else contained in this Project Agreement.
- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Contracting Authority, no consent, approval or satisfaction of Contracting Authority or the Contracting Authority Representative shall be unreasonably withheld or delayed.
- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Project Co, no consent, approval or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
 - (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project 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 Project Agreement;
- (iv) Schedule 1 - Definitions and Interpretation;
- (v) Schedule 34 - Contracting Authority Permits, Licences and Approvals;
- (vi) Schedule 35 - Lands;
- (vii) Schedule 27 - Dispute Resolution Procedure;
- (viii) Schedule 19 - Liquidated Damages;
- (ix) Schedule 42 - Rail Corridor Access and Flagging;
- (x) Schedule 21 - Construction Period Payments;
- (xi) Schedule 20 - Payment Mechanism;
- (xii) Schedule 15 - Output Specifications;
- (xiii) Schedule 17 - Environmental Obligations;
- (xiv) Schedule 25 - Insurance and Performance Security Requirements;
- (xv) Schedule 22 - Variation Procedure;
- (xvi) Schedule 10 - Review Procedure;
- (xvii) Schedule 14 - Commissioning;
- (xviii) Schedule 11 - Quality Management;
- (xix) Schedule 28 - Refinancing;
- (xx) Schedule 23 - Compensation on Termination;
- (xxi) Schedule 26 - Record Provisions;
- (xxii) Schedule 24 - Expiry Transition Procedure;
- (xxiii) the other Schedules in the order in which they are listed in Section 1.1(b); and

- (xxiv) Schedule 13 - Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), 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 Project Co or Contracting Authority, upon discovery of same, shall immediately give Notice to the Contracting Authority Representative. The Contracting Authority Representative shall, within 10 Business Days after such Notice, make a determination of which provision governs and give Notice of such determination, in writing, to Project Co.
- (d) Contracting Authority and Project Co shall comply with the determination of the Contracting Authority Representative pursuant to this Section 1.2 unless Contracting Authority or Project Co disputes the decision of the Contracting Authority Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

1.3 Conflict of Documents

- (a) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and the Lenders' Direct Agreement, the provisions of the Lenders' Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

1.4 [REDACTED]

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1 to 11, 13, 15 to 24, 28 to 30, 35, 37 to 39 and 51 to 64, and Schedule 1 – Definitions and Interpretation, Schedule 2 – Completion Documents, Schedule 3 – Custody Agreement, Schedule 8 – Energy Matters, Schedule 9 – Key Individuals, Schedule 10 – Review Procedure, Schedule 11 – Quality Management, Schedule 12 – Works Schedule Requirements, Schedule 13 – Project Co Proposal Extracts, Schedule 16 – Encumbrances, Schedule 17 – Environmental Obligations, Schedule 18 – Communication and Public Engagement Protocol, Schedule 22 – Variation Procedure, Schedule 25 – Insurance and Performance Security Requirements, Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure, Schedule 34 – Contracting Authority Permits, Licences and Approvals, Schedule 35 – Lands, Schedule 37 – Intellectual Property and Schedule 39 – System Extension will come into effect on Commercial Close. All other provisions of this Project Agreement will come into effect only on Financial Close. The provisions of this Project Agreement will terminate on the Termination Date.

2.2 Standby Letter of Credit

- (a) If Project Co has provided Contracting Authority with multiple standby letters of credit in accordance with Section 9.1(2) of the RFP, for purposes of this Section 2.2 each of the multiple irrevocable standby letters of credit is referred to as a Standby Letter of Credit for purposes of this Project Agreement.
- (b) Unless a Standby Letter of Credit is drawn by Contracting Authority in accordance with the provisions of this Project Agreement, Contracting Authority shall release and deliver the Standby Letter(s) of Credit to Project Co on Financial Close.
- (c) Project Co shall ensure that the Standby Letter(s) of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.
- (d) If Project Co delivers multiple Standby Letters of Credit from multiple Letter of Credit Providers in accordance with section 9.1(2) of the Request for Proposals, Project Co acknowledges and agrees that:
 - (i) Contracting Authority may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider in any specified ratable amount;
 - (ii) Contracting Authority may draw on any Standby Letter of Credit provided by any Letter of Credit Provider in a disproportionate amount to such Letter of Credit Provider's contribution to security;
 - (iii) Contracting Authority may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a Project Co Party; and
 - (iv) the provision of multiple Standby Letters of Credit shall not in any way prejudice or adversely affect the rights of Contracting Authority to draw on the Standby Letter(s) of Credit in accordance with this Project Agreement, including in a circumstance where the default giving rise to Contracting Authority's right to draw on the Standby Letter(s) of Credit is not the result of any act or omission of the Letter of Credit Provider(s) whose Standby Letter of Credit is drawn upon.

2.3 Financial Close

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to Contracting Authority drafts of all documents referred to in Section 1 of Schedule 2 - Completion Documents.
- (b) On or before the date of this Project Agreement:

- (i) Project Co shall deliver to Contracting Authority the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
 - (ii) Contracting Authority shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 - Completion Documents.
- (c) If (i) Project Co fails to deliver to Contracting Authority any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the date of this Project Agreement (other than as a direct result of a breach by Contracting Authority of its obligations under Section 2.3(b)(ii)) and Contracting Authority does not waive such requirement, or (ii) Financial Close does not occur by the Financial Close Target Date (other than as a direct result of a breach by Contracting Authority of its obligations under Section 2.3(b)(ii)), Contracting Authority will be entitled to draw on the Standby Letter of Credit, in full or in part, and to retain the proceeds thereof as liquidated damages and may terminate this Project Agreement in its entirety by written Notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that Contracting Authority will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by Contracting Authority as a result of the event described in Section 2.3(c)(i) or of Project Co not achieving Financial Close by the Financial Close Target Date. The Parties agree that such liquidated damages shall be payable whether or not Contracting Authority incurs or mitigates its damages, and that Contracting Authority shall not have any obligation to mitigate any such damages.
- (d) If Contracting Authority fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 - Completion Documents by the date of this Project Agreement (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of the Standby Letter of Credit and to terminate this Project Agreement in its entirety by written Notice having immediate effect.

2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, Contracting Authority may in its sole discretion either:
- (i) terminate this Project Agreement in its entirety by written Notice having immediate effect; or

- (ii) direct Project Co to assign to a designee of Contracting Authority which has agreed to assume:
 - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences and Approvals; and
 - (B) those contracts between Project Co and any Project Co Party which Contracting Authority elects to be assigned.
- (c) If Contracting Authority exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in Section 2.4(b)(ii)(A) and (B), Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Design and Bid Fee plus any applicable HST pursuant to Section 10.3.2 of the Request for Proposals plus [REDACTED]% of the Design and Bid Fee. Contracting Authority's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to Contracting Authority, that such fee represents full and final satisfaction of any obligation or liability of Contracting Authority to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

3. SCOPE OF AGREEMENT

3.1 Scope of Agreement

- (a) Project Co shall undertake the Project and perform the Project Operations in accordance with and subject to the provisions of this Project Agreement.
- (b) Project Co shall exercise its rights and perform its obligations at its own cost and risk without recourse to Contracting Authority, except as otherwise provided in this Project Agreement.

4. BUSINESS OPPORTUNITIES, ADVERTISING AND PLANNED CLOSURE EVENTS

4.1 Business Opportunities

- (a) Project Co acknowledges that Contracting Authority: (i) may from time to time develop, or permit the development of, commercial and other opportunities on or associated with the Project Co System Infrastructure and on the Metrolinx Lands, including, for greater certainty, the addition of retail facilities, kiosks, and newsstands, the erection of billboards and other forms of advertising, the granting of naming rights associated with the Project Co System Infrastructure, and wifi, radio and public television on the Project Co System Infrastructure (“**Business Opportunities**”); (ii) reserves the right to all Business Opportunities; and (iii) may, as set out in this Project Agreement, grant rights in the Business Opportunities to Project Co or other parties.
- (b) To the extent that the development of a Business Opportunity materially adversely interferes with Project Co's licence rights hereunder or materially adversely interferes with Project Co's ability

to perform the Project Operations, such development shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

- (c) For clarity, Project Co acknowledges and agrees that, other than as set out in Section 4.1(b), the addition of retail facilities, kiosks, or newsstands, the erection of billboards and other forms of advertising by Contracting Authority or the implementation of other Business Opportunities by Contracting Authority shall not entitle Project Co to any additional compensation or extension of time in relation thereto.
- (d) Project Co shall cooperate with Contracting Authority in Contracting Authority's implementation of Business Opportunities.
- (e) To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for Contracting Authority's consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to both Contracting Authority and Project Co. Contracting Authority may accept any such proposal in its sole discretion and subject to such terms and conditions as Contracting Authority may require.
- (f) Notwithstanding that Project Co has proposed a Business Opportunity to Contracting Authority for its consideration, Project Co acknowledges and agrees that:
 - (i) Contracting Authority reserves the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party;
 - (ii) Contracting Authority may initiate a separate procurement process for the development of such Business Opportunity; and
 - (iii) Project Co shall not be entitled to receive any payment or compensation from Contracting Authority (in any form) on the basis that Project Co proposed such Business Opportunity to Contracting Authority, even if Contracting Authority proceeds with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party.

4.2 Planned Closure Events

- (a) Prior to Final Completion, Contracting Authority shall, from time to time, have the right to instruct Project Co by way of Notice to close or partially close areas where the Works are being performed for a Planned Closure Event. Project Co shall, at its own cost and expense, carry out each such instruction and adjust and amend the Project Works Schedule and the provision of the Works to accommodate each Planned Closure Event. In connection with each Planned Closure Event, Contracting Authority shall give Project Co no fewer than 45 Business Days' prior Notice of its intention to instruct Project Co to close or partially close any areas where the Works are being performed, together with the nature of such Planned Closure Event.
- (b) The Contracting Authority Representative and the Project Co Representative will meet periodically, but no less than once per year, to discuss potential Planned Closure Events.

5. REPRESENTATIONS AND WARRANTIES

5.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to Contracting Authority that as of Commercial Close:
- (i) Project Co is a [REDACTED] between [REDACTED] and [REDACTED] and validly existing under the laws of the Province of Ontario, is in good standing [REDACTED] with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
 - (A) [REDACTED] under the laws of the Province of Ontario, is in good standing with [REDACTED] with respect to the filing of annual reports, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as [REDACTED] of Project Co;
 - (B) [REDACTED] under the laws of Canada, is in good standing with [REDACTED] with respect to the filing of annual reports, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as [REDACTED] of Project Co;
 - (C) [REDACTED] under the laws of the Province of Ontario, is in good standing with [REDACTED] with respect to the filing of annual reports, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as [REDACTED] of Project Co;
 - (D) [REDACTED] under the laws of the Province of Ontario, is in good standing with [REDACTED] with respect to the filing of annual reports, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as [REDACTED] of Project Co;
 - (E) [REDACTED] under the laws of the Province of Ontario, is in good standing with [REDACTED] with respect to the filing of annual reports, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project

Agreement and to perform its obligations hereunder in its capacity as [REDACTED] of Project Co; and

- (F) [REDACTED] under the laws of the Province of Ontario, is in good standing with [REDACTED] with respect to the filing of annual reports, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as [REDACTED] of Project Co;
- (ii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction, operation, maintenance and rehabilitation of light rail transit projects, including the supply, operation and maintenance of light rail vehicles, similar to the Project in scale, scope, type and complexity 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 Project Agreement;
- (iii) Project Co, and [REDACTED] in its capacity as [REDACTED] of Project Co, have the requisite power, authority and capacity to execute, deliver and perform this Project 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 Project Agreement to be done, executed, delivered or performed;
- (iv) no steps or proceedings have been taken or are pending to supersede or amend:
- (A) the constating or formation documents of Project Co, including [REDACTED];
or
- (B) the constating documents, articles or by-laws of any [REDACTED]
- in each case in a manner that would impair or limit Project Co's ability to perform its obligations under this Project Agreement;
- (v) this Project Agreement has been duly authorized, executed, and delivered by Project Co and by [REDACTED] in its capacity as [REDACTED] of Project Co, and constitutes a legal, valid, and binding obligation of Project Co and [REDACTED], enforceable against them 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;

- (vi) the execution, delivery, and performance by Project Co and by [REDACTED] in its capacity as [REDACTED] of Project Co of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) [REDACTED];
 - (B) its constating, formation or organizational documents, including any by-laws;
 - (C) any Applicable Law; or
 - (D) any covenant, contract, 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) no Project Co Event of Default has occurred and is continuing;
- (viii) all of the information regarding Project Co and [REDACTED] set out in Schedule 31 - Project Co Information is true and correct in all material respects;
- (ix) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or [REDACTED] or, to Project Co's knowledge, against any Project Co 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 Project Co or [REDACTED] or in any impairment of Project Co's or [REDACTED] ability to perform its obligations under this Project Agreement, and Project Co and [REDACTED] have no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (x) Project Co has conducted its own investigations and has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of Contracting Authority and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Project Co Services in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xi) each of Project Co and [REDACTED] in its capacity as [REDACTED] of Project Co is able to meet its obligations as they generally become due;
- (xii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada);
- (xiii) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xiv) Project Co is a [REDACTED] for the purposes of the *Income Tax Act (Canada)*, and no [REDACTED] is a Non-Resident;

- (xv) no Restricted Person has Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or [REDACTED] in relation to the operation, management and ownership of the Project;
- (xvi) to the knowledge of Project Co, no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project; and
- (xvii) either:
 - (A) the COR-Certified Construction Project Co Party is in possession of its COR Certification in good standing as required under this Project Agreement and has the ability to maintain such COR Certification in good standing at all times during the performance of the Works in accordance with its terms, provisions and conditions; or
 - (B) the COR-Qualified Construction Project Co Party:
 - (I) is in possession of its OHSAS 18001 Accreditation which remains in good standing and has the ability to maintain such OHSAS 18001 Accreditation in good standing at all times during the performance of the Works until such COR-Qualified Construction Project Co Party receives its COR Certification as required under this Project Agreement; and
 - (II) has made an application to the IHSA for its COR Certification as required under this Project Agreement.

5.2 Contracting Authority Representations and Warranties

- (a) IO represents and warrants to Project Co, on a several basis, that as of Commercial Close:
 - (i) *Ontario Infrastructure and Lands Corporation* is a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended, which provides all the requisite corporate power and authority for IO to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement as agent for the Province;
 - (ii) subject to Sections 5.2(a)(v)(C), (D), (E) and (F), as applicable, IO is entering into this Project Agreement as agent for the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind the Province to this Project Agreement, and Project Co 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 agent for the Province that are required by this Project Agreement to be executed and delivered by IO;

- (iii) subject to Sections 5.2(a)(v)(C), (D), (E) and (F), IO has the requisite power, authority and capacity to perform its obligations under this Project 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 Project Agreement to be done, executed, delivered or performed;
- (iv) subject to Sections 5.2(a)(v)(C), (D) and (E), IO has obtained all of the necessary approvals to enter into this Project Agreement;
- (v) this Project Agreement has been duly authorized, executed, and delivered by IO and constitutes a legal, valid, and binding obligation of IO, enforceable against IO 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 such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments;
 - (C) statutory limitations of general application respecting the enforceability of claims against the Province or its property;
 - (D) Section 11.3 of the *Financial Administration Act*, R.S.O. 1990, c. F.12;
 - (E) any terms and conditions as are set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12; and
 - (F) the powers of the Minister of Finance to effect set offs against amounts owing by Ontario pursuant to Section 43 of the *Financial Administration Act*, R.S.O. 1990, c. F.12; and
- (vi) the execution, delivery, and performance by IO of this Project 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*, R.S.O. 1990, c. E.25;
 - (C) any Applicable Law; or

- (D) any covenant, contract, agreement, or understanding relating to the Project or the Lands to which it is a party or by which it or any of its properties or assets is bound or affected.
- (b) Metrolinx represents and warrants to Project Co, on a several basis, that as of Commercial Close:
- (i) Metrolinx is a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and has all of the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement in its own name as a Crown agency of the Province in accordance with Section 3 of the *Metrolinx Act, 2006*, S.O. 2006, c. 16;
 - (ii) subject to Sections 5.2(b)(v)(C), (D) and (E), Metrolinx is entering into this Project Agreement in its own name as a Crown agency of the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind itself personally to this Project Agreement and to provide recourse to the Province in accordance with the provisions of the *Metrolinx Act, 2006*, S.O. 2006, c. 16, including without limitation section 35 thereof, and Project Co is entitled to rely upon Metrolinx's authority to bind itself and the recourse to the Province on such basis in respect of all other agreements, instruments, undertakings and documents executed and delivered by Metrolinx that are required by this Project Agreement to be executed and delivered by Metrolinx;
 - (iii) subject to Sections 5.2(b)(v)(C), (D) and (E), Metrolinx has the requisite power, authority and capacity to perform its obligations under this Project 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 Project Agreement to be done, executed, delivered or performed;
 - (iv) Metrolinx has obtained all necessary approvals to enter into this Project Agreement as a Crown agency;
 - (v) this Project Agreement has been duly authorized, executed, and delivered by Metrolinx and constitutes a legal, valid, and binding obligation of Metrolinx, enforceable against Metrolinx, subject to the provisions of the *Metrolinx Act, 2006*, S.O. 2006, c. 16, 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 such as specific performance and injunction may not be available

- against Metrolinx and the Province and that a court may stay proceedings or the execution of judgments;
- (C) statutory limitations of general application respecting the enforceability of claims against Metrolinx or the Province or the property of Metrolinx or the Province;
 - (D) any terms and conditions set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12; and
 - (E) with regard to the recourse against the Province, section 35 of the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and the powers of the Minister of Finance to effect set offs against amounts owing by the Province pursuant to Section 43 of the *Financial Administration Act*, R.S.O. 1990, c. F.12;
- (vi) the execution, delivery, and performance by Metrolinx of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
- (A) the *Metrolinx Act, 2006*, S.O. 2006, c. 16, or any regulations made in respect thereof;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding relating to the Project or the Lands to which it is a party or by which it or any of its properties or assets is bound or affected; and
- (vii) Metrolinx has, or will have, licence rights of use and access to, on and over the Metrolinx Lands sufficient to enable Contracting Authority to grant or to cause to be granted to Project Co the access rights contemplated in Section 14.1.
- (c) Contracting Authority represents and warrants to Project Co, on a joint and several basis, that as of Commercial Close, no Contracting Authority Event of Default has occurred and is continuing.

6. BACKGROUND INFORMATION

6.1 No Liability

- (a) Except as expressly provided in Sections 6.4, 16.1, 16.2, 16.3, 16.4, 16.5 and 16.6 neither Contracting Authority nor any Province Person shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from Contracting Authority or any Province Person, 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, Project Co or any Project Co Party.

6.2 No Warranty

- (a) Except as expressly provided in Sections 6.4, 16.1, 16.2, 16.3, 16.4, 16.5 and 16.6:
- (i) neither Contracting Authority nor any Province Person gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither Contracting Authority nor any Province Person warrants that the Background Information represents all of the information in its possession or control (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents; and
 - (ii) neither Contracting Authority nor any other Province Person shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
 - (A) to disclose or make available to Project Co or any Project Co Party any information, documents or data;
 - (B) to review or update the Background Information; or
 - (C) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

6.3 No Claims

- (a) Project Co 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 Project 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 6.4, 16.1, 16.2, 16.3, 16.4, 16.5 and 16.6, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against Contracting Authority or any Province Person (whether in contract, tort or otherwise), including any claim in damages, for extensions of time or for additional payments under this Project 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 Project Co be relieved from any of its obligations under this Project Agreement on any such grounds.

6.4 Technical Reports

- (a) Contracting Authority agrees that, if as of Commercial Close, except as disclosed in any Background Information or as otherwise disclosed by Contracting Authority or any Contracting Authority Party, or known by Project Co or any Project Co Party, any of the information in the Technical Reports is, to the actual knowledge of Contracting Authority, incorrect or there is relevant information in the possession or control of Contracting Authority that would make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Project Operations or materially adversely affects Project Co's cost of performing the Project Operations, such incorrect information shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (b) For the purposes of Section 6.4(a), “to the actual knowledge of Contracting Authority” means to the actual knowledge of the IO project manager – Project Delivery for the Project, or the Metrolinx Director, Hurontario LRT.

7. PROJECT DOCUMENTS

7.1 Project Documents

- (a) Project Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a party, and shall ensure that each Project Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Project Co Party is a party, so as to ensure that other parties to such Project Documents shall not be entitled to terminate same. In the event that Project Co receives a Notice of default under any of the Project Documents, it shall promptly, and, in any event, no later than 2 Business Days after receipt thereof, deliver a copy of such Notice of default to Contracting Authority.
- (b) Upon the written request of Contracting Authority or the Contracting Authority Representative, Project Co will deliver or cause to be delivered to Contracting Authority or the Contracting Authority Representative a copy of any notices or consents delivered or received by Project Co under any of the Project Documents.

7.2 Ancillary Documents

- (a) Project Co shall not:
 - (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 32.3, 45.5, 59.3 and 60.2 or otherwise to prevent or cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);

- (ii) make or agree to any amendment, restatement or other modification of any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of Contracting Authority, whether actual or potential;
- (iii) breach its obligations (or waive, exercise or allow to lapse any rights it may have) or permit others to breach their obligations (or waive, exercise or allow to lapse any rights they may have) under any Ancillary Document, that materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of Contracting Authority, whether actual or potential; or
- (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 7.2(a)(i),

without the prior written consent of Contracting Authority, provided that, where consent is requested pursuant to Section 7.2(a)(i) or 7.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 7.2(a)(i) or 7.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of Contracting Authority, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 7.2(a)(i) or any agreement replacing all or part of any Ancillary Document as described in Section 7.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein applicable to changes in Project Co Parties, including Section 59.3.

7.3 Changes to Lending Agreements and Refinancing

- (a) Subject to the terms of the Lenders' Direct Agreement, Project Co shall not terminate, amend or otherwise modify the Lending Agreements, or waive or exercise any of its rights under the Lending Agreements, if, at the time such action is contemplated and effected, it would materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or the Project Documents or have the effect of increasing any liability of Contracting Authority, whether actual or potential, unless:
 - (i) such action is a Permitted Borrowing; or
 - (ii) such action is a Refinancing, other than a Mandatory Refinancing, effected in accordance with the provisions of Schedule 28 - Refinancing.

7.4 Compliance with Lending Agreements

- (a) Project Co shall keep the Lending Agreements in good standing to the extent necessary to perform its obligations under this Project Agreement and the Project Documents, and shall ensure that none of the terms and conditions of the Lending Agreements shall prevent Project Co from performing its obligations under this Project Agreement or the Project Documents.

8. CONTRACTING AUTHORITY'S RESPONSIBILITIES

8.1 General

- (a) Contracting Authority shall, at its own cost and risk:
- (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law; and
 - (ii) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that Contracting Authority shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) Contracting Authority shall, and shall cause all Contracting Authority Parties to, take reasonable steps to minimize undue interference with the provision of the Project Operations by Project Co or any Project Co Party.
- (c) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of Contracting Authority or any Province Person in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude IO's board of directors or Metrolinx's board of directors (or any respective designate appointed pursuant to Section 63.1 of this Project Agreement) from performing, discharging or exercising its duties, responsibilities, and powers under Applicable Law. Project Co further agrees that, subject to Section 39.1(b), it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of IO's board of directors and Metrolinx's board of directors (or any respective designate appointed pursuant to Section 63.1 of this Project Agreement) from time to time.
- (d) Except as set out in Section 5.2, IO and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Project Agreement and for each covenant of the other under this Project Agreement. For clarity, the joint and several liability of Metrolinx pursuant to this Project Agreement is solely in its capacity as Crown agency of the Province.

8.2 Contracting Authority Permits, Licences and Approvals

- (a) Contracting Authority shall, at its own cost and risk:
- (i) except as otherwise provided in Schedule 34 – Contracting Authority Permits, Licences and Approvals, obtain, maintain, and, as applicable, renew all Contracting Authority Permits, Licences and Approvals, which may be required for the performance of the Project Operations; and
 - (ii) comply with all Permits, Licences and Approvals in accordance with their terms.

- (b) Contracting Authority shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Project Co may request and as Contracting Authority may reasonably be able to provide, and shall execute such applications and documents as are required to be in its name, to enable Project Co or any Project Co Party to obtain, maintain or renew any Project Co Permits, Licences and Approvals or to demonstrate compliance with any Permits, Licences and Approvals, provided that Contracting Authority shall not be responsible for obtaining or for any delay in obtaining or for the failure of Project Co or any Project Co Party to obtain any Project Co Permit, Licence or Approval, unless such delay or failure is caused by any act or omission of Contracting Authority or any Contracting Authority Party. For greater certainty, Contracting Authority shall not be obligated to:
- (i) invoke Crown immunity or exercise any other of its legal rights in order to avoid or eliminate the requirement to obtain any Permits, Licences and Approvals; and
 - (ii) automatically grant Project Co Permits, Licences and Approvals for which it is the authorizing entity and will apply its usual procedures and criteria in considering applications from Project Co or any Project Co Party for such Project Co Permits, Licences and Approvals.

9. PROJECT CO RESPONSIBILITIES

9.1 Other Business

- (a) Project Co shall not engage in any activities which are not specifically related to, required by and conducted for the purpose of the Project without the prior written consent of Contracting Authority, in its sole discretion.

9.2 General

- (a) Project Co shall, at its own cost and risk:
- (i) perform all of its obligations under, and observe all provisions of, this Project 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) so as to satisfy the Output Specifications;
 - (D) in accordance with Good Industry Practice;

- (E) in a manner consistent with the Quality Plans and the Project Co Proposal Extracts;
 - (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 Project Agreement, in a manner which will not impair the ability of Contracting Authority, any Contracting Authority Party or any Province Persons to comply with Applicable Law;
 - (I) subject to the other provisions of this Project Agreement, in a manner which will not impair the performance of the Governmental Activities; and
 - (J) in accordance with all other terms of this Project Agreement;
- (iii) cooperate with Contracting Authority in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of Contracting Authority’s obligations under this Project Agreement;
 - (iv) cooperate with Contracting Authority in respect of Contracting Authority’s consultations with each City, MTO, Region of Peel, 407 ETR and each Railway Company in relation to the Project and the Project Operations;
 - (v) cooperate and assist Contracting Authority in any dispute relating to the Project or the Project Agreement arising out of any Master Agreement, including attending at hearings, providing information, and doing such other things as Contracting Authority may reasonably require to resolve the dispute;
 - (vi) immediately notify the Contracting Authority Representative, each City, 407 ETR, MTO, Region of Peel and each Railway Company Owner, as applicable, to the extent that Project Co becomes aware of any defect in the property or Existing Third Party Infrastructure of:
 - (A) Metrolinx, excluding the New Metrolinx Infrastructure;
 - (B) the City of Mississauga, excluding the New City of Mississauga Infrastructure;
 - (C) the City of Brampton, excluding the New City of Brampton Infrastructure;
 - (D) 407 ETR, excluding the New 407 ETR Infrastructure;
 - (E) the MTO, excluding New MTO Infrastructure;
 - (F) Region of Peel, excluding New Region of Peel Infrastructure; or

- (G) a Railway Company Owner, excluding New Railway Company Infrastructure;
- (vii) enter into any agreements that may be required by Utility Companies to complete the Works;
- (viii) coordinate with each City, the Region of Peel, 407 ETR, MTO, each Utility Company and each Railway Company all Construction Activities relating to Existing Third Party Infrastructure owned by each such person and its applicable New Third Party Infrastructure (including the provision of the Project Works Schedule relating to such infrastructure) so as to minimize the impact of Construction Activities on such person's operations and the services provided by such person to the public;
- (ix) immediately notify Contracting Authority, each applicable City, MTO, Region of Peel, 407 ETR, and each applicable Railway Company Owner with respect to,
 - (A) any injuries to persons on Lands owned by or leased to such City, MTO, Region of Peel, 407 ETR or such Railway Company Owner, or damage to any infrastructure or Lands owned by or leased to any of them that occurs during the course of the Project Operations;
 - (B) any significant developments during the Construction Period that affect infrastructure or Lands owned by or leased to such City, MTO, Region of Peel, 407 ETR or such Railway Company Owner; and
 - (C) any proposed decision where the effect thereof may reasonably be expected to affect the design, functionality, safety or integrity of any part of any infrastructure that belongs to such City, MTO, Region of Peel, 407 ETR or such Railway Company Owner; and
- (x) immediately (A) notify Contracting Authority upon the receipt or notice of (and provide Contracting Authority with copies of any correspondence received in relation to), any incident report, investigation report, inspection, order, charge or similar correspondence (in each case, whether in draft or final form) issued by the Ministry of Labour or any other Governmental Authority in respect of the Project Operations, and (B), following a request by Contracting Authority, provide Contracting Authority with a copy of any health and safety investigation report completed by Project Co.

9.3 Project Co Parties

- (a) Project Co shall not be relieved of any liability or obligation under this Project Agreement by the appointment of any Project Co Party, and Project Co shall cause each Project Co Party, to the extent such Project Co Party performs or is specified hereunder to perform the Project Operations, to comply with the obligations of Project Co hereunder in the same manner and to the same extent as Project Co.

9.4 Project Co Permits, Licences and Approvals

- (a) Project Co shall, at its own cost and risk:
- (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences and Approvals which may be required for the performance of the Project Operations;
 - (ii) perform the obligations of Project Co under the Contracting Authority Permits, Licences and Approvals as set out in Schedule 34 – Contracting Authority, Permits, Licences and Approvals and comply with Project Co’s obligations set out in Schedule 34 – Contracting Authority, Permits, Licences and Approvals;
 - (iii) comply with all Permits, Licences and Approvals in accordance with their terms;
 - (iv) provide all security, including all letters of credit, that may be required in connection with any Project Co Permit, Licence and Approval, provided that, if Contracting Authority is able to obtain an exemption from such security on behalf of Project Co and with respect to the Project,
 - (A) Project Co shall provide to Contracting Authority an accurate accounting of the costs and expenses avoided by Project Co as a result of any such exemption; and
 - (B) Contracting Authority shall be permitted to deduct an amount equal to all costs and expenses that were avoided by Project Co as a result of any such exemption from the Substantial Completion Payment; and
 - (v) if there is a legislative or other requirement for the applicant in respect of any Project Co Permit, Licence and Approval to be Contracting Authority, (A) act as Contracting Authority’s agent in relation to such Project Co Permit, Licence and Approval, and (B) be responsible for all aspects of the applicable application preparation and submittal process. If desired by Contracting Authority, in its sole discretion, Contracting Authority shall approve the form of application prior to its submission by Project Co.
- (b) Where Project Co Permits, Licences and Approvals have requirements that may impose any conditions, liabilities or obligations on Contracting Authority or any Province Person, Project Co shall not obtain, amend or renew (other than upon the same terms and conditions) such Project Co Permits, Licences and Approvals without the prior written consent of Contracting Authority, provided that neither Contracting Authority nor any Province Person shall be responsible for obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval. Contracting Authority shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on Contracting Authority or any Province Person by the requirements of any Project Co Permit, Licence or Approval obtained with Contracting Authority’s consent under this Section 9.4(b).
- (c) Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Contracting Authority may request and as Project

Co may reasonably be able to provide, and shall execute such applications and documents as are required to be in its name, to enable Contracting Authority to obtain, maintain or renew any Contracting Authority Permits, Licences and Approvals or to demonstrate compliance with any Permits, Licences and Approvals, provided that Project Co shall not be responsible for obtaining or for any delay in obtaining or for the failure of Contracting Authority to obtain any Contracting Authority Permit, Licence or Approval, unless such delay or failure is caused by any act or omission of Project Co, any Project Co Party or any other person for whom Project Co is responsible at law.

- (d) With respect to each City's site plan review for Project Co System Infrastructure:
- (i) Project Co shall prepare and submit all documentation and materials that would be included in an application for site plan approval and that the applicable City will require to complete site plan review of the Project Co System Infrastructure.
 - (ii) Subject to Section 9.4(d)(iii), Project Co shall address all comments from, and shall comply with all terms and conditions imposed by the applicable City arising from the City's site plan review.
 - (iii) Project Co shall promptly provide to Contracting Authority a written description of any comments, terms or conditions arising from the City's site plan review that are, (A) inconsistent with the Project Agreement, or (B) include a requirement to obtain an official plan amendment, zoning by-law amendment or minor variance, as applicable. Contracting Authority may, in its sole discretion, direct Project Co not to comply with any or all of such comments, terms or conditions.
 - (iv) Neither Contracting Authority nor Project Co will be required to sign any site plan agreements in respect of site plan approval.
- (e) With respect to each City's site plan approval for New Third Party Infrastructure, Project Co shall obtain site plan approval for all New Third Party Infrastructure on behalf of the applicable owner(s) of the New Third Party Infrastructure.
- (f) At the request of Contracting Authority, Project Co shall, at its sole cost and expense, provide Contracting Authority with all information (including Design Data and supporting documentation) and administrative assistance as would reasonably be required by the applicable City or third party in relation to the preparation and submission of any rezoning application and the obtaining of any zoning amendment by the applicable City or third party. Contracting Authority may, in its sole discretion, provide all such information to the applicable City or third party.
- (g) If, prior to the Scheduled Substantial Completion Date, a City fails to issue to Project Co a final determination (a granting, conditional granting, or refusal) in respect of a Listed Project Co PLA prior to the expiration of [REDACTED] per cent times the number of Business Days designated for a final determination by the applicable City in Appendix F to Schedule 1 – Definitions and

Interpretation for the applicable Listed Project Co PLA (the “**City PLA Deadline**”), then any delay or additional costs in respect of the Works caused by the failure to make a final determination by the City PLA Deadline shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event, provided that:

- (i) the applicable Project Co Permit, Licence or Approval is a Listed Project Co PLA;
 - (ii) Project Co has fulfilled all obligations pursuant to the Applicable Law, in accordance with any deadline imposed by this Project Agreement or a City, including providing timely and thorough responses to questions or concerns posed by such City in respect of the Listed Project Co PLA;
 - (iii) Project Co submitted the applicable Listed Project Co PLA in accordance with the timing for such submission in the Interim Baseline Works Schedule, the Baseline Works Schedule or any Recovery Works Schedule, as applicable; and
 - (iv) Project Co’s application for the Listed Project Co PLA and Project Co’s responses to all questions or concerns posed by a City were in accordance with Good Industry Practice.
- (h) For clarity, Section 9.4(g) does not entitle Project Co to a Delay Event or a Compensation Event,
- (i) in the event that a City’s final determination on a Listed Project Co PLA is made in a timely way, pursuant to the applicable City PLA Deadline, but is not favourable to Project Co or Project Co disagrees with the substance of the final determination;
 - (ii) in the event that a City fails to issue to Project Co a final determination in respect of a Permit, Licence or Approval that is not explicitly listed as a Listed Project Co PLA; or
 - (iii) with respect to,
 - (A) Permits, Licences or Approvals that are related to, but not explicitly included on, the Listed Project Co PLAs; or
 - (B) the Traffic and Transit Management Plan.
- (i) In the event that Contracting Authority agrees or elects, in its sole discretion, to become a party to, or be bound by any Project Co Permit, License and Approval following a written request in this regard being made by Project Co to Contracting Authority, then with respect to such Project Co Permit, License and Approval, the Parties covenant and agree as follows:
- (i) Contracting Authority covenants and agrees to provide to Project Co a copy of such Project Co Permit, Licence and Approval within 60 days of Contracting Authority’s receipt of the same;
 - (ii) Project Co agrees to and in favour of Contracting Authority:

- (A) to perform and fulfil the liabilities and obligations (including indemnity obligations) of Contracting Authority under such Project Co Permit, License and Approval as if Project Co was an original party thereto in the place and stead of Contracting Authority;
 - (B) to pay any amounts paid, payable, or owing by Contracting Authority arising under, pursuant to, in respect of or in connection with such Project Co Permit, License and Approval; and
 - (C) to perform, satisfy, discharge and fulfil all obligations (including indemnity obligations), liabilities and indebtedness of or owing by Contracting Authority arising under, pursuant, in respect of or in connection with such Project Co Permit, License and Approval;
- (iii) Project Co acknowledges and agrees that any amount paid by Contracting Authority under, pursuant to, in respect of or in connection with such Project Co Permit, License and Approval shall constitute, and shall be deemed to constitute, a debt of an equivalent amount immediately due and payable by Project Co to Contracting Authority pursuant to the terms of this Project Agreement, and Contracting Authority shall be entitled to exercise its rights under Section 34.12 to seek payment of such debt due and payable to Contracting Authority by Project Co; and
- (iv) Project Co acknowledges and agrees that Contracting Authority's agreement or election to become a party to, or be bound by such Project Co Permit, License and Approval shall not, and shall not be deemed, construed or interpreted to:
- (A) be an agreement by Contracting Authority that such Project Co Permit, License and Approval is, becomes or constitutes a Contracting Authority Permit, License and Approval;
 - (B) be a waiver by Contracting Authority of full compliance with, or a waiver by Contracting Authority of any breach of, any of the provisions of this Project Agreement;
 - (C) be any form of forbearance of or to Contracting Authority's right to seek or enforce strict compliance with any of the provisions of this Project Agreement, or the exercise by Contracting Authority of any right, power or remedy that may be available to Contracting Authority under this Project Agreement; or
 - (D) restrict, limit, prejudice or in any other way impair the rights and/or remedies of Contracting Authority under this Project Agreement.

9.5 Safety and Security

- (a) During the Construction Period and following Final Completion solely in relation to Construction Activities, Project Co shall:

- (i) comply with the Contractor Site Specific Safety Manual;
- (ii) subject to Section 9.5(b), keep the Site (including Existing Third Party Infrastructure on the Site), Metrolinx Lands Discrete Parcels (once access to the Metrolinx Lands Discrete Parcels has been granted to Project Co in accordance with Section 14.1(a) and Schedule 35 –Lands), New Third Party Infrastructure and Project Co System Infrastructure in a safe and orderly state, as appropriate in accordance with the Contractor Site Specific Safety Manual and Good Industry Practice, to avoid danger to persons on the Site (including Existing Third Party Infrastructure on the Site), Metrolinx Lands Discrete Parcels, New Third Party Infrastructure and Project Co System Infrastructure and in the immediate vicinity of the Site (including Existing Third Party Infrastructure on the Site), Metrolinx Lands Discrete Parcels, New Third Party Infrastructure and Project Co System Infrastructure;
- (iii) except as set out in Section 9.5(b), take such measures as are reasonable in accordance with Good Industry Practice to maintain and secure the Site (including Existing Third Party Infrastructure on the Site), Metrolinx Lands Discrete Parcels, New Third Party Infrastructure and Project Co System Infrastructure to prevent access of any persons or creatures not entitled to be there once Project Co has been granted access to the Site or Metrolinx Lands Discrete Parcels, as applicable, or has commenced Work on the New Third Party Infrastructure and Project Co System Infrastructure;
- (iv) comply, and cause each Project Co Party to comply,
 - (A) with Applicable Law relating to health and safety, including the *Occupational Health and Safety Act* (Ontario) and all regulations thereto; and
 - (B) with any direction or instruction from Transport Canada arising from any contractual arrangement or board order involving Transport Canada and one or both of MTO or Metrolinx with respect to the Rail Corridor, and facilitate and provide cooperation with respect to any inspections by Transport Canada on the Lands;
- (v) with respect to the Works, cause a COR-Certified Construction Project Co Party or, prior to receipt of COR Certification, a COR-Qualified Construction Project Co Party, to perform, all of the obligations of the “constructor”, and indemnify Contracting Authority and each Province Person against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
- (vi) provide Contracting Authority with a certificate of good standing from WSIB or any successor thereto once every 90 days from Financial Close until Final Completion, and from Final Completion until the Termination Date, at the request of the Contracting Authority Representative from time to time; and

- (vii) cause the Construction Contractor to deliver at least one copy of the Contractor Site Specific Safety Manual to the Site no later than the first day of the Construction Period (or such other date as may be agreed by the Parties) and maintain the Contractor Site Specific Safety Manual (as it may be amended by the Construction Contractor from time to time) at the Site for the duration of the Construction Period.
- (b) New Third Party Infrastructure shall, for all purposes of this Project Agreement, become Existing Third Party Infrastructure on the earlier of,
 - (i) the date that there is a Handover of that portion of the New Third Party Infrastructure from Project Co to the applicable third party; and
 - (ii) Final Completion.
- (c) During the Operational Term, Project Co shall:
 - (i) cooperate with Contracting Authority and any Governmental Authority, as appropriate, with a view to securing and protecting the security of the Project Co System Infrastructure and protecting the security of System Users;
 - (ii) notify Contracting Authority of any breach of security or potential breach of security on or off the Project Co System Infrastructure;
 - (iii) cooperate with Contracting Authority any Governmental Authority and the Emergency Service Provider in relation to the planning, organisation and control of extraordinary Passenger movements resulting from the holding of special events as contemplated pursuant to the Output Specifications;
 - (iv) cooperate with any special enquiries or investigations carried out by Contracting Authority, Emergency Service Providers or any Governmental Authority as a result of accidents, incidents or changes in Applicable Law and shall promptly provide to Contracting Authority, the Emergency Service Providers and any Governmental Authority (as the case may be) all information, resources and facilities within its control which are reasonably required for such enquiries or investigations;
 - (v) comply with the Safety Management Plan, Security Management Plan and Emergency Response Plan;
 - (vi) follow the safety and security instructions set out in the LRT Rules and Standard Operating Procedures, including any verbal instructions by individuals authorized in accordance with the LRT Rules and Standard Operating Procedures, and comply with all requirements set out in the Output Specifications related to safety and security;
 - (vii) with respect to the Hurontario OMSF,

- (A) keep the Hurontario OMSF in a safe and orderly state, as appropriate in accordance with Good Industry Practice and in accordance with the Output Specifications; and
 - (B) take such measures as are reasonable in accordance with Good Industry Practice and as are required by the Output Specifications to secure the Hurontario OMSF;
- (viii) in an Emergency situation or when an urgent security matter arises in respect of the safety or security of the Project Co System Infrastructure, the System Users or the Hurontario OMSF, take instruction from Contracting Authority with respect to maintaining the security and safety of the Project Co System Infrastructure, the System Users, and the Hurontario OMSF; and
- (ix) with respect to the Project Co Services, cause a COR-Certified Service Provider Project Co Party or, prior to receipt of COR Certification, a COR-Qualified Service Provider Project Co Party, to perform all Project Co Services and indemnify Contracting Authority and each Province Person against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto.

9.6 Health and Safety Certification

- (a) Project Co shall, at its own cost and risk, at all times during the performance of the Works cause a COR-Qualified Construction Project Co Party or COR-Certified Construction Project Co Party, as the case may be, to:
- (i) to the extent a COR-Qualified Construction Project Co Party has not obtained COR Certification prior to the date of this Project Agreement,
 - (A) use best efforts to obtain its COR Certification no later than eighteen months following the date of this Project Agreement. In the event that Contracting Authority is satisfied, in its sole discretion, that the COR-Qualified Construction Project Co Party has used best efforts to obtain its COR Certification in accordance with this Section 9.6 and the COR-Qualified Construction Project Co Party has not obtained COR Certification by the end of such eighteen month period, then Contracting Authority shall establish a time period during which the COR-Qualified Construction Project Co Party shall obtain its COR Certification, which time period shall not be less than 30 days, and
 - (B) maintain in good standing and, as applicable, renew its OHSAS 18001 Accreditation until such time as the COR-Qualified Construction Project Co Party has obtained its COR Certification, and
 - (ii) once the COR-Qualified Construction Project Co Party is certified (hereafter referred to as a “**COR-Certified Construction Project Co Party**”), maintain in good standing, and, as applicable, renew its COR Certification; and

- (iii) comply with all requirements of its OHSAS 18001 Accreditation (if a COR-Qualified Construction Project Co Party) or COR Certification (if a COR-Certified Construction Project Co Party), in accordance with its terms.
- (b) Project Co shall, at its own cost and risk, at all times beginning on the date the Substantial Completion Countdown Notice is issued until the end of the Project Term cause the COR-Qualified Service Provider Project Co Party or COR-Certified Service Provider Project Co Party to:
- (i) to the extent a COR-Qualified Service Provider Project Co Party has not obtained its COR Certification prior to the date the Substantial Completion Countdown Notice is issued, use best efforts to obtain its COR Certification no later than six months following the date the Substantial Completion Countdown Notice is issued. In the event that Contracting Authority is satisfied, in its sole discretion, that the COR-Qualified Service Provider Project Co Party has used best efforts to obtain its COR Certification in accordance with this Section 9.6 and the COR-Qualified Service Provider Project Co Party has not obtained its COR Certification by the end of such six month period, then Contracting Authority shall establish a time period during which the COR-Qualified Service Provider Project Co Party shall obtain its COR Certification, which time period shall not be less than 30 days;
 - (ii) once the COR-Qualified Service Provider Project Co Party is certified (thereafter referred to as a “**COR-Certified Service Provider Project Co Party**”), maintain in good standing, and, as applicable, renew its COR Certification; and
 - (iii) comply with all requirements of its COR Certification in accordance with its terms.
- (c) Without limiting any other provision of this Project Agreement, if at any time during the performance of the Project Operations:
- (i) a COR-Qualified Construction Project Co Party or a COR-Qualified Service Provider Project Co Party fails to obtain its COR Certification in accordance with this Project Agreement and Contracting Authority determines that the failure to obtain the COR Certification is as a result of such COR-Qualified Construction Project Co Party or such COR-Qualified Service Provider Project Co Party, as the case may be, not using best efforts to obtain such certification and Contracting Authority delivers a Notice to Project Co indicating that a COR-Qualified Construction Project Co Party or a COR-Qualified Service Provider Project Co Party, as the case may be, has failed to obtain its COR Certification in accordance with this Project Agreement; or
 - (ii) a COR-Qualified Construction Project Co Party fails to maintain its OHSAS 18001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement; or

- (iii) a COR-Certified Construction Project Co Party or a or a COR-Certified Service Provider Project Co Party, as the case may be, fails to maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement;

(each, an “**H&S Certification Default Event**”); or
- (iv) Contracting Authority delivers a Notice to Project Co indicating that Contracting Authority is of the opinion that a COR-Qualified Construction Project Co Party will fail to maintain its OHSAS 18001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement; or
- (v) Contracting Authority delivers a Notice to Project Co indicating that Contracting Authority is of the opinion that a COR-Certified Construction Project Co Party or COR-Certified Service Provider Project Co Party, as the case may be, will fail to maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement,

Project Co shall:

- (vi) immediately upon the occurrence of a H&S Certification Default Event, notify Contracting Authority that a H&S Certification Default Event has occurred, and:
 - (A) produce and deliver to Contracting Authority a report identifying the reasons for the failure to obtain or maintain in good standing the COR Certification or OHSAS 18001 Accreditation, as the case may be;
 - (B) produce and deliver to Contracting Authority a plan showing the steps that are to be taken to have the COR Certification or OHSAS 18001 Accreditation, as the case may be, obtained or reinstated in good standing within a period of not more than 30 days (the “**H&S Certification Reinstatement Plan**”), which H&S Certification Reinstatement Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to the H&S Certification Reinstatement Plan, Project Co shall take, and shall cause the COR-Qualified Construction Project Co Party, the COR-Certified Construction Project Co Party, the COR-Qualified Service Provider Project Co Party, or the COR-Certified Service Provider Project Co Party, as the case may be, to take, all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended H&S Certification Reinstatement Plan not more than 5 Business Days from the date on which such request is made by Contracting Authority;
 - (C) no later than 5 Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Construction Inspection or H&S Maintenance Inspection, as the case may be, in accordance with Section 13(b); and

- (D) arrange to have conducted an H&S Construction Re-Inspection or H&S Maintenance Re-Inspection, as the case may be in accordance with Section 13(f), if required, or
- (vii) within 5 Business Days of receipt of the Notice from Contracting Authority under Section 9.6(c)(iv) or (v):
 - (A) produce and deliver to the Contracting Authority Representative a report identifying the manner in which the COR Certification or OHSAS 18001 Accreditation, as the case may be, shall be maintained in good standing or obtained, as applicable;
 - (B) produce and deliver to the Contracting Authority Representative a plan showing the steps that are to be taken to ensure that the COR Certification or OHSAS 18001 Accreditation, as the case may be, will be maintained in good standing without interruption (the “**H&S Certification Maintenance Plan**”), which H&S Certification Maintenance Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority require any amendments or revisions to be made to the H&S Certification Maintenance Plan, Project Co shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended H&S Certification Maintenance Plan not more than 5 Business Days from the date on which such request is made by Contracting Authority;
 - (C) arrange to have conducted a complete H&S Construction Inspection or H&S Maintenance Inspection, as the case may be, in accordance with Section 13(b), and
 - (D) arrange to have conducted an H&S Construction Re-Inspection or H&S Maintenance Re-Inspection, as the case may be, in accordance with Section 13(f), if required.

9.7 Protest and Trespass

- (a) Except as otherwise provided in this Project Agreement, Contracting Authority shall not be responsible for the presence of any persons participating in civil disobedience, demonstration or protest action (“**Protesters**”) or any other persons otherwise not entitled to be on or around the Lands (“**Trespassers**”). For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Metrolinx Lands shall not be a breach of the obligation of Contracting Authority to grant licence rights of use and access to Project Co on and over the Metrolinx Lands pursuant to Section 14 nor a breach of any other obligation, representation or warranty under this Project Agreement.
- (b) Subject to Section 9.7(c) and as otherwise set out in this Project Agreement, during the Operational Term, in respect of the Project Co System Infrastructure, excluding the Hurontario

OMSF and the TPSS, Project Co shall follow the instructions of Contracting Authority and the Police Service with respect to the management of Protestors and Trespassers and Project Co shall promptly notify the Contracting Authority Representative of the occurrence of any Protestors or Trespassers on the Operational Term Lands or Project Co System Infrastructure. If any instructions received by Project Co from Contracting Authority and the Police Service with respect to the management of Protestors and Trespassers conflict, Project Co shall act in accordance with the instructions of the Police Service to the extent of such conflict and, in so doing, shall, to the extent of the such conflict, be deemed to be acting in accordance with this Section 9.7(b) notwithstanding the applicable instructions of Contracting Authority. For clarity, Project Co's obligations with respect to the Operational Term Lands shall commence only upon the commencement of the Operational Term, and following receipt of the Notice to be delivered by Contracting Authority in accordance with Section 14.1(i).

- (c) The management of any Protestors or Trespassers shall be the responsibility of Project Co,
- (i) throughout the Construction Period in respect of the Site (including Existing Third Party Infrastructure on the Site), Metrolinx Lands Discrete Parcels (once access to each of the Metrolinx Lands Discrete Parcels has been granted to Project Co in accordance with Section 14.1(a) and Schedule 35 –Lands), New Third Party Infrastructure and Project Co System Infrastructure; and
 - (ii) throughout the Project Term in respect of the Hurontario OMSF and the TPSS and those portions of the Metrolinx Lands on which the Hurontario OMSF and the TPSS are located or occupied,
- to the extent such management is not otherwise the responsibility of the Police Service.
- (d) If, during the periods set out in Section 9.7(c)(i) and Section 9.7(c)(ii), Protestors or Trespassers occupy the Site, lands, facilities or infrastructure referred to in Section 9.7(c)(i) or Section 9.7(c)(ii), or access to such Site, lands, facilities, or infrastructure is prevented or interfered with by Protestors or Trespassers, Project Co shall use all appropriate measures reasonable in the circumstances to manage such Protestors or Trespassers and promptly notify the Contracting Authority Representative of such occurrence and of the action which Project Co proposes to take in respect thereof. Project Co may exercise any legal remedy available to it to remove Protestors or Trespassers from the Site, lands, facilities or infrastructure referred to in Section 9.7(c)(i) or Section 9.7(c)(ii), provided that if Project Co does elect to exercise any such legal remedy, Project Co shall give the Contracting Authority Representative at least 24 hours' Notice prior to commencing any such legal proceeding (except in a case of Emergency, danger to persons or material destruction or material damage to property where, in such circumstances, such Notice may be given to Contracting Authority less than 24 hours prior to the commencement of such legal proceeding) and shall continually update the Contracting Authority Representative as to the status of any such legal proceeding in reasonable detail and at reasonable intervals, and provided further that:

- (i) Project Co shall not give directly or indirectly to any Protester or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Protester or Trespasser or by other Protesters or Trespassers; and
 - (ii) Project Co shall not by virtue of this Section 9.7(d) be prevented from entering into bona fide settlements of claims brought against it by Protesters or Trespassers which provide for reasonable payments in satisfaction of such claims or agreeing to any reasonable cost orders in any proceedings.
- (e) Project Co may request the assistance of Contracting Authority (at the cost of Project Co) to remove Protesters or Trespassers during the periods, and for the Site, lands, facilities or infrastructure, set out in Section 9.7(c)(i) or Section 9.7(c)(ii) if Project Co demonstrates to Contracting Authority's reasonable satisfaction that:
- (i) Project Co is pursuing legal remedies available to it to remove the Protesters or Trespassers (provided that for this purpose Project Co may, but shall not be obligated to, prosecute injunctive or other judicial remedies beyond the court of first instance); and
 - (ii) the continued presence of the Protesters or Trespassers is having a material adverse effect on the conduct of the Works or the Project Co Services (as the case may be) that Project Co is unable to mitigate.

Following such request, Contracting Authority shall notify Project Co whether Contracting Authority can lawfully provide any assistance in relation to the removal of the Protesters or Trespassers that is not independently available to Project Co and, to the extent that such assistance can be lawfully provided, Contracting Authority shall provide such assistance (at the cost of Project Co) to the extent it is, in the discretion of Contracting Authority, reasonable and appropriate in the circumstances to do so.

9.8 Additional Works and Third Party Works

- (a) Project Co shall, having regard to Project Co's obligations set out in Section 15, arrange and carry out all coordination of the Project Operations with the Third Party Works directly with the applicable Third Party Contractor.
- (b) Contracting Authority may, in its sole discretion, carry out Additional Works.
- (c) Contracting Authority 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 Project Co. For clarity, Contracting Authority may, in its sole discretion, assign such responsibilities to Project Co during either or both of the Construction Period or Operational Term.
- (d) In connection with the Additional Works, Contracting Authority shall,

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- (i) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works with,
 - (A) the Works during the Construction Period; and
 - (B) the Project Co Services during the Operational Term;
 - (ii) enter into separate contracts with Additional Contractors,
 - (A) under conditions of contract which are compatible with the conditions of this Project Agreement;
 - (B) that require Additional Contractors to comply with Section 9.8(e) and all directions of Project Co in respect of any matter regarding health and safety on the Site, and methods and manner of construction (where applicable); and
 - (C) that require Additional Contractors to comply with Project Co's coordination and scheduling of the Additional Works; and
 - (iii) ensure that insurance coverage is provided by each Additional Contractor as would be required by a prudent owner similarly situated and coordinate such insurance with the insurance coverage of Project Co and in any event, such insurance shall provide for liability insurance of not less than \$[REDACTED].
- (e) In connection with the Additional Works, if Contracting Authority has assigned responsibilities to Project Co pursuant to this Section 9.8, Project Co shall,
- (i) provide for the methods and manner of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works with the Works or Project Co Services, as applicable, to be performed under this Project Agreement;
 - (ii) assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety at the Site, including all the responsibilities of the 'constructor' under the *Occupational Health and Safety Act* (Ontario), prior to Substantial Completion and, exercised in a manner consistent with the said Act, at any time that Project Co is acting as a 'constructor' on the Site following Substantial Completion;
 - (iii) provide Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works, as applicable;
 - (iv) participate with Contracting Authority and Additional Contractors in reviewing the construction schedules of Additional Contractors, when directed to do so by Contracting Authority; and

- (v) if part of the Works is affected by or depends upon, for its proper execution, the Additional Works, promptly report to Contracting Authority in writing and prior to proceeding with that part of the Works any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall invalidate any claims against Contracting Authority by reason of such readily apparent deficiencies.
- (f) In the case of Additional Works carried out prior to Substantial Completion, if:
 - (i) any Additional Contractors cause any damage to the Works;
 - (ii) Project Co incurs any additional costs or there is any delay in respect of the Works as a result of any Additional Contractors not complying with the coordination, scheduling and safety instructions of Project Co; or
 - (iii) subject to the performance by Project Co of its obligations under this Section 9.8, if Project Co incurs any additional costs or there is any delay in respect of the Works as a result of any such Additional Works (other than Additional Works that are required to meet the Output Specifications and provided such Additional Works are performed by such Additional Contractors by any applicable dates set out in the Output Specifications and in accordance with Good Industry Practice and with the terms of their respective contracts or engagements with Contracting Authority)

then any such delay or additional costs in respect of the Works shall, subject to and in accordance with Section 40 be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event.

- (g) Claims, disputes, and other matters in question between Project Co and Additional Contractors shall be dealt with in substantially the same manner as contemplated in Schedule 27 - Dispute Resolution Procedure provided that the Additional Contractors and Contracting Authority has made commercially reasonable efforts to ensure that provisions similar to Schedule 27 – Dispute Resolution have been included in the contracts between Contracting Authority and the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any Additional Contractor whose contract with Contracting Authority contains a similar agreement to arbitrate.
- (h) In connection with the Additional Works, Project Co may request a Variation as follows:
 - (i) Project Co shall have a period of 10 Business Days following Notice from Contracting Authority of Contracting Authority’s intention to carry out such Additional Works, including a reasonable description of such Additional Works, to request a Variation if such Additional Works are,
 - (A) reasonably expected to make void a warranty made in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice; or

- (B) reasonably expected to have a material negative consequence on Project Co's ability to perform any of the Project Operations;
- (ii) If Contracting Authority assigns responsibilities to Project Co pursuant to Section 9.8(c) and Section 9.8(e) after Substantial Completion, and Project Co demonstrates to Contracting Authority, acting reasonably, that it is unable to carry out such responsibilities without adding additional resources to the resources providing the Project Co Services at the relevant time, Project Co shall have a period of 10 Business Days following Notice from Contracting Authority of such an assignment of responsibilities to request a Variation in respect of the cost such additional resources;
- (iii) If Project Co has made a request for a Variation in accordance with Section 9.8(h)(i) or Section 9.8(h)(ii), Contracting Authority shall, within 10 Business Days of such request, either issue a Variation Enquiry or give Notice to Project Co that they do not agree that a Variation is required;
- (iv) Either Party may refer the question of whether a Variation is required as the result of a warranty risk or risk in the performance of the Project Operations for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and
- (v) If Contracting Authority has, under Section 9.8(h)(iii), given Notice to Project Co that it does not agree that a Variation is required, Contracting Authority shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless Contracting Authority determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void or will not result in any material negative consequence on Project Co's ability to perform any of the Project Operations and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
 - (B) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement, use commercially reasonable efforts to mitigate the adverse effects with respect to any void or voidable warranty and take commercially reasonable steps to minimize any increase in costs arising from any void warranty.
- (i) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors on and to the Works performed by Project Co shall not relieve Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation

9.9 Adjacent Developments

- (a) Project Co shall, coordinate and cooperate with Contracting Authority with respect to the Metrolinx Developer Review Process described in the Metrolinx Developer's Guide, having regard to the obligations and responsibilities set forth in the Metrolinx Developer's Guide, Schedule 15-2 Part 1, Article 15, and this Section 9.9, in connection with proposed Adjacent Developments referred by Contracting Authority to Project Co.
- (b) The primary intent of the Metrolinx Developer Review Process, as set forth in the Metrolinx Developer's Guide, is to facilitate Adjacent Developments and to avoid or mitigate any adverse impact of Adjacent Developments on the Works, the Project Co Services, or the Project Co System Infrastructure.
- (c) Project Co shall permit the developer of an Adjacent Development that is subject to the Metrolinx Developer Review Process to post or affix signage on the Metrolinx Lands, as and if required by any Municipality and in locations required by such Municipality, in connection with such Adjacent Development application.
- (d) Project Co shall provide to the developer of an Adjacent Development that is subject to the Metrolinx Developer Review Process all relevant Project documentation in respect of the design and construction of elements of the Project Co System Infrastructure that may be impacted by the proposed Adjacent Development, subject to the developer of the Adjacent Development executing a confidentiality agreement and a waiver of liability, each in a form and substance satisfactory to Contracting Authority and Project Co, each acting reasonably.
- (e) All work and activities undertaken by Project Co or any Project Co Party pursuant to this Section 9.9 and Schedule 15-2, Part 1, Article 15, shall be at Project Co's own cost, provided that in the event that more than 24 Adjacent Development applications are referred to Project Co by Contracting Authority in a Contract Year then Project Co shall be entitled to a Variation in respect of such excess development applications referred to them.

9.10 System Extension

- (a) Contracting Authority shall be entitled to carry out or procure the carrying out of any System Extension at any time during the Project Term and Project Co shall not be entitled to object or prevent the carrying out of any such System Extension.
- (b) Project Co shall make available those parts of the Metrolinx Lands or the Project Co System Infrastructure to enable an Extension Contractor to connect the Project Co System Infrastructure with the System Extension.
- (c) Project Co and Contracting Authority shall comply with Schedule 39 – System Extension in connection with any System Extension considered by Contracting Authority at any time during the Project Term.

9.11 [Intentionally Deleted]**9.12 Demolition Requirements**

- (a) Without limiting Project Co's obligation to perform Project Operations at all times in accordance with Applicable Law, in respect of any Demolition, Project Co shall, and shall cause each applicable Project Co Party to, at such person's own cost and risk and at all times during the performance of the Project Operations:
- (i) conduct all work in connection with any Demolition at all times in compliance with Section 3 of the Performance Standards Regulation and the Building Code;
 - (ii) ensure that all Project Co Parties having responsibility for the supervision of any such Demolition are qualified as either a Professional Engineer, limited license holder or provisional license holder (as such terms are used in the Performance Standards Regulation) (such person is hereinafter referred to as a "**Demolition Supervisor**");
 - (iii) observe and perform the Demolition in a manner that is consistent with the recommendations set forth in the Demolition Guidelines in all material respects; and
 - (iv) in respect of any Complex Structure Demolition to be conducted by Project Co or any applicable Project Co Party:
 - (A) prepare detailed specifications relating to such Complex Structure Demolition which specifications will include, without limitation, colour-coded Load-Path Diagrams (which will include a description of the Demolition Requirements set forth herein) to supplement the Site work plans and blueprints relating to the Demolition and all other technical requirements relating to the Complex Structure Demolition (the "**Demolition Specifications**");
 - (B) at all times when a Complex Structure Demolition is being performed that the Demolition Specifications, demolition workplan and Load-Path Diagram, be present and available at the Site at which such Complex Structure Demolition is being performed; and
 - (C) ensure at all times when a Complex Structure Demolition is being performed that a Demolition Supervisor will be on the Site at which such Complex Structure Demolition is being performed and actively supervising all activities in respect of the Complex Structure Demolition;
- (collectively, the "**Demolition Requirements**").
- (b) If at any time while any Demolition is being performed pursuant to this Project Agreement, Project Co or any Project Co Party that is performing any part of any Demolition receives notice from Contracting Authority or any Governmental Authority that the Demolition is being conducted in a manner that is either not in compliance with the Demolition Requirements or not

otherwise in accordance with this Project Agreement (such event referred to as a “**Demolition Default Event**”), Project Co, and any applicable Project Co Party, shall:

- (i) be required immediately upon the occurrence of a Demolition Default Event, to notify Contracting Authority that a Demolition Default Event has occurred, unless Contracting Authority was the person that provided notice of the Demolition Default Event;
- (ii) cease all work in respect of such Demolition; and
- (iii) within 5 Business Days of receipt of a notice of a Demolition Default Event produce and deliver to the Contracting Authority Representative:
 - (A) a report identifying the reasons for the occurrence of the Demolition Default Event; and
 - (B) a Demolition Plan showing the steps that are to be taken to rectify the Demolition Default Event within a period of not more than 30 days from the occurrence of the Demolition Default Event, which Demolition Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to such Demolition Plan, Project Co and the applicable Project Co Parties shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended and revised Demolition Plan not more than 5 Business Days from the date on which such request is made by Contracting Authority.
- (c) No Demolition shall be recommenced at the Site that was the subject of the Demolition Default Event until:
 - (i) Contracting Authority is satisfied that Project Co or the applicable Project Co Party has taken all necessary steps to remediate such Demolition Default Event in accordance with Demolition Plan; and
 - (ii) Contracting Authority has received a report, in form and substance satisfactory to Contracting Authority, prepared by a Professional Engineer that the Demolition Default Event has been remediated and the Site has been properly prepared for the Demolition to proceed in accordance with the Demolition Plan.

9.13 Tracking System

- (a) Project Co shall, at its own cost and risk, provide to Contracting Authority a system to track (a) the status of each Listed Project Co PLA through every stage of preparation, submission and approval and (b) the progress made by the Category 1 Utility Companies in performing the activities described in Section 40.1(a)(xix)(A), Section 40.1(a)(xix)(B) and Section 40.1(a)(xix)(C). More specifically, such system shall:

- (i) be updated by Project Co each Business Day and be made available to Contracting Authority (and, with respect to the status of each Listed Project Co PLA, each City) in real time each Business Day through a web-based interface which would include functionality to provide automated email alerts to a customizable frequency and set of email addresses;
- (ii) be operational no later than the date upon which the first Listed Project Co PLA application is submitted or Category 1 Utility Company activity described in Section 40.1(a)(xix)(A), Section 40.1(a)(xix)(B) or Section 40.1(a)(xix)(C) is commenced;
- (iii) include a feature that highlights to Contracting Authority and each City each outstanding applicable Listed Project Co PLA when it reaches the following milestone triggers:
 - (A) **[REDACTED]**% of the number of Business Days designated for a final determination by the applicable City in Appendix F to Schedule 1 – Definitions and Interpretation for the applicable Listed Project Co PLA;
 - (B) **[REDACTED]**% of the number of Business Days designated for a final determination by the applicable City in Appendix F to Schedule 1 – Definitions and Interpretation for the applicable Listed Project Co PLA; and
 - (C) 5 Business Days prior to the expiration of the City PLA Deadline; and
- (iv) include a feature that highlights to Contracting Authority and the Category 1 Utility Company each outstanding applicable activity described in Section 40.1(a)(xix)(A), Section 40.1(a)(xix)(B) or Section 40.1(a)(xix)(C) when it reaches the following milestone triggers:
 - (A) **[REDACTED]**% of the number of Business Days designated for completion by the Category 1 Utility Company in the applicable Final Utility Baseline Document for the applicable activity described in Section 40.1(a)(xix)(A), Section 40.1(a)(xix)(B) or Section 40.1(a)(xix)(C); and
 - (B) **[REDACTED]**% of the number of Business Days designated for completion by the Category 1 Utility Company in the applicable Final Utility Baseline Document for the applicable activity described in Section 40.1(a)(xix)(A), Section 40.1(a)(xix)(B) or Section 40.1(a)(xix)(C).
- (b) Project Co shall submit documentation on the proposed design, functionality, and usage of the system to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure no later than 60 days after Financial Close.
- (c) In addition, Project Co shall provide written notice to the Contracting Authority Representative with respect to any outstanding Listed Project Co PLA or Category 1 Utility Company activity

described in Section 40.1(a)(xix)(A), Section 40.1(a)(xix)(B) or Section 40.1(a)(xix)(C) when it reaches the milestone triggers outlined in Section 9.13(a)(iii) and Section 9.13(a)(iv) above.

- (d) With respect to any failure to issue to Project Co a final determination in respect of a Listed Project Co PLA prior to the expiration of the relevant City PLA Deadline, Project Co shall not be entitled to the Delay Event or Compensation Event pursuant to Section 40.1(a)(xviii) unless the tracking system as described in Section 9.13(a) is fully functional and available to Contracting Authority and the applicable City and contains accurate information as to the status of the applicable Listed Project Co PLA.
- (e) With respect to any failure by a Category 1 Utility Company to perform the obligations set out in Section 40.1(a)(xix)(A), Section 40.1(a)(xix)(B) or Section 40.1(a)(xix)(C), Project Co shall not be entitled to the Delay Event or Compensation Amount pursuant to Section 40.1(a)(xix) unless the tracking system as described in Section 9.13(a) is fully functional and available to Contracting Authority and contains accurate information as to the progress made by the Category 1 Utility Companies in performing the activities described in Section 40.1(a)(xix)(A), Section 40.1(a)(xix)(B) or Section 40.1(a)(xix)(C).

10. REPRESENTATIVES

10.1 The Contracting Authority Representative

- (a) The Contracting Authority Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the Contracting Authority Representative and such other functions and powers of Contracting Authority under this Project Agreement as Contracting Authority may notify Project Co from time to time.
- (b) Contracting Authority may, from time to time by written Notice to Project Co, change the Contracting Authority 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 Contracting Authority Representative has been appointed, or when the Contracting Authority Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Contracting Authority Representative's functions under this Project Agreement, Contracting Authority shall perform or may, by written Notice to Project Co, promptly appoint an alternative Contracting Authority Representative to perform the functions which would otherwise be performed by the Contracting Authority Representative. Upon receipt of such written Notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative Contracting Authority Representative which is permitted by this Project Agreement as being authorized by Contracting Authority, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The Contracting Authority Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.

- (e) Subject to the limitations set out in Sections 10.1(a) and 10.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the Contracting Authority Representative which is explicitly authorized by this Project Agreement as being authorized by Contracting Authority, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

10.2 The Project Co Representative

- (a) Subject to the limitations set out in Section 10.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of Contracting Authority.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written Notice to Contracting Authority, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise be performed by the Project Co Representative, provided that, Project Co must seek Contracting Authority's consent in accordance with Section 10.2(b) if such alternative Project Co Representative is in place for more than 180 days. Upon receipt of such written Notice, Contracting Authority and the Contracting Authority Representative shall be entitled to treat any act of such alternative Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and Contracting Authority and the Contracting Authority Representative shall not be required to determine whether authority has in fact been given.
- (d) The Project Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.
- (e) Subject to the limitations set out in Section 10.2(d), unless otherwise notified in writing, Contracting Authority and the Contracting Authority Representative shall be entitled to treat any act of the Project Co Representative which is explicitly authorized by this Project Agreement as being authorized by Project Co, and Contracting Authority and the Contracting Authority Representative shall not be required to determine whether authority has in fact been given.

10.3 Communications to Representatives

- (a) At the time that a Party appoints or changes the appointment of the Contracting Authority Representative or the Project Co 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.

10.4 Key Individuals

- (a) The individuals who are critical to the performance of the Works are identified in Sections A and C of Schedule 9 - Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Works in the capacity set out in Schedule 9 - Key Individuals (unless such Key Individuals are not available for reasons beyond the control of Project Co or a Project Co Party). Project Co or a Project Co Party shall not, for the duration of the Works, require or request any such person to be involved in any other project, if, in the reasonable opinion of Contracting Authority such involvement would have a material adverse effect on the Works. If Project Co fails to comply with this Section 10.4(a), Project Co shall pay to Contracting Authority liquidated damages as set out in Schedule 19 – Liquidated Damages. For clarity, Project Co and the Project Co Parties' reasonable commercial efforts, in accordance with this Section 10.4(a), shall include the denial of promotions or relocations of a Key Individual as permitted by the Applicable Law. For the purposes of this Section, only the following reasons will be considered beyond the control of Project Co or a Project Co Party: (i) death; (ii) short-term disability; (iii) long-term disability; (iv) maternity leave, parental leave or any other job protected leave under Applicable Law; (v) termination of employment for cause; (vi) retirement; or (vii) any other reason in the opinion of Contracting Authority, acting reasonably (Project Co shall provide to Contracting Authority any further documentation as may be reasonably requested by Contracting Authority to assess any reason beyond the control of Project Co).
- (b) Subject to the following sentence of this Section 10.4(b), the individuals who are critical to the performance of the Project Co Services are identified in Sections B and C of Schedule 9 - Key Individuals. The individuals who will fill the positions of Operations Manager(s), Maintenance Manager(s) for Fixed Infrastructure and Maintenance Manager for Revenue Vehicles, and the Project Co Party responsible for each such position, listed in Part B of Schedule 9 – Key Individuals will be identified to Contracting Authority following Commercial Close and on or before the date that is two years prior to the Scheduled Substantial Completion Date, following which Schedule 9 – Key Individuals shall be revised accordingly. Project Co shall use commercially reasonable efforts to ensure that such persons are involved in the Project Co Services in the capacity set out in Schedule 9 – Key Individuals at the outset of the Operational Term (unless such Key Individuals are not available for reasons beyond the control of Project Co or a Project Co Party). Project Co shall ensure that such Key Individuals are replaced over the duration of the Operational Term in a planned and orderly fashion and in consultation with Contracting Authority and with explicit identification of each Key Individual's length of time as a Key Individual during the Operational Term. Once a Key Individual has been identified and approved by Contracting Authority as part of the planned and orderly replacement of Key Individuals pursuant to this Section 10.4(b), Project Co or a Project Co Party shall not, for the planned period of the Project Co Services, require or request any such person to be involved in any other project if, in the reasonable opinion of Contracting Authority, such involvement would have a material adverse effect on the Project Co Services. For the purposes of this Section, only the following reasons will be considered beyond the control of Project Co or a Project Co Party: (i) death; (ii) short-term disability; (iii) long-term disability; (iv) maternity leave, parental leave or any other job protected leave under Applicable Law; (v) termination of employment for cause; (vi) retirement; or (vii) any other reason in the opinion of Contracting Authority, acting

reasonably (Project Co shall provide to Contracting Authority any further documentation as may be reasonably requested by Contracting Authority to assess any reason beyond the control of Project Co).

- (c) Subject to Project Co's obligations to ensure that Key Individuals remain involved in the Works and in the Project Co Services as set out in Sections 10.4(a) and 10.4(b), if it becomes necessary for Project Co to replace any individual identified in Schedule 9 - Key Individuals, Project Co shall nominate a competent suitably qualified and experienced permanent replacement or replacements as soon as practicable and provide Contracting Authority with relevant information on the proposed replacement and shall consult with Contracting Authority before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 - Key Individuals without the prior written consent of Contracting Authority, which consent shall not be withheld or delayed where Project Co is compliant with Sections 10.4(a), 10.4(b) and 10.4(d) and the proposed replacement is suitably qualified and experienced. In the event Project Co fails to nominate a competent suitably qualified and experienced permanent replacement or replacements for a period of greater than 120 days from the date it became necessary for Project Co to replace any individual identified in Schedule 9 - Key Individuals, Project Co shall pay to Contracting Authority liquidated damages as set out in Schedule 19 – Liquidated Damages.
- (d) If Contracting Authority determines, acting reasonably, that it is in the best interests of Contracting Authority that any individual identified in Schedule 9 - Key Individuals be replaced, Contracting Authority shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 days after receipt by Project Co of such Notice, Project Co shall provide Contracting Authority with relevant information on the proposed replacement and shall consult with Contracting Authority before finalizing the appointment of such replacement.

11. WORKS COMMITTEE

11.1 Establishment

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Works Committee**”) consisting of:
- (i) six representatives appointed by Contracting Authority from time to time, one of whom will be the Contracting Authority Representative; and
 - (ii) the following three representatives appointed by Project Co:
 - (A) the Project Co Representative;
 - (B) one representative of the Construction Contractor; and
 - (C) such other representative appointed by Project Co from time to time.

- (b) A representative of the Independent Certifier and a representative of the Service Provider shall each be required to attend meetings as a non-voting member of the Works Committee. Members of the Works Committee may invite, on prior Notice to all members, such advisors and consultants as they require from time to time to attend meetings and to provide briefings to the Works Committee.
- (c) The Contracting Authority Representative shall be the chairperson of the Works Committee.

11.2 Function and Role

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works. The Works Committee shall interface with the System Management Committee as and when required.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
 - (i) any design, construction and commissioning issues;
 - (ii) the Project Works Schedules;
 - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
 - (iv) any quality assurance and safety and security issues, including any design, configuration control, interfacing, training, testing, operational impact and other matters creating or giving rise to a safety or security issue or otherwise requiring attention and oversight;
 - (v) the Works Reports;
 - (vi) any special matters referred to the Works Committee by IO, Metrolinx or Project Co;
 - (vii) any Proceeding at Risk Matters referred to the Works Committee in accordance with Section 11.6.
 - (viii) any community and media relations issues in accordance with Schedule 18 - Communication and Public Engagement Protocol;
 - (ix) any issues related to Schedule 7 – Mobility Matters; and
 - (x) any other issues pertaining to the Works.
- (c) Subject to Section 11.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any change to the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
 - (iii) any Variation;
 - (iv) any change that may materially adversely affect Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date; or
 - (v) any matter with respect to which Contracting Authority has a right of consent or in respect of which Contracting Authority may exercise discretion pursuant to this Project Agreement.

11.3 Term of Works Committee

- (a) Unless otherwise agreed by the Parties, the Works Committee shall operate only until the Final Completion Date.

11.4 Replacement of Committee Members

- (a) Contracting Authority shall be entitled to replace any of its representatives on the Works Committee by written Notice to Project Co. Contracting Authority will use commercially reasonable efforts to deliver prior written Notice of any such replacement to Project Co. Project Co may replace any of its representatives on the Works Committee with the prior written consent of Contracting Authority.

11.5 Procedures and Practices

- (a) The members of the Works Committee may:
- (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
 - (iii) exclude from any meeting of the Works Committee such persons as the members of the Works Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.

- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Any one of the Project Co Representative, the Contracting Authority Representative and any of Metrolinx’s representatives on the Works Committee may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than five Business Days’ Notice to all members of the Works 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 Works Committee, the Works Committee shall meet at the Site, the Project Co System Infrastructure, the New Third Party Infrastructure, in the GTA or in any other location in Ontario. Meetings of the Works 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, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) Four representatives of Contracting Authority (one of whom shall be the Contracting Authority Representative) and the two representatives of Project Co shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes within five Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority notifies Project Co within five Business Days of receipt of the minutes that Contracting Authority disagrees with the contents of the minutes, Contracting Authority and Project Co shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by Contracting Authority during regular business hours.

11.6 Proceeding at Risk

- (a) If at any time prior to Final Completion:
 - (i) the Contracting Authority Representative has noted a Critical Non-Conformance in respect of the Works; or
 - (ii) the Contracting Authority Representative has noted a Works Submittal as “CRITICAL NON-CONFORMANCE” in accordance with Schedule 10 – Review Procedure (each of

the matters described in clauses (i) and (ii) of this Section 11.6(a), a “**Proceeding at Risk Matter**”);

then Contracting Authority may issue to Project Co (with a copy to the Independent Certifier) a notice (the “**Proceeding at Risk Notice**”) identifying Contracting Authority’s reasons for issuing the Proceeding at Risk Notice and requesting Project Co to deliver any relevant Design Data and any other information reasonably required by Contracting Authority from Project Co to review the Proceeding at Risk Matter.

- (b) Following the issuance of a Proceeding at Risk Notice, the Contracting Authority Representative and the Project Co Representative, together with the other members of the Works Committee, shall each promptly and diligently make a reasonable *bona fide* effort to resolve the Proceeding at Risk Matter. The Independent Certifier shall be required to attend all meetings and deliberations of the Works Committee at which the Proceeding at Risk Matter is considered, but shall not be entitled to participate in any decisions of the Works Committee.
- (c) Within 10 Business Days after receipt by Project Co of a Proceeding at Risk Notice, Project Co shall deliver a response to Contracting Authority and each member of the Works Committee, which shall include:
 - (i) the Design Data and any other information requested by Contracting Authority in the Proceeding at Risk Notice;
 - (ii) Project Co’s opinion confirming agreement with, or disputing the opinion of, Contracting Authority regarding the Proceeding at Risk Matter;
 - (iii) any additional Design Data and other information in support of Project Co’s opinion regarding the Proceeding at Risk Matter;
 - (iv) Project Co’s proposal to rectify the Proceeding at Risk Matter; and
 - (v) any reasonable request for additional information from Contracting Authority in respect of the Proceeding at Risk Matter.
- (d) Within 5 Business Days after receipt by Contracting Authority of the response from Project Co pursuant to Section 11.6(c), Contracting Authority shall notify Project Co if Contracting Authority requires any additional information from Project Co. Project Co shall provide such additional information to Contracting Authority, each member of the Works Committee and the Independent Certifier within 5 Business Days after receipt of such notice.
- (e) Within 15 Business Days after receipt by Contracting Authority of all deliverables contemplated by Section 11.6(c) and, if applicable, Section 11.6(d), and in any event, no later than 35 Business Days after receipt by Project Co of the Proceeding at Risk Notice, the Works Committee shall meet in person (the “**PAR Meeting**”), to attempt to resolve the Proceeding at Risk Matter.

- (f) Within 5 Business Days after the PAR Meeting and, in any event, no later than 40 Business Days after receipt by Project Co of the Proceeding at Risk Notice, the Works Committee shall attempt to reach a final decision with respect to the Proceeding at Risk Matter. If the Works Committee is unable to reach a final decision, the Parties shall immediately refer the Proceeding at Risk Matter to the Independent Certifier, who shall within 5 Business Days, or such longer time as reasonably agreed by the Parties, provide its written opinion and supporting analysis as to whether Project Co is Proceeding at Risk, including an opinion as to whether Project Co is performing the Works in a manner that will result in Project Co becoming unable to satisfy the requirements for Substantial Completion.
- (g) If the Independent Certifier determines pursuant to Section 11.6(f) that Project Co is Proceeding at Risk, Contracting Authority may, in its sole discretion, give notice to the Lenders' Agent pursuant to Section 13 of the Lenders' Direct Agreement that Project Co is Proceeding at Risk, together with a copy of the Independent Certifier's written opinion.
- (h) Following the Independent Certifier's decision pursuant to Section 11.6(f), either Party may refer the Proceeding at Risk Matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (i) The Proceeding at Risk Notice, review, and comments made during the process set out in this Section 11.6 are for general conformity to the obligations and requirements of this Project Agreement, and any such notice, review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and satisfying all requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for Contracting Authority.

12. SYSTEM MANAGEMENT COMMITTEE

12.1 Establishment

- (a) The Parties shall, not later than 18 months prior to the Scheduled Substantial Completion Date, establish a committee (the "**System Management Committee**") to serve until the Termination Date consisting of:
- (i) 4 representatives appointed by Contracting Authority from time to time;
 - (ii) 1 senior representative of Project Co; and
 - (iii) 1 senior representative of the Service Provider.
- (b) Members of the 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 System Management Committee.
- (c) One of the representatives of Contracting Authority shall be the chairperson of the System Management Committee.

12.2 Function and Role

- (a) The 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 System Management Committee shall interface with the Works Committee as and when required.
- (b) The System Management Committee shall be responsible for receiving and reviewing all matters related to the Project Co System Infrastructure, both prior to and during the Operational Term, including:
- (i) any joint review of the Project Co System Infrastructure and the Output Specifications;
 - (ii) any performance issues, including with respect to the Project Co System Infrastructure;
 - (iii) any special matter referred to the System Management Committee by Contracting Authority or Project Co;
 - (iv) any community and media relations issues in accordance with Schedule 18 - Communication and Public Engagement Protocol; and
 - (v) any other issues pertaining to the Project Operations (excluding the Works).
- (c) Subject to Section 12.2(d), any unanimous decision of the System Management Committee shall be final and binding on the Parties. If the System Management Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (d) The 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 Project Agreement;
 - (ii) any Variation;
 - (iii) any change that may materially adversely affect Project Co's ability to perform the Project Co Services or the performance by the relevant parties of any Governmental Activities; or
 - (iv) any matter with respect to which Contracting Authority has a right of consent or in respect of which Contracting Authority may exercise discretion pursuant to this Project Agreement.

12.3 Replacement of Committee Members

- (a) Contracting Authority shall be entitled to replace any of its representatives on the System Management Committee by written Notice to Project Co. Contracting Authority will use commercially reasonable efforts to deliver prior written Notice of any such replacement to Project Co. Project Co may replace any of its representatives on the System Management Committee with the prior written consent of Contracting Authority.

12.4 Procedures and Practices

- (a) The members of the System Management Committee may:
- (i) adopt such procedures and practices for the conduct of the activities of the System Management Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the System Management Committee such other persons as the members of the System Management Committee may agree;
 - (iii) exclude from any meeting of the System Management Committee such persons as the members of the System Management Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the System Management Committee.
- (b) Once established, the System Management Committee shall meet at least once each month during the Operational Term, unless otherwise agreed by the members of the System Management Committee or the Parties.
- (c) Any member of the System Management Committee may convene a special meeting of the System Management Committee at any time. Special meetings of the System Management Committee may be convened on not less than 5 Business Days' Notice to all members of the 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 System Management Committee, the System Management Committee shall meet at the Site, the Project Co System Infrastructure, in the GTA or in any other location in Ontario. Meetings of the 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, provided that each member of the System Management Committee must attend in person at least once each calendar quarter.
- (e) One representative of IO, one representative of Metrolinx, one representative of Project Co and one representative of the Service Provider shall constitute a quorum at any meeting of the System

Management Committee. A quorum of members may exercise all the powers of the System Management Committee. The members shall not transact business at a meeting of the System Management Committee unless a quorum is present.

- (f) Minutes of all meetings, recommendations and decisions of the System Management Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Contracting Authority. Contracting Authority shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Project Co notifies Contracting Authority within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Contracting Authority and Project Co shall be deemed to have approved such minutes. Contracting Authority shall maintain a complete set of all minutes of the meetings of the System Management Committee and shall make such minutes available for inspection by Project Co during regular business hours.

13. QUALITY MANAGEMENT

- (a) Project Co shall comply with the provisions of Schedule 11 – Quality Management.
- (b) Subject to Section 13(c), Project Co shall cause (A) the Construction Contractor, at its sole cost and expense, to conduct an inspection of its facilities and of its health and safety management systems on an annual basis until Final Completion or as otherwise required in accordance with Sections 9.6(c)(vi)(C) or 9.6(c)(vii)(C) (each, an “**H&S Construction Inspection**”), and (B) the Service Provider, at its sole cost and expense, to conduct an inspection of its facilities and its health and safety management systems on an annual basis commencing on the first anniversary of the Substantial Completion Date and thereafter until the end of the Project Term or as otherwise required in accordance with Sections 9.6(c)(vi)(C) or 9.6(c)(vii)(C), (each, an “**H&S Maintenance Inspection**”), which H&S Construction Inspection and H&S Maintenance Inspection shall:
- (i) be conducted by a Certified H&S Inspector, and
 - (ii) during the performance of the Works, include, at a minimum
 - (A) a review of general compliance with all applicable *Occupational Health and Safety Act* (Ontario) requirements, compliance with all safety manuals applicable to any portion of the Lands at which the Works are being conducted including, but not limited to, the Contractor Site Specific Safety Manual; and
 - (B) a review of the Construction Contractor’s job hazard analysis documentation on any Site which could endanger or put at risk the safety of any Person working at the Site; and
 - (iii) during the performance of the Project Co Services, include, at a minimum:

- (A) a review of general compliance with all applicable *Occupational Health and Safety Act* (Ontario) requirements, and compliance with all safety manuals applicable to the provision of the Project Co Services; and
 - (B) a review of the Service Provider's job hazard analysis documentation relating to the provision of Project Co Services.
- (c) The first H&S Construction Inspection shall occur no later than the ninetieth (90th) day following Financial Close or, if that day is not a Business Day, on the Business Day immediately succeeding such day.
- (d) Project Co shall cause the results of each H&S Construction Inspection (such results referred to as the "**H&S Construction Inspection Report**") to be delivered to Contracting Authority and the Works Committee not more than 5 Business Days from the date on which a H&S Construction Inspection is completed. An H&S Construction Inspection Report arising from an H&S Construction Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Inspection Report was issued.
- (e) Project Co shall cause the results of each H&S Maintenance Inspection (such results referred to as the "**H&S Maintenance Inspection Report**") to be delivered to Contracting Authority and the System Management Committee not more than 5 Business Days from the date on which a H&S Maintenance Inspection is completed. Any H&S Maintenance Inspection Report arising from an H&S Maintenance Inspection shall be tabled and presented by Project Co for discussion by the System Management Committee at the next meeting of the System Management Committee that follows the date on which such H&S Maintenance Inspection Report was issued.
- (f) To the extent an H&S Construction Inspection Report or H&S Maintenance Inspection Report, as the case may be, discloses any non-compliance by the COR-Qualified Construction Project Co Party, the COR-Certified Construction Project Co Party, the COR-Certified Service Provider Project Co Party, or the COR-Qualified Service Provider Project Co Party, as the case may be, with the terms of the COR Certification or OHSAS 18001 Accreditation, as the case may be, Contracting Authority shall have the right to require Project Co to cause the COR-Qualified Construction Project Co Party, the COR-Certified Construction Project Co Party, the COR-Qualified Service Provider Project Co Party and the COR-Certified Service Provider Project Co Party, as the case may be, at its sole cost and expense:
- (i) to take any corrective and remedial action required by the H&S Construction Inspection Report or H&S Maintenance Inspection Report, as the case may be, to correct any such non-compliance, and Project Co shall cause the COR-Qualified Construction Project Co Party, the COR-Certified Construction Project Co Party, the COR-Qualified Service Provider Project Co Party and the COR-Certified Service Provider Project Co Party, as the case may be, to comply with all instructions given by the certified H&S Inspector in respect of actions required to be taken to correct any such non-compliance;

- (ii) to arrange to have conducted by a Certified H&S Inspector such follow-up H&S Construction Inspections and H&S Maintenance Inspections, as the case may be, of those facilities and health management systems associated with the non-compliances identified in the relevant H&S Construction Inspection Report (each, an “**H&S Construction Re-Inspection**”) or in the relevant H&S Maintenance Inspection Report (each an “**H&S Maintenance Re-Inspection**”), in each case, within 3 Business Days from the date on which any such request is made by Contracting Authority, until any and all corrective and remedial actions required by the Certified H&S Inspector with respect to the correction of each identified non-compliance is completed to the satisfaction of the Certified H&S Inspector;
- (iii) to cause the results of each H&S Construction Re-Inspection (such results referred to as the “**H&S Construction Re-Inspection Report**”) to be delivered to Contracting Authority and the Works Committee not more than 3 Business Days from the date on which a H&S Construction Re-Inspection is completed. An H&S Construction Re-Inspection Report arising from an H&S Construction Re-Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Re-Inspection Report was issued; and
- (iv) to cause the results of each H&S Maintenance Re-Inspection (such results referred to as the “**H&S Maintenance Re-Inspection Report**”) to be delivered to Contracting Authority and the System Management Committee not more than 3 Business Days from the date on which a H&S Maintenance Re-Inspection is completed. An H&S Maintenance Re-Inspection Report arising from an H&S Maintenance Re-Inspection shall be tabled and presented by Project Co for discussion by the System Management Committee at the next meeting of the System Management Committee that follows the date on which such H&S Maintenance Re-Inspection Report was issued.

14. ACCESS TO THE LANDS

14.1 Licence

- (a) Subject to this Section 14 and the provisions of Schedule 35 – Lands, including any restrictions on the use and access to the Metrolinx Lands set out in Schedule 35 – Lands, Contracting Authority shall grant or have caused to be granted, and shall continuously grant or cause to be granted, to Project Co and the Project Co Parties, non-exclusive licence rights of use and access to, on and over the Metrolinx Lands and the Project Co System Infrastructure on the Metrolinx Lands (other than the Revenue Vehicles) as are required by Project Co and such Project Co Parties sufficient (subject to Project Co performing its obligations described in the Project Co Permits, Licences and Approvals and subject to the timing and extent of the grant of use and access to the Metrolinx Lands set out in Schedule 35 – Lands) to allow Project Co and such Project Co Parties to perform those Project Operations to be performed on the Metrolinx Lands. The rights granted to Project Co pursuant to this Section 14.1(a) shall be effective on the later of,

- (i) the date of Financial Close; and
 - (ii) the commencement date for access to individual parcels of the Metrolinx Lands as set out in Schedule 35 – Lands.
- (b) Subject to this Section 14, from and after the date that Metrolinx has title to a Revenue Vehicle pursuant to a Bill of Sale pursuant to Schedule 43 – Revenue Vehicles, Metrolinx shall grant or have caused to be granted, and shall continuously grant or cause to be granted, to Project Co and all Project Co Parties, a non-exclusive licence and right of use and access to such Revenue Vehicle as is required by Project Co and such Project Co Parties sufficient to allow Project Co and such Project Co Parties to perform the Project Operations.
- (c) Subject to Project Co’s obligation to comply with the other terms and conditions set forth in this Project Agreement and the other Project Documents, Project Co shall ensure that each Project Co Party shall at all times, when entering the Lands or using or accessing the Project Co System Infrastructure, the New Third Party Infrastructure and the Existing Third Party Infrastructure, act in a manner consistent with the obligations of Project Co under the Project Agreement.
- (d) In consideration for the use and access granted pursuant to Section 14.1(a) and Section 14.1(b), Project Co shall provide the Project Operations subject to and in accordance with this Project Agreement.
- (e) Without derogating from any of Contracting Authority’s rights hereunder, in particular, its rights of access to the Metrolinx Lands and the Project Co System Infrastructure prior to the Substantial Completion Date for the purposes of any Contracting Authority Commissioning, and subject to any restrictions set out in Schedule 35 – Lands, Contracting Authority acknowledges that, in respect of the Project Operations, Project Co and the Project Co Parties require, and Contracting Authority shall provide access to the Metrolinx Lands, the Revenue Vehicles and the other Project Co System Infrastructure on such lands without material interference by Contracting Authority or any Province Person for such period of time identified in Section 14.1(a) and Section 14.1(b) applicable thereto.
- (f) None of the rights granted pursuant to this Section 14.1 shall grant access to,
- (i) any lands beyond the boundaries of the Metrolinx Lands, or to any lands other than Metrolinx Lands, other than easements and similar interests of Contracting Authority which benefit the Metrolinx Lands, obtained after Commercial Close, to the extent the same are necessary for the Project Operations or exceed any restrictions set out in Schedule 35 - Lands; or
 - (ii) any facilities or infrastructure of Contracting Authority, a City, Utility Companies, Railway Companies, MTO, Region of Peel, 407 ETR or any other third parties, except as set out in Schedule 35 – Lands (which access, if any, is subject to Section 14.2(c)).

- (g) The use and access rights provided in this Section 14.1 shall automatically terminate as of the Termination Date, save and except for the earlier termination of the use and access rights specified in Schedule 35 – Lands.
- (h) For greater certainty, the use and access rights provided in this Section 14.1 shall not entitle Project Co or any Project Co Party to extract any mineral from the Metrolinx Lands for use in the Project Operations.
- (i) Contracting Authority shall acquire use of and access to the Metrolinx Lands described in Schedule 35 – Lands on or prior to the applicable commencement date for access set out in Schedule 35 – Lands. Contracting Authority shall provide Notice to Project Co of the commencement of access rights to the Metrolinx Lands as such access is obtained by Contracting Authority.
- (j) Project Co acknowledges and agrees that Contracting Authority has no authority to and is not obligated to grant the use of or access to any lands comprising the Third Party Lands other than such portions of the Third Party Lands that are part of the Metrolinx Lands, which use and access must be sought by Project Co or the Project Co Parties from each third party owner or rights holder of such Third Party Lands in accordance with this Project Agreement, Applicable Law, any Permits, Licences and Approvals and any other requirements imposed by such third party.
- (k) Project Co shall ensure that no Project Co Party uses or accesses (including trespasses upon) any lands of a third party land owner or rights holder during and for the purpose of the performance of the Project Operations, (i) save and except as otherwise set out in this Project Agreement or permitted by Applicable Law, or (ii) unless Project Co has obtained the permission of such third party for such use or access and, in such an event, only in accordance with any and all terms and conditions of such permission.

14.2 Non-exclusive Licence to Metrolinx Lands / Development of Lands

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder to the Metrolinx Lands and the Project Co System Infrastructure on the Metrolinx Lands shall be non-exclusive and that Contracting Authority and any person authorized by Contracting Authority may occupy and possess the Metrolinx Lands, the Project Co System Infrastructure, the New Third Party Infrastructure and the Existing Third Party Infrastructure (in each case on the Metrolinx Lands) without the prior consent of Project Co, including for the purposes of carrying out the Governmental Activities and the Other Works. In exercising its rights Project Co shall not, and shall require that the Project Co Parties (other than any Alstom Party) shall not, except as permitted under this Project Agreement, disrupt the performance of the Governmental Activities or the Other Works.
- (b) Without limiting Section 14.2(a), Project Co acknowledges that Contracting Authority may, from time to time, use or develop (including by way of subdivision), or permit the use or development of, or dispose of, portions of the Metrolinx Lands (or interests in the Metrolinx Lands), other than those portions of the Metrolinx Lands (or interests in the Metrolinx Lands) necessary for the

performance of the Project Operations. To the extent that such use, development or disposition materially adversely interferes with Project Co's licence rights hereunder or materially adversely interferes with Project Co's ability to perform the Project Operations, such use, development or disposition shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. For greater certainty, but without limiting the generality of the foregoing, Project Co acknowledges and agrees that certain of the Metrolinx Lands, shall be subject to the restrictions set out in Schedule 35 – Lands.

- (c) Project Co shall be solely responsible to arrange all access to lands that it requires to access Existing Third Party Infrastructure except in the case of Existing Third Party Infrastructure located on Metrolinx Lands, in which case, access to Metrolinx Lands is provided for in accordance with Schedule 35 – Lands and any Permits, Licences and Approvals. Project Co shall be solely responsible to obtain permission from the applicable third party to access the Existing Third Party Infrastructure or any component thereof.

14.3 Naming and Signage

- (a) Project Co acknowledges that Contracting Authority and the applicable owners of the New Third Party Infrastructure and Existing Third Party Infrastructure reserve and retain,
- (i) all rights to designate the name for the Project Co System Infrastructure, and any part of the Project Co System Infrastructure, or any part thereof, the New Third Party Infrastructure and the Existing Third Party Infrastructure and to retain all revenues derived from the sponsorship of such names;
 - (ii) all rights to signage in relation to the Lands and any part of the Project Co System Infrastructure, the New Third Party Infrastructure and the Existing Third Party Infrastructure; and
 - (iii) all rights, Trade-Marks, naming or branding regarding the Project Co System Infrastructure, or any party thereof, the New Third Party Infrastructure and the Existing Third Party Infrastructure.
- (b) Without limiting Contracting Authority's rights pursuant to Section 14.3(a), with the prior written consent of Contracting Authority, which may take into consideration any applicable governmental guidelines, including guidelines set out in Schedule 18 - Communication and Public Engagement Protocol and Schedule 35 – Lands, Project Co, the Project Co Parties and the Senior Lenders may, for the period prior to Substantial Completion, erect and maintain signage (which may include such parties' logos and trade names) at or on the Metrolinx Lands identifying their respective roles in connection with the development and construction of the Project.

14.4 No Interest in Land, Facilities or Infrastructure

- (a) Project Co agrees that it acquires no estate, right, title or ownership interest in the Lands or any part of the Project Co System Infrastructure (including, for greater certainty, the Revenue

Vehicles) or the New Third Party Infrastructure or any other interest in land, facilities or infrastructure pursuant to this Project Agreement or otherwise.

14.5 Non-Disturbance Agreement

- (a) If Contracting Authority mortgages, charges or otherwise encumbers the Metrolinx Lands, Contracting Authority shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement, in form satisfactory to Project Co, acting reasonably, executed by the mortgagee, chargee or other encumbrancer of the Metrolinx Lands permitting Project Co and the Lenders' Agent to access and use the Metrolinx Lands under the use and access granted pursuant to this Section 14 and the Lenders' Direct Agreement, respectively, free from interference from such mortgagee, chargee or other encumbrancer or any person claiming by or through any such person. This Section 14.5 shall not apply in respect of any portion of such Metrolinx Lands used or developed pursuant to Section 14.2(b) if neither the licence granted pursuant to this Section 14 nor the Project Operations pertain to such portion of the Metrolinx Lands.

14.6 Adjustments to Metrolinx Lands Available to Project Co

- (a) Project Co may provide a written request that Contracting Authority acquire ownership of or obtain rights or interests in or to additional lands which, in Project Co's opinion, would improve the efficiency of its delivery of the Project Operations (each, an "**Additional Lands Request**"). Contracting Authority may, in its sole discretion, accept or reject an Additional Lands Request, or prescribe conditions, restrictions or requirements in connection with its agreement to an Additional Lands Request.
- (b) In the event that Contracting Authority agrees to an Additional Lands Request, subject to the provisions of this Section 14.6 and Schedule 22 – Variation Procedure, the acquisition of ownership of or the obtainment of rights or interests in or to such additional lands shall result in a Variation, provided that such additional lands, rights or interests shall become "**Additional Lands**" and part of the Lands and the Metrolinx Lands (and therefore eligible for use in respect of the Project Operations) only if and when:
- (i) Contracting Authority has issued a Variation Confirmation pursuant to Schedule 22 – Variation Procedure (or the Parties have otherwise agreed in writing); and
- (ii) Contracting Authority has successfully acquired or obtained such additional lands.
- (c) Project Co shall include in each Additional Lands Request:
- (i) for each of the Additional Lands requested, supporting reasons, justifications, and detailed plans evidencing, at a minimum:
- (A) how each of the proposed Additional Lands would improve the efficiency of the delivery of the Project Operations; and

- (B) that the lands, rights or interests, if acquired, would be sufficient, but not excessive, to achieve the objective described in Section 14.6(c)(i)(A);
- (ii) the legal description(s) related to the Additional Lands being proposed together with all relevant Parcel Register for Property Identifier documents and, if the Additional Lands cannot be fully legally defined, a sketch depicting the location and limits of the Additional Lands and a legal survey of such Additional Lands to establish the boundaries. Whenever the Additional Lands are part of a larger lands parcel, the legal survey must define a smaller parcel sufficient for the delivery of the Project Operations;
- (iii) a plan for conducting any necessary investigations of the Additional Lands (a “**Site Investigation Plan**”), including with respect to contamination and other environmental conditions, utilities, geotechnical conditions, fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, located on, in or under such lands. If required by Contracting Authority, Project Co shall implement the Site Investigation Plan and shall provide all reports prepared or issued (“**Site Investigation Reports**”) in connection with the Site Investigation Plan to Contracting Authority. Contracting Authority shall be an addressee of all such Site Investigation Reports and shall be entitled to rely on the reports; and
- (iv) any savings in Direct Costs to Project Co that will result in a reduction in the compensation payable to Project Co in accordance with Section 1.11(a) of Schedule 22 – Variation Procedure.

Project Co shall provide such additional information as Contracting Authority may request at any time in relation to the Additional Lands Request.

- (d) Project Co acknowledges and agrees that any decision or determination of Contracting Authority with respect to an Additional Lands Request shall be final and binding on the Parties. Project Co acknowledges and agrees that Contracting Authority’s decision or determination shall not be subject to dispute resolution pursuant to Schedule 27 – Dispute Resolution Procedure.
- (e) Additional Lands acquired or obtained by Contracting Authority pursuant to this Section 14.6 shall constitute Lands and Metrolinx Lands for the purposes of this Project Agreement, provided that, notwithstanding anything to the contrary in this Project Agreement:
 - (i) Project Co shall be responsible for and shall indemnify and hold harmless Contracting Authority and the Province Persons from and against all costs, risks, obligations, and liabilities in respect of, or arising in connection with, such Additional Lands (and any portion of such Additional Lands comprising the Site) including claims relating to Site Conditions thereon and therein, including with respect to Contamination, Species-at-Risk, Utility Infrastructure, or fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites;

- (ii) Contracting Authority provides no representation or warranty, and shall have no obligation to Project Co, in respect of, or arising in connection with, any Additional Lands other than to grant or cause to be granted, to Project Co and the Project Co Parties, non-exclusive licence rights of use and access to, on and over the Additional Lands and the Project Co System Infrastructure on the Additional Lands to allow Project Co and such Project Co Parties to perform those Project Operations to be performed on the Additional Lands;
- (iii) To the extent related to or arising in connection with the Additional Lands Request or Additional Lands, Project Co shall not be entitled to claim any cost or schedule relief, including any Delay Event, Compensation Event, Excusing Cause, Relief Event or event of Force Majeure. In no event will Contracting Authority be liable for any delay by Contracting Authority, any Contracting Authority Party or any third party in:
 - (A) reviewing or processing an Additional Lands Request; or
 - (B) acquiring or obtaining Additional Lands;

pursuant to this Section 14.6; and
- (iv) Project Co shall be solely responsible for and shall indemnify and hold harmless Contracting Authority from and against all costs and expenses of Contracting Authority in connection with any Additional Lands Request, whether or not such Additional Lands Request results in the acquisition or obtainment of Additional Lands.
- (f) Project Co shall be entitled to acquire ownership of or obtain rights or interests in or to any properties at its own cost and expense, however, such properties shall not, for the purposes of this Project Agreement, be Metrolinx Lands and no Project Co System Infrastructure shall be located on, or rely in any way upon, any properties which Project Co acquires ownership of or obtains rights or interests in or to pursuant to this Section 14.6(f).
- (g) **[REDACTED]**
- (h) **[REDACTED]**
- (i) Project Co acknowledges that (i) any land acquisitions undertaken pursuant to Section 14.6(a) or Section 14.6(g) may proceed in accordance with the lands acquisition process set out in the *Expropriations Act* (Ontario) and, in such an event, (ii) such acquisitions shall be subject to the timelines and processes required under such Act.

14.7 Changes to Lands

- (a) Notwithstanding any other provision in this Project Agreement, the Parties acknowledge and agree that any alteration or variation to or in the Metrolinx Lands described in Schedule 35 – Lands or the dates by which Contracting Authority grants to Project Co access to the Metrolinx

Lands pursuant to Section 14.1(a) shall be effected by way of Variation, subject to and in accordance with Schedule 22 – Variation Procedure.

15. ENCUMBRANCES

15.1 Project Co Shall Perform Obligations Under Encumbrances

- (a) Project Co's access to and use of the Metrolinx Lands or any part thereof granted in Article 14 shall be subject to the Encumbrances.
- (b) Subject to Section 15.2, Project Co shall perform all obligations of Contracting Authority under all Encumbrances for or on behalf of Contracting Authority, other than:
 - (i) obligations which Project Co is not legally capable of performing for or on behalf of Contracting Authority; and
 - (ii) obligations which the applicable counterparty to such Encumbrance formally relieves or waives Project Co from performing, with the consent of Contracting Authority, in its sole discretion (and if such relief or waiver is not consented to by Contracting Authority, and subject to Section 15.1(b)(i), Project Co shall perform such obligations in accordance with this Section 15).
- (c) Project Co, whether before, during or after the completion of the Works, shall not in any manner breach the Encumbrances.

15.2 No Encumbrances

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be created, filed, issued or registered upon or against the Metrolinx Lands or any part of them or any interest therein (i) due to an act or omission of Project Co or any Project Co Party, (ii) arising in relation to the Works, or (iii) arising in relation to the Project Co Services.
- (b) Project Co does not have title to the Metrolinx Lands or any interest therein, and no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain title to or any interest in the Metrolinx Lands or any part thereof, except:
 - (i) as may be expressly agreed to in writing by Contracting Authority;
 - (ii) as may be expressly permitted by the terms of this Project Agreement; or
 - (iii) as may be permitted under Applicable Law, but without limiting Project Co's obligations under Sections 15.2(c)(i) and 15.3(a).
- (c) In the event that the Metrolinx Lands or any part thereof or any interest therein becomes subject to any Encumbrance following Financial Close:

- (i) due to an act or omission of Project Co or any Project Co Party (which has not been consented to in writing by Contracting Authority), or arising in relation to the Works or in relation to the Project Co Services, Project Co shall immediately take all steps necessary to terminate, remove, vacate or discharge such Encumbrance. If such Encumbrance is not terminated, removed, vacated or discharged within ten (10) Business Days of Project Co becoming aware of the creation, filing, issuance or registration of such Encumbrance, then, without prejudice to any other rights or remedies it may have, Contracting Authority may take whatever steps it deems necessary and appropriate (in its sole discretion) to terminate, remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co 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, and Project Co hereby appoints Contracting Authority as Project Co's attorney to execute any termination or discharge of an Encumbrance referred to in this Section 15.2(c)(i), which appointment is coupled with an interest and shall be irrevocable for the Project Term and thereafter so long as any of Project Co's obligations under this Section 15.2(c)(i) are outstanding;
- (ii) due to an act or omission of Project Co or any Project Co Party (which has been consented to in writing by Contracting Authority), or arising in relation to the Works or in relation to the Project Co Services, Project Co shall perform all obligations under such Encumbrance in accordance with Section 15.1 and 15.3 (as is applicable) and at its sole cost and expense; or
- (iii) which is not due to an act or omission of Project Co or any Project Co Party, or which has not arisen in relation to the Works or in relation to the Project Co Services, prior to performing obligations under any such Encumbrance, Project Co shall promptly notify Contracting Authority of any such Encumbrance and Contracting Authority may elect, in its sole discretion, to:
 - (A) have such Encumbrance be removed, vacated or discharged;
 - (B) perform the required obligations thereunder; or
 - (C) instruct Project Co to perform the required obligations thereunder.
- (d) For the purposes of this Section 15 if,
 - (i) an encumbrance otherwise identified in Sections (b) (viii), (ix) or (x) of Schedule 16 – Encumbrances has not been complied with (excluding non-compliance by Project Co) and such non-compliance materially interferes with the use of the Metrolinx Lands for the purposes of the Project Operations; or
 - (ii) an encumbrance otherwise identified in Sections (b) (vii), (viii), (ix) or (x) of Schedule 16 – Encumbrances was not disclosed to Project Co and was not ascertainable through

commercially standard off-title searches, and such encumbrance materially interferes with the use of the Metrolinx Lands for the purposes of Project Operations,

Contracting Authority shall be entitled to the same election as set out in Section 15.2(c)(iii), subject to Section 15.2(e). Project Co shall promptly notify Contracting Authority of any such encumbrance upon Project Co becoming aware of such encumbrance.

- (e) If Project Co is instructed to perform obligations under an Encumbrance pursuant to Section 15.2(c)(iii) or Section 15.2(d), which performance imposes costs or delays in the performance of Project Operations, such performance,
 - (i) prior to Substantial Completion shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
 - (ii) following Substantial Completion shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (f) In the event that any portion of the Lands which are not Metrolinx Lands becomes subject to any encumbrance following Financial Close due to an act or omission of Project Co or any Project Co Party or which arises in relation to the Works or in relation to the Project Co Services, Project Co acknowledges and agrees that it will be required by the owner of such Lands (or Contracting Authority, at the request of such owner) to remove, vacate or discharge such encumbrance. For the purposes of the foregoing, “encumbrance” includes those matters included in Encumbrances, insofar as they relate to or affect the Lands that are not the Metrolinx Lands, *mutatis mutandis*.

15.3 Construction Act (Ontario)

- (a) The Parties acknowledge that Section 15.2 shall apply to claims for liens made against the Metrolinx Lands pursuant to the Construction Act and shall also apply to claims made against Contracting Authority or the holdback under the Construction Act as though such a claim were an Encumbrance against the Metrolinx Lands as referred to therein. Project Co agrees that Section 15.2 shall also apply to any claims for liens against the Lands that are not Metrolinx Lands, *mutatis mutandis*.
- (b) Project Co shall withhold from each Subcontractor the holdbacks required under the Construction Act and shall deal with such holdbacks in accordance with the Construction Act.
- (c) Project Co 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 Construction Act, require that a certificate of completion under Section 33(1) of the Construction Act 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) Project Co shall follow the requirements of the Construction Act and Good Industry Practice for posting and advertising certificates of completion when issued.
- (e) Project Co shall promptly provide Contracting Authority with a copy of any materials which are provided to the Lenders to evidence compliance with the Construction Act.
- (f) Upon request by Contracting Authority, Project Co shall perform and deliver to Contracting Authority a sub-search of title on the Lands or any part thereof. Contracting Authority shall pay the reasonable costs of any such search except (i) a search that reveals Encumbrances that are not permitted by this Project Agreement, (ii) a search requested based on a reasonable suspicion that an Encumbrance that is not permitted by this Project Agreement has been registered on title to the Lands, and (iii) a search requested for the purpose of confirming that an Encumbrance that is not permitted by this Project Agreement has been discharged from title to the Lands.
- (g) Project Co shall cause a Payment Certifier to be appointed under the Construction Contract and shall cause such Payment Certifier to certify the substantial performance of the Construction Contract in accordance with the Construction Act.

16. SITE CONDITION

16.1 Acceptance of Site Condition

- (a) Subject to Sections 6.4, 16.1(b), 16.2, 16.3, 16.4, 16.5 and 16.6, Project Co acknowledges and agrees that it has inspected or investigated the Lands, the Existing Third Party Infrastructure and the Site Conditions, including the Background Information, prior to executing this Project Agreement and agrees to accept the Lands, the Existing Third Party Infrastructure and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 6.4, 16.1(b), 16.2, 16.3, 16.4, 16.5 and 16.6, Project Co shall not be entitled to make any claim of any nature whatsoever against Contracting Authority or any Province Person on any grounds relating to the Lands, the Existing Third Party Infrastructure or the Site Conditions, including the fact that incorrect or insufficient information on any matter relating to the Lands, the Existing Third Party Infrastructure or the Site Conditions was given to it by any person, whether or not a Contracting Authority entity or a Province Person.
- (b) Section 16.1(a) is not intended to prohibit Project Co from relying upon information that has been provided by a person who has given Project Co an express written entitlement to rely on that information, provided, however, that, subject to Sections 6.4, 16.2, 16.3, 16.4, 16.5 and 16.6, Project Co shall not be entitled to make any claim of any nature whatsoever against Contracting Authority or any Province Person on any grounds relating to the information provided by that person. For clarity, subject to Sections 6.4, 16.2, 16.3, 16.4, 16.5 and 16.6, Project Co’s legal recourse shall be against the person who provided the express written entitlement to rely on the information and not a Contracting Authority or any Province Person.
- (c) Subject to Sections 6.4, 16.1(b), 16.2, 16.3, 16.4, 16.5 and 16.6, Project Co acknowledges and agrees that it has and shall be deemed to have:

- (i) performed all necessary due diligence and investigation or inspection on the Lands and examined the Lands and their surroundings and any Existing Third Party Infrastructure;
 - (ii) performed all necessary due diligence and investigation or inspection on the Existing Third Party Infrastructure and satisfied itself prior to executing this Project Agreement as to the structural, environmental and general condition of such Existing Third Party Infrastructure;
 - (iii) satisfied itself as to the presence of any Contamination on, in or under the Lands or migrating to or from the Lands;
 - (iv) satisfied itself as to the adequacy of the rights of access to, from and through the Lands and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
 - (v) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Lands;
 - (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties; and
 - (vii) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Lands, the loadbearing and other relevant properties of the Lands, the risk of injury or damage to property affecting the Lands, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works.
- (d) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Project Operations in a lawful manner.

16.2 Contamination

- (a) Contracting Authority, as between Project Co and Contracting Authority, shall be responsible for Contamination on, in or under, or migrating to or from, the Controlled Elements, except for any such Contamination, or the migration of that Contamination to or from the Controlled Elements that:
 - (i) was within the actual knowledge of Project Co or a Project Co Party as of Commercial Close;
 - (ii) was described in, or was properly inferable, readily apparent or readily discoverable from, the Environmental Reports or the Geotechnical Reports;

- (iii) Project Co is obliged to remediate or otherwise deal with pursuant to the provisions of this Project Agreement;
- (iv) is Minor System User Contamination;
- (v) is on, in or under, or migrating to or from, the Optional Lands; or
- (vi) is (directly or indirectly) caused by Project Co or any Project Co Party.

For clarity, if, in the performance of Project Operations, Project Co or any Project Co Party Worsens any Contamination for which Project Co is already responsible pursuant to Section 16.2(a), Project Co shall also be responsible for the Worsening of such Contamination.

- (b) For the purposes of Section 16.2(a)(i), “actual knowledge” shall mean knowledge that is actually held by the person who was identified as the project manager (or analogous position) for the Project in Project Co’s proposal in response to the Request for Proposals.
- (c) If, in the performance of the Project Operations, Project Co or any Project Co Party:
 - (i) Worsens any Contamination for which Contracting Authority is responsible pursuant to Section 16.2(a), and
 - (ii) the Worsening of such Contamination was not caused (directly or indirectly) by a failure of Project Co or any Project Co Party to comply with its obligations under the Project Agreement including, without limitation, the obligation to complete the Project Operations in accordance with Good Industry Practice, and
 - (iii) Project Co complies with its obligations in Section 16.2(f) or 16.2(g), as applicable,
 then Section 16.2(i) shall apply to both the Contamination and the Worsened Contamination.
- (d) If, in the performance of Project Operations, Project Co or any Project Co Party,
 - (i) Worsens any Contamination for which Contracting Authority is responsible pursuant to Section 16.2, and
 - (ii) the Worsening of such Contamination was caused (directly or indirectly) by a failure of Project Co or any Project Co Party to comply with its obligations under the Project Agreement including, without limitation, the obligation to complete the Works in accordance with Good Industry Practice, and/or
 - (iii) Project Co does not comply with its obligations in Section 16.2(f) or 16.2(g), as applicable,

then Section 16.2(i) shall only apply to the costs of addressing the Contamination as required by Applicable Law, but not the Worsened Contamination, which shall be the responsibility of Project Co.

- (e) For Contamination (or Worsened Contamination, as applicable) which is the responsibility of Project Co by virtue of Section 16.2 (excluding Section 16.2(a)(iii)), and in respect of which no remediation or removal is required by Applicable Law, then the sole obligation of Project Co in respect of such Contamination (or Worsened Contamination, as applicable) is to comply with the Project Agreement.
- (f) Upon the discovery of any Contamination or Worsened Contamination, as applicable (other than Contamination or Worsened Contamination which is the responsibility of Project Co pursuant to Section 16.2(a)), Project Co shall immediately inform the Contracting Authority Representative, and, in addition, Project Co shall comply, and ensure compliance by all Project Co Parties, with the Project Agreement in respect thereof:
 - (i) at Contracting Authority's cost pursuant to Section 16.2(i), in respect of Contamination or Worsened Contamination for which Contracting Authority is responsible pursuant to Section 16.2; and
 - (ii) at its own cost in respect of Contamination or Worsened Contamination for which it is responsible pursuant to Section 16.2.
- (g) Except to the extent required to prevent or mitigate an Emergency, or to comply with Applicable Law or Good Industry Practice, Project Co shall not undertake any significant work pursuant to Section 16.2(f) in respect of Contamination or Worsened Contamination for which Contracting Authority is responsible pursuant to this Section 16.2 until the Contracting Authority Representative has been given a reasonable opportunity to review the nature, extent and circumstances of the Contamination or Worsened Contamination and has instructed Project Co to proceed with such work.
- (h) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Contamination or Worsened Contamination which are in addition to any required pursuant to Section 16.2(f), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority's cost pursuant to Section 16.2(i).
- (i) If Sections 16.2(f) or 16.2(h) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of Contamination for which Contracting Authority is responsible pursuant to Section 16.2 or as a result of any instructions given by Contracting Authority pursuant to Section 16.2(h) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:

- (i) in the Works shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
 - (ii) in the Project Co Services shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (j) In the event that Contracting Authority and Project Co do not agree as to the nature or extent of the Contamination or of the actions to be performed by Project Co pursuant to Section 16.2(f), such disagreement shall be referred for determination to an independent and suitably qualified and experienced person, acceptable to Project Co and Contracting Authority, each acting reasonably (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person’s decision shall be final and binding on the Parties only in respect of the nature or extent of the Contamination and any action to be performed by Project Co pursuant to Section 16.2(f), except to the extent that either Party alleges that such decision would result in non-compliance with Applicable Law or this Project Agreement, in which event either Party may refer the disagreement for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (k) For the purposes of Section 16.2(a)(ii):
- (i) Project Co acknowledges and agrees that (A) the contaminants listed in Table 3 of the MOECP Site Condition Standards, made pursuant to O. Reg. 153/04, as amended from time to time, in concentrations that are in excess of the Industrial / Commercial / Community Property Use standard for medium and fine textured soils may be present on, in or under, or migrating to or from the Potentially Contaminated TPSS Lands, including the soil or groundwater that is on, in or under, or migrating to or from the Potentially Contaminated TPSS Lands, (collectively, the “**Inferred TPSS Contamination**”) and (B) the Inferred TPSS Contamination shall be deemed to be “properly inferable” by Project Co for the purposes of Section 16.2(a)(ii).
 - (ii) If Project Co encounters soils that are on, in or under, or migrating to or from the Potentially Contaminated TPSS Lands, and that contain
 - (A) “hazardous waste” as defined in Section 1 – Definitions of Ontario Regulation 347/90 – General – Waste Management, as amended from time to time (“**Hazardous Waste Soils**”); or
 - (B) “PCB materials” as defined by Ontario Regulation 362/90 - Waste Management – PCB, as amended from time to time, as material having a PCB concentration of more than fifty parts per million by weight (50 microgram per gram, as reported by a Canadian Association for Laboratory Accreditation Inc. certified analytical laboratory by analytical method EPA 8082a) (“**PCB Soils**”),

then the following shall apply:

- (C) Project Co shall be responsible for the characterization of the Hazardous Waste Soils or PCB Soils that require disposal off of the Lands or re-use to the satisfaction of the receiver or disposal site;
- (D) Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation (a “**Hazardous Waste Soils or PCB Soils Variation**”) for any increase in cost between the cost of the disposal of soils described in Section 16.2(k)(i) and the cost of the disposal of the applicable Hazardous Waste Soils or PCB Soils, provided that such disposal of Hazardous Waste Soils or PCB Soils is not otherwise the responsibility of Project Co pursuant to any provision of Section 16.2(a) other than Section 16.2(a)(ii); and
- (E) Project Co shall not be entitled to a Delay Event, a Compensation Event or any Variation other than a Hazardous Waste Soils or PCB Soils Variation with respect to the discovery, characterization, re-use or disposal of any Hazardous Waste Soils or PCB Soils.

16.3 Items of Geological, Historical Heritage or Archaeological Interest or Value

- (a) Project Co shall be responsible for items referred to in this Section 16.3(a) which may be found on or in the Optional Lands. As between the Parties, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Lands are or shall be the sole and absolute property of Contracting Authority or the owner of the relevant property, as applicable.
- (b) Contracting Authority shall be responsible for items referred to in Section 16.3(a) except for any such items that were described in, or were properly inferable, readily apparent or readily discoverable from,
 - (i) the Archaeological Reports; or
 - (ii) any Cultural Heritage Reports.
- (c) **[Intentionally Deleted]**
- (d) Upon the discovery of any item referred to in Section 16.3(a), Project Co shall:
 - (i) immediately inform the Contracting Authority Representative of such discovery; and
 - (ii) take all steps not to disturb the item and, if necessary, cease any Project Operations in so far as performing such Project Operations would endanger the item or prevent or impede its excavation, 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 comply, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremations Services Act, 2002* (Ontario) and the *Standards & Guidelines for*

Conservation of Provincial Heritage Properties issued under the *Ontario Heritage Act* (Ontario):

- (A) at Contracting Authority's cost pursuant to Section 16.3(f), in respect of any such discovery for which Contracting Authority is responsible pursuant to Section 16.3(b); and
- (B) at its own cost in respect of any such discovery for which it is responsible pursuant to Section 16.3(b).

Without limiting the foregoing or Project Co's obligations under Schedule 17 – Environmental Obligations, Project Co shall also perform all Project Operations in a manner that ensures that Contracting Authority and the Project Operations are in compliance with the Metrolinx Interim Heritage Management Protocol (2013).

- (e) In the event that Contracting Authority wishes Project Co to perform actions in respect of any discovery of any item referred to in Section 16.3(a) which are in addition to any required pursuant to Section 16.3(d), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority's cost pursuant to Section 16.3(f).
- (f) If Sections 16.3(d) or 16.3(e) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of any such discovery for which Contracting Authority is responsible pursuant to Section 16.3(b) or as a result of any instructions given by Contracting Authority pursuant to Section 16.3(e) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation shall,
 - (i) prior to Substantial Completion (but in the case of Section 16.3(d), only to the extent it directly results in the interruption of the Works during a continuous period of 14 days or more with respect to each such discovery), subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
 - (ii) following Substantial Completion, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (g) In the event that Contracting Authority and Project Co do not agree as to the nature or extent of the actions required to be performed by Project Co pursuant to Section 16.3(d)(ii), such disagreement shall be referred for determination to an independent and suitably qualified and experienced person, acceptable to Project Co and Contracting Authority, each acting reasonably (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person's decision shall be final and binding on the Parties except to the extent that either Party alleges that such decision would result in non-compliance with Applicable Law or this

Project Agreement, in which event either Party may refer the disagreement for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

16.4 Species-at-Risk

- (a) Project Co shall be responsible for any Species-at-Risk which may be found on, in or at the Optional Lands. Contracting Authority shall be responsible for any Species-at-Risk which may be found on, in or at the Lands, except that Project Co shall be responsible for any Species-at-Risk which may be found on, in or under the Lands:
- (i) the occurrence of which, in the location in which it is found, was described in the Environmental Assessments; or
 - (ii) the occurrence of which is directly or indirectly caused by a failure by Project Co to comply with, or a breach or default by Project Co of, any of the provisions of this Project Agreement. For greater certainty, Project Co shall be responsible for new populations of Species-at-Risk in locations at the Lands where as a result of a failure by Project Co to comply with, or a breach or default of Project Co of, any of the provisions in this Project Agreement, conditions are created that are deemed suitable habitat for Species-at-Risk in accordance with Applicable Law.
- (b) In respect of Species-at-Risk for which Project Co is responsible pursuant to Section 16.4(a), Project Co shall, at its own cost, comply, and ensure compliance by all Project Co Parties, with all Applicable Law and the provisions of Schedule 15 – Output Specifications and Schedule 17 – Environmental Obligations. Upon the discovery of any Species-at-Risk for which Contracting Authority is responsible pursuant to Section 16.4(a), Project Co shall:
- (i) immediately inform the Contracting Authority Representative of such discovery; and
 - (ii) comply, and ensure compliance by all Project Co Parties, with all Applicable Law and the provisions of Schedule 15 – Output Specifications and Schedule 17 - Environmental Obligations in respect thereof, including taking all necessary steps to preserve the respective habitat and relocate the Species-at-Risk at Contracting Authority's cost pursuant to Section 16.4(d).
- (c) In the event that Contracting Authority wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.4(b), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority's cost pursuant to Section 16.4(d).
- (d) If Section 16.4(b) or Section 16.4(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of the discovery of any Species-at-Risk for which Contracting Authority is responsible pursuant to Section 16.4(a) or as a result of any instructions given by Contracting Authority pursuant to Section 16.4(c) and which

would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:

- (i) prior to Substantial Completion shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
- (ii) following Substantial Completion shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

16.5 Defects – Major Existing Third Party Infrastructure

- (a) Contracting Authority shall be responsible for defects in Major Existing Third Party Infrastructure, provided that the defect:
 - (i) was not within the actual knowledge of Project Co or a Project Co Party, as of Commercial Close;
 - (ii) was not referenced or described in, or was not properly inferable, readily apparent or readily discoverable from, the Background Information;
 - (iii) is not attributable to the results of wear and tear that are (A) reasonable given the use and age of the Major Existing Third Party Infrastructure and (B) consistent with wear and tear that could reasonably be expected to exist for similar infrastructure, operating in a similar environment and similar circumstances; or
 - (iv) was not caused or contributed to by Project Co or a Project Co Party.
- (b) For the purposes of Section 16.5(a)(i), “actual knowledge” shall mean knowledge that is actually held by the person who was identified as the project manager (or analogous position) for the Project in Project Co’s proposal in response to the Request for Proposals.
- (c) If a defect in Major Existing Third Party Infrastructure that is the responsibility of Contracting Authority pursuant to Section 16.5(a),
 - (i) delays Project Co’s performance of the Works, then any such delay or additional costs in respect of the Works shall, subject to and in accordance with Section 40 be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
 - (ii) materially adversely interferes with Project Co’s ability to perform the Project Co Services or materially adversely affects Project Co’s cost of performing the Project Co Services shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

16.6 Mislocated or Unknown Utilities

- (a) Project Co shall be responsible for Utility Infrastructure on or in the Lands pursuant to this Project Agreement, except for any Utility Infrastructure that is (A) Mislocated Utility Infrastructure, or is (B) Utility Infrastructure that:
- (i) was not within the actual knowledge of Project Co or a Project Co Party, as of Commercial Close; and
 - (ii) subject to Section 16.6(d), was not referenced or described in, or was not inferable, readily apparent or readily discoverable, from the Background Information.
- (b) For the purposes of Section 16.6(a)(i), “actual knowledge” shall mean knowledge that is actually held by the person who was identified as the project manager (or analogous position) for the Project in Project Co’s proposal in response to the Request for Proposals.
- (c) Subject to Section 16.6(d), if Utility Infrastructure on or in the Site that is not the responsibility of Project Co pursuant to Section 16.6(a) delays Project Co’s performance of the Works then any such delay or additional costs in respect of the Works shall, subject to and in accordance with Section 40 be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event.
- (d) Project Co shall not be eligible for a Delay Event or a Compensation Event set out in Section 16.6(c) in respect of:
- (i) any Utility Infrastructure that is located on or in the Public Road Allowance and is outside of the study area limits represented by the Subsurface Utility Engineering (SUE) Report;
 - (ii) any Utility Infrastructure that is a service connection;
 - (iii) any Utility Infrastructure that is above-ground, aerial, or at-grade; and
 - (iv) any of the following Utility Infrastructure that is owned by a Municipality, 407 ETR or MTO:
 - (A) watermains of nominal diameter less than 150mm;
 - (B) combined sewers or storm sewers of nominal diameter less than 300mm;
 - (C) sanitary sewers of nominal diameter less than 250mm; and
 - (D) street lighting and traffic signal cables.

17. GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS**17.1 Governmental, Railway and Utility Company Fees**

- (a) Project Co shall be responsible for,
- (i) all Financial Obligations under or in respect of all Project Co Permits, Licences and Approvals; and
 - (ii) all Financial Obligations in respect of Contracting Authority Permits, Licences and Approvals that are set out as being Project Co's responsibility in Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations or Schedule 34 – Contracting Authority Permits Licences and Approvals.

Notwithstanding the foregoing, Project Co shall not be responsible for payment of the following:

- (A) any development charges relating to the Works, Project Co System Infrastructure, the New Third Party Infrastructure or the Lands; and
 - (B) any application fees under or in respect of any Project Co Permits, Licences and Approvals from any Municipalities relating to the Works.
- (b) Subject to Section 17.1(a)(ii), Contracting Authority shall be responsible for all Financial Obligations under or in respect of all the Contracting Authority Permits, Licences and Approvals, including such Financial Obligations, as applicable in either case, to a City, the Region of Peel, any Utility Company, any Railway Company, any Governmental Authority or any third party in respect of the Project Operations, including:
- (i) any engineering administration and inspection fees required in respect of works or services required to be performed;
 - (ii) any security deposits required under any Contracting Authority Permits, Licences and Approvals; and
 - (iii) any other amounts payable under any Contracting Authority Permits, Licences and Approvals.
- (c) The Parties agree that any refund, partial rebate or credit granted by Contracting Authority, a City, the Region of Peel, any applicable Utility Company, any applicable Railway Company, any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Sections 17.1(a) and 17.1(b) shall be for the benefit of Contracting Authority to the extent such Financial Obligations were paid by Contracting Authority and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co. Without limiting the generality of the foregoing, to the extent that Contracting Authority enters into any cost sharing arrangements with a City, the Region of Peel, any Utility Company, any Railway Company, any Governmental Authority or any third party, Project Co acknowledges and agrees

that Contracting Authority shall be the sole beneficiary of any such cost sharing arrangements and Project Co shall have no entitlement whatsoever to any benefit arising from any such cost sharing arrangements.

18. CHANGE IN STANDARDS

- (a) Where this Project Agreement requires Project Co to comply with a technical or operational standard in respect of the design, construction, maintenance, rehabilitation or operations aspects of the Project Operations, and that standard has changed between Commercial Close (except for Project Operations that are in respect of or relating to the Vehicle Supplier Activities, such date shall be as at February 28, 2013) and the date that such compliance is required, then Project Co shall give Notice to Contracting Authority of such change. If, after such Notice, Contracting Authority requires compliance with the changed standard (rather than the standard applicable as of the date of Commercial Close or February 28, 2013, as applicable), then, to the extent such change impacts the design, construction, maintenance, rehabilitation or operations aspects of the Project Operations 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 22 – Variation Procedure, result in a Variation. If Contracting Authority does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of Commercial Close or February 28, 2013, as applicable, without a Variation therefor. This Section 18(a) shall not apply where a change in a technical standard is also a Change in Law or where Section 18(b) applies.
- (b) Where a Utility Agreement requires Project Co to comply with a technical standard in respect of the design or construction of certain Utility Infrastructure as part of the Works, and that standard has changed between Commercial Close and the date that such compliance is required, then Project Co shall give Notice to Contracting Authority of such change, and, if and to the extent such change impacts the design or construction of such Utility Infrastructure 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 22 – Variation Procedure, result in a Variation. This Section 18(b) shall not apply where a change in a technical standard is also a Change in Law.

19. COORDINATION AND NO DISRUPTION

- (a) Project Co shall perform the Project Operations so as to coordinate with,
- (i) subject to and in accordance with Section 9.8 (to the extent applicable), the operations of Contracting Authority, any Province Person, any Governmental Authority, 407 ETR, each City and the Region of Peel;
 - (ii) the construction, operation and maintenance of any System Extension and in accordance with Schedule 39 – System Extension;

- (iii) the construction of the interface, connection or inter-connection between the Project Co System Infrastructure and the existing City of Mississauga network (including, but not limited to, the MiWay network), the existing City of Brampton network (including, but not limited to, the Brampton Transit network), each existing Railway Company network, the existing 407 ETR network, the existing Go Transit network, and any other Ontario road or roadway; and
 - (iv) all Adjacent Developments.
- (b) Project Co shall use commercially reasonable efforts to minimize:
- (i) any interference with the operations of:
 - (A) Contracting Authority, any Province Person, any Governmental Authority, 407 ETR, each City, the Region of Peel, any Other Contractor, Railway Company or Utility Company, including the performance of the Governmental Activities and the Other Works; and
 - (B) the existing City of Mississauga network (including, but not limited to, the MiWay network), the existing City of Brampton network (including, but not limited to, the Brampton Transit network), the existing 407 ETR network, each existing Railway Company network, the existing Go Transit network, and any other Ontario road or roadway;
 - (ii) any interference with the construction or maintenance of:
 - (A) the existing City of Mississauga network (including, but not limited to, the MiWay network);
 - (B) the existing City of Brampton network (including, but not limited to, the Brampton Transit network);
 - (C) the existing 407 ETR network;
 - (D) the existing Go Transit network;
 - (E) each existing Railway Company network; and
 - (F) any other Ontario road or roadway;
 - (iii) any lane closures, track closures, traffic diversions, track diversions, traffic restrictions, track restrictions or other impairment of the public's use and enjoyment of the Project Co System Infrastructure; and
 - (iv) any interference with Adjacent Developments.

- (c) Without limiting or prejudice to any other obligation of Project Co under this Project Agreement, at the request of Contracting Authority, Project Co shall, in good faith and acting reasonably, use reasonable commercial efforts to negotiate and execute an agreement with a third party identified by Contracting Authority whose activities may or will interface or interfere with the Project Operations (including a “Project Co”, construction contractor or service provider who is carrying out or will carry out activities on another alternative financing and procurement project for Contracting Authority) to govern matters relating to, without limitation, the coordination of the Project Operations with the activities of such third party and cooperation, communication and the exchange of information between Project Co and such third party. In such an event, if and to the extent that any of the terms and conditions of such agreement would result in (i) a material change to the Works and would not otherwise be required of Project Co under the Project Agreement or (ii) a material adverse change to the risk profile of the Project Operations, then, such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

20. DESIGN AND CONSTRUCTION OBLIGATIONS

20.1 Overall Responsibility

- (a) Project Co shall perform and complete the Works:
- (i) so as to satisfy the Output Specifications;
 - (ii) in accordance with the Project Co Proposal Extracts;
 - (iii) in accordance with the Design Data;
 - (iv) in accordance with the applicable Project Works Schedule; and
 - (v) in accordance with the other terms and conditions of this Project Agreement.
- (b) Without prejudice to Section 20.1(a), but subject to the provisions of the Project Co Services Requirements, Schedule 20 - Payment Mechanism and Schedule 24 - Expiry Transition Procedure, if, at any time during the Project Term, any of the Works, the Project Co System Infrastructure, the New Third Party Infrastructure or any parts thereof do not fully satisfy the Output Specifications and/or any other term or condition of this Project Agreement (other than the Project Co Proposal Extracts) Project Co shall, at its own cost and expense, rectify the Works, the Project Co System Infrastructure, the New Third Party Infrastructure and any part thereof so that:
- (i) the Works, the Project Co System Infrastructure, the New Third Party Infrastructure and all parts thereof shall, at all times, comply with and satisfy in full the Output Specifications and the other terms and conditions of this Project Agreement (other than the Project Co Proposal Extracts); and

- (ii) the Works, the Project Co System Infrastructure, the New Third Party Infrastructure and all parts thereof will, at all times, be able to meet all safety and performance standards and other requirements set out in the Output Specifications and the Project Agreement.

20.2 Completion of Project Co System Infrastructure and New Third Party Infrastructure

- (a) Project Co shall design, engineer, construct and commission the Project Co System Infrastructure and New Third Party Infrastructure so as to provide Contracting Authority complete and operational Project Co System Infrastructure and New Third Party Infrastructure in accordance with the Output Specifications and the Project Co Proposal Extracts, and that will allow Project Co to perform the Project Operations, all in accordance with and subject to the terms of this Project Agreement.

20.3 Development of Design

- (a) Project Co shall, at its own cost, develop and complete the design of the Project Co System Infrastructure, New Third Party Infrastructure and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 - Review Procedure and this Section 20.3.
- (b) The further development of the design of the Project Co System Infrastructure and New Third Party Infrastructure and the process by which such design is progressed must fully comply with the requirements of this Project Agreement.
- (c) In order to develop the detailed design of the Project Co System Infrastructure and New Third Party Infrastructure, Project Co shall consult with the Stakeholders (which consultation requirements pursuant to the Environmental Assessments are further described in Schedule 17 - Environmental Obligations) and the Contracting Authority Representative and the Contracting Authority Design Team in an interactive process. The development of the detailed design of the Project Co System Infrastructure and New Third Party Infrastructure based on Stakeholder input shall in no way be construed or regarded as a Variation and is not intended to result in a Variation.
- (d) The Parties agree that Appendices A and C to H (inclusive) to Schedule 10 - Review Procedure are initial lists of Design Data and other items that will require design review, which Design Data and other items shall include (to a scale required by the Contracting Authority Representative):
 - (i) design development drawings, reports, schedules and specifications for New Municipal Infrastructure, progressed from Commercial Close, showing all engineering and landscape design information sufficient to allow for the development of working drawing documentation, submitted at 30% completion (the “**Preliminary New Municipal Infrastructure Design Development Submittals**”);
 - (ii) design development drawings, reports, schedules and specifications progressed from Commercial Close, and with respect to the New Municipal Infrastructure progressed from the Preliminary New Municipal Infrastructure Design Development Submittals, with

extensive user group input, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawing documentation, submitted at:

- (A) 50% completion (the “**Pre-final Design Development Submittals**”); and
- (B) progressed from the Pre-final Design Development Submittals, [REDACTED]% completion (the “**Final Design Development Submittals**”)

(collectively, the “**Design Development Submittals**”);

- (iii) working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement, submitted at 100% completion (the “**Construction Document Submittals**”); and
 - (iv) all other documentation required pursuant to Schedule 10 - Review Procedure.
- (e) Project Co shall submit to the Contracting Authority Representative for review in accordance with Schedule 10 - Review Procedure all Design Data and other items listed in Section 20.3(d).
- (f) The Design Data and other items listed in Section 20.3(d) must contain, at a minimum, the following additional information:
- (i) identification of the stage of design or construction to which the documentation relates;
 - (ii) all design or construction drawings and specifications necessary to enable the Contracting Authority Representative to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 - Review Procedure;
 - (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
 - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (g) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Project Co System Infrastructure prior to being entitled to proceed in accordance with Schedule 10 - Review Procedure and it is subsequently determined in accordance with Schedule 10 - Review Procedure or Schedule 27 - Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk undo, remove from the Project Co System Infrastructure, and/or Lands, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.

- (h) Project Co shall not commence or permit the commencement of the next level of construction of any part or parts of the New Third Party Infrastructure, unless Project Co has first obtained the written consent of the applicable third party to do so. If, after obtaining such written consent, Project Co commences or permits the commencement of the next level of construction of any part or parts of the New Third Party Infrastructure, prior to being entitled to proceed in accordance with Schedule 10 - Review Procedure and it is subsequently determined in accordance with Schedule 10 - Review Procedure or Schedule 27 - Dispute Resolution Procedure that the construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk,
- (i) obtain written consent from the applicable third party owner of the New Third Party Infrastructure to undo, remove from the New Third Party Infrastructure, and/or Lands, replace and restore, as applicable, any parts of the construction that do not comply with this Project Agreement; and
 - (ii) following the written consent contemplated in Section 20.3(h)(i), undo, remove from the New Third Party Infrastructure, and/or Lands, replace and restore, as applicable, any parts of the construction that do not comply with this Project Agreement.
- (i) Neither Contracting Authority nor any Province Person will have any liability:
- (i) if a document submitted by Project Co and reviewed by Contracting Authority, the Contracting Authority Representative or the Contracting Authority Design Team results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
 - (ii) for any loss or claim arising due to any defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (j) Project Co and Contracting Authority will cooperate with each other in the design review process. Notwithstanding such cooperation by Contracting Authority, such review shall not constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (k) Project Co shall allow the Contracting Authority Representative and the Contracting Authority Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the Contracting Authority Representative and/or Contracting Authority Design Team, as applicable, as soon as practicable following receipt of a written request from the Contracting Authority Representative.

20.4 Start-Up Meeting

- (a) Within 20 Business Days after Commercial Close, Project Co and the Design Team shall attend a start-up meeting (the “**Start-Up Meeting**”) with Contracting Authority to set out the design development process in greater detail.

- (b) The agenda for the Start-Up Meeting shall include the following:
- (i) Project Co's plan to develop a successful long-term partnership with Contracting Authority for the purpose of supporting Contracting Authority in achieving its vision, mission and core values;
 - (ii) Project Co's plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
 - (iii) Project Co's process to ensure optimum design quality;
 - (iv) Project Co's approach to ensure that all Project Co Parties perform the Works, as applicable, as a fully coordinated team;
 - (v) a proposed schedule of Works Submittals which is consistent with the Interim Baseline Works Schedule which provides for a progressive and orderly flow of Works Submittals from Project Co to the Contracting Authority Representative to allow sufficient time for review of each Works Submittal by the Contracting Authority Representative, and taking into account both the resources available to the Contracting Authority Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Interim Baseline Works Schedule;
 - (vi) Project Co's plan to successfully integrate feedback from consultations with Stakeholders and the Contracting Authority Design Team;
 - (vii) Project Co's approach to timing, construction, and adjustment; and
 - (viii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation and that takes into account the document security protocol described in Section 52.5(f).

20.5 Design Review Meetings

- (a) In order to obtain input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, Project Co and the Design Team shall hold design review meetings (the "**Design Review Meetings**") with Contracting Authority and the Contracting Authority Design Team upon the following terms:
- (i) the Project Co Representative shall arrange the Design Review Meetings in consultation with the Contracting Authority Representative;
 - (ii) all Design Review Meetings shall be held in the GTA unless Contracting Authority agrees otherwise in writing;

- (iii) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings and Project Co shall incorporate such schedule into each of the relevant Project Works Schedules;
- (iv) Project Co shall circulate to Contracting Authority and the Contracting Authority Design Team an agenda for each of the Design Review Meetings no later than 10 Business Days prior to the relevant Design Review Meeting;
- (v) in advance of a Design Review Meeting, Project Co may submit to the Contracting Authority Design Team for comment any interim drafts of any designs or plans required under this Project Agreement, which submissions shall be used to inform Contracting Authority on the development of Project Co System Infrastructure and New Third Party Infrastructure design and provide an opportunity for dialog on compliance with the requirements of the Project Agreement. If a Proposal Part corresponds to the interim submissions, then Project Co shall ensure that the interim submissions are substantially the same content and level of detail as the corresponding Proposal Part. For greater certainty,
 - (A) interim submissions shall be informal and shall not be reviewed in accordance with Schedule 10 - Review Procedure; and
 - (B) the requirement for Project Co to submit interim submissions that are substantially the same content and level of detail as the corresponding Proposal Part, shall not
 - (I) lessen, reduce or otherwise modify or amend Contracting Authority's rights under the Project Agreement to review any Design Development Submittals in accordance with Schedule 10 – Review Procedure; or
 - (II) constitute acceptance by Contracting Authority of the corresponding Proposal Part or any Design Development Submittal in accordance with Schedule 10 – Review Procedure;
- (vi) the Design Review Meetings shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
- (vii) Project Co shall maintain minutes of the Design Review Meetings, including possible design solutions and changes in design, and, within 5 Business Days after each Design Review Meeting, Project Co shall provide to Contracting Authority and the Contracting Authority Design Team a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Review Meeting; and
- (viii) Contracting Authority and Project Co agree that the subject matter of the Design Review Meetings shall not be regarded as Submittals to which Schedule 10 - Review Procedure

applies, and that Contracting Authority shall not be bound by the input provided in connection with the Design Review Meetings.

- (b) The Parties shall, together with the Contracting Authority Design Team, hold Design Review Meetings prior to the submission of:
 - (i) each of the Design Development Submittals; and
 - (ii) each of the Construction Document Submittals.
- (c) The purpose of the Design Review Meetings is to facilitate the incorporation of Contracting Authority input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 - Review Procedure.

20.6 Testing

- (a) To the extent and in the manner provided by the Quality Documentation and other terms of this Project Agreement, all testing shall be carried out by a duly accredited and certified testing facility and organization. The Contracting Authority Representative shall be given timely advance Notice (being not less than 2 Business Days) of the date of such tests, except for categories of tests (if any) in respect of which the Contracting Authority Representative gives written Notice to Project Co that it does not require such Notice. The Contracting Authority Representative and any other Contracting Authority Party at Contracting Authority's option shall be entitled to attend at any test. Any materials or plant which fail such tests shall be rejected.
- (b) Project Co shall develop a test recording system which shall permit ready retrieval of all test readings and shall provide information relating to tests proposed, test methodology and test readings to the Contracting Authority Representative on request.
- (c) With respect to continuous testing operations (such as concrete quality, structural concrete strengths, aggregate quality, compaction tests and bituminous material quality), Project Co shall provide to the Contracting Authority Representative at regular intervals (not to exceed weekly unless otherwise agreed by the Parties) test summary sheets and statistical analyses indicating strength and quality trends.

20.7 Performance of Design Obligations

- (a) In the design and engineering of the Project Co System Infrastructure and New Third Party Infrastructure, Project Co, its consultants and the Project Co Parties shall exercise the standard of care normally exercised by licensed or registered professional engineering and architectural personnel and other licensed or registered professionals, as applicable, having knowledge and experience in performing design activities of a similar nature, scope and complexity.
- (b) Project Co 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, as applicable, 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, and all other applicable standards, specifications and codes, and as otherwise required by Applicable Law.

20.8 General Construction Obligations

- (a) Project Co 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 Project Co System Infrastructure and New Third Party Infrastructure, and other performance of the Works.
- (b) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
 - (i) construct the Works diligently, expeditiously and in a thorough and workman-like manner consistent with Schedule 11 – Quality Management;
 - (ii) ensure that no works other than the Works under this Project Agreement are constructed on the Lands by Project Co or any person for whom Project Co is responsible at law;
 - (iii) protect the Works from all of the elements, casualty and damage; and
 - (iv) 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 Law 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 Contracting Authority’s prior written consent in accordance with Section 20.9.
- (c) During the Construction Period, Project Co shall not, and Project Co shall ensure that the Project Co Parties do not, in any way whatsoever, contravene or cause a contravention of any labour-related contractual obligation or agreement or any provision of any collective agreement to which a City or the Region of Peel is a party that is applicable to the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure or the New Region of Peel Infrastructure, as the case may be, constructed pursuant to this Project Agreement, as such collective agreements or labour-related agreements may be amended from time to time.

20.9 Substitutions

- (a) Whenever equipment, components, materials, supplies, tools, and other items are specified or otherwise described in this Project 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 Contracting Authority, in its sole discretion.

20.10 Works Submittals

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by Contracting Authority prior to Substantial Completion, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by Contracting Authority pursuant to Schedule 10 - Review Procedure. The first document to be submitted by Project Co for review by Contracting Authority pursuant to Schedule 10 - Review Procedure shall be the draft document control and security protocol described in Section 52.5(f).

20.11 [Intentionally Deleted]**20.12 Liquidated Damages and Construction Period Deductions**

- (a) Project Co shall comply with Schedule 19 – Liquidated Damages and Part B – Construction Period Failures of Schedule 21 – Construction Period Payments, and shall be liable to Contracting Authority for all liquidated damages and Construction Period Deductions in accordance with the terms of such schedules and the other applicable provisions of this Project Agreement.

20.13 Apprenticeship Declaration

- (a) No later than 90 days after Financial Close, Project Co shall provide a copy of the Apprenticeship Declaration executed by Project Co, substantially in the form attached as Schedule 38 – Apprenticeship Declaration, for approval by Contracting Authority.

20.14 Apprenticeship Plan and Program

- (a) No later than 90 days after Financial Close, Project Co shall provide a plan setting out Project Co's Project-specific approach to promoting apprenticeship training opportunities in connection with the completion of the Works on the Project (the "**Apprenticeship Plan**") for review and approval by Contracting Authority. The Apprenticeship Plan shall include,
- (i) a detailed approach for realizing the objectives of the Apprenticeship Declaration on the Project;

- (ii) specific objectives for training and apprenticeship opportunities for the Project on a trade-by-trade basis;
 - (iii) apprenticeship opportunities for each trade required on the Project;
 - (iv) the number of apprentices to be employed for the Works, shall be in accordance with journey person to apprentice ratios established in section 60 of the *Ontario College of Trades and Apprenticeships Act, 2009*, or in any successor legislation thereto;
 - (v) a confirmation that apprenticeships will be registered with the Ministry of Training, Colleges and Universities and the Ontario College of Trades, as applicable;
 - (vi) a recruitment program to ensure the required supply of apprentices to meet Project Co's Apprenticeship Plan objectives and requirements;
 - (vii) a program to support apprentices on the Project to complete their apprenticeships prior to Substantial Completion and, for those whose apprenticeships are not complete by the Substantial Completion Date a program to support apprentices, on a commercially reasonable basis, to complete their apprenticeships after the Substantial Completion Date; and
 - (viii) a focused apprenticeship program for at-risk youth, historically disadvantaged groups including low-income, racialized and immigrant populations, women, aboriginal persons, newcomers to Ontario, veterans, persons with disabilities, and residents of the community(ies) in which the Project is located.
- (b) Project Co shall implement the approved Apprenticeship Plan.
- (c) On each anniversary of Commercial Close until the Substantial Completion Date (on which date the last submission under this Section 20.14 shall be made), Project Co shall provide an annual report to Contracting Authority on the implementation of the Apprenticeship Plan which report shall include,
- (i) statistics on the number of apprentices involved in the Project relative to the number of journey persons, for each month of the Project; and
 - (ii) detailed information setting out Project Co's progress toward achieving the objectives set out in the Apprenticeship Plan and the Apprenticeship Declaration, including an identification of any barriers that prevented Project Co from achieving its objectives.
- (d) Contracting Authority may require Project Co to amend its Apprenticeship Plan if, in Contracting Authority's opinion, acting reasonably, Project Co is failing to maximize apprenticeship opportunities on the Project pursuant to the then current Apprenticeship Plan.
- (e) Contracting Authority may, in its sole discretion, release Project Co's Apprenticeship Plan to the public. Project Co's Apprenticeship Plan shall not be Confidential Information.

20.15 Community Benefits and Liaison Plan

- (a) No later than 90 days after Financial Close, Project Co will provide to Contracting Authority, for review and approval, a plan setting out Project Co's Project-specific approach to,
- (i) providing community liaison to the communities impacted by the Works; and
 - (ii) events it plans to undertake to enhance community awareness of employment opportunities and opportunities for the provision of goods and services to Project Co,
- (the "**Community Benefits and Liaison Plan**").
- (b) The Community Benefits and Liaison Plan shall include,
- (i) a description of Project Co's planned initiatives to enhance community awareness of employment opportunities that are available as a result of the Project;
 - (ii) a description of Project Co's plans to liaise with local workforce agencies;
 - (iii) a description of Project Co's planned events to disseminate information about employment opportunities that are available to local workforces;
 - (iv) a description of Project Co's plans to disseminate information about goods and services that will be required for the Project from the community in the vicinity of the Project and supplier opportunities that exist; and
 - (v) the identification of Project Co's liaison person or team whose role it will be to liaise with local community groups during the Works.
- (c) Project Co shall implement the approved Community Benefits and Liaison Plan.
- (d) Project Co shall provide a quarterly report to Contracting Authority on the implementation of the Community Benefits and Liaison Plan, which report shall include detailed information on Project Co's success in implementing the Community Benefits and Liaison Plan.
- (e) Contracting Authority may require Project Co to amend its Community Benefits and Liaison Plan from time to time if, in Contracting Authority's opinion, acting reasonably, Project Co is failing to successfully implement the Community Benefits and Liaison Plan.
- (f) Contracting Authority may, in its sole discretion, release Project Co's Community Benefits and Liaison Plan to the public. Project Co's Community Benefits and Liaison Plan shall not be Confidential Information.
- (g) Project Co or a representative of Project Co shall attend quarterly meetings with Metrolinx and other community partners to ensure the coordination of activities identified as part of the Community Benefits and Liaison Plan.

20.16 [Intentionally Deleted]**20.17 Executive Project Meetings**

- (a) Subject to Sections 20.17(b) and 20.17(c), during the Construction Period, Contracting Authority, may, in its sole discretion and from time to time, schedule and hold meetings with senior executives of Project Co and the Project Co Parties for such individuals to provide senior executives of Contracting Authority with an update on the progress of and issues with the Project (each is an **“Executive Project Meeting”**).
- (b) Contracting Authority may, in its sole discretion, elect to schedule and hold an Executive Project Meeting upon the delivery of no fewer than 10 Business Days’ prior Notice to Project Co.
- (c) The precise date, time and location of each Executive Project Meeting shall be scheduled by Contracting Authority, acting reasonably.
- (d) Contracting Authority shall have the right to request the attendance of specific employees, officers, directors and other representatives of Project Co or any Project Co Party at each Executive Project Meeting, and, if requested to attend such meeting, Project Co shall use reasonably commercial efforts to ensure all such individuals attend.
- (e) No later than 5 Business Days prior to the date of each Executive Project Meeting, Project Co shall prepare and submit to Contracting Authority a one page (11” x 17” sized) summary (the **“Executive Project Meeting Document”**), which shall include the following information and be current to such date:
- (i) the date of the Executive Project Meeting Document (in month and year format);
 - (ii) Project information, including the name of the Project, the name of Project Co and the names of the Project Co Parties, including their respective representatives in attendance;
 - (iii) a high-level Project schedule in respect of the Works, including Commercial Close, Financial Close, the design development phase, the construction phase, the testing and commissioning phases, the Scheduled Substantial Completion Date, the anticipated Substantial Completion Date if such date is different from the Scheduled Substantial Completion Date, the Scheduled Final Completion Date, and any other material high-level items on the critical path of, as applicable, the Interim Baseline Works Schedule or the Baseline Works Schedule;
 - (iv) a brief description of the status of the design process to date, including the number of (A) Submittals submitted to Contracting Authority pursuant to Schedule 10 – Review Procedure; (B) Submittals for which the Contracting Authority Representative has assigned a comment of “NO COMMENT”, “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” pursuant to Schedule 10 – Review Procedure; (C) Submittals under review by Contracting Authority pursuant to Schedule 10 – Review Procedure; and (D) Submittals scheduled to

- be submitted to Contracting Authority pursuant to Schedule 10 – Review Procedure within six months following the Executive Project Meeting;
- (v) a brief high-level description of the construction activities undertaken since the previous Executive Project Meeting, including three distinct progress photos;
 - (vi) Earned Value Metrics (as defined in Schedule 12 – Works Schedule Requirements) progress per construction month;
 - (vii) a brief description of the top five issues Project Co desires to bring to the attention of Contracting Authority;
 - (viii) the number of total recordable injuries, lost time injuries, and non-lost time injuries per construction month;
 - (ix) the number of Non-Conformance Reports issued since Financial Close for each construction month by type (i.e. Critical Non-Conformance, Major Non-Conformance, and Minor Non-Conformance) and the total Failure Points associated with such Non-Conformance Reports;
 - (x) the number of Project Co Permits, Licenses and Approvals opened and closed with an emphasis on delayed applications; and
 - (xi) any other information requested by Contracting Authority, acting reasonably.
- (f) All discussions at an Executive Project Meeting and documents exchanged between the Parties in respect of an Executive Project Meeting shall be on a without prejudice basis, and shall not limit or prejudice any Party's rights or obligations under this Project Agreement, including under Schedule 27 – Dispute Resolution Procedure.

21. ACCESS AND MONITORING

21.1 Access for Province Persons

- (a) Subject to Section 21.1(b), but without limiting any of Contracting Authority's rights in respect of the Lands, the Project Co System Infrastructure, the New Third Party Infrastructure or the right of any third party in relation to that third party's portion of the Lands or New Third Party Infrastructure, Project Co acknowledges and agrees that throughout the Project Term, Project Co shall not restrict the access of Contracting Authority, the Province Persons, and their respective representatives, to the Lands, the Project Co System Infrastructure and the New Third Party Infrastructure and any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours, including for the purposes of general inspection or audit, or of attending any test or study being carried out in respect of the Works, or to fulfill any statutory, public or other duties or functions.

- (b) In exercising their access rights under Section 21.1(a), Contracting Authority, the Province Persons and their respective representatives shall:
- (i) comply with all reasonable directions that may be issued by or on behalf of the Project Co Representative from time to time so as to not unduly interfere with the Project Operations (including the Vehicle Supplier Activities); and
 - (ii) in respect of the Metrolinx Lands:
 - (A) provide reasonable prior Notice appropriate to the circumstances (other than for any offices or other facilities provided for the use of Contracting Authority and/or Province Persons); and
 - (B) 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 Project Co Representative from time to time.

21.2 Increased Monitoring

- (a) If, at any time during the Project Term, Contracting Authority is of the opinion, acting reasonably, that there are defects in the Works or that Project Co has failed to comply, in any material respect, with the requirements of this Project Agreement (including the Output Specifications and the Project Co Proposal Extracts), Contracting Authority may, without prejudice to any other right or remedy available to it, by Notice to Project Co, increase the level of monitoring of Project Co from that set out in this Project Agreement to such level as Contracting Authority considers reasonable taking into account the nature of the relevant defect or failure until such time as Project Co shall have demonstrated, to Contracting Authority's satisfaction, that it is capable of performing and will perform, in all material respects, its obligations under this Project Agreement. Project Co will compensate Contracting Authority for any reasonable costs incurred as a result of such increased monitoring.

21.3 Right to Uncover

- (a) Project Co shall ensure that Contracting Authority is afforded advance Notice of, and that Contracting Authority is afforded a full opportunity to witness, all inspection and test activity in accordance with the Inspection and Test Plan. If Project Co does not provide such Notice and opportunity, Project Co shall at the request of Contracting Authority uncover any relevant part of the Works which have been covered up or otherwise put out of view or remove any relevant part of the Works that have been proceeded with in order to permit Contracting Authority to witness the relevant inspection or test activity. Project Co shall bear all costs of any such uncovering or removal, regardless of whether or not any defect is discovered in the relevant Works.
- (b) Contracting Authority shall have the right, at any time during the Project Term, to request Project Co to uncover and inspect (or allow Contracting Authority to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where Contracting Authority reasonably believes that such part or parts of the Works is or are defective or that Project Co has

failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When Contracting Authority makes such a request, Contracting Authority shall include reasonably detailed reasons with such request.

- (c) If an inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to Contracting Authority and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (d) If an inspection shows that the relevant part or parts of the Works is not or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, the exercise by Contracting Authority of its rights pursuant to this Section 21.3:
 - (i) prior to Substantial Completion shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
 - (ii) following Substantial Completion shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

21.4 No Relief from Obligations

- (a) The Parties acknowledge that the exercise by Contracting Authority or the Contracting Authority Representative of the rights under this Section 21 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Section 21.

21.5 Access by Others

- (a) Subject to Section 21.5(b) and subject to and in accordance with Section 9.8 (to the extent applicable), Project Co shall ensure that throughout the Project Term, without prejudice to any access rights of any such person as a member of the general public or pursuant to Applicable Law, that it does not restrict access to the Lands, Project Co System Infrastructure, Existing Third Party Infrastructure, or New Third Party Infrastructure for:
 - (i) the Independent Certifier to the extent required to perform its obligations pursuant to Schedule 6 - Independent Certifier Agreement;
 - (ii) inspectors and other persons authorized to act on behalf of Contracting Authority and owners of New Third Party Infrastructure and Existing Third Party Infrastructure, for inspection and/or acceptance purposes;

- (iii) all Other Contractors, including the owners or operators of any Third Party Facilities and their agents at all reasonable times to exercise any right or power or perform any duty or obligation under any Applicable Law or the Utility Agreements, Railway Orders or encroachment permits, provided that, wherever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations;
 - (iv) all Governmental Authorities and Emergency Service Providers in order to carry out any work (including surveys and inspections) in accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law and provided that, whenever consistent with the applicable requirements of such Governmental Authority, Emergency Service Providers or Applicable Law and the requirements of this Project Agreement (as the case may be), Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations;
 - (v) any Province Person, Other Contractors, owners or operators of Third Party Facilities, Governmental Authorities, Emergency Service Providers, Utility Companies and Railway Companies for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the Lands, the Project Co System Infrastructure, the New Third Party Infrastructure and Existing Third Party Infrastructure owned or operated by such person or in which such person has any interest, provided that, whenever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations; and
 - (vi) any Province Person to undertake emergency training in relation to the Project Co System Infrastructure.
- (b) Subject to Section 21.5(c), Contracting Authority shall require persons accessing Site(s) on the Metrolinx Lands in accordance with access rights under Section 21.5(a) to:
- (i) provide reasonable prior Notice to Project Co appropriate to the circumstances;
 - (ii) comply with all relevant health and safety procedures and any reasonable directions with regard to health and safety that may be issued by or on behalf of the Project Co Representative from time to time; and
 - (iii) if reasonably required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.
- (c) Section 21.5(b) shall not apply,
- (i) to Additional Contractors, who shall instead comply with any instructions or procedures made by Project Co pursuant to Section 9.8;

- (ii) in the case of access rights described in Section 21.5(a) for the purpose of responding to an Emergency ;
- (iii) for the purposes of responding to an emergency declared by Contracting Authority or by a Governmental Authority; and
- (iv) in circumstance where the requirements of Section 21.5(b) are inconsistent with the requirements of the applicable Governmental Authority or Emergency Service Provider.

21.6 Public Use

- (a) Project Co shall have no right to grant, to the general public, the right to use either the Project Co System Infrastructure or the New Third Party Infrastructure. It shall be the right of Contracting Authority to grant the right of use to the general public to the Project Co System Infrastructure. It shall be the right of,
 - (i) the City of Mississauga to grant the right of use to the general public to the New City of Mississauga Infrastructure;
 - (ii) the City of Brampton to grant the right of use to the general public to the New City of Brampton Infrastructure;
 - (iii) Metrolinx to grant the right of use to the general public to the New Metrolinx Infrastructure;
 - (iv) 407 ETR to grant the right of use to the general public to the New 407 ETR Infrastructure;
 - (v) MTO to grant the right of use to the general public to the New MTO Infrastructure;
 - (vi) each applicable Railway Company Owner to grant the right of use to the general public to its New Railway Company Infrastructure;
 - (vii) Region of Peel to grant the right of use to the general public to the New Region of Peel Infrastructure; and
 - (viii) Utility Companies to grant the right of use to the general public to the New Utility Company Infrastructure.
- (b) Except as explicitly permitted by Contracting Authority or this Project Agreement, and subject to Project Co's compliance with all applicable Permits, Licences and Approvals, Project Co shall,
 - (i) minimize interference with all existing transit systems at all times during the Construction Period; and

- (ii) to the extent that the Project necessitates interference, in any way, with the operation of an existing transit system, including the imposition of any closures or detours on an existing transit system, use commercially reasonable efforts to cooperate with Contracting Authority, each City, MTO, 407 ETR and other relevant third parties to ensure the continued operation of such existing transit system.
- (c) Except as otherwise expressly provided in this Project Agreement, Project Co shall not have any claim whatsoever against Contracting Authority, any Province Person, Emergency Service Providers or any other Governmental Authority for, or in respect of, any lane closure or diversion or any track closure or diversion, including any closure or diversion as a result of the exercise of any other rights or powers or the discharge of any other duties or functions by any such authority, affecting all or any part of the Lands, the Project Co System Infrastructure or the New Third Party Infrastructure, at any time.
- (d) Subject to closures or diversions of traffic flow permitted by this Project Agreement, Project Co shall cause all Works and Project Co Services to be carried on so as not to interfere unnecessarily with, and so as to minimize any necessary interference with, the convenience of the public in respect of, and the access of the public to and use of, any public or private roads or highways or other transportation infrastructure (other than the Project Co System Infrastructure and the New Third Party Infrastructure), whether under the control or in the possession of Contracting Authority or any other person.

22. WORKS SCHEDULE REQUIREMENTS AND WORKS REPORT REQUIREMENTS

22.1 Completion of the Works

- (a) Project Co shall complete the Works in accordance with this Project Agreement and achieve:
 - (i) Substantial Completion by the Scheduled Substantial Completion Date; and
 - (ii) Final Completion by the Scheduled Final Completion Date.

22.2 Works Schedule Requirements

- (a) Project Co and Contracting Authority shall comply with the provisions of Schedule 12 – Works Schedule Requirements.

22.3 Notification of Early Substantial Completion

- (a) Unless Project Co obtains the prior written consent of Contracting Authority, in its sole discretion, Project Co shall not be entitled to a Substantial Completion Certificate prior to, and the Substantial Completion Date and the Payment Commencement Date shall not be earlier than, the Scheduled Substantial Completion Date; or
- (b) If Project Co advises Contracting Authority that it expects to be able to achieve Substantial Completion prior to the Scheduled Substantial Completion Date, the Contracting Authority

Representative shall be entitled to require Project Co to produce and submit to the Contracting Authority Representative a revised Progress Works Schedule (or Recovery Works Schedule, as applicable) showing the manner and the periods in which the Works shall be performed and what the revised date for Substantial Completion would be so as to enable Contracting Authority to consider at its sole discretion:

- (i) whether to agree to an earlier Scheduled Substantial Completion Date; and
- (ii) what modifications, if any, shall be required to this Project Agreement in order to accommodate such earlier Scheduled Substantial Completion Date.

22.4 Works Report

- (a) Project Co shall continuously monitor the progress of the Works in relation to, as applicable, the Interim Baseline Works Schedule or the Baseline Works Schedule and, within 15 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, Project Co shall provide to the Contracting Authority Representative and the Independent Certifier a works report (each, a “**Works Report**”), which will include:
 - (i) an executive summary describing the general status of the Works and progress made over the relevant month;
 - (ii) an updated Progress Works Schedule and corresponding Works Schedule Report in accordance with Schedule 12 – Works Schedule Requirements;
 - (iii) a narrative description of any Disputes related to the Works, including any action that has taken place over the relevant month to resolve such Disputes;
 - (iv) a narrative description of the status of any Proceeding at Risk Matter that has not been resolved pursuant to Section 11.6(f), in accordance with Schedule 27 – Dispute Resolution Procedure or otherwise;
 - (v) any additional content and an update on those matters set out in Schedule 33 - Works Report Requirements;
 - (vi) in accordance with Section 23, a LEED progress report;
 - (vii) a progress report comparing Project Co’s actual Construction Activities and procurement activities relating to the Project Co System Infrastructure with LEED rating requirements; and
 - (viii) a detailed, narrative description of all issues relating to Warranty Work and the warranties set out in Section 25.15,

all in form and substance satisfactory to Contracting Authority, acting reasonably. For greater certainty, for all updates and revisions to the Project Works Schedules, Project Co must provide a revised critical path reflecting the updated or revised Project Works Schedule.

- (b) Project Co shall use, and shall ensure that the Construction Contractor uses, the project management software system specified by Contracting Authority.

23. LEED, ENERGY AND ENVIRONMENTAL REQUIREMENTS

23.1 Environmental Management / Contamination and Hazardous Substances

- (a) Project Co shall comply with the provisions of Schedule 17 - Environmental Obligations.

23.2 Energy Matters

- (a) Project Co and Contracting Authority shall comply with the provisions of Schedule 8 – Energy Matters.

23.3 LEED Design and Construction Obligations

- (a) Project Co shall perform the Works in respect of the Hurontario OMSF so as to achieve the prerequisites and credits required to achieve the LEED Silver Rating and, except as set out in the Output Specifications, Project Co may, in its sole discretion, determine which additional credits to pursue.

23.4 Mandatory Prerequisites and Credits

- (a) Project Co shall, at a minimum, achieve the credits and prerequisites under the LEED Rating System provided for in the Output Specifications.
- (b) Project Co shall, at a minimum, achieve the following credits and points under the LEED Rating System:
 - (i) **[Intentionally Deleted]**
 - (ii) “Outdoor Water Use Reduction” credit under “Performance Category: Water Efficiency”, and obtain a minimum of 1 point in respect of such credit;
 - (iii) “Indoor Water Use Reduction” credit under “Performance Category: Water Efficiency”, and obtain a minimum of 1 point in respect of such credit; and
 - (iv) “Advanced Metering” credit under “Performance Category: Energy & Atmosphere”.

23.5 LEED Progress Reports

- (a) As part of each Works Report, Project Co shall submit a progress report comparing actual construction and procurement activities with LEED Silver Rating requirements.

23.6 LEED Silver Rating

- (a) Within 60 days following Financial Close, Project Co shall cause the Hurontario OMSF to be registered with CaGBC on behalf of Contracting Authority, and, promptly following such registration, Project Co shall provide evidence to Contracting Authority that such registration is valid and effective as of the date that it was made.
- (b) If there is a change in the requirements for achievement of LEED Silver Rating under the LEED Rating System, and Project Co is required by the CaGBC to comply with such change, then Project Co shall notify Contracting Authority of such change and such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (c) Project Co shall apply to the CaGBC to obtain LEED Silver Rating for the Hurontario OMSF as soon as possible.
- (d) In the event that:
- (i) Project Co fails to obtain the credits and minimum number of points required pursuant to Section 23.4(b) within 24 months after the Substantial Completion Date; or
 - (ii) LEED Silver Rating for the Hurontario OMSF is not obtained within 24 months after the Substantial Completion Date,

other than as a direct result of any act or omission of Contracting Authority or any Contracting Authority Party, Project Co shall pay to Contracting Authority liquidated damages as set out in Schedule 19 – Liquidated Damages.

23.7 Greenhouse Gas Credits

- (a) Any greenhouse gas credits which may be guaranteed as a result of the Project shall be owned by Contracting Authority and Project Co shall have no entitlement to any of such credits whatsoever.

24. INDEPENDENT CERTIFIER**24.1 Appointment**

- (a) On or prior to the date of this Project Agreement, the Parties shall appoint an independent, suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project Agreement and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 - Independent Certifier Agreement. 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 24.7(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, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

24.2 Role of Independent Certifier

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

24.3 Changes to Terms of Appointment

- (a) Neither Contracting Authority nor Project Co shall without the other's prior written approval:
 - (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 services 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.

24.4 Right to Change Appointment

- (a) The Parties agree that the Independent Certifier shall not provide any services or reports or other information to Project Co, the Lenders, the Project Co Parties or any other person other than pursuant to the performance of the functions of the Independent Certifier under this Project Agreement unless agreed to in writing by the Parties. 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 24.7, 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.

24.5 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. All instructions and representations issued or made by either of the Parties to the Independent Certifier shall be simultaneously copied to the other and the Parties shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.

24.6 Payment of Independent Certifier

- (a) Project Co and Contracting Authority shall share equally the responsibility for the payment of all fees and costs of the Independent Certifier.

24.7 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 by the Parties, be as set out in the Independent Certifier Agreement.
- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within 5 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 5 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 the 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 27 - Dispute Resolution Procedure.

25. COMMISSIONING AND COMPLETION**25.1 Commissioning Activities**

- (a) Project Co shall perform all Commissioning, and shall support and facilitate the performance of all Contracting Authority Commissioning, if any, pursuant to the Commissioning Program.

25.2 Commencement of Commissioning

- (a) Project Co shall give 30 days' written Notice to the Independent Certifier, the Contracting Authority Commissioning Agent and the Contracting Authority Representative of the proposed commencement of the Commissioning.

- (b) Project Co shall give at least 5 Business Days' Notice to, and shall invite, the Independent Certifier, the Contracting Authority Commissioning Agent and the Contracting Authority Representative to witness, and to comment on, each aspect of the Commissioning. Project Co shall, together with such Notice, provide all information that the Independent Certifier, the Contracting Authority Commissioning Agent and the Contracting Authority Representative may reasonably require in relation thereto, including:
- (i) tests proposed;
 - (ii) test methodology; and
 - (iii) expected test results.

25.3 Substantial Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least 10 Business Days' Notice prior to the date upon which Project Co anticipates delivering the Substantial Completion Notice (the "**10-Day Notice**").
- (b) Project Co shall give Notice to the Independent Certifier and the Contracting Authority Representative upon the satisfaction of all of the requirements for Substantial Completion under this Project Agreement (the "**Substantial Completion Notice**"). The Substantial Completion Notice shall (i) describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion, (ii) include as appendices all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List, and (iii) include Project Co's opinion that the conditions for issuance of the Substantial Completion Certificate under this Project Agreement have been satisfied.
- (c) Within two Business Days of receiving the Substantial Completion Notice from Project Co, the Independent Certifier shall review the Substantial Completion Notice to determine whether or not the Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List. For the purposes of this Section 25.3(c), if the Substantial Completion Notice contains a Substantial Completion Deliverable that, in the reasonable opinion of the Independent Certifier, is of such poor quality that it would impede, in a material way, the ability of Contracting Authority and the Independent Certifier to assess whether or not the requirements for Substantial Completion under this Project Agreement have been satisfied, then such Substantial Completion Deliverable shall be deemed to have not been included as part of the Substantial Completion Notice. Following such review and determination by the Independent Certifier and before the expiry of such two Business Day period, the Independent Certifier shall either deliver notice to Project Co and Contracting Authority:
- (i) confirming that the Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List (the "**IC Substantial Completion Deliverables Confirmation**"); or

- (ii) setting out a list of the Substantial Completion Deliverables that were not included in the Substantial Completion Notice (an “**IC Substantial Completion Deliverables Deficiencies List**”).

If the Independent Certifier provides a notice to Project Co and Contracting Authority setting out an IC Substantial Completion Deliverables Deficiencies List pursuant to this Section 25.3(c), then Project Co shall subsequently submit a new and replacement version of the Substantial Completion Notice pursuant to Section 25.3(b), which, for greater certainty, includes all of the Substantial Completion Deliverables, and the process described in this Section 25.3(c) shall be repeated until the IC Substantial Completion Deliverables Confirmation is provided by the Independent Certifier to Project Co and Contracting Authority

- (d) Contracting Authority shall, within 5 Business Days after receipt of the IC Substantial Completion Deliverables Confirmation, provide the Independent Certifier and Project Co with Contracting Authority’s opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied or, if applicable, any reasons as to why Contracting Authority considers that the Substantial Completion Certificate should not be issued.
- (e) Within 5 Business Days after Project Co’s receipt of Contracting Authority’s opinion pursuant to Section 25.3(d), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, to determine whether any Minor Deficiencies exist, and to issue to Contracting Authority and to Project Co either:
 - (i) the Substantial Completion Certificate, confirming the date of issue as the Substantial Completion Date and setting out the Minor Deficiencies List (if applicable) in accordance with Section 25.7; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Substantial Completion Certificate.
- (f) Where the Independent Certifier has issued a report in accordance with Section 25.3(e)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority 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 Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, and for each subsequent application for Substantial Completion, Project Co shall submit a new 10-Day Notice and a new Substantial Completion Notice and the process described in Sections 25.3(c) to (f), inclusive, shall be repeated until the Substantial Completion Certificate has been issued.

- (g) In the event that the Substantial Completion Certificate has not been issued within 30 days after the delivery of a 10-Day Notice or the delivery of a Substantial Completion Notice, such 10-Day Notice or Substantial Completion Notice, as applicable, shall be deemed to have been rescinded by Project Co and Project Co shall be required to deliver a new 10-Day Notice in order to initiate a new application for Substantial Completion.
- (h) For greater certainty, the Independent Certifier's decision to issue the IC Substantial Completion Deliverables Confirmation shall not limit or otherwise affect (i) any of Project Co's obligations under this Project Agreement to satisfy the requirements of Substantial Completion or (ii) the opinion of Contracting Authority or the determination of the Independent Certifier as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied pursuant to Section 25.3(d) and Section 25.3(e) respectively.
- (i) The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Payment Commencement Date, and a Dispute in relation to the Payment Commencement Date shall not be subject to resolution pursuant to Schedule 27 - Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.
- (j) The submission of the Substantial Completion Notice by Project Co in accordance with Section 25.3(b) shall constitute a waiver by Project Co of all claims whatsoever against Contracting Authority under this Project Agreement, arising prior to the submission of the Substantial Completion Notice, except:
 - (i) without limitation to the specific notice requirements in this Project Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) arising prior to the submission of the Substantial Completion Notice and still unsettled; and
 - (ii) any third party claim which was not known to Project Co or a Project Co Party or could not reasonably have been known to Project Co or a Project Co Party at such time and with respect to which Project Co or a Project Co Party is entitled to indemnification from Contracting Authority in accordance with this Project Agreement.

25.4 [Intentionally Deleted]**25.5 Contracting Authority Commissioning**

- (a) The Parties acknowledge that Contracting Authority may perform Contracting Authority Commissioning both before and after the Substantial Completion Date. Prior to Substantial Completion, Project Co shall not restrict Contracting Authority, and any of its employees and subcontractors from full access to the Lands, the Project Co System Infrastructure and the New Third Party Infrastructure and all relevant parts thereof at such times as may be set out in the Commissioning Program to enable Contracting Authority to undertake any Contracting Authority Commissioning in accordance with the Commissioning Program. Contracting Authority shall comply, and shall ensure that all other Province Persons comply with the directions, procedures and safety guidelines established by Project Co for the Lands, the Project Co System Infrastructure and the New Third Party Infrastructure and shall use commercially reasonable efforts to minimize disruption to the Project Operations in performing any Contracting Authority Commissioning.
- (b) Contracting Authority acknowledges that, during the Contracting Authority Commissioning Period, Project Co and its Subcontractors will be active on the Lands, the Project Co System Infrastructure and the New Third Party Infrastructure in both the rectification of Minor Deficiencies and the completion of Commissioning, and Contracting Authority shall take commercially reasonable steps to allow such activities to proceed in accordance with the Commissioning Program.
- (c) Project Co acknowledges that, prior to and during the Contracting Authority Commissioning Period, Project Co and its Subcontractors shall cooperate with Contracting Authority and all other Province Persons and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the Contracting Authority Commissioning activities are able to be completed in the timeframe for completion set out in the Commissioning Program.

25.6 Substantial Completion Countdown Notice and Substantial Completion Deliverables

- (a) Project Co shall deliver a Notice (a “**Substantial Completion Countdown Notice**”) to Contracting Authority and the Independent Certifier specifying the date on which Project Co anticipates that Substantial Completion will be achieved (the “**Anticipated Substantial Completion Date**”).
- (b) The Substantial Completion Countdown Notice shall be delivered not less than 180 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the Substantial Completion Countdown Notice not less than 180 days prior to the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Substantial Completion Date.

- (c) In accordance with Section 22.3(a), the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date, without the prior written consent of Contracting Authority, in its sole discretion.
- (d) Within 15 Business Days of the Independent Certifier's receipt of the Substantial Completion Countdown Notice in accordance with Section 25.6(a), the Independent Certifier, in consultation with Project Co and Contracting Authority, shall prepare and deliver to Project Co and Contracting Authority a list of deliverables (the "**Substantial Completion Deliverables List**") that (A) are to be appended to and form part of the Substantial Completion Notice to be submitted by Project Co pursuant to Section 25.3(b), and (B) will constitute a minimum amount of evidence necessary for Project Co, in the Substantial Completion Notice, to describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion and to support Project Co's opinion that the conditions for issuance of the Substantial Completion Certificate have been satisfied (collectively, the "**Substantial Completion Deliverables**").
- (e) From time to time until the date that is 60 days prior to the Anticipated Substantial Completion Date, the Independent Certifier, in consultation with Project Co and Contracting Authority, may amend the Substantial Completion Deliverables List, including to set out any additional Substantial Completion Deliverables not identified in the Substantial Completion Deliverables List pursuant to Section 25.6(d). Each amended Substantial Completion Deliverables List shall, following its preparation, be deemed to be the Substantial Completion Deliverables List for the purposes of this Project Agreement and be promptly delivered to Project Co and Contracting Authority.
- (f) For greater certainty, nothing in Section 25.6(d) or Section 25.6(e) limits or otherwise affects any of Project Co's obligations under this Project Agreement to satisfy the requirements of Substantial Completion or to describe, in reasonable detail, the satisfaction of such requirements in the Substantial Completion Notice pursuant to Section 25.3(b).

25.7 Minor Deficiencies

- (a) In the event that Minor Deficiencies exist when Project Co gives the Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and Contracting Authority, shall prepare a list of all Minor Deficiencies (the "**Minor Deficiencies List**") identified at that time and an estimate of the cost for Contracting Authority and the time for Project Co to complete and rectify such Minor Deficiencies. Contracting Authority may withhold from the Substantial Completion Payment a holdback amount that is 200% of the amount estimated by the Independent Certifier for Contracting Authority to complete and rectify all Minor Deficiencies (the "**Completion Holdback**"), which holdback shall be held in an interest bearing account.
- (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, Project Co shall schedule the completion and rectification of Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any lane or track closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the Project Co System Infrastructure, the

New Third Party Infrastructure or the relevant portion thereof, or disruption of the Project Operations or of the operations of Contracting Authority, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works, and otherwise in accordance with the Traffic and Transit Management Plan.

- (c) The Independent Certifier must prepare the Minor Deficiencies List in relation to the Substantial Completion Notice as soon as reasonably practicable and, in any event, before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) No later than 20 Business Days prior to the Anticipated Final Completion Date, Contracting Authority may direct the Independent Certifier to amend, in consultation with Project Co and Contracting Authority, the Minor Deficiencies List on one occasion to include a list of any and all Minor Deficiencies that were identified after the preparation of, or not included in, the Minor Deficiencies List pursuant to Section 25.7(a). The Independent Certifier shall prepare the amended Minor Deficiencies List as soon as reasonably practicable and, in any event, within 10 Business Days of such direction given by Contracting Authority. The amended Minor Deficiencies List shall, following its preparation, be deemed to be the Minor Deficiencies List for the purposes of this Project Agreement, including, without limitation, for the purposes of Sections 25.7 to 25.9 inclusive. The amount of the Completion Holdback shall not be affected by the amended Minor Deficiencies List.
- (e) Where the Independent Certifier has been directed by Contracting Authority to amend the Minor Deficiencies List pursuant to Section 25.7(d), the Independent Certifier shall specify a rectification time for any newly added Minor Deficiencies that is no greater than 10 Business Days from the date of issuance of such amended Minor Deficiencies List.
- (f) Contracting Authority may, in its sole discretion, waive any requirement for Substantial Completion, and the failure to meet any such requirement shall constitute a Minor Deficiency.
- (g) Nothing in this Section 25.7 shall prevent Contracting Authority from making any adjustments to the Monthly Service Payments in accordance with Schedule 20 – Payment Mechanism.

25.8 Rectification of Minor Deficiencies

- (a) Project Co shall, in consultation with the Contracting Authority Representative and so as to minimize, to the greatest extent reasonably possible, any lane or track closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the Project Co System Infrastructure and the New Third Party Infrastructure or any portion thereof or disruption of the Project Operations or of the operations of Contracting Authority, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works, and otherwise in accordance with the Traffic and Transit Management Plan, complete and rectify all Minor Deficiencies:

- (i) within 180 days of the issuance of the Minor Deficiencies List pursuant to Section 25.7(a) for all Minor Deficiencies where no time for completion and rectification has been specified by the Independent Certifier; or
 - (ii) within the time for completion and rectification of any Minor Deficiency where such a time was specified by the Independent Certifier in the Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Project Co System Infrastructure, the New Third Party Infrastructure or any portion thereof and to ensure compliance with the Traffic and Transit Management Plan.

25.9 Failure to Rectify Minor Deficiencies

- (a) If Project Co fails to complete and rectify any Minor Deficiency within the time for its completion and rectification specified in Section 25.8, Contracting Authority may engage others to perform the work necessary to complete and rectify such Minor Deficiency at the risk and cost of Project Co, and Contracting Authority may deduct such cost from the Completion Holdback and interest accrued thereon.
- (b) Within 2 Business Days of Final Completion, Contracting Authority shall release to Project Co the Completion Holdback, together with all interest accrued thereon and applicable HST. Where Contracting Authority exercises its rights pursuant to 25.9(a), if the cost of such completion and rectification exceeds the amount of the Completion Holdback and interest, then Project Co shall reimburse Contracting Authority for all such excess cost.

25.9A Final Completion Countdown Notice

- (a) Project Co shall deliver a notice (the “**Final Completion Countdown Notice**”) to Contracting Authority and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Final Completion Date) on which Project Co anticipates that Final Completion will be achieved (the “**Anticipated Final Completion Date**”).
- (b) The Final Completion Countdown Notice shall be delivered not less than 90 days prior to the Anticipated Final Completion Date. If Project Co fails to deliver the Final Completion Countdown Notice not less than 90 days prior to the Scheduled Final Completion Date, the Anticipated Final Completion Date shall be deemed to be the same date as the Scheduled Final Completion Date.

25.10 Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least 10 Business Days’ Notice prior to the date upon which Project Co anticipates delivering the Final Completion Notice.

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- (b) Project Co shall give the Independent Certifier and the Contracting Authority Representative Notice (a “**Final Completion Notice**”) upon the satisfaction of all requirements for Final Completion, which Final Completion Notice shall describe, in reasonable detail:
- (i) the items of minor work of a seasonal nature that cannot be completed prior to the Final Completion Date, if any, and the time for completion of such work as agreed between Contracting Authority and Project Co, each acting reasonably; and
 - (ii) the satisfaction of the requirements for Final Completion, including the completion and rectification of all Minor Deficiencies other than any outstanding seasonal work identified in the Final Completion Notice, and the submission of all records and data as set forth in the Commissioning Program, together with Project Co’s opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied.
- (c) Contracting Authority shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with Contracting Authority’s opinion as to whether the conditions for issuance of Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Final Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co’s receipt of Contracting Authority’s opinion pursuant to Section 25.10(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, and to issue to Contracting Authority and to Project Co either:
- (i) the Final Completion Certificate, confirming the date of issue as the Final Completion Date; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate, including any items on the Minor Deficiencies List which remain outstanding.
- (e) Where the Independent Certifier has issued a report in accordance with Section 25.10(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority 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 Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 25.10(c) to (e), inclusive, shall be repeated until the Final Completion Certificate, has been issued.

- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Final Completion Certificate may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (g) If, within 30 days after the time specified in the Final Completion Notice for completion of seasonal work, Project Co has failed to complete such seasonal work, Contracting Authority may engage others to perform the work necessary to complete the seasonal work, at the risk and cost of Project Co. Project Co shall pay to Contracting Authority the costs incurred by Contracting Authority to complete such seasonal work within 10 Business Days of presentation of an invoice for such costs.
- (h) The submission of the Final Completion Notice by Project Co in accordance with Section 25.10(b), shall constitute a waiver by Project Co of all claims whatsoever against Contracting Authority, arising prior to the submission of the Final Completion Notice, except:
 - (i) without prejudice to specific notice requirements in this Project Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) prior to the Final Completion Notice and still unsettled; and
 - (ii) any third party claim which was not known to Project Co or a Project Co Party or could not reasonably have been known to Project Co or a Project Co Party at such time and with respect to which Project Co or a Project Co Party is entitled to indemnification from Contracting Authority in accordance with this Project Agreement.

25.11 Effect of Certificates/Use

- (a) The issue of the Substantial Completion Certificate or the Final Completion Certificate, the commencement of use by Contracting Authority or the public of any part of the Project Co System Infrastructure under the terms of this Project Agreement or the commencement of any Governmental Activities shall, in no way:
 - (i) limit the obligations of Project Co under this Project 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 Contracting Authority of the Works or the way in which they have been carried out.

25.12 Project Co System Infrastructure Reference Plans and Surveyor's Real Property Reports

- (a) Project Co shall prepare and submit to Contracting Authority the draft and final Reference Plans and Surveyor's Real Property Reports in respect of the Project Co System Infrastructure described in Section 7.2 of Part 1 of Schedule 15-2 – Design and Construction Requirements.

25.13 Inspection, Commissioning and Handover of New Third Party Infrastructure

- (a) Project Co acknowledges and agrees that New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure and New Railway Company Infrastructure will be inspected, Commissioned and handed over to each City, Go Transit, 407 ETR, MTO, Region of Peel, each Railway Company Owner or Contracting Authority, as applicable, on a component by component basis and from time to time during the Construction Period.
- (b) For the purposes of this Section 25.13, Contracting Authority may delegate the responsibility for carrying out interim inspections, final inspections, warranty inspections, and Commissioning and Handover activities, on behalf of Contracting Authority, to:
- (i) the City of Mississauga, in respect of the New City of Mississauga Infrastructure;
 - (ii) the City of Brampton, in respect of the New City of Brampton Infrastructure;
 - (iii) Go Transit, in respect of the New Metrolinx Infrastructure;
 - (iv) 407 ETR, in respect of the New 407 ETR Infrastructure;
 - (v) MTO in respect of the New MTO Infrastructure;
 - (vi) Region of Peel in respect of the New Region of Peel Infrastructure; and
 - (vii) each applicable Railway Company Owner in respect of its New Railway Company Infrastructure,

by providing Notice to Project Co of any such delegation (any such notice referred to as a “**Notice of Delegation**”), and Contracting Authority may, in its sole discretion, and at any time revise such delegation by Notice to Project Co. For clarity, Contracting Authority may delegate the foregoing responsibility in respect of all or any component of any applicable New Third Party Infrastructure, and may delegate the foregoing responsibility in respect of any one or more of the New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure and New Railway Company Infrastructure. Project Co acknowledges and agrees that, for the purposes of this Section 25.13, Project Co shall Handover:

- (viii) all New City of Mississauga Infrastructure directly to Contracting Authority unless Contracting Authority has delivered to Project Co a Notice of Delegation in respect of

- New City of Mississauga Infrastructure, in which case, Project Co shall Handover such New City of Mississauga Infrastructure directly to the City of Mississauga;
- (ix) all New City of Brampton Infrastructure directly to Contracting Authority unless Contracting Authority has delivered to Project Co a Notice of Delegation in respect of New City of Brampton Infrastructure, in which case, Project Co shall Handover such New City of Brampton Infrastructure directly to the City of Brampton;
 - (x) all New Metrolinx Infrastructure directly to Contracting Authority unless Contracting Authority has delivered to Project Co a Notice of Delegation in respect of New Metrolinx Infrastructure, in which case, Project Co shall Handover such New Metrolinx Infrastructure directly to Go Transit;
 - (xi) all New 407 ETR Infrastructure directly to Contracting Authority unless Contracting Authority has delivered to Project Co a Notice of Delegation in respect of New 407 ETR Infrastructure, in which case, Project Co shall Handover such New 407 ETR Infrastructure directly to 407 ETR;
 - (xii) all New MTO Infrastructure directly to Contracting Authority unless Contracting Authority has delivered to Project Co a Notice of Delegation in respect of New MTO Infrastructure, in which case, Project Co shall Handover such New MTO Infrastructure directly to MTO;
 - (xiii) all New Region of Peel Infrastructure directly to Contracting Authority unless Contracting Authority has delivered to Project Co a Notice of Delegation in respect of New Region of Peel Infrastructure, in which case, Project Co shall Handover all New Region of Peel Infrastructure directly to Region of Peel; and
 - (xiv) all New Railway Company Infrastructure directly to Contracting Authority unless Contracting Authority has delivered to Project Co a Notice of Delegation in respect of New Railway Company Infrastructure, in which case, Project Co shall Handover such New Railway Company Infrastructure directly to the applicable Railway Company Owner.
- (c) No later than 5 days prior to the anticipated completion of New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure or New Railway Company Infrastructure, as applicable, Project Co shall provide Notice to Contracting Authority or, where a Notice of Delegation has been provided to Project Co, Project Co shall provide Notice to the applicable City, Go Transit, 407 ETR, MTO, Region of Peel or the applicable Railway Company Owner, as applicable, of the date on which the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure, as applicable, will be completed and ready for inspection and testing. Project Co and Contracting Authority, or Project Co and the applicable

third party (where a Notice of Delegation has been provided) shall carry out a joint inspection of such New Third Party Infrastructure. Such joint inspection shall occur no later than 90 days after the date of completion of, as applicable, the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure. The inspection and testing of New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure and New Railway Company Infrastructure pursuant to this Section 25.13(c) shall follow the inspection and testing requirements set out in the Inspection and Test Plan and the Inspection and Test Sub-Plans. Such inspection, shall be for the purposes of:

- (i) assessing whether the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure, as applicable, has been constructed in accordance with the Output Specifications and is otherwise in compliance with the requirements in the Project Agreement; and
 - (ii) identifying any defects or deficiencies to the applicable New Third Party Infrastructure that Project Co must correct, repair or restore before Project Co completes the Commissioning of the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure before the Handover of the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure, as applicable.
- (d) Prior to final inspection of New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure and New Railway Company Infrastructure, Project Co shall:
- (i) prepare a record of the following, and submit it to Contracting Authority for review in accordance with Schedule 10 – Review Procedure at least 30 Business Days before the final inspection:
 - (A) a list of the New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure and New Railway Company Infrastructure, as the case may be, to be inspected;
 - (B) the tests, inspection methods and procedures to be used and performed and the standards that apply in respect of tests, inspection methods and procedures,

- which test and inspection shall follow the inspection and testing requirements set out in the Inspection and Test Plan and the Inspection and Test Sub-Plans;
- (C) the scheduled date for testing and inspection of the applicable New Third Party Infrastructure;
 - (D) a list of the names and employers of persons to represent Project Co and Contracting Authority or, if a Notice of Delegation has been issued in respect of the relevant New Third Party Infrastructure, a list of the names and employers of persons to represent Project Co and the applicable City, Go Transit, 407 ETR, MTO, Region of Peel, and/or the applicable Railway Company Owner, as the case may be, at the inspection; and
 - (E) a list of existing systems that may be impacted by the tests and inspection.
- (ii) Ensure that:
- (A) all defects and deficiencies that have been identified by Contracting Authority, the applicable City, Go Transit, 407 ETR, MTO, Region of Peel or the applicable Railway Company Owner, as applicable, during any interim inspections, have been rectified; and
 - (B) any damage to New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure or New Railway Company Infrastructure, as applicable, is repaired by Project Co in accordance with Section 30 of this Project Agreement.
- (e) Project Co shall prepare a record of each inspection carried out pursuant to Section 25.13(c) in inspection report format including: (i) a list of defects or deficiencies to New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure or New Railway Company Infrastructure, as applicable, identified during the inspection; and (ii) actions to be taken by Project Co to correct each defect or deficiency and to rectify the damage. Project Co shall submit the inspection reports to Contracting Authority within three Business Days of each inspection for review in accordance with Schedule 10 – Review Procedure.
- (f) After the inspection of the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure pursuant to Section 25.13(c), Project Co shall make all arrangements in respect of the applicable New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure and New Railway Company Infrastructure, as applicable, to,

- (i) correct all defects and deficiencies to the applicable New Third Party Infrastructure and repair any damage to the applicable New Third Party Infrastructure;
- (ii) complete Commissioning of the applicable New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure and New Railway Company Infrastructure in accordance with Schedule 14 – Commissioning;
- (iii) in respect of New City of Mississauga Infrastructure only, comply with all requirements in respect of such infrastructure set out in Appendix A of Schedule 14 – Commissioning prior to, and as a pre-condition of Handover of such infrastructure;
- (iv) in respect of New City of Brampton Infrastructure only, comply with all requirements in respect of such infrastructure set out in Appendix B of Schedule 14 – Commissioning prior to, and as a pre-condition of Handover of such infrastructure;
- (v) in respect of New Region of Peel Infrastructure only, comply with all requirements in respect of such infrastructure set out in Appendix C of Schedule 14 – Commissioning prior to, and as a pre-condition of Handover of such infrastructure;
- (vi) in respect of New MTO Infrastructure only, comply with all requirements in respect of such infrastructure set out in Appendix D of Schedule 14 – Commissioning prior to, and as a pre-condition of Handover of such infrastructure;
- (vii) in respect of New 407 ETR Infrastructure only, comply with all requirements in respect of such infrastructure set out in Appendix E of Schedule 14 – Commissioning prior to, and as a pre-condition of Handover of such infrastructure;
- (viii) in respect of New Metrolinx Infrastructure only, comply with all requirements in respect of such infrastructure set out in Appendix F of Schedule 14 – Commissioning prior to, and as a pre-condition of Handover of such infrastructure;
- (ix) complete Handover of
 - (A) the New City of Mississauga Infrastructure to Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of New City of Mississauga Infrastructure, complete Handover to the City of Mississauga;
 - (B) the New City of Brampton Infrastructure to Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of New City of Brampton Infrastructure, complete Handover to the City of Brampton;

- (C) the New Metrolinx Infrastructure to Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of New Metrolinx Infrastructure, complete Handover to Go Transit;
 - (D) the New 407 ETR Infrastructure to Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of New 407 ETR Infrastructure, complete Handover to 407 ETR;
 - (E) the New MTO Infrastructure to Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of New MTO Infrastructure, complete Handover to MTO;
 - (F) the New Region of Peel Infrastructure to Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of New Region of Peel Infrastructure, complete Handover to Region of Peel; and
 - (G) the New Railway Company Infrastructure to Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of New Railway Company Infrastructure, complete Handover to the applicable Railway Company owner;
- (x) seek, receive, and document confirmation from Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of the applicable New Third Party Infrastructure, seek, receive, and document confirmation from the applicable City, Go Transit, 407 ETR, MTO, Region of Peel or the applicable Railway Company Owner, as applicable, that such Commissioning and Handover has been completed.
- (g) Project Co shall provide Notice to Contracting Authority when any New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure and New Railway Company Infrastructure has been Commissioned and has achieved Handover to the applicable City, Go Transit, 407 ETR, MTO, Region of Peel and the applicable Railway Company Owner, as applicable. Such Notice to Contracting Authority shall include the following:
- (i) a clear identification of that portion or component of the New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure or New Railway Company Infrastructure, as applicable, that is the subject of the Notice;
 - (ii) the date of Handover of the applicable New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure or New Railway Company

Infrastructure (as set out in the written confirmation required by Section 25.13(g)(iii)); and

- (iii) a written confirmation, signed by an authorized representative of the applicable City, Go Transit, 407 ETR, MTO, Region of Peel or the applicable Railway Company Owner, as applicable, that Commissioning and Handover of the New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure or New Railway Company Infrastructure, as the case may be, has been completed, including the confirmed date of Handover.
- (h) Each City, Go Transit, 407 ETR, MTO, Region of Peel or each Railway Company Owner, with respect to its respective New Third Party Infrastructure, and Contracting Authority, may;
 - (i) at any time and from time to time, on providing 30 Business Days' Notice to Project Co, require a joint interim inspection of, as applicable, the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure to be carried out for the purposes of:
 - (A) assessing whether the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure, as applicable, has been constructed in accordance with the Output Specifications and is otherwise in compliance with the requirements of the Project Agreement; and
 - (B) identifying any defects or deficiencies to the applicable New Third Party Infrastructure;
 - (ii) at any time and from time to time, on providing 30 Business Days' notice to Project Co, require a joint warranty inspection to be carried out in respect of the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure following final completion of the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure, in each case, for the purpose of identifying any defects or deficiencies.
- (i) In addition to the warranty inspections that may be performed from time to time pursuant to Section 25.13(h), a joint warranty inspection of New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure,

New MTO Infrastructure, New Region of Peel Infrastructure and New Railway Company Infrastructure shall be carried out no earlier than 60 days and no later than 30 days prior to the end of the applicable warranty period for such New Third Party Infrastructure.

- (j) Prior to any interim inspection or any warranty inspection of New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure or New Railway Company Infrastructure, as applicable, Project Co shall prepare and submit to Contracting Authority, for review in accordance with Schedule 10 – Review Procedure, a record of the following at least 20 Business Days before the applicable interim inspection or warranty inspection, as the case may be:
- (i) a list of the New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure and New Railway Company Infrastructure, as the case may be, to be inspected;
 - (ii) the tests, inspection methods and procedures to be used and performed and the standards that apply in respect of tests, inspection methods and procedures, which tests and inspections shall follow the inspection and testing requirements set out in the Inspection and Test Plan and the Inspection and Test Sub-Plans;
 - (iii) the date for testing and inspection of the applicable New Third Party Infrastructure which shall be no later than 45 Business Days after the Notice has been provided to Project Co pursuant to Section 25.13(h).
 - (iv) a list of the names and employers of persons to represent Project Co and Contracting Authority or, if a Notice of Delegation has been issued in respect of the relevant New Third Party Infrastructure, a list of the names and employers of persons to represent Project Co, the applicable City, Go Transit, 407 ETR, MTO, Region of Peel and/or the applicable Railway Company Owner, as the case may be, at the inspection; and
 - (v) a list of existing systems that may be impacted by the tests and inspection.
- (k) Prior to any warranty inspection of any New City of Mississauga Infrastructure, New City of Brampton Infrastructure or New Region of Peel Infrastructure, Project Co shall submit to Contracting Authority or, if a Notice of Delegation has been issued, submit to the applicable City or the Region, as the case may be, the City of Mississauga Warranty Deliverables, the City of Brampton Warranty Deliverables or the Region of Peel Warranty Deliverables, as the case may be, for review in accordance with Schedule 10 – Review Procedure at least 30 Business Days before the warranty inspection.
- (l) Project Co shall prepare a record of each interim inspection and each warranty inspection carried out pursuant to Section 25.13(h) and 25.13(i) in inspection report format including: (i) a list of defects or deficiencies to the New City of Mississauga Infrastructure, the New City of Brampton

Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure and the New Railway Company Infrastructure, as applicable, identified during the inspection, and (ii) actions to be taken by Project Co to correct each defect or deficiency and to rectify the damage. Project Co shall submit the inspection reports to Contracting Authority for review within 3 Business Days of the inspection for review in accordance with Schedule 10 – Review Procedure.

- (m) Project Co shall arrange, schedule, and facilitate all inspections, and Commissioning and Handover activities, in respect of the New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure and New Railway Company Infrastructure directly with Contracting Authority, except where Contracting Authority has provided Notice of Delegation to Project Co in respect of any of the New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure or New Railway Company Infrastructure, in which case Project Co shall arrange, schedule, and facilitate all inspections, and Commissioning and Handover activities with the applicable City, Go Transit, 407 ETR, MTO, Region of Peel, and the applicable Railway Company Owner, as applicable. Project Co acknowledges and agrees that no joint inspection shall proceed unless, where a Notice of Delegation has been provided, the applicable City, Go Transit, 407 ETR, MTO, Region of Peel and the applicable Railway Company Owner, as applicable, are in attendance at such inspection, and it is Project Co's responsibility to coordinate with and ensure such Person is in attendance at all joint inspections contemplated under this Section 25.13. Project Co shall report to Contracting Authority on the status of all inspections, Commissioning and Handover carried out in accordance with this Section 25.13 as part of the Works Report.

25.14 Intentionally Deleted

25.15 Warranties on New Third Party Infrastructure

- (a) Project Co warranties on the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure and the New Railway Company Infrastructure shall be as follows:
- (i) Project Co warrants that all New City of Mississauga Infrastructure, all New City of Brampton Infrastructure, all New Metrolinx Infrastructure, all New 407 ETR Infrastructure, all New MTO Infrastructure, all New Region of Peel Infrastructure and all New Railway Company Infrastructure, including all Products, shall conform to the specifications set out in the Project Agreement in all respects and shall be new, of good quality material, of merchantable quality and, as described in the Project Agreement, and free of defects in materials, equipment and workmanship for a period commencing,
- (A) in the case of the New City of Mississauga Infrastructure, on the date of Handover of the New City of Mississauga Infrastructure, or a portion thereof, to

- Contracting Authority or to the City of Mississauga in accordance with Section 25.13, and ending on the date that is 2 years after such date of Handover of the New City of Mississauga Infrastructure, or a portion thereof;
- (B) in the case of the New City of Brampton Infrastructure, on the date of Handover of the New City of Brampton Infrastructure, or a portion thereof, to Contracting Authority or to the City of Brampton in accordance with Section 25.13, and ending on the date that is 2 years after such date of Handover of the New City of Brampton Infrastructure, or a portion thereof;
- (C) in the case of the New Metrolinx Infrastructure, on the date of Handover of the New Metrolinx Infrastructure, or a portion thereof, to Contracting Authority or to Go Transit in accordance with Section 25.13, and ending on the date that is 2 years after such date of Handover of the New Metrolinx Infrastructure, or a portion thereof;
- (D) in the case of the New 407 ETR Infrastructure, on the date of Handover of the New 407 ETR Infrastructure, or a portion thereof, to Contracting Authority or to 407 ETR in accordance with Section 25.13, and ending on the date that is 2 years after such date of Handover of the New 407 ETR Infrastructure, or a portion thereof;
- (E) in the case of New MTO Infrastructure, on the date of Handover of the New MTO Infrastructure, or a portion thereof, to Contracting Authority or to MTO in accordance with Section 25.13, and ending on the date that is 2 years after such date of Handover of the New MTO Infrastructure, or a portion thereof;
- (F) in the case of New Region of Peel Infrastructure, on the date of Handover of the New Region of Peel Infrastructure, or a portion thereof, to Contracting Authority or to Region of Peel in accordance with Section 25.13, and ending on the date that is 2 years after such date of Hand over of the New Region of Peel Infrastructure, or a portion thereof; and
- (G) in the case of New Railway Company Infrastructure, on the date of Handover of the New Railway Company Infrastructure, or a portion thereof, to Contracting Authority or to the applicable Railway Company Owner in accordance with Section 25.13, and ending on the date that is 2 years after such date of Handover of the New Railway Company Infrastructure, or a portion thereof.
- (ii) The warranties set out in Section 25.15(a)(i) shall each cover labour and material, including the costs of removal and replacement of covering materials. None of the warranties shall limit extended warranties on any items of equipment or material called for elsewhere in Schedule 15 – Output Specifications or otherwise provided by any manufacturer of such equipment or material. Project Co shall ensure that all extended warranties specified in the Project Agreement are provided and shall,

- (A) in the case of the New City of Mississauga Infrastructure, assign to the City of Mississauga (or to whom the City of Mississauga may otherwise direct) all such extended warranties;
 - (B) in the case of the New City of Brampton Infrastructure, assign to the City of Brampton (or to whom the City of Brampton may otherwise direct) all such extended warranties;
 - (C) in the case of the New Metrolinx Infrastructure, assign to Metrolinx (or to whom Metrolinx may otherwise direct) all such extended warranties;
 - (D) in the case of the New 407 ETR Infrastructure, assign to 407 ETR (or to whom 407 ETR may otherwise direct) all such extended warranties;
 - (E) in the case of New MTO Infrastructure, assign to MTO (or to whom MTO may otherwise direct) all such extended warranties;
 - (F) in the case of New Region of Peel Infrastructure, assign to Region of Peel (or to whom Region of Peel may otherwise direct) all such extended warranties; and
 - (G) in the case of New Railway Company Infrastructure, assign to the applicable Railway Company Owner (or to whom the applicable Railway Company Owner may otherwise direct) all such extended warranties.
- (iii) Contracting Authority may, in its sole discretion, assign the Project Co warranties set out in Section 25.15(a) to the City of Mississauga (in the case of the New City of Mississauga Infrastructure), to the City of Brampton (in the case of the New City of Brampton Infrastructure), to Metrolinx (in the case of the New Metrolinx Infrastructure), to 407 ETR (in the case of the New 407 ETR Infrastructure), to MTO (in the case of the New MTO Infrastructure), to Region of Peel (in the case of the New Region of Peel) or to an applicable Railway Company Owner (in the case of the applicable New Railway Company Infrastructure) and shall provide Notice to Project Co of any such assignment of the Project Co warranties.
- (iv) On the commencement of each warranty period set out in Section 25.15(a)(i) for each of the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure and the New Railway Company Infrastructure or any component thereof, Project Co shall provide at least two copies of full compilations of all warranty documentation related thereto, one compilation for Contracting Authority and the other for each City, Go Transit, 407 ETR, MTO, Region of Peel and each Railway Company Owner with respect to its New Third Party Infrastructure. Project Co shall update all copies of each compilation from time to time as requested by Contracting Authority or each City, Go Transit, 407 ETR, MTO, Region of Peel and each Railway Company Owner with respect to its New Third Party

Infrastructure. Each of the compilations shall indicate the start and completion date of each and every warranty.

(b) **Warranty Work**

- (i) Project Co shall carry out all work to satisfy the warranties provided pursuant to Section 25.15(a) promptly and in accordance with the warranty periods set out in Section 25.15(a)(i)(A), 25.15(a)(i)(B), 25.15(a)(i)(C), 25.15(a)(i)(D), 25.15(a)(i)(E), 25.15(a)(i)(F), and 25.15(a)(i)(G) and Project Co shall also Make Good any damage to New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure or New Railway Company Infrastructure caused by the repairing of such defects, deficiencies or failures to comply (“**Warranty Work**”). All Warranty Work shall be carried out and completed at Project Co’s cost and expense and Warranty Work shall not be the basis for a claim for a Delay Event, a Compensation Event, a Variation, additional compensation, or damages. For clarity, such defect, deficiencies and failures to comply include defects, deficiencies and failures to comply in respect of Products and workmanship.
- (ii) If Project Co fails to carry out Warranty Work in the time specified or subsequently agreed upon, without prejudice to any other right or remedy Contracting Authority may have, Contracting Authority, the applicable City, Go Transit, 407 ETR, MTO, Region of Peel or the applicable Railway Company Owner may correct such New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure or New Railway Company Infrastructure, and Contracting Authority shall deduct the cost and expense thereof from any payment then or thereafter due to Project Co, provided the Independent Certifier has certified such cost to Contracting Authority.
- (iii) Project Co acknowledges that the timely performance of Warranty Work is critical to (A) the ability of the City of Mississauga to maintain effective operations of the New City of Mississauga Infrastructure, (B) the ability of the City of Brampton to maintain effective operations of the New City of Brampton Infrastructure, (C) the ability of the MTO to maintain effective operations of the New MTO Infrastructure, (D) the ability of 407 ETR to maintain effective operations of the New 407 ETR Infrastructure, (E) the ability of Go Transit to maintain effective operations of the New Metrolinx Infrastructure, (F) the ability of Region of Peel to maintain effective operations of the New Region of Peel Infrastructure, and (G) the ability of each Railway Company Owner to maintain the effective operations of its New Railway Company Infrastructure. Project Co shall use commercially reasonable efforts to respond to any requirement by Contracting Authority, a City, Go Transit, 407 ETR, MTO, Region of Peel or a Railway Company Owner to correct defective, deficient or non-compliant items in the applicable New Third Party Infrastructure within the time periods required by Contracting Authority, the applicable City, GO Transit, 407 ETR, MTO, Region of Peel or the applicable Railway Company

Owner. In relation to critical areas required for effective operations, Project Co shall commence, carry out and complete Warranty Work on an urgent basis with all due haste, taking into account the circumstances and any timelines for commencement and completion as may be communicated by Contracting Authority, the applicable City, Go Transit, 407 ETR, MTO, Region of Peel or the applicable Railway Company Owner to Project Co.

- (iv) Project Co further acknowledges that if Contracting Authority, a City, Go Transit, 407 ETR, MTO, Region of Peel or a Railway Company Owner is unable to contact Project Co and/or obtain the Warranty Work promptly, or in the case of urgent Warranty Work within the time period set out in Section 25.15(b)(iii), Contracting Authority, the applicable City, Go Transit, 407 ETR, MTO, Region of Peel or the applicable Railway Company Owner, as applicable, may take such emergency steps as are reasonable and appropriate to correct such defects, deficiencies or failures to comply with the Project Agreement, at Project Co's sole cost and expense. Except in the case of damage caused by Contracting Authority, the applicable City, Go Transit, 407 ETR, MTO, Region of Peel or the applicable Railway Company Owner to the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure, as applicable, such emergency steps shall not invalidate any Project Co warranties in respect of the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure.
- (v) After the Handover of the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure, or any component thereof, Project Co shall be solely responsible for obtaining access from the applicable City, 407 ETR, Go Transit, MTO, Region of Peel or the applicable Railway Company Owner, as applicable, for the purpose of carrying out Warranty Work. Project Co acknowledges that such access to the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure may be subject to such limitations as may be imposed by the applicable City, Go Transit, 407 ETR, MTO, Region of Peel or the applicable Railway Company Owner and that Project Co may be required to obtain a Permit, Licence or Approval to access the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure (or the Lands on which the infrastructure is situate) for the purpose of carrying out Warranty Work. If, after making commercially reasonable efforts and otherwise complying with its obligations pursuant to this Project Agreement, Project Co is unable to obtain access to the New City of Mississauga Infrastructure, the New City

of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure, Project Co shall refer the matter to Contracting Authority.

(c) **Remedies Not Exclusive**

- (i) The express warranties set out in this Section 25.15 shall not deprive Contracting Authority, any City, Go Transit, 407 ETR, MTO, Region of Peel or any Railway Company Owner of any action, right or remedy otherwise available to any of them at law or in equity and the periods referred to in this Section 25.15, shall not be construed as a limitation on the time in which Contracting Authority, a City, Go Transit, 407 ETR, MTO, Region of Peel or a Railway Company Owner may pursue such other action, right or remedy.

25.16 Disputes Regarding Handover of the New Third Party Infrastructure

- (a) In the event of a dispute between Project Co and Contracting Authority (including Contracting Authority as a representative of the interests of each City, Go Transit, 407 ETR, MTO, Region of Peel and each Railway Company Owner) with respect to final inspection, Commissioning or Handover of the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure pursuant to Section 25.13, as applicable, the following shall apply:

- (i) Project Co shall make commercially reasonable efforts to resolve all outstanding concerns of Contracting Authority, each City, Go Transit, 407 ETR, MTO, Region of Peel and each Railway Company Owner in a prompt manner;
- (ii) Any Commissioning or Handover issue that is unresolved after the expiration of 180 days after Project Co has given Notice pursuant to Section 25.13(b) shall be referred to the Independent Certifier for final determination on an expedited basis and, in any event, no later than the Scheduled Substantial Completion Date; and
- (iii) Any Commissioning or Handover issue that is,
 - (A) unresolved as of the Substantial Completion Countdown Notice issued pursuant to Section 25.6(a); or
 - (B) arises after the issuance of the Substantial Completion Countdown Notice issued pursuant to Section 25.6(a) and is not resolved,

shall be referred to the Independent Certifier for final determination prior to the Scheduled Substantial Completion Date.

26. PROJECT CO SERVICES

26.1 Overall Responsibility

- (a) Project Co shall, following the Substantial Completion Date, perform the Project Co Services:
- (i) so as to satisfy the Output Specifications;
 - (ii) in accordance with the Project Co Proposal Extracts;
 - (iii) in accordance with Good Industry Practice;
 - (iv) in accordance with the Maintenance Plan;
 - (v) in accordance with the Operations Plan;
 - (vi) in a manner that does not void, breach or have an adverse effect on any supplier's or manufacturer's warranty or guarantee given in relation to the Vehicles;
 - (vii) in accordance with any other reasonable requirements of the manufacturer or supplier of the Vehicles, including any warranty or guarantee requirements so as not to void, breach or adversely affect any warranty or guarantee claims; and
 - (viii) in accordance with the other terms of this Project Agreement.
- (b) During the Operational Term, Contracting Authority may, from time to time, grant a licence or licences for the temporary use of any Station Plaza or portion thereof for use as special event space (a "**Station Plaza Licence**") to a person or persons (each, a "**Station Plaza Licensee**"). Contracting Authority's granting of a licence for temporary use of any Station Plaza by a Station Plaza Licensee shall be in accordance with the following:
- (i) Contracting Authority shall consult with Project Co from time to time with a view to considering Project Co's recommendations regarding permitted uses, permitted times of day and days of the week, maximum number of people, and other appropriate restrictions on the temporary use of the Station Plazas;
 - (ii) If Contracting Authority intends to grant a Station Plaza Licence, Contracting Authority shall give Project Co Notice setting out the proposed terms of such Station Plaza Licence. Project Co may provide comments, if any, to Contracting Authority for its consideration, which Contracting Authority will take into account, acting reasonably. Contracting Authority shall advise Project Co if in Contracting Authority's opinion, acting reasonably, any such Station Plaza Licence is likely to significantly impede Project Co from the performance of its obligations during the Operational Term or adversely affect safety and security;
 - (iii) In respect of Project Co Services provided by Project Co exclusively in respect of Station Plaza Licences, Contracting Authority shall pay to Project Co an amount equal to,

- (A) Project Co's Direct Costs, as defined in Appendix A to Schedule 22 – Variation Procedure; and
- (B) Project Co's applicable margins, as determined in accordance with Appendix B to Schedule 22 – Variation Procedure.
- (iv) Project Co acknowledges and agrees that the granting of any Station Plaza Licence or Licences shall not, in and of itself, automatically entitle Project Co to a Variation; and
- (v) Project Co shall not prevent Station Plaza Licensees from occupying and using the Station Plazas in accordance with the terms of any such Station Plaza Licence.

26.2 Commencement of Project Co Services

- (a) Project Co shall commence the Project Co Services on the day immediately after the Substantial Completion Date and shall perform the Project Co Services until the end of the Operational Term.

26.3 Equipment for Project Co Services

- (a) Project Co will procure, deliver, install, commission, maintain, repair, decommission, upgrade and replace any equipment required by Project Co to perform the Project Co Services.

26.4 No Closure of the Project Co System Infrastructure

- (a) During the Operational Term, Project Co shall not close all or any portion of the Project Co System Infrastructure in any circumstances other than (i) as directed by Contracting Authority or a Governmental Authority (including, for greater certainty, any Emergency Service Provider); (ii) as otherwise approved by Contracting Authority, acting reasonably; or (iii) during and as a result of (A) any situation, event, occurrence, multiple occurrences or circumstances in respect of the Project Co System Infrastructure identified by Project Co, acting reasonably, that could constitute an Emergency or (B) any other danger, damage, failure or incident on the Project Co System Infrastructure identified by Project Co, acting reasonably, requiring an Operational Response pursuant to Section 26.10.

26.5 Maintenance Plans

- (a) By no later than each of the applicable times set out in Schedule 15 – Output Specifications, Project Co shall submit to Contracting Authority for review pursuant to Schedule 10 - Review Procedure, the Maintenance Plan, and shall update such plan as and at each of the times provided for in the Output Specifications thereafter.

26.6 Revisions to Maintenance Plan

- (a) If permitted by and by no later than each of the applicable times set out in Schedule 15 – Output Specifications, Project Co may submit to Contracting Authority a revision to the applicable Maintenance Plan for the Contract Year showing the effect of the proposed changes. If Project Co

is entitled to proceed with such changes pursuant to Schedule 15 – Output Specifications and Schedule 10 - Review Procedure, then the Maintenance Plan as so amended shall thereafter become the Maintenance Plan in respect of that Contract Year.

26.7 Operations Services

- (a) In addition to the other requirements set out in this Project Agreement, Project Co shall perform the Operations Services at the times scheduled for such Operations Services as set forth in the Project Co Services Requirements and the Operations Plan.

26.8 Operations Plan

- (a) By no later than each of the applicable times set out in Schedule 15 – Output Specifications, Project Co shall submit to Contracting Authority for review pursuant to Schedule 10 - Review Procedure, the Operations Plan, and shall update such plan as and at each of the times provided for in the Output Specifications thereafter.

26.9 Revisions to Operations Plan

- (a) If permitted by and by no later than each of the applicable times set out in Schedule 15 – Output Specifications, Project Co may submit to Contracting Authority a revision to the applicable Operations Plan for the Contract Year showing the effect of the proposed changes. If Project Co is entitled to proceed with such changes pursuant to Schedule 15 – Output Specifications and Schedule 10 - Review Procedure, then the Operations Plan as so amended shall thereafter become the Operations Plan in respect of that Contract Year.

26.10 Operational Response and Project Co's Obligations

- (a) The Parties acknowledge and agree that the purpose of Operational Response is to take such immediate steps as are prudent in the circumstances to eliminate, mitigate or prevent further adverse impact (including in relation to health and safety) arising from, danger, damage, failure or incident on the Project Co System Infrastructure and that Operational Response includes the following activities:
- (i) initial reporting to the Operations Control Centre of the occurrence of a danger, failure, damage or other incident;
 - (ii) attendance by Project Co or a Project Co Party's staff at the Lands or the relevant part of the Project Co System Infrastructure to assess the cause of the problem;
 - (iii) determination of the appropriate course of action;
 - (iv) where possible and safely within the capabilities immediately available to Project Co, rectification of the problem *in situ*;

- (v) implementation of measures to overcome or mitigate disruption to the Operations Services and any other impacted Project Co Services;
- (vi) where possible and safely within Project Co's immediately available capabilities, implementation of temporary repairs; and
- (vii) in the case of an Emergency, complying with Section 62.1.

Operational Response does not include the performance of permanent repairs except where these are of a minor or trivial nature.

- (b) Project Co shall initiate an Operational Response to a failure, damage or incident requiring Operational Response (including an Emergency) within 15 minutes of the earlier of:
 - (i) Project Co (or any of its Subcontractors) identifying that such danger, failure, damage or incident has occurred; and
 - (ii) Contracting Authority notifying the Operations Control Centre or Project Co directly of such danger, failure, damage or incident,

and shall carry out an Operational Response in a prompt manner.

- (c) Except where Contracting Authority has notified Project Co in accordance with Section 26.10(b)(ii), Project Co shall notify Contracting Authority through means of an electronic log immediately following a report to the Operations Control Centre of the occurrence of a danger, failure, damage or other incident requiring Operational Response. For greater certainty, representatives of Contracting Authority shall be entitled to attend the relevant part of the Lands or the Project Co System Infrastructure (where the incident has occurred) in order to view the appropriate measures taken or to be taken by Project Co to restore the Project Co System Infrastructure and the Operations Services to the standard being provided immediately prior to the danger, failure, damage or incident and to observe any actions taken by Project Co. As soon as possible following the incident (but no later than 48 hours after the incident), Project Co shall issue a written report to Contracting Authority describing the incident, its cause (so far as known), its duration, its location, the action taken and any follow-up actions required. In connection with any event requiring an Operational Response, Project Co shall comply with the communications protocol developed in accordance with Schedule 18 – Communication and Public Engagement Protocol.
- (d) The Parties acknowledge and agree that in the event of an occurrence of an Operational Response that constitutes an Emergency, Project Co shall not be entitled to any other form of relief or compensation from Contracting Authority in respect of such Operational Response or its consequences, save as expressly provided for in Section 42 and Section 62.1(c).

26.11 Revenue Service Commencement

- (a) Notwithstanding the issuance of the Substantial Completion Certificate, Project Co shall not commence Revenue Service until directed to do so in a Notice from Contracting Authority. Where the Independent Certifier has issued the Substantial Completion Certificate but Contracting Authority has not directed Project Co to commence Revenue Service:
- (i) Project Co shall not commence Revenue Service, but shall otherwise perform all other aspects of the Project Co Services and the rights and obligations of Contracting Authority and of Project Co in this Project Agreement shall in all other respects remain the same, including, for greater certainty, (A) the commencement of the Operational Term, and (B), in accordance with Schedule 20 – Payment Mechanism, Contracting Authority's obligation to make Monthly Service Payments and its right to make Deductions related to Project Co's failure to provide the Project Co Services or to satisfy the Project Co Services Requirements, other than in respect of Revenue Service until the commencement of Revenue Service in accordance with Section 26.11(a)(ii); and
 - (ii) Contracting Authority may at any time after the Substantial Completion Date require Project Co to commence Revenue Service by providing at least five Business Days prior Notice to Project Co stating the date upon which Revenue Service is to commence. Following receipt of such Notice from Contracting Authority, Project Co shall commence Revenue Service on the date specified in such Notice.

27. [INTENTIONALLY DELETED]**28. HUMAN RESOURCES****28.1 Admittance of Personnel**

- (a) Contracting Authority shall have the right to order the removal from the Metrolinx Lands, the Project Co System Infrastructure and the New Third Party Infrastructure of any person employed by (or acting on behalf of) Project Co, or any Project Co Party, whose presence, in the reasonable opinion of Contracting Authority is likely to have an adverse effect on the Other Works or the Governmental Activities or who, in the reasonable opinion of Contracting Authority is not a fit and proper person to be at the Metrolinx Lands, the Project Co System Infrastructure and the New Third Party Infrastructure for any reason, including a failure to comply with any Contracting Authority policy or any immediate obligation of Contracting Authority to ensure the safety and well-being of persons at the Metrolinx Lands, the Project Co System Infrastructure and the New Third Party Infrastructure.

28.2 Confirmation of Action

- (a) Any action taken under Section 28.1 shall promptly be confirmed by Contracting Authority to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

28.3 Finality as to Admission

- (a) Any decision of Contracting Authority made pursuant to Section 28.1 shall be final and conclusive.

28.4 Staff Competency

- (a) Project Co shall ensure that:
- (i) there shall at all times be a sufficient number of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the performance of the Project Operations with the requisite level of skill and experience to perform the Project Operations in accordance with this Project Agreement. For greater certainty, this obligation shall include ensuring that there are a sufficient number of such skilled and experienced persons employed or engaged by Project Co or any Project Co Party to complete the Works in accordance with the applicable Project Works Schedules and to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in the Project Co Services;
 - (ii) all persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Operations receive such training and supervision as is necessary to ensure the proper performance of this Project Agreement and compliance with all health and safety rules, procedures and requirements, Authority Requirements and the Contracting Authority HR Policy; and
 - (iii) it creates and maintains, and causes all Project Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Operations to ensure the proper performance of this Project Agreement.

28.5 Employee Training

- (a) Project Co shall and shall ensure all Project Co Parties establish and provide formal training programs and certification for the staff of Project Co and of all Project Co Parties required to be certified to perform specific tasks related to the Project Co Services as required by any provincial or federal regulatory body, including but not limited to training of personnel regarding the operation, maintenance and repair of the Vehicles. All training programs and activities shall be designed, developed, and implemented in accordance with established professional standards for performance based development. Project Co shall and shall ensure that all Project Co Parties consider all suggestions provided by Contracting Authority to improve the training by Project Co and all Project Co Parties; however, the final decision on any training program is the responsibility of Project Co and the relevant Project Co Parties.
- (b) Project Co shall and shall ensure that the relevant Project Co Parties, upon Contracting Authority's request, provide training program materials to Contracting Authority for filing with

regulatory agencies as and when required. All such training program materials or other documentation provided by Project Co and the relevant Project Co Parties shall be provided in both paper and digital formats, and shall be written in English.

- (c) Project Co and all Project Co Parties shall be responsible for the cost of all training and certification for all employees of Project Co and Project Co Party employees.

28.6 Convictions

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause such Project Co Party to, ensure that all potential employees (including, for greater certainty, permanent, temporary, full time and part time employees) and persons who may otherwise perform the Project Co Services:
- (i) are questioned concerning Relevant Convictions; and
 - (ii) are required to complete and deliver to Project Co a criminal records search form.
- (b) To the extent permitted by Applicable Law, Project Co shall, and shall cause each Project Co Party to, ensure that no person who discloses any Relevant Conviction, or who is found to have any Relevant Conviction following the completion of a criminal records search, in either case of which Project Co or a Project Co Party is aware or ought to be aware, is allowed access to the Metrolinx Lands, the Project Co System Infrastructure or the New Third Party Infrastructure to perform any Project Co Services, without the prior written consent of Contracting Authority, in its sole discretion.
- (c) To the extent permitted by Applicable Law, Project Co shall ensure that Contracting Authority is kept advised at all times of any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Project Co Services who, subsequent to the commencement of such employment or engagement, (i) has been arrested or detained; (ii) receives a Relevant Conviction; or (iii) is charged with an offence that could lead to a Relevant Conviction (of which Project Co or a Project Co Party becomes aware or whose previous Relevant Convictions become known to Project Co or a Project Co Party). Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to Contracting Authority as contemplated in this Section 28.6.
- (d) Project Co will ensure that all employees who operate Vehicles in relation to the Project Co Services provide a driver's license abstract satisfactory to Project Co prior to being employed and prior to operating any Vehicles, and shall provide an updated driver's license abstract satisfactory to Project Co on at least an annual basis.
- (e) Project Co shall provide Contracting Authority with the following: (i) prior to the operation of Vehicles, a driver's licence abstract satisfactory to Contracting Authority for all employees who operate Vehicles in relation to the Project Co Services, and (ii) on at least an annual basis, a summary of the updated driver's licence abstracts delivered to Project Co pursuant to

Section 28.6(c) with respect to all employees who operate Vehicles in relation to the Project Co Services which abstracts shall be satisfactory to Contracting Authority.

- (f) Should the information provided by Project Co pursuant to Section 28.6(e) be determined by Contracting Authority, acting reasonably, to be unsatisfactory, with respect to any such employee who operates Vehicles in relation to the Project Co Services, Contracting Authority may:
 - (i) request the immediate removal by Project Co of any employee as operator of a Vehicle;
or
 - (ii) avail itself of any other remedy provided under this Project Agreement.

28.7 Disciplinary Action

- (a) Contracting Authority, acting reasonably, may notify Project Co of any Project Co or Project Co Party employee who engages in misconduct or is incompetent or negligent in the performance of duties or whose presence or conduct on the Metrolinx Lands or at work is otherwise considered by Contracting Authority to be undesirable, to constitute a threat to the health and/or safety of any of the users of the Metrolinx Lands and/or System Users or which Contracting Authority consider may potentially compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of any of the public transit systems within the Region of Peel so as to affect public confidence in any of the public transit systems within such area or the Project. Upon investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise Contracting Authority in writing of the outcome of any disciplinary action taken in respect of such person.

28.8 Human Resources Policies

- (a) Project Co shall ensure that there are set up and maintained by it and by all Project Co Parties, human resources policies and procedures covering all relevant matters relating to the Project Operations (including, for example, health and safety). Project Co shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law, Authority Requirements, the Contracting Authority HR Policy 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 available to Contracting Authority on a timely basis.

28.9 Management Organizations

- (a) Project Co shall provide, and shall ensure that all Project Co Parties provide, to Contracting Authority, as required to keep such information current, the names of the management teams responsible for the performance of the Project Operations.

28.10 Governmental Authority

- (a) Project Co shall ensure that it and all Project Co Parties comply at all times with any regulations, policies or directions set by any Governmental Authority related to labour, employment and/or human resources.

29. GOODS, EQUIPMENT, CONSUMABLES AND MATERIALS

29.1 Standards

- (a) Project Co shall cause the goods, Vehicles, equipment, consumables and materials used or supplied by it or any Contractor or Subcontractor in connection with the Project Operations, including for certainty the Revenue Vehicles, to be:
- (i) of good quality, fit for their intended purpose and maintained in a safe, serviceable and clean condition in accordance with the Output Specifications and Good Industry Practice;
 - (ii) of the type specified in the Output Specifications, if applicable; and
 - (iii) in compliance with all Applicable Law,

and shall, as soon as practicable after receiving a request from the Contracting Authority Representative, supply to the Contracting Authority Representative evidence to demonstrate its compliance with this Section 29.1(a).

29.2 Stocks

- (a) Project Co shall cause sufficient stocks of goods, Vehicles, equipment, consumables and materials (including those in respect of or in connection with the Revenue Vehicles) to be held in compliance with its obligations under this Project Agreement.

30. DAMAGE AND DESTRUCTION

30.1 Protection of Works and Property and Reinstatement Work

- (a) Project Co shall protect the Project Co System Infrastructure and the New Third Party Infrastructure prior to Handover of the New Third Party Infrastructure and the property of Contracting Authority and third parties on and adjacent to the Lands (including, for clarity, the Existing Metrolinx Infrastructure and the Existing Third Party Infrastructure) from damage or destruction which may arise as a result of Project Co's operations under this Project Agreement, and Project Co shall be responsible for such damage or destruction, except for any damage or destruction which occurs as a result of acts or omissions by Contracting Authority or any Contracting Authority Party.
- (b) Unless this Project Agreement is terminated in accordance with its terms, if all or any part of
- (i) the Project Co System Infrastructure or the New Third Party Infrastructure prior to Handover of the New Third Party Infrastructure; or

- (ii) as a result of Project Co's operations under this Project Agreement, the property of Contracting Authority or a third party on or adjacent to the Lands,

is damaged or destroyed, Project Co shall, at its own cost and expense, Make Good such Project Co System Infrastructure, New Third Party Infrastructure or property of Contracting Authority or a third party (the "**Reinstatement Work**") promptly and in any event as soon as practicable in the circumstances. Except as otherwise expressly provided in this Project Agreement, damage to or destruction of all or any part of the Project Co System Infrastructure or the New Third Party Infrastructure shall not terminate this Project Agreement or relieve Project Co of any of its obligations hereunder or entitle Project Co to any compensation from Contracting Authority. For clarity, after Handover of New Third Party Infrastructure, damage or destruction to such New Third Party Infrastructure shall be dealt with pursuant to the Project Agreement as damage or destruction to the property of third parties.

- (c) Project Co shall not undertake to Make Good any damage or destruction whatsoever to the property of Contracting Authority or a third party on or adjacent to the Lands (other than to the Project Co System Infrastructure or the New Third Party Infrastructure prior to Handover of the New Third Party Infrastructure) without first consulting Contracting Authority and receiving written instructions from Contracting Authority as to the course of action to be followed.
- (d) Notwithstanding Sections 30.1(a) and 30.2, Reinstatement Work carried out by Project Co in respect of New Third Party Infrastructure that is not owned by a Municipality, shall be planned and implemented by Project Co in consultation with the applicable third party.

30.2 Reinstatement Plan

- (a) If the Reinstatement Work is reasonably estimated to cost more than \$[REDACTED] (index linked) or in any other case where the Contracting Authority Representative, having regard to the nature of the damage or destruction, notifies Project Co that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the Final Completion Date and the Contracting Authority Representative acting reasonably considers that the continued application of the Design and Construction Certification Procedure would be able to adequately address the Reinstatement Work without the need for a separate Reinstatement Plan), Project Co shall, as soon as practicable and in any event within 20 Business Days after the occurrence of the damage or destruction or receipt of notification from the Contracting Authority Representative, as the case may be, (or if, with the exercise of all due diligence more than 20 Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction or receipt of notification from the Contracting Authority Representative, as the case may be, as may be reasonably required with the exercise of all due diligence, provided Project Co exercises and continues to exercise all such due diligence) submit to the Contracting Authority Representative pursuant to Schedule 10 - Review Procedure a plan (a "**Reinstatement Plan**") prepared by Project Co for carrying out the Reinstatement Work setting out, in reasonable detail, *inter alia*:

- (i) a description of the Reinstatement Work required to Make Good the damage or destruction;
- (ii) Project Co’s proposed schedule for the execution of the Reinstatement Work; and
- (iii) the information required pursuant to Schedule 22 – Variation Procedure as if such plan were an Estimate;

and the Reinstatement Work must not be commenced until the Contracting Authority Representative consents thereto in accordance with Schedule 10 - Review Procedure except to the extent necessary to address any Emergency or public safety needs.

30.3 Conduct of Reinstatement Work

- (a) Project Co shall cause all Reinstatement Work to be carried out in accordance with the Output Specifications (other than Reinstatement Work with respect to the property of Contracting Authority or a third party on or adjacent to the Lands that is not Project Co System Infrastructure or New Third Party Infrastructure) and all other applicable requirements under this Project Agreement and, where applicable, in accordance with the Reinstatement Plan consented to by the Contracting Authority Representative in accordance with Schedule 10 - Review Procedure. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Design and Construction Certification Procedure. If requested by the Contracting Authority Representative, the persons (and if applicable, a suitable parent entity thereof acceptable to Contracting Authority) retained by Project Co to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work or design work in connection therewith, enter into a construction contract with Project Co and a direct agreement with Contracting Authority in substantially the same forms as the Construction Contract and the Construction Contractor’s Direct Agreement.
- (b) In the event any Insurance Proceeds under Insurance Policies as referred to in Schedule 30 - Insurance Trust Agreement are available to carry out the Reinstatement Work, such Insurance Proceeds shall be paid into the Insurance Trust Account and shall be dispensed in accordance with the provisions of the Insurance Trust Agreement to carry out the Reinstatement Work.

31. MONITORING AND PERFORMANCE AUDITS

31.1 Performance Audits

- (a) If Contracting Authority reasonably believes that Project Co is in breach of its obligations with respect to the Project Co Services, including:
 - (i) under Section 26;
 - (ii) under the Output Specifications; or

- (iii) in respect of any defects, deficiencies or items of outstanding work that should have been completed as part of the Works,

then Contracting Authority may cause to be performed, by an arm's length consultant appointed by Contracting Authority, a performance audit, inspection and survey of the Project Co System Infrastructure to assess whether the Project Co System Infrastructure has been and is being maintained by Project Co in accordance with Project Co's obligations (the "**Performance Audit**").

- (b) Contracting Authority shall notify Project Co in writing at least 10 Business Days prior to the date that Contracting Authority wishes to cause a Performance Audit to be undertaken. Contracting Authority shall, acting in good faith, consider any reasonable request by Project Co for the Performance Audit to be performed on an alternative date if such request is made by Project Co in writing at least 5 Business Days prior to the date originally requested by Contracting Authority, on the basis that performing the Performance Audit on the date originally requested by Contracting Authority would materially prejudice Project Co's ability to provide the Project Co Services.
- (c) When causing any Performance Audit to be undertaken, Contracting Authority shall use commercially reasonable efforts to minimize any disruption caused to the provision of the Project Co Services. The cost of a Performance Audit, except where Section 31.1(e) applies, shall be borne by Contracting Authority. Project Co shall provide Contracting Authority, at no additional cost or charge, with any reasonable assistance required by Contracting Authority from time to time during the Performance Audit.
- (d) If a Performance Audit shows that Project Co has not performed or is not performing its obligations in any material respect, Contracting Authority shall:
 - (i) provide Project Co with a written Notice of non-compliance;
 - (ii) provide Project Co with instructions regarding rectification or Project Co Services, as the case may be, required to be performed by Project Co in order for Project Co to perform its obligations;
 - (iii) specify a reasonable period of time within which Project Co must perform such rectification or Project Co Services; and
 - (iv) be entitled to exercise all rights pursuant to Section 32.
- (e) If a Performance Audit shows that Project Co has not performed or is not performing its obligations in any material respect, Project Co shall:
 - (i) perform any rectification or Project Co Services, as the case may be, required by Contracting Authority within a reasonable period of time specified by Contracting Authority, and be responsible for any costs incurred in performing such rectification or Project Co Services, as the case may be; and

- (ii) pay or reimburse Contracting Authority for the costs of the Performance Audit and any administrative costs incurred by Contracting Authority in relation to the Performance Audit.
- (f) Nothing in this Section 31.1 shall limit or restrict Contracting Authority's rights hereunder to perform any other performance audits, inspections and surveys at its own cost and expense.
- (g) Contracting Authority's right to cause a Performance Audit to be undertaken may not be exercised more than once every 180 days unless any Performance Audit performed in the preceding 12 month period shows that Project Co has not performed or is not performing its obligations in any material respect.

31.2 Monitoring of Performance

- (a) Project Co shall monitor the performance of the Project Co 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 Project Co's obligations as set out in the Output Specifications and the Payment Mechanism, Project Co shall, as reasonably requested by Contracting Authority, provide the Contracting Authority Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.
- (b) Contracting Authority 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.

31.3 Failure Points

- (a) In each Payment Period, Project Co shall measure the performance of the Project Co Services, and based on the performance of the Project Co Services in the applicable Payment Period, Failure Points may be awarded, as applicable, in accordance with the Payment Mechanism.

31.4 Warning Notices

- (a) Without prejudice to Contracting Authority's rights under Section 45 and any other rights under this Project Agreement, if Project Co accrues the following number of Failure Points or more in any one Payment Period, then Contracting Authority may give written Notice (a "**Warning Notice**") to Project Co setting out the matter or matters giving rise to such Notice and stating that it is a "Warning Notice":
 - (i) **[REDACTED]** Failure Points in respect of Trip Availability Failures;
 - (ii) **[REDACTED]** Failure Points in respect of Passenger Facility Availability Failures;
 - (iii) **[REDACTED]** Failure Points in respect of All Availability Failures combined; or

- (iv) [REDACTED] Failure Points in respect of Quality Failures and Service Failures, combined.

31.5 Monitoring Notices

- (a) Without prejudice to Contracting Authority's rights under Section 45 and any other rights under this Project Agreement, if Project Co accrues the following number of Failure Points or more in any rolling 3 Payment Periods, Contracting Authority may, by Notice (a "**Monitoring Notice**") to Project Co require Project Co to increase the level of Project Co's monitoring of its own performance of its obligations under this Project Agreement until such time as Project Co shall have demonstrated to the reasonable satisfaction of Contracting Authority that it is performing, and is capable of continuing to perform, its obligations under this Project Agreement in respect of the relevant Project Co Services:
 - (i) [REDACTED] Failure Points in respect of Trip Availability Failures;
 - (ii) [REDACTED] Failure Points in respect of Passenger Facility Availability Failures;
 - (iii) [REDACTED] Failure Points in respect of All Availability Failures combined; or
 - (iv) [REDACTED] Failure Points in respect of Quality Failures and Service Failures, combined.
- (b) Contracting Authority may give a Warning Notice pursuant to Section 31.4 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 Project Co in monitoring its own performance;
 - (ii) if Project Co, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or that Contracting Authority was not entitled to give the Monitoring Notice, Project Co shall, within 3 Business Days of the receipt of the Monitoring Notice, provide Notice to Contracting Authority's setting out matters objected to and any changes necessary in order to prevent prejudice to Project Co's performance of its obligations under this Project Agreement;
 - (iii) if Project Co provides Contracting Authority a Notice under Section 31.5(c)(ii), the measures to be taken by Project Co shall be agreed between the Parties or, in the absence of agreement within 10 Business Days of Contracting Authority's receipt of such Notice, may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure;

- (iv) if Project Co fails to increase Project Co's monitoring as provided herein, Contracting Authority may perform such monitoring save where Project Co, acting in good faith, is pursuing a Dispute pursuant to Section 31.5(c)(iii);
 - (v) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that Contracting Authority was entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse Contracting Authority for any reasonable costs and expenses incurred by or on behalf of Contracting Authority in relation to the giving of such Monitoring Notice; and
 - (vi) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that Contracting Authority was not entitled to give the applicable Monitoring Notice, Contracting Authority shall bear its own costs and reimburse Project Co for any reasonable costs and expenses incurred by or on behalf of Project Co in relation to the giving of such Monitoring Notice.
- (d) In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of Contracting Authority that Project Co has performed its obligations under this Project Agreement for a period of 90 consecutive days and during such period has not received a Warning Notice or Monitoring Notice in respect of the same or similar Project Co Services, as applicable, Project Co may apply for the withdrawal of such Monitoring Notice. If Contracting Authority is satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, it shall, within 10 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 27 - Dispute Resolution Procedure that Contracting Authority was not entitled to give any Monitoring Notice, Contracting Authority 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.

32. CONTRACTING AUTHORITY'S REMEDIAL RIGHTS

32.1 Exercise of Remedial Rights

- (a) Contracting Authority may exercise all rights set out in this Section 32 at any time and from time to time if:
 - (i) Contracting Authority, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:
 - (A) does or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any System User or Province Person;

- (B) does or can reasonably be expected to result in a materially adverse interruption in the Project Co Services or the availability of the Project Co System Infrastructure to System Users;
- (C) does or can reasonably be expected to materially prejudice the performance of any Governmental Activities; or
- (D) may potentially compromise (I) Contracting Authority's reputation or integrity, or (II) the nature of any of the public transit systems within the Region of Peel so as to affect public confidence in any of the public transit systems within such area or the Project,

provided that:

- (E) in respect of a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party, which can reasonably be expected to cause any of the consequences set out in Sections 32.1(a)(i)(A), 32.1(a)(i)(B) and 32.1(a)(i)(C), Contracting Authority shall not exercise its rights under this Section 32 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of Notice from Contracting Authority or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Sections 32.1(a)(i)(A), 32.1(a)(i)(B) and 32.1(a)(i)(C) actually occur; and
 - (F) in respect of Section 32.1(a)(i)(D), Contracting Authority shall not exercise its rights under this Section 32 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of Notice from Contracting Authority or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;
- (ii) Project Co accrues the following number of Failure Points or more in any one Payment Period:
- (A) **[REDACTED]** Failure Points in respect of Trip Availability Failures;
 - (B) **[REDACTED]** Failure Points in respect of Passenger Facility Availability Failures;
 - (C) **[REDACTED]** Failure Points in respect of All Availability Failures combined; or

- (D) [REDACTED] Failure Points in respect of Quality Failures and Service Failures, combined.
- (iii) while a Monitoring Notice is in effect that is not being disputed by Project Co, acting in good faith, Project Co receives a Warning Notice in respect of the same or similar Project Co Services;
- (iv) pursuant to Schedule 11 – Quality Management, a Quality Audit that is not being disputed by Project Co, acting in good faith, shows that Project Co has not performed or is not performing its obligations and Project Co has failed to perform the rectification or Project Co Services, as applicable, as provided in the Output Specifications;
- (v) a labour dispute materially affects or can reasonably be expected to materially affect the Project Operations, the Governmental Activities or the availability of the Project Co System Infrastructure to System Users;
- (vi) Contracting Authority has received a notice under the Service Provider’s Direct Agreement that entitles Contracting Authority to exercise step-in rights thereunder;
- (vii) Project Co has failed to comply with any written direction issued by or on behalf of Contracting Authority;
- (viii) Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to its COR Certification or OHSAS 18001 Accreditation, as the case may be, in accordance with Section 9.6, or Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to H&S Construction Inspections in accordance with Section 13(b), or to perform its obligations to rectify any noncompliance noted in any H&S Construction Inspection Report in accordance with Section 13(d); or
- (ix) Project Co has not caused the COR-Qualified Service Provider Project Co Party or the COR-Certified Service Provider Project Co Party, as the case may be, to perform its obligations with respect to its COR Certification in accordance with Section 9.6, or Project Co has not caused the COR-Qualified Service Provider Project Co Party or the COR-Certified Service Provider Project Co Party, as the case may be, to perform its obligations with respect to H&S Maintenance Inspections in accordance with Section 13(b), or to perform its obligations to rectify any noncompliance noted in any H&S Maintenance Inspection Report in accordance with Section 13(f).

32.2 Emergency

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, Contracting Authority may exercise all of the rights set out in this Section 32 at any time and from time to time during the Operational Term if Contracting Authority, acting reasonably, considers the circumstances to constitute an Emergency.

32.3 Rectification

- (a) Without prejudice to Contracting Authority's rights under Section 45 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 32.1 or 32.2, Contracting Authority may, by written Notice, require Project Co to take such steps as Contracting Authority, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of Subcontractors or a limited suspension of the performance of the Works, and Project Co shall use commercially reasonable efforts to comply with Contracting Authority's requirements as soon as reasonably practicable.
- (b) If Contracting Authority gives Notice to Project Co pursuant to Section 32.3(a) and either:
- (i) Project Co does not either confirm, within 5 Business Days of such Notice or such shorter period as is appropriate in the case of an Emergency or in the event Contracting Authority is entitled to exercise step-in rights under the Service Provider's Direct Agreement that it is willing to take the steps required in such Notice or present an alternative plan to Contracting Authority to mitigate, rectify and protect against such circumstances that Contracting Authority may accept or reject acting reasonably; or
 - (ii) Project Co 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 Contracting Authority, acting reasonably, shall think fit,
- then Contracting Authority may take such steps as it considers to be appropriate, acting reasonably, including, if applicable, exercising step-in rights under the Service Provider's Direct Agreement and requiring the termination and replacement of Subcontractors, 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 Project Co Services to the standards required by this Project Agreement, and the provisions of Section 42, including Section 42.1(a)(iv) and Section 42.1(a)(ix), shall apply.
- (c) Notwithstanding the foregoing provisions of this Section 32.3, in the event of an Emergency, the Notice under Section 32.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and Contracting Authority may, prior to Project Co's confirmation under Section 32.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.
- (d) Where Contracting Authority considers it to be necessary to do so, the steps which Contracting Authority may take pursuant to this Section 32.3 subsequent to the provision of the Notice under Section 32.3(a) unless the Notice is given at a later time as provided in Section 32.3(c), may, at Contracting Authority's option, include the partial or total suspension of Project Co's right and obligation to perform any Project Co Services having regard to the circumstances in question (without any extension of the Project Term or suspension of any other Project Co Services), and

the provisions of Section 42, including Section 42.1(a)(iv) and Section 42.2, shall apply, but such suspension shall be only for so long as, as applicable:

- (i) the circumstances referred to in Section 32.1 or 32.2 subsist; or
- (ii) in respect of any such circumstances relating to Project Co's performance of the Project Co Services, until such time as Project Co shall have demonstrated to the reasonable satisfaction of Contracting Authority that, notwithstanding such circumstances, Project Co has taken such steps, including, if applicable, the termination and replacement of Subcontractors, as are required pursuant to this Section 32.3 and as are necessary to be capable of performing its obligations in respect of the relevant Project Co Services to the required standard in accordance with this Project Agreement, and thereafter Project Co shall perform its obligations as aforesaid.

32.4 Costs and Expenses

- (a) Subject to Contracting Authority's obligations pursuant to Sections 32.5 and 32.6:
 - (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of Contracting Authority's rights pursuant to this Section 32; and
 - (ii) Project Co shall reimburse Contracting Authority for all reasonable costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights pursuant to this Section 32.

32.5 Reimbursement Events

- (a) In this Section 32.5, a "**Reimbursement Event**" means:
 - (i) an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by a Province Person;
 - (ii) a labour dispute involving employees of any Province Person that materially affects or can reasonably be expected to materially affect the Project Operations; or
 - (iii) an Emergency that is not caused or contributed to by an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement.
- (b) If Contracting Authority either takes steps itself or requires Project Co to take steps in accordance with this Section 32 as a result of a Reimbursement Event:
 - (i) Contracting Authority shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of Contracting Authority's rights

pursuant to this Section 32 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and

- (ii) subject to Section 32.5(c), Contracting Authority shall bear all costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights pursuant to this Section 32.
- (c) If, in exercising its rights pursuant to this Section 32, Contracting Authority performs any part of the Project Co Services either itself or by engaging others, Contracting Authority shall be entitled to deduct from any Monthly Service Payment the reasonable cost of performing such Project Co Services. If Contracting Authority makes such a deduction, then Project Co shall be relieved of its reimbursement obligations under Section 32.4(a)(ii) up to the amount equal to the deduction.

32.6 Reimbursement if Improper Exercise of Rights

- (a) If Contracting Authority exercises its rights pursuant to this Section 32, but Contracting Authority was not entitled to do so, Contracting Authority shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of Contracting Authority issued as a result of Contracting Authority having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not Contracting Authority is entitled to exercise its rights pursuant to this Section 32 before taking any such action that Contracting Authority may require and Project Co shall comply with all of Contracting Authority's requirements. Only concurrently with or after complying with Contracting Authority's requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

33. VEHICLES

- (a) Project Co agrees to comply with the provisions of Schedule 43 – Revenue Vehicles.

34. PAYMENT

34.1 Payments During the Construction Period

- (a) Contracting Authority shall pay to Project Co the Construction Period Payments, plus, for clarity, applicable HST in accordance with Schedule 21 – Construction Period Payments and this Project Agreement.
- (b) Contracting Authority shall pay to Project Co the Substantial Completion Payment (i) plus any Cost Adjustment – Utilities, (ii) plus, for clarity, applicable HST, and (iii) minus any Lane Closure Adjustment or Property Access Closure Adjustment, on the Substantial Completion

Payment Commencement Date in accordance with Schedule 21 – Construction Period Payments and this Project Agreement.

- (c) Project Co shall keep and allow Contracting Authority access to detailed records of all amounts invoiced to Project Co by the Category 1 Utility Companies and all amounts paid by Project Co to the Category 1 Utility Companies. Such records shall be of sufficient detail to enable Project Co to demonstrate and Contracting Authority to confirm that a Changed Cost for Utilities has arisen and the amount of such Changed Cost for Utilities. Project Co's failure to keep and allow Contracting Authority access to such records shall be at Project Co's risk.
- (d) Prior to Substantial Completion, Project Co shall provide its estimate of the cost adjustment that is to be applied to the payment made following Substantial Completion pursuant to Section 34.1(b). The "Cost Adjustment – Utilities" means an amount calculated in accordance with the following:
- (i) if the Changed Cost for Utilities is less than the Original Eligible Utilities Costs, (and the Changed Cost for Utilities is a positive number) the Substantial Completion Payment shall be increased by [REDACTED] per cent of the Changed Cost for Utilities;
 - (ii) if the Changed Cost for Utilities is a negative number, the Substantial Completion Payment will be decreased by [REDACTED] per cent of the Changed Cost for Utilities;
 - (iii) if Changed Cost for Utilities is greater than the Original Eligible Utilities Costs, the Substantial Completion Payment shall be increased by,
 - (A) [REDACTED] per cent of the Changed Cost for Utilities up to the point at which the Changed Cost for Utilities equals the Original Eligible Utilities Cost; plus
 - (B) [REDACTED] per cent of that portion of the Changed Cost for Utilities that exceeds the value of Original Eligible Utilities Cost.
- (e) Contracting Authority and Project Co each acknowledge and agree that the purpose of the Construction Period Payments and the Substantial Completion Payment are to assist Project Co with costs of construction incurred by Project Co in respect of the Project Co System Infrastructure and the New Third Party Infrastructure.

34.2 Monthly Service Payments

- (a) Subject to and in accordance with this Project Agreement, including this Section 34.2(a) and Schedule 20 - Payment Mechanism, Contracting Authority shall pay to Project Co the Monthly Service Payments, plus, for clarity, any applicable HST.

34.3 Payment Adjustments

- (a) Project Co acknowledges and agrees that:

- (i) the amount of any Monthly Service Payment may be adjusted pursuant to Schedule 20 - Payment Mechanism; and
 - (ii) such adjustments are integral to the provisions of this Project Agreement.
- (b) If, for any reason, any adjustment (including a Deduction) made pursuant to Schedule 20 - Payment Mechanism is invalid and unenforceable, and an Applicable Law that is a Change in Law is enacted that permits Contracting Authority to recover or to cause such adjustment to be enforceable, such Change in Law (only to the extent that it permits Contracting Authority to recover or to cause such adjustment to be enforceable) shall be deemed to not be a Relevant Change in Law and Project Co shall not be entitled to any compensation hereunder for such Change in Law.

34.4 Payment Commencement

- (a) Subject to and in accordance with this Project Agreement, Contracting Authority shall pay Project Co the Monthly Service Payments calculated as being due to Project Co in respect of each Payment Period following the Payment Commencement Date in accordance with Schedule 20 - Payment Mechanism.
- (b) Project Co shall not be entitled to any Monthly Service Payments for any period prior to the Payment Commencement Date.

34.5 Adjustments to Payment Periods

- (a) The Annual Service Payment payable in respect of each of the first Contract Year and the last Contract Year shall be adjusted in accordance with Schedule 20 - Payment Mechanism.

34.6 Invoicing and Payment Arrangements

- (a) Within 5 Business Days following the end of each Payment Period, Project Co shall issue to Contracting Authority an invoice for the amount of the Monthly Service Payment owing by Contracting Authority to Project Co for such Payment Period, with such adjustments as provided in the Payment Adjustment Report issued in the previous Payment Period.
- (b) Project Co shall comply with all requirements of Schedule 20 - Payment Mechanism in respect of invoices and shall include with each invoice such supporting documentation as Contracting Authority 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 Contracting Authority;

- (iii) any other adjustments to reflect overpayments and underpayments, as agreed between the Parties or determined in accordance with Schedule 27 - Dispute Resolution Procedure;
- (iv) any amount owing to Contracting Authority under this Project Agreement;
- (v) any amount owing to Project Co under this Project Agreement;
- (vi) the net amount owing by Contracting Authority to Project Co, or by Project Co to Contracting Authority, as applicable; and
- (vii) a statutory declaration in form and in substance satisfactory to Contracting Authority with respect to Construction Act compliance and payment to all lien claimants:
 - (A) from Project Co, and
 - (B) upon request by Contracting Authority, from any Project Co Party.
- (d) The invoices issued to Contracting Authority in respect of the first Monthly Service Payment following the Payment Commencement Date shall include up-to-date copies of the parcel registers for all of the Lands, which subsearches of title in support thereof shall not be performed earlier than 45 days following publication of a certificate of substantial performance of the Works pursuant to section 32(1) of the Construction Act.
- (e) HST shall be shown separately on all invoices from Project Co, together with Project Co's HST registration number.
- (f) Upon agreement of the Parties, the form of invoice may be changed from time to time.
- (g) The Contracting Authority Representative shall review each invoice submitted in accordance with this Section 34.6. Contracting Authority 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 34.6(k).
- (h) Contracting Authority shall not be obligated to make any payment to Project Co unless all conditions precedent applicable to such payment under this Project Agreement have been satisfied by Project Co. Further, Contracting Authority shall not be obligated to pay an invoice delivered by Project Co after the second Payment Period following the Payment Commencement Date until Project Co has delivered the Payment Adjustment Report referred to in Section 34.6(i) for the previous Payment Period. In the event that Project Co delivers any Payment Adjustment Report later than the stipulated date in Section 34.6(i), Contracting Authority's obligation to pay the invoice issued by Project Co for the immediately following Payment Period shall be extended by the number of days by which Project Co was late in delivering the applicable Payment Adjustment Report to Contracting Authority.
- (i) Within 5 Business Days following the end of each Payment Period, Project Co shall also submit to Contracting Authority:

- (i) a Monthly Performance Monitoring Report in respect of the Payment Period just ended (as further described in Schedule 11 – Quality Management); and
- (ii) a report (a “**Payment Adjustment Report**”) setting out any adjustments required between the actual Monthly Service Payments determined by Project Co to be owing by Contracting Authority to Project Co in respect of the Payment Period just ended and the amount that was paid by Contracting Authority during such Payment Period, including details of:
 - (A) all Deductions in relation to Availability Failures;
 - (B) all Deductions in relation to Quality Failures;
 - (C) all Deductions in relation to Service Failures;
 - (D) all Deductions in relation to Energy Failures; and
 - (E) any Gainshare Adjustment or Painshare Adjustment.
- (j) Project Co 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 10 Business Days of receipt by Contracting Authority of the Payment Adjustment Report, the Contracting Authority Representative shall:
 - (i) determine and advise Project Co that the Payment Adjustment Report is approved by Contracting Authority, in which case the adjustments set out therein will be reflected by Project Co in the invoice next issued by Project Co; or
 - (ii) if Contracting Authority disputes Project Co’s entitlement to any part of the amounts set out therein, notifies Project Co in writing of that part of the amounts (insofar as at the time of such Notice Contracting Authority is reasonably able to quantify it) which Contracting Authority disputes and submits to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, Contracting Authority shall withhold payment of any disputed amount pending agreement or determination of Project Co’s entitlement to the disputed amount in accordance with Section 34.9.

34.7 Electronic Invoicing

- (a) Project Co shall cooperate with the reasonable requirements of Contracting Authority, and shall submit its invoices and all other documentation relating to this Project Agreement in a form and with the structure and content as is reasonably required to be compatible with Contracting Authority’s information systems.

34.8 Final Payment Periods

- (a) At the beginning of each of the final 3 Payment Periods immediately prior to the Expiry Date, Contracting Authority shall estimate, acting reasonably, the adjustments to the Monthly Service Payments for each such Payment Period. Contracting Authority may withhold the amounts that it has reasonably estimated for such adjustments from amounts paid to Project Co during each of the final 3 Payment Periods.
- (b) Within 10 Business Days of receipt by Contracting Authority of the applicable Payment Adjustment Report for each of the final 3 Payment Periods, the Contracting Authority Representative shall either:
- (i) determine and advise Project Co that the Payment Adjustment Report is approved by Contracting Authority and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount Contracting Authority previously paid in respect of the applicable Payment Period. Based on such reconciliation, either Contracting Authority or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation; or
 - (ii) if Contracting Authority disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such Notice Contracting Authority is reasonably able to quantify it) which Contracting Authority disputes and submits to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the Contracting Authority Representative shall perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount Contracting Authority previously paid in respect of the applicable Payment Period. Based on such reconciliation, either Contracting Authority or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation, provided that Contracting Authority shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 34.9.

34.9 Disputes

- (a) If Contracting Authority, 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 Project Co in writing of that part of the amounts (insofar as at the time of such Notice Contracting Authority is reasonably able to quantify it) which Contracting Authority disputes and submit to Project Co 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 10 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 27 – Dispute Resolution Procedure. Following resolution of the Dispute, any amount which has been paid by Contracting Authority that is determined not to have been payable shall be paid forthwith by

Project Co to Contracting Authority, and Project Co shall indemnify and hold harmless Contracting Authority from and against any damages suffered or incurred resulting from such overpayment by Contracting Authority as provided for at Section 56.1(e) on the basis that the due date was the date of the overpayment by Contracting Authority. Following resolution of the Dispute, any amount that has been set off by Contracting Authority that is determined to have been payable shall be paid forthwith by Contracting Authority to Project Co and Contracting Authority shall indemnify and hold harmless Project Co from and against any damages suffered or incurred resulting from such set off by Contracting Authority as provided for at Section 56.2(c) on the basis that the due date was the date upon which such amount became payable to Project Co.

34.10 Payments

- (a) Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under this Project Agreement, such amounts shall be due within 30 days of receipt or deemed receipt of an invoice therefor.
- (b) Project Co shall maintain or cause to be maintained all holdbacks required pursuant to the Construction Act 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.

34.11 Manner of Payment

- (a) All payments under this Project 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 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 Business Day, then the electronic transfer shall be made on the Business Day immediately succeeding such day.

34.12 Set-Off

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
 - (i) Contracting Authority to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement (other than any Construction Period Payments and Unpaid Construction Period Payments), any amounts (including any amounts payable in accordance with Section 56 or any amounts payable as liquidated damages pursuant to Schedule 19 – Liquidated Damages) that
 - (A) are due to Contracting Authority by Project Co pursuant to the terms of this Project Agreement; or
 - (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure; and

- (ii) Project Co to set off against any amounts otherwise due to Contracting Authority pursuant to the terms of this Project Agreement, any amounts (including any amounts payable in accordance with Section 56) that
 - (A) are due to Project Co by Contracting Authority pursuant to the terms of this Project Agreement; or
 - (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure.

34.13 Effect of Payment

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

34.14 Audit of Performance and Payment

- (a) Without limiting Contracting Authority's rights and Project Co's obligations pursuant to Section 37.2, at any time and from time to time until 365 days after the Termination Date, Contracting Authority may give Notice to Project Co requiring an audit of any matter relating to performance of the Project Operations and payments by or to Contracting Authority within the 7 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 performance and payments to verify their accuracy, correctness and completeness.
- (b) Contracting Authority shall appoint an auditor to perform and complete such audit at Contracting Authority's cost and expense and pursuant to terms of reference determined by Contracting Authority.
- (c) Within a reasonable time following receipt of a Notice referred to in Section 34.14(a), Project Co shall make available to Contracting Authority's auditor, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments.
- (d) Contracting Authority shall notify Project Co of the results of the audit, and if Contracting Authority's auditor discovers any inaccuracy, incorrectness or incompleteness, then, subject to Project Co's right to dispute the same in accordance with Schedule 27 – Dispute Resolution Procedure:
 - (i) Project Co 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 Contracting Authority, reimburse Contracting Authority 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 Contracting Authority, Project Co shall reimburse Contracting Authority for the amount of such overpayment and, further, shall indemnify and hold harmless Contracting Authority from and against any damages suffered or incurred resulting from such overpayment by Contracting Authority as provided for at Section 56.1(e) on the basis that the due date was the date of the overpayment by Contracting Authority; and
- (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment by Contracting Authority, whether or not material, Contracting Authority shall pay Project Co the amount of such underpayment and, further, shall indemnify and hold harmless Project Co from and against any damages suffered or incurred resulting from such underpayment by Contracting Authority as provided for at Section 56.2(c) on the basis that the due date was the date of the underpayment by Contracting Authority.

34.15 No Other Entitlement

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

35. TAXES

35.1 Taxes

- (a) All amounts specified in this Project Agreement, including, for clarity, any compensation payable on termination, are expressed exclusive of HST, but inclusive of all other Taxes payable pursuant to Applicable Law. For clarity, Contracting Authority shall not be required to pay any interest and/or penalties that are imposed on or assessed against Project Co or any Project Co Party for non-compliance with Applicable Law. If Project Co is required by Applicable Law to collect any such HST from Contracting Authority, Contracting Authority shall pay such HST to Project Co simultaneously with the amount to which such applicable HST relates or applies.
- (b) Contracting Authority 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 Metrolinx Lands, the Project Co System Infrastructure or the New Third Party Infrastructure.

- (c) Contracting Authority shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by Contracting Authority upon and in connection with payments by Contracting Authority to Project Co under this Project Agreement. For greater certainty, the Parties agree that the conditions set out in paragraph 168(3)(c) of the *Excise Tax Act* (Canada) are not satisfied at the time of Substantial Completion hereunder and, unless otherwise required by Applicable Law, any HST payable by Contracting Authority hereunder shall be calculated solely by reference to the amount of the payment, without any deductions or adjustments on account of paragraph 168(3)(c) of the *Excise Tax Act* (Canada).

35.2 Changes in Scope of Taxation

- (a) If, as a result of a Change in Law, the application of Taxes under Part IX of the *Excise Tax Act* (Canada) or any provincial sales tax legislation changes with respect to the provision of any goods or services by Project Co in connection with the performance of the Works, Contracting Authority and Project Co agree to cooperate to determine how such change affects their respective obligations under this Project Agreement to the extent not already addressed in this Project Agreement.

35.3 Changes in Recoverability of Tax Credits

- (a) Contracting Authority will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to Contracting Authority from time to time, as the same is incurred by Project Co, 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 35.3, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Province in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any good or service to Contracting Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.
- (c) For the purposes of this Section 35.3, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to Contracting Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

35.4 Information and Assistance Provided by Project Co

- (a) Project Co shall, at Contracting Authority's request and cost, assist Contracting Authority in applying for and obtaining all remissions and credits of Taxes to which Contracting Authority is entitled.
- (b) Contracting Authority 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 Project Agreement. Project Co shall, at Contracting Authority's cost, assist Contracting Authority in making any applications for such global or general exemption, waiver, remission or refund and shall provide Contracting Authority with such documentation as Contracting Authority may reasonably require to support such application and, in any event, shall provide such consent as Contracting Authority may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by Contracting Authority through such application shall accrue to the sole benefit of Contracting Authority.
- (c) Project Co will provide Contracting Authority with any information reasonably requested by Contracting Authority from time to time in relation to any Taxes chargeable in accordance with this Project Agreement and payable by Contracting Authority to Project Co from time to time.

35.5 Residency – *Income Tax Act (Canada)*

- (a) Project Co shall not undertake any action or transaction that, if undertaken, would cause or result in Project Co becoming a Non-Resident without Contracting Authority's prior written consent, which consent may be withheld in Contracting Authority's sole discretion.

35.6 Taxes – General

- (a) Project Co shall not, without the prior written consent of Contracting Authority (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause Contracting Authority or any Contracting Authority Party to have (or result in Contracting Authority or any Contracting Authority 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 Project Co or any Project Co Party under this Project Agreement or under any other Project Document.

35.7 Taxes – Indemnity

- (a) If:
 - (i) Project Co becomes a Non-Resident, or
 - (ii) Contracting Authority or any Contracting Authority Party is or becomes required by Applicable Law to deduct or withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by Contracting

Authority or any Contracting Authority Party under this Project Agreement or under any of the Project Documents,

then Contracting Authority or any Contracting Authority Party shall be entitled to make any applicable deductions or withholdings required by Applicable Law from any amount paid or credited or to be paid or credited to Project Co or a Project Co Party on or after the date on which:

- (iii) Project Co or the Project Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; or
- (iv) Contracting Authority or any Contracting Authority 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 Contracting Authority or any Contracting Authority Party under this Project Agreement or under any other Project Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.

(b) If:

- (i) Project Co becomes a Non-Resident, or
- (ii) Contracting Authority or any Contracting Authority 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 Project Co or a Project Co Party by Contracting Authority or any Contracting Authority Party under this Project Agreement or under any of the Project Documents,

Project Co shall, in each case, indemnify and hold harmless Contracting Authority and the Contracting Authority Parties for:

- (iii) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by Contracting Authority or any Contracting Authority Party in respect of any amounts paid or credited by Contracting Authority or any Contracting Authority Party to Project Co or any Project Co Party under this Project Agreement or under any other Project Document as a result of either of the foregoing items less any amount withheld or deducted by Contracting Authority or any Contracting Authority Party in respect of such Taxes, and
- (iv) 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 Liabilities**”).

Payment under this indemnification shall be made within 30 days from the date Contracting Authority makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by Contracting Authority shall be conclusive evidence, absent manifest error, of the amount due from Project Co to Contracting Authority. Contracting Authority shall be entitled to exercise its rights of set-off under Section 34.12 against any amounts owing under this indemnification.

36. FINANCIAL MODEL

36.1 Appointment of Custodian

- (a) On or prior to the date of this Project Agreement, the Parties shall appoint a suitably qualified and experienced person to act as the custodian for the purposes of this Project Agreement, and shall enter into an agreement with the Custodian substantially in the form of Schedule 3 - Custody Agreement.

36.2 Delivery and Use of Financial Model

- (a) In accordance with Schedule 2 - Completion Documents, Project Co shall deliver copies of the Financial Model (1 printed copy and 2 copies on CD-Rom) to Contracting Authority and the Custodian to be held in custody on terms to be agreed by the Parties.
- (b) Following the approval by Contracting Authority of any amendment to the Financial Model, Project Co shall promptly deliver copies of the revised Financial Model, in the same form as the original Financial Model (or such other form as may be agreed by the Parties from time to time), to Contracting Authority and the Custodian.
- (c) The Parties shall instruct the Custodian to keep both a hard copy and an electronic copy of all versions of the Financial Model.
- (d) Project Co hereby grants to Contracting Authority an irrevocable, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Financial Model or any revised Financial Model for any purpose in connection with this Project Agreement, whether during or after the Project Term.
- (e) For greater certainty, Project Co acknowledges and agrees that Contracting Authority shall not be liable to Project Co for, and Project Co shall not seek to recover from Contracting Authority or any Contracting Authority Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Financial Model.

37. RECORDS, INFORMATION AND AUDIT

37.1 Records Provisions

- (a) Project Co shall comply with Schedule 26 - Record Provisions.

37.2 Information and General Audit Rights

- (a) Project Co shall provide and shall cause each Subcontractor to provide to Contracting Authority all information, reports, documents, records and the like, including as referred to in Schedule 26 - Record Provisions, in the possession of, or available to, Project Co as Contracting Authority may reasonably require from time to time for any purpose in connection with this Project Agreement, other than, subject to Section 37.4, Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Contractors shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to Contracting Authority, and shall require each Subcontractor, including the Contractors, to provide to Contracting Authority (at Contracting Authority's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 37.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as Contracting Authority may reasonably require from time to time to enable Contracting Authority to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Project Co System Infrastructure and the New Third Party Infrastructure, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than, subject to Section 37.4, Sensitive Information.
- (c) Project Co shall promptly after receipt provide Contracting Authority with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Project Operations or the Project Co System Infrastructure or the New Third Party Infrastructure, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify Contracting Authority of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor 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 Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 - Record Provisions, which are required to be provided to or available to Contracting Authority hereunder, shall be subject and open to inspection and audit by Contracting Authority at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless Contracting Authority and Project Co otherwise agree. Contracting Authority shall also have the right to monitor and audit the performance of any and all parts of the Project Operations wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of Contracting Authority monitoring and auditing

such parts of the Project Operations, including providing them with access and copies (at Contracting Authority's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Project Operations. Except as otherwise provided herein, all of Contracting Authority's costs for the inspections, audits and monitoring shall be borne by Contracting Authority.

- (f) In conducting an audit of Project Co under Section 37.2(e) or as otherwise provided under this Project Agreement, Contracting Authority shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at Contracting Authority's reasonable cost) of all books and records of Project Co required to be provided to or available to Contracting Authority hereunder, upon reasonable Notice and at reasonable times. Project Co shall fully cooperate with Contracting Authority and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with Contracting Authority all matters arising from such audits, including the refunding of monies to Contracting Authority where applicable. At the reasonable request of Contracting Authority's auditors, Project Co shall provide such information, reports, documents and records as Contracting Authority's auditors may reasonably require, other than Sensitive Information.
- (g) Contracting Authority's rights pursuant to this Section 37.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) Contracting Authority's rights pursuant to this Section 37.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law. Contracting Authority's right pursuant to this Section 37.2 may also be exercised by the Auditor General of Ontario, Her Majesty the Queen in right of Canada and the Auditor General of Canada without the requirement for further action on the part of Contracting Authority.
- (i) Without limiting the generality of Section 37.2(a) and subject to Section 52.1(a) and 52.3, in the event that Contracting Authority is required to provide information, including financial information, in relation to the Project, to the Province for corporate or financial reporting purposes, Project Co shall provide such information to Contracting Authority as Contracting Authority may reasonably require in order to comply with its corporate or financial reporting obligations. Project Co acknowledges and agrees that such information may include Sensitive Information.

37.3 Delivery of Reports to Contracting Authority

- (a) During the Operational Term, in addition to Project Co's obligations pursuant to this Section 37, Project Co shall provide Contracting Authority with a copy of all reports required pursuant to the Project Agreement including, but not limited to, the Monthly Performance Monitoring Report, the Energy Analysis Report, the Payment Adjustment Report, the Annual Insurance Report and any other reports which are required to be delivered to Contracting Authority pursuant to this Project Agreement and which are requested by Contracting Authority.

37.4 Right to Disclose Intellectual Property

- (a) Nothing in this Section 37 shall prevent Contracting Authority from exercising any right granted to Contracting Authority pursuant to Schedule 37 – Intellectual Property. Contracting Authority shall have the right to disclose Confidential Information of Project Co or any Project Co Party as authorized or contemplated hereunder, including when exercising the rights granted to Contracting Authority pursuant to Schedule 24 – Expiry Transition Procedure and Schedule 37 – Intellectual Property.

38. CHANGES IN LAW**38.1 Performance after Change in Law**

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

38.2 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 10 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 10 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 27 – Dispute Resolution Procedure; and
 - (iii) Contracting Authority shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
 - (B) Project Co shall be responsible for obtaining all Project Co Permits, Licences and Approvals required in respect of the Variation;
 - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;

- (D) Project Co 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
- (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 – Variation Procedure.

38.3 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 Project Co 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 38.3.
- (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 10 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 10 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 27 - Dispute Resolution Procedure; and
 - (iii) Contracting Authority shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences and Approvals required in respect of the Variation;
 - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;

- (D) Project Co 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;
- (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project 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 in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
- (F) any entitlement to compensation payable shall be in accordance with this Section 38.3, and any calculation of compensation shall take into consideration, *inter alia*:
 - (I) any failure by a Party to comply with Section 38.3(b)(iii)(E);
 - (II) the extent to which a Party has been, or shall be, compensated in respect of such Relevant Change in Law as a result of any indexation or adjustment of the Monthly Service Payments under this Project Agreement;
 - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project 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) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 40 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 38.3, and Section 41 shall be construed accordingly.
- (d) In relation to a Relevant Change in Law that results in a net increase or decrease in costs incurred by Project Co in delivery of the Project Operations, taking into consideration, *inter alia*, Section 38.3(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 Contracting Authority nor Project Co shall be entitled to any payment or compensation pursuant to this Section 38.3 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year or, except as provided in Section 40 or otherwise in this Project Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.

38.4 VSC Change in Law

- (a) On the occurrence of a VSC Change in Law, Project Co shall be entitled to seek compensation for any increase in the net cost to Project Co of performing the Vehicle Supplier Activities so as to put Project Co in no better and no worse position than it would have been in had the VSC Change in Law not occurred.
- (b) On the occurrence of a VSC Change in Law:
 - (i) either Party may give Notice to the other of the need for a Variation as a result of such VSC Change in Law and, if Project Co receives a notice from the Construction Contractor for a variation under the Construction Contract as a result of such VSC Change in Law, a corresponding Notice for a Variation shall be given by Project Co to Contracting Authority;
 - (ii) the Parties shall meet within 10 Business Days, or as soon as reasonably practicable, after such Notice as described in Section 38.4(b)(i) is given to Contracting Authority, to consult with respect to the effect of the VSC Change in Law and to reach an agreement on whether a Variation is required as a result of such VSC Change in Law. If Contracting Authority and Project Co have not, within 10 Business Days of this meeting reached an agreement, either Party may refer the question of whether a Variation is required as a result of such VSC Change in Law or the effect of any VSC Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) Contracting Authority shall, within 15 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the VSC Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences and Approvals required in respect of the Variation;
 - (C) Contracting Authority shall not be entitled to withdraw any Variation Enquiry unless the Parties otherwise agree;

- (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the VSC Change in Law as soon as reasonably practicable;
 - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
 - (I) use commercially reasonable efforts to mitigate the adverse effects of any VSC Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such VSC Change in Law; and
 - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any VSC Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such VSC Change in Law;
 - (F) any entitlement to compensation payable shall be in accordance with this Section 38.4, and any calculation of compensation shall take into consideration, *inter alia*:
 - (I) any failure by a Party to comply with Section 38.4(b)(iii)(E);
 - (II) **[NOT USED]**;
 - (III) any increase or decrease in its costs resulting from such VSC Change in Law; and
 - (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project 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; and
 - (G) notwithstanding Section 1.2(c) of Schedule 22 – Variation Procedure but subject, for certainty, to the provisions of this Section 38.4, the only payment or compensation payable by Contracting Authority to Project Co in connection with a Variation initiated under this Section 38.4 shall be the amount equal to the amount to be paid to the Revenue Vehicle Manufacturer under the Revenue Vehicle Supply Contract as a consequence of the Revenue Vehicle Manufacturer exercising its rights thereunder due to the occurrence of the subject VSC Change in Law.
- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 38.4 or otherwise in this Project Agreement, relief in respect of any VSC Change in Law,

or the consequences thereof, other than in accordance with this Section 38.4, and Section 41 shall be construed accordingly.

39. VARIATIONS

39.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 – Variation Procedure shall apply in respect of Variations and Small Works.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of Contracting Authority to Project Co or any Project Co 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 Project Co Services.
- (c) Without limiting Project Co’s obligations pursuant to Section 9.3 and Schedule 22 – Variation Procedure, Project Co shall include in each Subcontract, and shall cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations, including Variations as to scope of the Works or the Project Co Services.

39.2 Innovation and Value Engineering

- (a) Project Co acknowledges that Contracting Authority at all times desires to reduce the Monthly Service Payments and the overall cost to Contracting Authority of the Works and the Project Co Services, and Project Co agrees to cooperate, explore and work with Contracting Authority 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 Project Co, Project Co may make a proposal (the “**Innovation Proposal**”) by Notice to Contracting Authority.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
 - (i) any Variation Enquiry initiated by Contracting Authority;
 - (ii) any Variation resulting from a Change in Law; or
 - (iii) any change to the Contracting Authority Activities.
- (d) The Innovation Proposal must:
 - (i) set out sufficient detail to enable Contracting Authority to evaluate the Innovation Proposal in full;

- (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;
 - (iii) request Contracting Authority to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes Contracting Authority require as a result;
 - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and Contracting Authority;
 - (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 Contracting Authority 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 Contracting Authority to fully evaluate and consider the Innovation Proposal.
- (e) Contracting Authority 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 Project Co Services, or the likelihood of successful completion of the Works or performance of the Project Co Services;
 - (iii) the Innovation Proposal will benefit or interfere with the efficient operation of the Project Co System Infrastructure or the New Third Party Infrastructure;
 - (iv) the Innovation Proposal will interfere with the relationship between Contracting Authority and third parties;
 - (v) the financial strength of Project Co is sufficient to deliver the changed Works or perform the changed Project Co Services, as applicable;
 - (vi) the residual value of the Project Co System Infrastructure or the New Third Party Infrastructure is affected;
 - (vii) the Innovation Proposal will change the Monthly Service Payment;
 - (viii) the Innovation Proposal materially affects the risks or costs to which Contracting Authority is exposed; or

- (ix) any other matter Contracting Authority considers relevant.
- (f) Contracting Authority may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) Contracting Authority may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If Contracting Authority 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 Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) Unless Contracting Authority specifically agrees to an increase in the Monthly Service Payments in accepting an Innovation Proposal pursuant to Section 39.2(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 Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of a Subcontractor to decrease, the net savings in the costs of Project Co and/or the Subcontractor will be shared equally by Project Co and Contracting Authority, and Contracting Authority’s share of the net savings shall, as agreed by the Parties, 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 Contracting Authority to decrease, the net savings in the costs of Contracting Authority will be shared as follows:
 - (i) equally by Project Co and Contracting Authority for the first 5 years following the implementation of the Innovation Proposal; and
 - (ii) thereafter, Contracting Authority shall be entitled to the full benefit of the net savings in costs (if applicable),

and Project Co’s share of the net savings shall, at Contracting Authority’s sole option, be reflected in either a lump sum payment or in an increase in the Monthly Service Payments.

39.3 [REDACTED]

40. DELAY EVENTS

40.1 Definition

- (a) For the purposes of this Project Agreement, “**Delay Event**” means any of the following events or circumstances only to the extent, in each case, that it affects the Works so as to cause a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date:

- (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
- (ii) any breach by Contracting Authority of any of Contracting Authority's obligations under this Project Agreement (including (A) any delay by Contracting Authority in giving access to the Metrolinx Lands pursuant to Section 14.1, including as a result of any failure to complete or to cause the completion of any of the Preparatory Activities by the applicable date set out in Sections 5.17 to 5.20 (inclusive) of Part 1 of Schedule 15-2 – Design and Construction Requirements; (B) any obstruction of the rights afforded to Project Co under Section 14.1, including as a result of any failure to complete or to cause the completion of any of the Preparatory Activities by the applicable date set out in Sections 5.17 to 5.20 (inclusive) of Part 1 of Schedule 15-2 – Design and Construction Requirements; (C) any delay by Contracting Authority in carrying out its obligations set forth in Schedule 10 - Review Procedure; (D) any delay by Contracting Authority to deliver the Burnhamthorpe and Duke of York Municipal ROW Construction Activities Notice or the Burnhamthorpe Water Project Contracts Shaft Area Lands Construction Activities Notice by the applicable date set out in Section 1.4(b) of Part 7 of Schedule 15-2 – Design and Construction Requirements; or (E) any delay by Contracting Authority to deliver the Highway 407 ETR Mainline Construction Activities Notice by the applicable date set out in Section 6.2(e) of Part 7 of Schedule 15-2 – Design and Construction Requirements), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
- (iii) an uncovering of the Works pursuant to Section 21.3 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), unless such uncovering of the Works was reasonable in the light of other defects or non-compliance previously discovered by Contracting Authority in respect of the same or a similar component of the Works or subset of the Works;
- (iv) a requirement pursuant to Sections 16.2(f)(i) or 16.2(h) for Project Co 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 Project Agreement;
- (v) a requirement pursuant to Sections 16.3(d)(ii)(A) or 16.3(e) for Project Co 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, artifacts 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 Project Agreement;

- (vi) a requirement pursuant to Sections 16.4(b) or 16.4(c) for Project Co 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 Species-at-Risk for which Contracting Authority is responsible, 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 Project Agreement;
- (vii) subject to compliance by Project Co with the provisions of Section 9.8, damage, costs or delays from the execution of Additional Works on the Lands by Additional Contractors, as applicable, in the circumstances described in Section 9.8(f), as applicable;
- (viii) a requirement pursuant to Section 13.1 of Schedule 27 - Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of Contracting Authority during the pendency of a Dispute, which Dispute is subsequently determined in Project Co's favour;
- (ix) an event of Force Majeure;
- (x) a Relief Event;
- (xi) a Relevant Change in Law;
- (xii) any change to the terms, conditions or requirements of the Environmental Assessments, except in each case to the extent resulting from any change by Project Co in the design of the Project or from any other act or omission on the part of Project Co;
- (xiii) a requirement for Project Co 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 pre-existing defects in Major Existing Third Party Infrastructure, for which Contracting Authority is responsible pursuant to Section 16.5, 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 Project Agreement;
- (xiv) a stop work order issued by a Governmental Authority in respect of the Project Co System Infrastructure or the Works, provided that such order was not issued as a result of a Relief Event, an act of Force Majeure, or as a result of an act, omission or fault of Project Co or a Project Co Party;
- (xv) **[Intentionally Deleted]**
- (xvi) a requirement that Project Co perform obligations under an Encumbrance pursuant to Section 15.2(c)(iii) or Section 15.2(d), which performance imposes costs or delays in the performance of Project Operations;

- (xvii) a requirement for Project Co 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 unknown Utility Infrastructure or Mislocated Utility Infrastructure pursuant to Section 16.6 for which Project Co is not responsible pursuant to Section 16.6, 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 Project Agreement;
- (xviii) subject to compliance with Section 9.13(a), a City's failure to issue to Project Co a final determination in respect of a Listed Project Co PLA as set out and subject to Section 9.4(g);
- (xix) a failure by one or more Category 1 Utility Companies to perform each of their respective obligations, as set out in the Final Utility Baseline Documents, to:
 - (A) inspect or review, as applicable, the Utility Work in accordance with the deadlines for inspection or review set out in the applicable Final Utility Baseline Document;
 - (B) design or construct Utility Infrastructure in accordance with the provisions set out in the applicable Final Utility Baseline Document (including, for clarity, deadlines for design and construction), but only in those circumstances where it is a requirement of the applicable Final Utility Baseline Document that the Category 1 Utility Company must carry out the design and construction of the Utility Infrastructure itself (by the Category 1 Utility Company's own forces or by a subcontractor retained by the Category 1 Utility Company); or
 - (C) carry out the same scope of the work as that set out in the applicable Final Utility Baseline Document, but only in those circumstances where it is a requirement of the applicable Final Utility Baseline Document that the Category 1 Utility Company must carry out the scope of work of the Utility Infrastructure itself (or through a subcontractor of the Category 1 Utility Company),provided, in each case, that such failure does not arise (directly or indirectly) as a result of any act or omission of Project Co or any Project Co Party. For the purposes of determining whether a failure by any one or more Category 1 Utility Companies has caused a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, the Parties shall, subject to Section 40.2(p), have regard to the cumulative effect of each and all failures by Category 1 Utility Companies in accordance with Sections 40.1(a)(xix)(A), 40.1(a)(xix)(B) and 40.1(a)(xix)(C);
- (xx) a delay or cancellation of a Rail Corridor Access Permit related to a Track Protection Barrier Access or Track Protection Access if the delay or cancellation is equal to or exceeds 25 per cent of the total planned duration for Rail Corridor Access under the applicable Track Protection Confirmation (measured from the date and time set out in the

Track Protection Confirmation), in accordance with Section 8.1(a)(i)(B) of Schedule 42 – Rail Corridor Access and Flagging;

- (xxi) a delay or cancellation of a Rail Corridor Access Permit related to a Minor Track Closure if the delay or cancellation is equal to or exceeds 25 per cent of the total planned duration for the Rail Corridor Access under the applicable Rail Corridor Access Permit or Track Protection Confirmation (measured from the date and time set out in the Track Protection Confirmation), in accordance with Section 8.1(a)(ii)(B) of Schedule 42 – Rail Corridor Access and Flagging;
 - (xxii) a delay or cancellation of a Rail Corridor Access Permit or Track Protection Confirmation related to a Major Track Closure in accordance with Section 8.1(a)(iii) of Schedule 42 – Rail Corridor Access and Flagging;
 - (xxiii) an evacuation or shutdown of the Rail Corridor directed by Metrolinx as a result of an Emergency Rail Situation in accordance with Section 10.1(b) of Schedule 42 – Rail Corridor Access and Flagging; and
 - (xxiv) an event where any of the Revenue Vehicle Deliverables have not been delivered by the Revenue Vehicle Manufacturer by the applicable Expected Delivery Date (as such term is defined in the Revenue Vehicle Supply Contract) and in accordance with the Output Specifications (as such term is defined in the Revenue Vehicle Supply Contract) except to the extent that any such failure to deliver any of the Revenue Vehicle Deliverables is caused, or contributed to, by Project Co or any Project Co Party (other than the Revenue Vehicle Manufacturer or any Alstom Party).
- (b) For clarity, in respect of Section 40.1(a)(xix), a failure by one or more Category 1 Utility Companies to perform each of their respective obligations set out in Section 40.1(a)(xix)(A), 40.1(a)(xix)(B), or 40.1(a)(xix)(C) shall not, in any event, be cause for a Delay Event unless Project Co has:
- (i) fully complied with its obligations pursuant to the applicable Utility Agreement and the applicable Final Utility Baseline Document;
 - (ii) properly coordinated the work being performed by the applicable Category 1 Utility Company with the Works; and
 - (iii) provided sufficient access to the Site to the applicable Category 1 Utility Company for the purposes of carrying out the Category 1 Utility Company's work.
- (c) For further clarity, Section 40.1(a)(xix) does not apply in respect of,
- (i) Category 1 Utility Companies in circumstances other than those specifically set out in Section 40.1(a)(xix)(A), 40.1(a)(xix)(B) and 40.1(a)(xix)(C);

- (ii) Category 2 Utility Companies including failures of a Category 2 Utility Company to perform in accordance with the applicable Utility Agreement; or
- (iii) Works carried out by Project Co or Project Co Parties or goods or services provided by Project Co or Project Co Parties to the Utility Companies.

40.2 Consequences of a Delay Event

- (a) Project Co shall provide written Notice to the Contracting Authority Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of any event or circumstances described in Sections 40.1(a)(ii), 40.1(a)(iv), 40.1(a)(v), 40.1(a)(vi), 40.1(a)(vii), 40.1(a)(xii), 40.1(a)(xiii), 40.1(a)(xiv), 40.1(a)(xvi), 40.1(a)(xvii), 40.1(a)(xviii), 40.1(a)(xix), 40.1(a)(xx), 40.1(a)(xxi), 40.1(a)(xxii) or 40.1(a)(xxiv) which, at the time of its occurrence, is reasonably likely to form the basis of a future claim by Project Co for relief under Section 40.2(e) as a Delay Event.
- (b) Project Co shall, within 13 Business Days (or such longer period of time as the Parties may agree) after delivering such notification under Section 40.2(a), provide further written details to the Contracting Authority Representative and the Independent Certifier which shall include:
 - (i) identification of the category of Delay Event on which Project Co's future claim for relief would be based if such event or circumstances were to form the basis of a claim for relief as a Delay Event;
 - (ii) details of the event or circumstances forming the basis of Project Co's notification under Section 40.2(a);
 - (iii) details of the contemporary records which Project Co shall thereafter maintain to substantiate its claim for extra time if the event or circumstances detailed in accordance with Section 40.2(b)(ii) forms the basis of a future claim by Project Co for relief as a Delay Event;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) that such event or circumstances may have upon the Scheduled Substantial Completion Date, if such event or circumstances forms the basis of a future claim by Project Co for relief as a Delay Event; and
 - (v) details of any measures that Project Co proposes to adopt to prevent such event or circumstances from forming the basis of a future claim by Project Co for relief as a Delay Event or to mitigate the consequences of such claim if such event or circumstances were to become a Delay Event.
- (c) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances disclosed in Section 40.2(a), Project Co shall submit further particulars based on such information to the Contracting Authority Representative and the Independent Certifier.

- (d) The Contracting Authority Representative shall, after receipt of written details under Section 40.2(b), or of further particulars under Section 40.2(c), be entitled by written notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall afford the Contracting Authority Representative and the Independent Certifier reasonable facilities for their investigations, including, without limitation, on-site inspection.
- (e) In addition to complying with its obligations under Sections 40.2(a) and 40.2(b), Project Co shall provide written notice to the Contracting Authority Representative and the Independent Certifier within 5 Business Days of: (A) becoming aware that an event or circumstances has satisfied, or will satisfy, in the opinion of Project Co, the applicable definition of Delay Event, or (B) becoming aware of the occurrence of an event to which Section 40.2(k) applies. Project Co shall, within 10 Business Days after such notification, provide further written details of the Delay Event or the event to which Section 40.2(k) applies to the Contracting Authority Representative and the Independent Certifier, including, if and as applicable, to substitute or supplement the information given in Sections 40.2(a), 40.2(b) and 40.2(c), to further substantiate or support Project Co's claim which shall include, to the extent not previously provided:
- (i) a statement of which Delay Event (or event pursuant to Section 40.2(k)) upon which the claim is based;
 - (ii) details of the circumstances from which the Delay Event (or event pursuant to Section 40.2(k)) arises;
 - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time or pursuant to Section 40.2(k);
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Substantial Completion Date, including a critical path analysis of the event or circumstance indicating the impact on the Scheduled Substantial Completion Date; and
 - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event or event pursuant to Section 40.2(k).
- (f) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim under Section 40.2(e), Project Co shall submit further particulars based on such information to the Contracting Authority Representative and the Independent Certifier.
- (g) The Contracting Authority Representative shall, after receipt of written details under Section 40.2(e), or of further particulars under Section 40.2(f), be entitled by written Notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall afford the Contracting

Authority Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co’s claim, including on-site inspection.

- (h) Subject to the provisions of this Section 40, the Contracting Authority Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix a revised Scheduled Substantial Completion Date, as soon as reasonably practicable and in any event within 10 Business Days of the later of:
 - (i) the date of receipt by the Contracting Authority Representative of Project Co’s Notice given in accordance with Section 40.2(e) and the date of receipt of any further particulars (if such are required under Section 40.2(f)), whichever is later; and
 - (ii) the date of receipt by the Contracting Authority Representative of any supplemental information supplied by Project Co in accordance with Section 40.2(f) and the date of receipt of any further particulars (if such are required under Section 40.2(g)), whichever is later.
- (i) For the avoidance of doubt, there shall be no extension to the Project Term as a result of any delay caused by a Delay Event.
- (j) If:
 - (i) the Contracting Authority Representative declines to fix a revised Scheduled Substantial Completion Date;
 - (ii) Project Co considers that a different Scheduled Substantial Completion Date should be fixed;
 - (iii) there is a dispute as to whether a Delay Event (or event pursuant to Section 40.2(k)) has occurred; or
 - (iv) there is a dispute as to whether Project Co is entitled to the relief set out in Section 40.2(k),

then Project Co 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 27 - Dispute Resolution Procedure. For greater certainty, if there is a dispute as to whether a Delay Event pursuant to Section 40.1(a)(xxiv) has occurred, any determination made by the Independent Certifier or any other person in accordance with Schedule 27 – Dispute Resolution Procedure shall not be binding with respect to the decision of the Independent Certifier to issue the Substantial Completion Certificate, or any of the rights of either Party, pursuant to Section 25 of the Project Agreement.

- (k) Subject to Project Co meeting the obligations set out in Section 40.2 and Section 40.3, if,

- (i) a Lane Closure is directly caused or extended by one or more of the events set out in Section 40.1(a), whether or not such event constitutes a Delay Event, such Lane Closure or extension thereof shall not be included in the Aggregate Actual Lane Closures or the Aggregate Actual Lane Closures Cost for the relevant Road Section for the purposes of calculating the Lane Closure Adjustment in accordance with the process set out in Schedule 7 – Mobility Matters;
- (ii) a Property Access Closure is directly caused or extended by one or more of the events set out in Section 40.1(a), whether or not such event constitutes a Delay Event, such Property Access Closure or extension thereof shall not be included in the Aggregate Actual Property Access Closures or the Aggregate Actual Property Access Closures Cost for the relevant Property Access Area for the purposes of calculating the Property Access Closure Adjustment in accordance with the process set out in Schedule 40 – Property Access Matters; and
- (iii) a Construction Period Quality Failure,
 - (A) has been assessed in accordance with Schedule 21 – Construction Period Payments; and
 - (B) has arisen from a Non-Conformance that has been directly caused by one or more of the events set out in Section 40.1(a), whether or not such event constitutes a Delay Event,such Construction Period Quality Failure shall not be applied as part of the Construction Period Deduction for the relevant Payment Period in accordance with Section 6 of Schedule 21 – Construction Period Payments.
- (iv) For clarity, Sections 40.2(k)(i) and 40.2(k)(ii) shall apply only to the extent that a Lane Closure or Property Access Closure was not contemplated by the Aggregate Target Property Access Closures or Aggregate Target Lane Closures and not merely because a Lane Closure or Property Access Closure has been deferred.
- (l) To the extent Project Co does not comply with its obligations under Sections 40.2(a), (b), (c), (d), (e), (f), (g) or (m), and subject to Section 40.2(m), such failure shall be taken into account in determining Project Co’s entitlement to an extension of time pursuant to this Section 40.
- (m) If Project Co does not provide further written details to the Contracting Authority Representative and the Independent Certifier as required under Section 40.2(b) within the 10 Business Day period referred to in such Section, Project Co acknowledges and agrees that, after a further 10 Business Days, Project Co shall not be entitled to rely upon, and Contracting Authority shall not be obligated to consider, the notice given under Section 40.2(a) for the purposes of determining Project Co’s entitlement to relief under this Section 40. Project Co, at its option, may submit a new, currently dated notice which complies with the provisions of Section 40.2(a) for the same event or circumstance which gave rise to the previous, unsubstantiated notice, and the

provisions of this Section 40 shall apply to such new notice, mutatis mutandis. Project Co acknowledges and agrees that Contracting Authority, in determining Project Co's entitlement to an extension of time pursuant to this Section 40 and without limiting any other right of Contracting Authority under this Project Agreement, shall be entitled to take into account the delay between:

- (i) Project Co becoming aware of the occurrence of the event or circumstance forming the basis of the original notice delivered pursuant to Section 40.2(a), and
 - (ii) Project Co submitting any new notice pursuant to Section 40.2(a) in respect of that event or occurrence.
- (n) In the event of a Delay Event pursuant to Section 40.1(a)(xxiv), if the delay in achieving Substantial Completion caused by such Delay Event exceeds 180 days from the Scheduled Substantial Completion Date, then Contracting Authority may, in its sole discretion and in addition to granting an extension of time pursuant to Section 40.2(h) in respect of such delay, do any one or more of the following:
- (i) fix a further revised Scheduled Substantial Completion Date;
 - (ii) terminate the Project Agreement pursuant to Section 47.5; or
 - (iii) issue a Variation pursuant to Schedule 22 – Variation Procedure in respect of such Delay Event.

For greater certainty, this Section 40.2(n) shall not limit Project Co's right to an extension of time under Section 40.2(h) where there is a Delay pursuant to Section 40.1(a)(xxiv).

- (o) For greater certainty, this Section 40.2, is subject to the provisions of Section 7 of Schedule 12 – Works Schedule Requirements.
- (p) In no event shall the extension of time for a Delay Event be more than the necessary extension of the critical path as a result of the Delay Event.

40.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Delay Event or an event pursuant to Section 40.2(k), Project Co shall, and shall require all Project Co 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 Project Agreement;
 - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event (including completing all appropriate and applicable testing and commissioning activities for any Revenue Vehicle Deliverables that have

been delivered pursuant to the Revenue Vehicle Supply Contract) or event pursuant to Section 40.2(k); and

- (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event (or event pursuant to Section 40.2(k)) as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 40.3, such failure shall be taken into account in determining,
 - (i) Project Co's entitlement to an extension of time pursuant to this Section 40; and
 - (ii) Project Co's entitlement to the relief contemplated in Section 40.2(k).

41. COMPENSATION EVENTS

41.1 Definition

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 40.1(a)(ii), 40.1(a)(iii), 40.1(a)(iv), 40.1(a)(v), 40.1(a)(vi), 40.1(a)(vii), 40.1(a)(viii), 40.1(a)(xii), 40.1(a)(xiii), 40.1(a)(xiv), 40.1(a)(xvi), 40.1(a)(xvii), 40.1(a)(xviii), 40.1(a)(xx), 40.1(a)(xxi), 40.1(a)(xxii), 40.1(a)(xxiii) or 40.1(a)(xxiv) as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay.

41.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 41. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
 - (i) Schedule 22 – Variation Procedure, in the case of a Delay Event referred to in Section 40.1(a)(i);
 - (ii) Section 44, in the case of a Delay Event referred to in Section 40.1(a)(ix);
 - (iii) Section 43, in the case of a Delay Event referred to in Section 40.1(a)(x);
 - (iv) Section 38, in the case of a Delay Event referred to in Section 40.1(a)(xi); and
 - (v) Section 41.6(b) in the case of a Delay Event referred to in Section 40.1(a)(xix).
- (b) Subject to Sections 41.3 and 41.4, if it is agreed, or determined in accordance with Schedule 27 - Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co 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 Contracting Authority to

Project Co. Project Co shall promptly provide the Contracting Authority Representative with any information the Contracting Authority Representative may require in order to determine the amount of such compensation.

- (c) **[Intentionally Deleted]**
- (d) If Contracting Authority is required to compensate Project Co pursuant to this Section 41.2, then Contracting Authority may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably, or, alternatively, Contracting Authority may request Project Co to agree to an adjustment to the Monthly Service Payments. If Project Co agrees to an adjustment to the Monthly Service Payments, then the provisions of Schedule 22 – Variation Procedure shall apply.
- (e) To the extent that Project Co does not comply with its obligations under Sections 40.2(a), 40.2(b), 40.2(c), 40.2(d), 40.2(e), 40.2(f), 40.2(g), or 40.2(m), and subject to Section 40.2(m), such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 41.

41.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Compensation Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Section 41 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 41.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 41.

41.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 41 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project 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.

41.5 [Intentionally Deleted]**41.6 Special Compensation Regarding Category 1 Utility Companies**

- (a) For the purposes of the special compensation regarding Category 1 Utility Companies, the following shall apply:
- (i) Sections 41.3 and 41.4 shall apply to the compensation set out in this Section 41.6, notwithstanding that the Delay Event referred to in Section 40.1(a)(xix) is not a Compensation Event.
- (b) If it is agreed, or determined in accordance with Schedule 27 - Dispute Resolution Procedure, that there has been a Delay Event referred to in Section 40.1(a)(xix), Project Co shall be entitled to the following:
- (i) an amount excluding any increase in price by a Category 1 Utility Company compensated pursuant to Section 34.1(b), calculated in accordance with the following:
 - (A) for the purpose of this Section 41.6(b)(i) **“Compensation Amount”** means an amount that would place Project Co in no better and no worse position than it would have been in had the applicable Delay Event referred to in Section 40.1(a)(xix) not occurred (and shall include any interest or financing costs accrued and paid or which became payable in accordance with the Lending Agreements during the period of the applicable Delay Event, in addition to the applicable monthly debt portion of the Annual Service Payment – Capital Portion of the Monthly Service Payment scheduled to be paid after Substantial Completion during the period of the applicable Delay Event);
 - (B) if the applicable Delay Event delays Substantial Completion for 90 or fewer days, Contracting Authority shall pay to Project Co an amount equal to 50 per cent of the Compensation Amount in respect of the number of days of delay; and
 - (C) if the applicable Delay Event delays Substantial Completion for more than 90 days, Contracting Authority shall pay to Project Co an amount equal to 100 per cent of the Compensation Amount in respect of the number of days exceeding 90 days of delay.

41.7 Compensation for Delay in Supply of Revenue Vehicles

- (a) The compensation payable to Project Co pursuant to this Section 41 shall be reduced by any amount which Project Co or a Project Co Party (other than the Revenue Vehicle Manufacturer or any Alstom Party) recovers under the Revenue Vehicle Supply Contract with respect to a Delay Event pursuant to Section 40.1(a)(xxiv) or would have recovered if it had complied with the requirements of the Revenue Vehicle Supply Contract.

42. EXCUSING CAUSES

42.1 Definition

- (a) For the purposes of this Project Agreement, “**Excusing Cause**” means any of the following events or circumstances if it occurs after the Substantial Completion Date and to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the Project Co Services:
- (i) the implementation of a Variation to the extent Project Co has identified any impact on the Project Co Services in its Estimate and such impact has been documented in the Variation Confirmation;
 - (ii) any breach by Contracting Authority of any of Contracting Authority’s obligations under this Project Agreement (including any obstruction of the rights afforded to Project Co under Section 14.1), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
 - (iii) any deliberate or negligent act or omission of any Province Person or any failure by any Province Person (having regard to the interactive nature of the activities of Contracting Authority and Project Co) to take commercially reasonable steps to perform its activities in a manner which minimizes undue interference with Project Co’s performance of the Project Co Services, except to the extent:
 - (A) any such act, omission or failure is caused, or contributed to, by Project Co or any Project Co Party;
 - (B) the Province Person is acting in accordance with a recommendation or instruction of Project Co or any Project Co Party;
 - (C) any such act, omission or failure was contemplated in Schedule 15 - Output Specifications or was otherwise provided for in this Project Agreement; or
 - (D) the consequences of any such act, omission or failure would have been prevented by the proper performance of Project Co’s obligations under this Project Agreement;
 - (iv) the implementation of any action taken by Contracting Authority, or any suspension of Project Co’s obligation to deliver all or any part of the Project Co Services, or the compliance by Project Co with instructions given by Contracting Authority, in each case in the circumstances referred to in Section 32;
 - (v) the performance of any Small Works in accordance with the terms of this Project Agreement during the period of time agreed between Contracting Authority and Project Co;

- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action involving employees of any Province Person, except to the extent that any such labour-related action is caused, or contributed to, by Project Co or any Project Co Party;
- (vii) the occurrence of any Contamination for which Contracting Authority is responsible pursuant to Section 16.2;
- (viii) the discovery of any Species-at-Risk for which Contracting Authority is responsible pursuant to Section 16.4;
- (ix) a derailment, collision, or any other accident involving the exterior of a Revenue Vehicle, including at intersections, except to the extent that any such derailment, collision, or other accident is caused, or contributed to, by Project Co or any Project Co Party; and
- (x) a derailment, collision, or any other accident involving both an element of Fixed Infrastructure (as defined in Schedule 15-1 – Technical Terms and Reference Documents) and a road vehicle except to the extent that any such collision is caused, or contributed to, by Project Co or any Project Co Party.

42.2 Consequences of an Excusing Cause

- (a) Provided that the effect of an Excusing Cause is claimed by Project Co, in writing, within 10 Business Days of the date on which Project Co or any Project Co Party became aware of the occurrence of such Excusing Cause, then (subject to Sections 42.3 and 42.4):
 - (i) any failure by Project Co to perform, and any poor performance of, any affected Project Co Services shall not constitute a breach of this Project Agreement by Project Co, [REDACTED] Failure Points shall accrue in respect of such failure and Project Co shall be relieved of its obligations to perform such Project Co Services for the duration and to the extent prevented by such Excusing Cause;
 - (ii) any interference shall be taken into account in measuring the performance of any affected Project Co Services in accordance with the Performance Monitoring Program, which shall be operated as though the relevant Project Co Services had been performed free from such adverse interference;
 - (iii) any interference shall be taken into account in operating the Payment Mechanism, which shall be operated as though any Availability Failure, Quality Failure, or Service Failure, or Energy Failure resulting from such interference had not occurred, so that Project Co shall be entitled to payment under this Project Agreement as if there had been no such interference with the Project Co Services, provided however that Project Co shall not be entitled to any additional compensation, except as may be provided hereunder for compensation on termination of this Project Agreement, if this Project Agreement is terminated as provided herein;

- (iv) this Section 42.2 shall not limit Contracting Authority’s entitlement to reimbursement pursuant to Section 32.4;
- (v) Contracting Authority shall reimburse Project Co 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 Project Co, as a result of any Excusing Cause referred to in Section 42.1(a)(ii), 42.1(a)(iii), 42.1(a)(vi), 42.1(a)(vii) or 42.1(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 22 – Variation Procedure; and
- (vi) the Monthly Service Payments payable by Contracting Authority shall be reduced by any savings in Direct Costs arising from Project Co being relieved of its obligations to perform the Project Co Services, as otherwise provided herein, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 – Variation Procedure.

42.3 Mitigation

- (a) If Project Co is (or claims to be) affected by an Excusing Cause, Project Co shall, and shall require all Project Co 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 Project Agreement;
 - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Excusing Cause; and
 - (iii) to resume performance of its obligations under this Project Agreement affected by the Excusing Cause as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 42.3, such failure shall be taken into account in determining Project Co’s entitlement to relief pursuant to this Section 42.

42.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 42 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project 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.

43. RELIEF EVENTS

43.1 Definition

- (a) For the purposes of this Project Agreement, “**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 Project Agreement:
- (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
 - (ii) failure by any Utility Company, local authority or other like body to provide services or to perform works, (solely in its role as utility service provider or similar service provider to the Project), provided, however, that such a failure shall not, in any event, be cause for a Relief Event, unless Project Co:
 - (A) has performed its obligations under any applicable agreement with the Utility Company with respect to the provision of such services and the relevant Utility Company has failed to meet its obligations thereunder; and
 - (B) has made all, and is continuing to make all, commercially reasonable efforts to diligently enforce its legal rights under any applicable agreement in respect of such services and otherwise cause the Utility Company to perform those works or services;
- For clarity, Section 43.1(a)(ii) shall apply only in circumstances where the Utility Company is providing services to Project Co of the type provided by the Utility Company in the normal course of its business. For further clarity, Section 43.1(a)(ii) shall not apply in circumstances where Project Co has entered into a Utility Agreement for the design and construction of Utility Infrastructure and the applicable Utility Company has failed to comply with its obligations under such an agreement;
- (iii) accidental loss or damage to the Works and/or the Project Co System Infrastructure or any roads servicing the Lands;
 - (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project 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 Project Co System Infrastructure, the New Third Party Infrastructure, the construction or facility operation or maintenance industry (or a significant sector of that industry) in the Province of Ontario or the operation of rail transit systems in the Province of Ontario; or
 - (vii) any 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 transit systems in general, provided, however, that a civil disobedience or protest action shall not, in any event, be cause for a Relief Event unless Project Co has fully complied with Section 9.7.

43.2 Consequences of a Relief Event

(a) Subject to Section 43.3:

- (i) no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 47.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement; and
- (ii) as soon as the events or circumstances constituting a Relief Event have ceased any Failure Points accrued in respect of any failure by Project Co to perform any of its obligations under this Project Agreement shall be cancelled and any related Warning Notices and Monitoring Notices shall be withdrawn,

but only to the extent that such failure to perform, is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event). For greater certainty, Contracting Authority shall be entitled to make Deductions in accordance with Schedule 20 - Payment Mechanism notwithstanding the cancellation of Failure Points pursuant to Section 43.2(a)(ii). Any Deduction to Project Co as a result of Relief Events referred to in Section 43.1(a)(v), 43.1(a)(vi), or 43.1(a)(vii) shall not exceed, in the aggregate, the amount that would be necessary to reduce payments to Project Co to an amount below the Senior Debt Service Amount.

(b) In respect of a Relief Event that is also a Delay Event pursuant to Section 40.1(a)(x):

- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 40; and
- (ii) in respect of a Relief Event occurring prior to the Substantial Completion Date affected by that Delay Event and referred to in Section 43.1(a)(ii) (but only in respect of failure by a Utility Company to perform works or provide services), 43.1(a)(v), 43.1(a)(vi) or 43.1(a)(vii), on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Contracting Authority Default Termination Sum, Non-Default Termination Sum or Breach of Refinancing Termination Sum (and as a part thereof) in accordance with Schedule 23 - Compensation on Termination, Contracting Authority shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or which became payable in accordance with the Lending Agreements during the period of the delay by Project Co or any Project Co Party to the Senior Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the Contracting Authority Default Termination Sum, Non-Default Termination Sum or Breach of Refinancing Termination Sum, as applicable, together with interest thereon at

the rate payable on the Senior Debt Amount, which, but for the Delay Event, would not have been paid by Project Co to the Senior Lenders.

- (c) If a Relief Event occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 43.2(b)(ii) and 49.
- (d) During a Relief Event which occurs on or after the Substantial Completion Date, the provisions of Schedule 20 - Payment Mechanism will continue to be in full force and effect, subject to Section 43.2(a).
- (e) Subject to Section 49, Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 43.
- (f) In respect of a Relief Event that,
 - (i) occurs prior to the Initial Capital Investment Date; and
 - (ii) causes a delay to Project Co in performing the Works,

Contracting Authority shall pay to Project Co, on the first Construction Period Payment date after the Initial Capital Investment Date is achieved, an amount equal to the Senior Debt Service Amount accrued and paid, or which became payable, by Project Co or any Project Co Party to the Senior Lenders, in accordance with the Lending Agreements, during the period of delay, up to and including the first Construction Period Payment date, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the delay caused by the Relief Event would not have been paid by Project Co to the Senior Lenders.

43.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event 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 43.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 43.
- (c) The Party claiming relief shall give written Notice to the other Party within 5 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 5 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

the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 43.3(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 43.3(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.

43.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 43 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project 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.

44. FORCE MAJEURE

44.1 Definition

- (a) For the purposes of this Project Agreement, “**Force Majeure**” means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
 - (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
 - (ii) nuclear or radioactive contamination of the Works, the Project Co System Infrastructure and/or the Lands, unless Project Co or any Project Co Party is the source or cause of the contamination;
 - (iii) chemical or biological contamination of the Works, the Project Co System Infrastructure and/or the Lands from any event referred to in Section 44.1(a)(i);
 - (iv) pressure waves caused by devices traveling at supersonic speeds; or
 - (v) the discovery of any Species-at-Risk, fossils, artifacts 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.

44.2 Consequences of Force Majeure

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- (a) Subject to Section 44.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Project Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 40.1(a)(ix):
- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 40; and
 - (ii) on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Contracting Authority Default Termination Sum, Non-Default Termination Sum or Breach of Refinancing Termination Sum (and as a part thereof) in accordance with Schedule 23 - Compensation on Termination, Contracting Authority shall pay to Project Co an amount equal to the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or which became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the Contracting Authority Default Termination Sum, Non-Default Termination Sum or Breach of Refinancing Termination Sum, as applicable, together with interest thereon at the rate or rates payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would not have been paid by Project Co to the Lenders.
- (c) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 44.2(b)(ii) and 49.
- (d) During an event of Force Majeure which occurs on or after the Substantial Completion Date, the provisions of Schedule 20 - Payment Mechanism will be suspended, and Contracting Authority shall pay to Project Co, for each Payment Period, the Senior Debt Service Amount, the Junior Debt Service Amount and an amount which reflects the cost to Project Co of the Project Co Services performed, provided that, during such Payment Period, the amount paid to Project Co pursuant to this Section 44.2(d) shall never be more than the Maximum Service Payment.
- (e) Subject to the provisions of this Section 44, and with respect to an event of Force Majeure that is not a Delay Event and that arises prior to the Substantial Completion Date,
- (i) a Lane Closure that is directly caused or extended by the occurrence of an event of Force Majeure shall not be included in the Aggregate Actual Lane Closures or the Aggregate Actual Lane Closure Cost for the relevant Road Section for the purposes of calculating the Lane Closure Adjustment in accordance with the process set out in Schedule 7 – Mobility Matters;
 - (ii) a Property Access Closure that is directly caused or extended by the occurrence of an event of Force Majeure shall not be included in the Aggregate Actual Property Access

Closures or the Aggregate Actual Property Access Closures Cost for the relevant Property Access Area for the purposes of calculating the Property Access Closure Adjustment in accordance with the process set out in Schedule 40 – Property Access Matters; and

- (iii) a Construction Period Quality Failure that,
 - (A) has been assessed in accordance with Schedule 21 – Construction Period Payments; and
 - (B) has arisen from a Non-Conformance that has been directly caused by an event of Force Majeure,

shall not be applied as part of the Construction Period Deduction for the relevant Payment Period in accordance with Section 6 of Schedule 21 – Construction Period Payments.

- (f) Subject to Section 49, Project Co’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 44.
- (g) In respect of an event of Force Majeure that,
 - (i) occurs prior to the Initial Capital Investment Date; and
 - (ii) causes a delay to Project Co in performing the Works,

Contracting Authority shall pay to Project Co, on the first Construction Period Payment date after the Initial Capital Investment Date is achieved, an amount equal to the Senior Debt Service Amount accrued and paid, or which became payable, by Project Co or any Project Co Party to the Senior Lenders, in accordance with the Lending Agreements, during the period of the delay, up to and including the first Construction Period Payment date, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the delay caused by the event of Force Majeure would not have been paid by Project Co to the Senior Lenders.

44.3 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 Project 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 44.3, such failure shall be taken into account in determining such Party’s entitlement to relief pursuant to this Section 44.

- (c) The Party claiming relief shall give written Notice to the other Party within 5 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 5 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 the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 44.3(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 44.3(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.

44.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 44 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project 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.

44.5 Modifications

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 - Dispute Resolution Procedure shall not apply to a failure of Contracting Authority and Project Co to reach agreement pursuant to this Section 44.5.

45. PROJECT CO DEFAULT

45.1 Project Co Events of Default

- (a) Subject to Section 45.1(b), for the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
 - (i) the occurrence of any of the following events other than as a consequence of a breach by Contracting Authority of its payment obligations hereunder:

- (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co's assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, Contracting Authority, a Contracting Authority Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the Governmental Activities or the availability of the Project Co System Infrastructure to System Users (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 45.1(a)(i)(A);
- (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co's ability to perform its obligations under this Project Agreement;
- (C) if any execution, sequestration, extent, garnishment or other process of or order by any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder; or
- (D) Project Co suffers any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out in this Section 45.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 45.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;

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- (ii) Project Co failing to achieve Substantial Completion within 365 days after the Scheduled Substantial Completion Date (the “**Longstop Date**”);
 - (iii) Project Co either:
 - (A) failing to deliver a Recovery Works Schedule under Section 14.1(b) of Schedule 12 – Works Schedule Requirements;
 - (B) delivering a Recovery Works Schedule under Section 14.1(b) of Schedule 12 – Works Schedule Requirements that indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
 - (C) delivering a Recovery Works Schedule under Section 14.1(b) of Schedule 12 – Works Schedule Requirements that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 14.1(c) of Schedule 12 – Works Schedule Requirements;
 - (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Project Operations, the Governmental Activities or the availability of the Project Co System Infrastructure to System Users, or that may compromise (A) Contracting Authority’s reputation or integrity, or (B) the nature of any of the public transit systems within the Region of Peel so as to affect public confidence in any of the public transit systems within such area or the Project and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of Notice of the same from Contracting Authority;
 - (v) Project Co committing a breach of Section 52 or Section 53 or a breach of its obligations under this Project Agreement (other than a breach that is referred to in Sections 45.1(a)(i) to (iv) inclusive or 45.1(a)(vi) to (xx) inclusive) which has or will have a material adverse effect on the Governmental Activities or the availability of the Project Co System Infrastructure to System Users, other than where such breach is a consequence of a breach by Contracting Authority of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
 - (A) Project Co shall:
 - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on Contracting Authority and the Governmental Activities or the availability of the Project Co System Infrastructure to System Users;
 - (II) put forward, within 7 Business Days of receipt of Notice of such breach from Contracting Authority, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule

shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 90 days of Notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and

- (III) 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; and
- (B) upon Project Co failing to comply with any of the provisions of Section 45.1(a)(v)(A):
- (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on Contracting Authority and the Governmental Activities or the availability of the Project Co System Infrastructure to System Users;
 - (II) Project Co shall, within 5 Business Days after Notice from Contracting Authority, submit a plan and schedule, which Contracting Authority shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to Contracting Authority, in its sole discretion, and 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; and
 - (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 45.1(a)(v)(B), or Contracting Authority, in its sole discretion, not accepting the plan and schedule submitted by Project Co pursuant to Section 45.1(a)(v)(B)(II), shall constitute a Project Co Event of Default;
- (vi) Project Co wholly abandoning the Works for a period which exceeds 3 Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement;
 - (vii) Project Co ceasing to perform any Project Co Services in accordance with this Project Agreement which is necessary for the Governmental Activities or the availability of the Project Co System Infrastructure to System Users, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement;
 - (viii) Project Co failing to comply with Sections 59.1 or 59.3;
 - (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 59.4;

- (x) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 3 Payment Periods;
- (xi) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 6 Payment Periods;
- (xii) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 12 Payment Periods;
- (xiii) Project Co failing to remove an Encumbrance that arose (I) due to an act or omission of Project Co or any Project Co Party, (II) in relation to the Works, or (III) in relation to the Project Co Services (other than any Encumbrance derived through Contracting Authority) within 45 days of the earlier of:
 - (A) the registration of such Encumbrance against title to the Lands or any part thereof; and
 - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;
- (xiv) Project Co failing to pay any sum or sums due to Contracting Authority under this Project Agreement, which sum or sums are not being disputed in accordance with Schedule 27 - Dispute Resolution Procedure or have not been set off by Project Co pursuant to Section 34.12(a)(ii), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and such failure continues for 45 days from receipt by Project Co of a Notice of non-payment from Contracting Authority;
- (xv) Project Co failing to comply with Section 60;
- (xvi) Project Co failing to comply with Section 7.3 or Schedule 28 - Refinancing;
- (xvii) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement, and:
 - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
 - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xviii) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 - Dispute Resolution Procedure;

- (xix) at any time after the Substantial Completion Date, Project Co committing a breach of its obligations under this Project Agreement (other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement) which results in a health and safety related criminal conviction or a conviction under the *Occupational Health and Safety Act* (Ontario) against Project Co or any Project Co Party or Contracting Authority (an “**H&S Conviction**”) provided however that:
- (A) an H&S Conviction against Project Co, a Project Co Party or Contracting Authority shall not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Operations of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated in accordance with Section 59.3 or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to Contracting Authority, in its sole discretion; and
 - (B) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 45.1(a)(xix), Contracting Authority shall:
 - (I) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing the act leading to the H&S Conviction; and
 - (II) give all due consideration, where appropriate, to action other than termination of this Project Agreement; or
- (xx) Project Co failing to comply with Section 28.4 and 28.8.
- (b) Contracting Authority shall not exercise any rights under this Section 45 (except its rights under Section 45.5(a)(i)) as a result of a Project Co Event of Default referred to in Sections 45.1(a)(vii) 45.1(a)(x), 45.1(a)(xi) and 45.1(a)(xii) until the day following the Substantial Completion Payment Commencement Date. For greater certainty, if Contracting Authority is prevented from exercising any rights under this Section 45 by the terms of the immediately preceding sentence, then, notwithstanding the passage of time or any intervening event (including that Contracting Authority may have exercised its rights under Section 45.5(a)), on and after the day following the Substantial Completion Payment Commencement Date, Contracting Authority may exercise any such rights.

45.2 Notification of Occurrence

- (a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify Contracting Authority of the occurrence, and details, of any Project Co 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 Project Co Event of Default.

45.3 Right to Termination

- (a) On the occurrence of a Project Co Event of Default, or at any time after Contracting Authority becomes aware of a Project Co Event of Default (and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with Schedule 27 - Dispute Resolution Procedure that a Project Co Event of Default has occurred), Contracting Authority may, subject to Section 45.4, terminate this Project Agreement in its entirety by written Notice having immediate effect, such Notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice.

45.4 Remedy Provisions

- (a) In the case of a Project Co Event of Default referred to in Sections 45.1(a)(i)(B), 45.1(a)(i)(C), 45.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 45.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 45.1(a)(i)(B) or 45.1(a)(i)(C)), 45.1(a)(iii), 45.1(a)(iv), 45.1(a)(vi), 45.1(a)(vii), 45.1(a)(viii), 45.1(a)(ix) (where the Project Co Event of Default referred to in Section 45.1(a)(ix) is capable of being remedied), 45.1(a)(xiv), 45.1(a)(xvi), 45.1(a)(xvii) (where the Project Co Event of Default referred to in Section 45.1(a)(xvii) is not in respect of insurance), 45.1(a)(xviii), 45.1(a)(xix) or 45.1(a)(xx), Contracting Authority shall, prior to being entitled to terminate this Project Agreement, give Notice of default to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice, and Project Co shall:
- (i) within 7 Business Days of such Notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 45 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 Contracting Authority, 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 Project Co puts forward a plan and schedule in accordance with Section 45.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 45 days from the Notice of default, Contracting Authority shall have 5 Business Days from receipt of the same within which to notify Project Co that Contracting Authority does not accept such longer period in the plan and schedule and that the 45 day limit will apply, failing which Contracting Authority shall be deemed to have accepted the longer period in the plan and schedule.

- (c) If a Project Co Event of Default, of which a Notice of default was given under Section 45.4(a), occurs and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on Contracting Authority and the Governmental Activities or the availability of the Project Co System Infrastructure to System Users; or
 - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 45.4(a)(i); or
 - (iii) such Project Co Event of Default is not remedied within 45 days of such Notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 45.4(a) and (b); or
 - (iv) where Project Co puts forward a plan and schedule pursuant to Section 45.4(a)(i) and Project Co 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 Contracting Authority may terminate this Project Agreement in its entirety by written Notice with immediate effect, such Notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice.

- (d) Notwithstanding that Contracting Authority may give the Notice referred to in Section 45.4(a), and without prejudice to the other rights of Contracting Authority in this Section 45.4, at any time during which a Project Co Event of Default is continuing, Contracting Authority may, at Project Co's risk and expense, take such steps as Contracting Authority considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.
- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 45.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and Contracting Authority shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

45.5 Replacement of Non-Performing Service Provider

- (a) Contracting Authority may, acting reasonably, require Project Co to terminate the Service Provider and ensure that a replacement Service Provider is appointed in accordance with Section 59.3 to provide the Project Co Services within 60 days:
- (i) as an alternative to termination of this Project Agreement pursuant to Sections 45.3 or 45.4, in any circumstance in which Contracting Authority could exercise such right of termination, if the Project Co Event of Default was caused, or contributed to, by the Service Provider or otherwise relates to the Project Co Services; or

- (ii) if Project Co accrues, in any rolling 6 Payment Periods more than:
 - (A) [REDACTED] Failure Points in respect of Trip Availability Failures;
 - (B) [REDACTED] Failure Points in respect of Passenger Facility Availability Failures;
 - (C) [REDACTED] Failure Points in respect of All Availability Failures combined;
or
 - (D) [REDACTED] Failure Points in respect of Quality Failures and Service Failures, combined,

provided that this Section 45.5 shall not give rise to partial termination of either the obligation to provide the Project Operations or this Project Agreement.

- (b) If Contracting Authority exercises its rights under this Section 45.5, Project Co shall, within 5 Business Days, put forward a proposal for the interim management or performance of the Project Co Services until such time as a replacement Service Provider can be engaged by Project Co. If Project Co fails to do so, or if its proposal is not reasonably likely to give adequate performance of the Project Co Services and the Parties cannot agree within a further 3 Business Days to a plan for the interim management or performance of the Project Co Services, then, without prejudice to the other rights of Contracting Authority in this Section 45.5, Contracting Authority itself may perform, or engage others (including a third party) to perform, the Project Co Services and Section 32.4 shall apply, *mutatis mutandis*, to the Project Co Services. Any Dispute in respect of the interim management or provision of the Project Co Services may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (c) If Project Co fails to terminate, or secure the termination of, the Service Provider and to secure a replacement Service Provider in accordance with this Section 45.5, Contracting Authority shall be entitled to exercise its termination rights in accordance with Sections 45.3 and 45.4, as applicable.
- (d) Where a replacement Service Provider is appointed in accordance with this Section 45.5, [REDACTED]% of the Failure Points accrued by Project Co prior to such replacement shall be cancelled.

45.6 Contracting Authority's Costs

- (a) Project Co shall reimburse Contracting Authority 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 Contracting Authority in exercising its rights under this Section 45, including any

relevant increased administrative expenses. Contracting Authority shall take commercially reasonable steps to mitigate such costs.

45.7 No other Rights to Terminate

- (a) Contracting Authority shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 45 and 47.

46. CONTRACTING AUTHORITY'S DEFAULT

46.1 Contracting Authority Events of Default

- (a) For the purposes of this Project Agreement, “**Contracting Authority Event of Default**” means any one or more of the following events or circumstances:
- (i) Contracting Authority failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed in accordance with Schedule 27 - Dispute Resolution Procedure or have not been set off by Contracting Authority pursuant to Section 34.12(a)(i), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and:
 - (A) in respect of a Construction Period Payment or the Substantial Completion Payment, such failure continues for 30 Business Days;
 - (B) subject to Section 46.1(a)(i)(C), in respect of any Monthly Service Payment, such failure continues for 30 days;
 - (C) in respect of any 3 Monthly Service Payments in any rolling 9 month period, such failure continues for 15 Business Days in respect of each such Monthly Service Payment; or
 - (D) in respect of any other payment due and payable by Contracting Authority to Project Co under this Project Agreement, such failure continues for 90 days,in any such case, from receipt by Contracting Authority of a Notice of non-payment from or on behalf of Project Co;
 - (ii) Contracting Authority committing a material breach of its obligations under Section 14 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of Project Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 days; or
 - (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement (other than

as a consequence of a breach by Project Co of its obligations under this Project Agreement) 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 Project Co Permits, Licences and Approvals shall not constitute an “act of any Governmental Authority”).

46.2 Project Co’s Options

- (a) On the occurrence of a Contracting Authority Event of Default and while the same is continuing, Project Co may give Notice to Contracting Authority of the occurrence of such Contracting Authority Event of Default, which Notice will specify the details thereof. If Project Co gives such Notice and the applicable Contracting Authority Event of Default has not been remedied within 30 days of receipt by Contracting Authority of Notice of the occurrence of such Contracting Authority Event of Default, at Project Co’s option and without prejudice to its other rights and remedies under this Project Agreement, Project Co may:
- (i) suspend performance of the Works and the Project Co Services until such time as Contracting Authority has remedied such Contracting Authority Event of Default; or
 - (ii) terminate this Project Agreement in its entirety by Notice in writing having immediate effect.

46.3 Project Co’s Costs

- (a) Contracting Authority shall reimburse Project Co 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 Project Co in exercising its rights under this Section 46, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

46.4 No Other Rights to Terminate

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

47. RELIEF EVENT AND NON-DEFAULT TERMINATION

47.1 Termination for Relief Event

- (a) Subject to Section 47.1(b), if a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives Notice to the other Party pursuant to Section 43.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written Notice to the other Party having immediate effect, provided that the effects of the Relief

Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

- (b) Neither Party shall be entitled to exercise its right to terminate this Project Agreement in accordance with Section 47.1(a) if Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, an amount which, together with the Monthly Service Payment, is equal to or greater than the Senior Debt Service Amount and the Junior Debt Service Amount for the relevant Payment Period.

47.2 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 Project Agreement pursuant to Section 44.5 within 180 days 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 Project Agreement by written Notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

47.3 Termination for Convenience

- (a) Contracting Authority shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days' written Notice to Project Co.
- (b) In the event of Notice being given by Contracting Authority in accordance with this Section 47.3, Contracting Authority shall, at any time before the expiration of such Notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works, or the Project Co Services, or any element of the Project Co Services, where such Works or Project Co Services have not yet been commenced.

47.4 Automatic Expiry on Expiry Date

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

47.5 Termination for Delay in Supply of Revenue Vehicles

- (a) If a Delay Event pursuant to Section 40.1(a)(xxiv) occurs and the delay in achieving Substantial Completion caused by such Delay Event exceeds 180 days then, pursuant to Section 40.2(n), Contracting Authority may, in its sole discretion, terminate this Project Agreement by written Notice to Project Co having immediate effect, provided, for certainty, that during the period of time prior to the receipt by Project Co of any such written notice of termination from Contracting

Authority, the consequences of such Delay Event shall continue (including under Sections 40 and 41 of the Project Agreement) and Project Co shall be entitled to any relief set out hereunder.

47.6 Termination for Failure to Obtain System Extension Lenders' Consent

- (a) Project Co acknowledges Contracting Authority's right to terminate the Project Agreement pursuant to and in accordance with Section 4.3(c)(ii) of Schedule 39 – System Extension as a result of a failure of Project Co to obtain from all Lenders the System Extension Lenders' Consent or a waiver of the requirement for the System Extension Lenders' Consent under the Lending Agreements.

48. EFFECT OF TERMINATION AND TRANSITIONAL ARRANGEMENTS

48.1 Termination

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a Notice of termination or termination on the Expiry Date pursuant to Section 47.4, this Section 48 shall apply in respect of such termination.

48.2 Continued Effect - No Waiver

- (a) Notwithstanding any breach of this Project Agreement by a Party, the other Party may elect to continue to treat this Project Agreement as being in full force and effect and to enforce its rights under this Project 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 Project Agreement, including any right to terminate this Project Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

48.3 Continuing Performance

- (a) Subject to any exercise by Contracting Authority of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 - Compensation on Termination) notwithstanding the giving of any Notice of default or Notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 48.

48.4 Effect of Notice of Termination

- (a) On the service of a Notice of termination, or termination on the Expiry Date pursuant to Section 47.4:
- (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to Contracting Authority as shall not already have been transferred to Contracting Authority pursuant to Section 55.1,

Project Co shall transfer to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than the Encumbrances caused or consented to by Contracting Authority), such part of the Works, the Project Co System Infrastructure, the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure and the New Railway Company Infrastructure as shall have been constructed and such items of plant, infrastructure and equipment as shall have been procured by Project Co, and, if Contracting Authority so elects:

- (A) all plant, equipment and materials (other than those referred to in Section 48.4(a)(i)(B)) on or near to the Site shall remain available to Contracting Authority for the purposes of completing the Works; and
 - (B) all construction plant and equipment shall remain available to Contracting Authority for the purposes of completing the Works, subject to payment by Contracting Authority of the Construction Contractor's reasonable charges;
- (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to Contracting Authority (to the extent such items have not already been delivered to Contracting Authority) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works, the Project Co System Infrastructure, the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure and the New Railway Company Infrastructure;
- (iii) in so far as title shall not have already passed to Contracting Authority pursuant to Section 55.1 or Section 48.4(a)(i), Project Co shall hand over to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than any Encumbrances caused or consented to by Contracting Authority), the Project Co System Infrastructure, the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure and the New Railway Company Infrastructure together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Project Operations and all facilities and equipment including, notwithstanding that termination may occur prior to the Expiry Date, the verification and transfer of inventory as set forth in Part 5 (Expiry Date Requirements) of the Project Co Services Requirements, and to the extent that any such assets or rights are not capable of being transferred by Project Co to Contracting Authority, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by Contracting Authority in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;

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- (iv) if Contracting Authority so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Construction Contract and the Service Contract), and any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Project Operations or to protect the interests of Project Co, shall be novated or assigned to Contracting Authority or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with any Contractor shall be made to Contracting Authority pursuant to, and subject to, the terms of the applicable Direct Agreement;
- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if Contracting Authority so elects, execute such sale) to Contracting Authority 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 27 - Dispute Resolution Procedure), free from all Encumbrances (other than any Encumbrances caused or consented to by Contracting Authority), all or any part of the stocks of material and other assets, road vehicles, construction equipment, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the Project Co System Infrastructure, and reasonably required by Contracting Authority in connection with the operation of the Project Co System Infrastructure or the performance of the Project Co Services;
- (vi) Project Co shall deliver to Contracting Authority (to the extent such items have not already been delivered to Contracting Authority) one complete set of:
- (A) the most recent Record Drawings in the format that Contracting Authority, acting reasonably, considers most appropriate at the time showing all alterations made to the Project Co System Infrastructure since the Substantial Completion Date;
 - (B) the most recent maintenance, operation and training manuals for the Project Co System Infrastructure; and
 - (C) current regulations and standards governing the Project Co System Infrastructure.
- (vii) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to Contracting Authority, free from all Encumbrances (other than any Encumbrances caused or consented to by Contracting Authority), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Project Agreement and included in the Project Co System Infrastructure, the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure, the New Metrolinx Infrastructure, the New 407 ETR Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure and the New Railway Company Infrastructure;

- (viii) Project Co shall deliver to Contracting Authority all information, reports, documents, records and the like referred to in Section 37, including as referred to in Schedule 26 - Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to Contracting Authority);
- (ix) in the case of the termination of this Project Agreement on the Expiry Date in accordance with Section 47.4, the Project Co System Infrastructure and elements of the Project Co System Infrastructure shall be in the condition required in accordance with Section 50 and Schedule 24 - Expiry Transition Procedure; and
- (x) in the case of termination prior to the Expiry Date, Project Co shall implement the requirements set out in Sections 2.2, 2.3(a)(ii) and 2.5 to 2.9 of Part 5 to Schedule 15-3 of this Project Agreement, taking into account the circumstances of termination occurring prior to the Expiry Date, and meet any timeframes set out in the notice of termination for the implementation of such requirements.

48.5 Ownership of Information

- (a) Subject to Section 51, all information obtained by Project Co, including the Record Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Project Operations accumulated over the course of the Project Term shall be the property of Contracting Authority and upon termination of this Project Agreement shall be provided or returned to Contracting Authority, as applicable, in electronic format acceptable to Contracting Authority, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

48.6 Provision in Subcontracts

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that Contracting Authority shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 48.

48.7 Transitional Arrangements

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall, subject to the continued performance of Project Co Services pursuant to Sections 3.2 and 3.3 of Schedule 23 - Compensation on Termination if applicable:
 - (i) cooperate fully with Contracting Authority and any successors providing services in the nature of any of the Project Co Services and any part of the Project Co Services in order to achieve a smooth transfer of the manner in which the Project Co Services are

- performed and to avoid or mitigate, in so far as reasonably practicable, any inconvenience or any risk to the health and safety of any System Users;
- (ii) as soon as practicable remove from the Lands all property belonging to Project Co or any Project Co Party that is not acquired by Contracting Authority pursuant to Section 48.4 or otherwise, and, if Project Co has not done so within 60 days after any Notice from Contracting Authority requiring it to do so, Contracting Authority 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 Project Co;
 - (iii) forthwith deliver to the Contracting Authority Representative:
 - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Project Co System Infrastructure; and
 - (B) to the extent transferable and without prejudice to Contracting Authority's rights pursuant to Section 51, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Project Co System Infrastructure; and
 - (iv) as soon as practicable vacate the Lands and, without limiting Project Co's obligations under Schedule 24 - Expiry Transition Procedure, shall leave the Lands and the Project Co System Infrastructure in a safe, clean and orderly condition.
- (b) If Contracting Authority wishes to conduct a competition or procurement 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 Project Co Services or any part of the Project Co Services, following the expiry of this Project Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with Contracting Authority fully in such competition process, including by:
- (i) providing any information which Contracting Authority may reasonably require to conduct such competition or procurement, including all information contained in any asset management system maintained by Project Co not otherwise transferred to Contracting Authority and including any information which may be Sensitive Information for such purpose; and
 - (ii) assisting Contracting Authority by allowing any or all participants in such competition process unrestricted access to the Metrolinx Lands and the Project Co System Infrastructure.

48.8 Termination upon Aforesaid Transfer

- (a) On completion of Project Co's obligations pursuant to this Section 48, this Project Agreement shall terminate and, except as provided in Section 48.9, all rights and obligations of Contracting

Authority and Project Co under this Project Agreement shall cease and be of no further force and effect.

48.9 Survival

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
- (i) all representations, warranties and indemnities under this Project Agreement; and
 - (ii) Sections 1.2, 1.3, 5, 7, 15.2, 16.1, 16.2(a), 16.3(a), 16.4(a), 16.5(a), 24.6, 25.11, 25.15, 31.1, 31.5, 32, 34.6, 34.8, 34.12, 34.13, 34.14, 35, 36, 37, 45.6, 46.3, 47.4, 48, 49, 50, 51 with the exception of 51.4(b), 51A, 52, 53, 55, 56, 57, 58, 60.3, 61.1, 64.4, 64.8, 64.9, 64.10, 64.11 and 64.12 of this Project Agreement, Schedule 7 – Mobility Matters, Schedule 8 – Energy Matters, Schedule 23 - Compensation on Termination, Sections 2, 4 and 5 of Schedule 24 - Expiry Transition Procedure, Sections 1.2 to 1.8 of Schedule 26 - Record Provisions, Schedule 27 - Dispute Resolution Procedure, Sections 2.1 – 2.6, and 3.2-3.9 of Schedule 37 – Intellectual Property, Schedule 39 – System Extension and any other provisions of this Project Agreement which are expressed to survive termination and which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 47.4.

49. COMPENSATION ON TERMINATION

49.1 Compensation on Termination

- (a) If this Project Agreement is terminated in accordance with the terms hereof, then Schedule 23 - Compensation on Termination shall apply and Contracting Authority shall pay Project Co any applicable compensation on termination.

49.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 49.2(b), any compensation paid pursuant to this Section 49, including pursuant to Schedule 23 - Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and Contracting Authority, 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 Project Agreement, and the circumstances leading to such breach or termination, and Project Co and Contracting Authority shall be precluded from exercising 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 49.2(a) shall be without prejudice to:

- (i) any liability of either Party to the other, including under the indemnities contained in this Project 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 34.12 or taken into account pursuant to Schedule 23 - Compensation on Termination in determining or agreeing upon the Contracting Authority Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum, Breach of Refinancing 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 48.9 of this Project 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 amount owing to Contracting Authority in relation to:
 - (A) Taxes or tax withholdings, including workers' compensation levies;
 - (B) fines, penalties or restitution orders by a court under any Federal or Provincial statute;
 - (C) any order made by a court under the *Civil Remedies Act* (Ontario); and
 - (D) any fraud or other criminal offence committed against Contracting Authority.

50. EXPIRY TRANSITION PROCEDURE

50.1 Expiry Transition

- (a) Project Co and Contracting Authority shall each comply with the requirements of Schedule 24 - Expiry Transition Procedure.

51. INTELLECTUAL PROPERTY

51.1 Ownership of Intellectual Property or LRV Intellectual Property

- (a) Subject to Section 51.4 and except with respect to the Revenue Vehicle Deliverables, the Ownership of Intellectual Property shall be as set out in Schedule 37 – Intellectual Property. Project Co and Contracting Authority shall each comply with the requirements of Schedule 37 – Intellectual Property.
- (b) Ownership of the LRV Intellectual Property shall be as set forth in Section 51A.

51A LRV INTELLECTUAL PROPERTY

51A.1 Ownership of LRV Intellectual Property

- (a) The Parties agree that all LRV Intellectual Property developed by the Revenue Vehicle Manufacturer and ownership rights therein shall remain vested in the Revenue Vehicle Manufacturer. The Parties agree that all LRV Intellectual Property developed by any other person and ownership rights therein shall remain vested in such person.
- (b) Project Co shall be responsible for the payment of all fees, royalties, and other charges, if any, that may be payable under the terms of any licence or commission in respect of the design, manufacture, supply, use, maintenance, repair, servicing and ownership of the Revenue Vehicle Deliverables, the Warranty Spares and the LRV Software and any work done or method employed in the carrying out by Project Co of its obligations pursuant to this Project Agreement.

51A.2 Licence to Use

- (a) Project Co, to the extent possible at the date of this Project Agreement, shall ensure that the Revenue Vehicle Manufacturer grants and otherwise shall, at its own cost and as soon as reasonably practicable (and in any event before the delivery of any portion of the Revenue Vehicle Deliverables to which it relates), grant or procure the grant, to Contracting Authority, any Contracting Authority Party, Project Co and any Project Co Party a royalty-free, non-exclusive, irrevocable, perpetual, non-transferable (subject to the terms hereof) world-wide licence to use, reproduce or exploit, free of charge, all LRV Intellectual Property required in connection only with the commissioning, operation, maintenance and repair (and, in the event that this Section 51A.2(a) applies, for the manufacture) of the Revenue Vehicle Deliverables, the Warranty Spares and the LRV Software.
- (b) In the event of a VSC Event of Default, any one of Contracting Authority, any Contracting Authority Party, Project Co or any Project Co Party may use, copy or reproduce the LRV Intellectual Property and LRV Software required solely for the purposes of the manufacture, operation, maintenance and repair or replacement of the Revenue Vehicle Deliverables, the Warranty Spares and the LRV Software referred to in Section 51A.2(a). Should such manufacture, operation, maintenance and repair or replacement require the release or disclosure in whole or in part of the LRV Intellectual Property and LRV Software to a third party (the “**Authorized Third Party**”), the release or disclosure shall be made subject to a prohibition against further use, release or disclosure. The LRV Intellectual Property and LRV Software shall only be used by an Authorized Third Party for the sole purpose of the continuing operation, maintenance, repair and replacement of the Revenue Vehicle Deliverables. Any one of Contracting Authority, a Contracting Authority Party, Project Co or a Project Co Party shall not, and shall cause any Authorized Third Party not to (other than pursuant to the previous sentence of this Section 51A.2(b)), manufacture for the purposes of profit, sale or resale. Nothing herein shall impair the right of Contracting Authority, any Contracting Authority Party, Project Co or any Project Co Party to use similar or identical LRV Intellectual Property or LRV Software acquired legally from other sources, for such purposes.

51A.3 Sublicense Rights

- (a) Project Co shall ensure that each of Contracting Authority, any Contracting Authority Party, Project Co and any Project Co Party shall have the right to grant sub-licences of the rights granted pursuant to Section 51A.2(b) to:
- (i) a manufacturer in the circumstances and under the terms and conditions identified in Section 51A.2(b); and
 - (ii) to any other person with the prior written consent of the Revenue Vehicle Manufacturer, such consent not to be unreasonably withheld or delayed.
- (b) Project Co shall ensure that all LRV Intellectual Property and LRV Software used in connection with the performance of its obligations under this Project Agreement is either vested in the Revenue Vehicle Manufacturer, or licensed to the Revenue Vehicle Manufacturer and that the terms of any licence granted to the Revenue Vehicle Manufacturer permits the sub-licensing of such LRV Intellectual Property and LRV Software to Contracting Authority, any Contracting Authority Party, Project Co or any Project Co Party, with the right to permit further assignment and sub-licensing by such persons in accordance with the provisions of Sections 51A.2 and 51A.3.

51A.4 Copyright

- (a) Subject to the provisions of Section 51A.2, the copyright vesting in all Required Documents and any other documents provided by the Revenue Vehicle Manufacturer under or pursuant to the provisions of the Revenue Vehicle Supply Contract shall remain vested in the Revenue Vehicle Manufacturer (or its sub-contractors or in such other person in whom the copyright vests as at that time as the case may be), provided that Project Co shall ensure that each of Contracting Authority, any Contracting Authority Party, Project Co and any Project Co Party shall have the right to reproduce (solely for their own purposes, and for the purposes of any sub-licencee in accordance with Section 51A.3) such documents in connection with the commissioning, operation, maintenance, repair, replacement or manufacture of the Revenue Vehicle Deliverables, the Warranty Spares or the LRV Software.
- (b) Project Co shall ensure that the copyright vesting in any documents provided by Contracting Authority, any Contracting Authority Party, Project Co and any Project Co Party under or pursuant to the provisions of the Revenue Vehicle Supply Contract shall remain vested in such person, provided that the Revenue Vehicle Manufacturer shall have the right to reproduce such documents in connection with its obligations under the Revenue Vehicle Supply Contract.

51A.5 Updates

- (a) Project Co shall from the date of Acceptance of the first LRV until the date of termination of the Revenue Vehicle Supply Contract, supply to Contracting Authority, any Contracting Authority Party, Construction Contractor and any Project Co Party all of the LRV Software and such updates, upgrades, changes and modifications to the LRV Software (and all other software licensed to Contracting Authority, any Contracting Authority Party, Construction Contractor and

any Project Co Party pursuant to Section 51A.2) as are required in order for Project Co to comply with its obligations under this Project Agreement.

- (b) Without prejudice to Contracting Authority's rights pursuant to any other provision of this Project Agreement, Project Co shall promptly correct at its own cost and expense any identified error, discrepancy or omission in any of the Required Documents, including those related to LRV Software.
- (c) Project Co shall supply Contracting Authority with copies of the Required Documents, including those related to LRV Software, in such form as agreed by Contracting Authority and Project Co in relation to each Revenue Vehicle Deliverable in accordance with the provisions of this Project Agreement.
- (d) In the case of LRV Software to be licensed to Contracting Authority, any Contracting Authority Party, Project Co and any Project Co Party pursuant to Section 51A.2, Project Co shall ensure that copies of the object codes of such LRV Software are provided to such person on the date of termination of the Revenue Vehicle Supply Contract, save to the extent that Project Co has prior to the date of termination, already provided such object code to such person, whether due to such object code being integrated within a Revenue Vehicle Deliverable or otherwise.

51A.6 Other LRV Intellectual Property Provisions

- (a) Project Co shall, with all due diligence, execute such documents and take such other commercially reasonable steps as may be required by Contracting Authority, any Contracting Authority Party, or any Project Co Party to give effect to the provisions of Section 51A.
- (b) Project Co shall comply with its obligations in relation to the LRV Software documentation requirements specified in the Output Specifications.
- (c) Where Contracting Authority, any Contracting Authority Party, Project Co, Construction Contractor or any Project Co Party has the right to modify any LRV Intellectual Property licensed by the Revenue Vehicle Manufacturer, Project Co shall ensure that all authors of such LRV Intellectual Property have waived all moral rights that such authors may have therein in favour of such persons and their respective successors, assigns and licensees.
- (d) The provisions of this Section 51A shall survive termination of this Project Agreement.

51.2 Licenses to Intellectual Property

- (a) Schedule 37 – Intellectual Property sets out the terms on which Intellectual Property used or supplied in connection with the Project will be licenced.

51.3 Representation and Warranty

- (a) Project Co represents, warrants and covenants to Contracting Authority that:
- (i) Project Co has and shall have the full and unencumbered right to provide all rights and licenses granted to Contracting Authority in this Project Agreement and to make all assignments of Intellectual Property as contemplated in this Project Agreement and to otherwise fully comply with the terms and requirements of Schedule 37 – Intellectual Property and its obligations therein;
 - (ii) any Intellectual Property licensed or assigned to Contracting Authority pursuant to this Project Agreement does not and shall not infringe, and is not and shall not be misappropriation of, any third party Intellectual Property rights;
 - (iii) as of Commercial Close:
 - (A) Project Co has not received any alleged infringement or misappropriation notices from third parties regarding any such Intellectual Property; and
 - (B) no fact is known to Project Co (including in respect of any actual, pending or threatened disputes, claims, suits, actions or proceedings or any other circumstance or event) that will, or could reasonably, effect, limit or prevent Project Co from fully complying with this Section 51.3(a).

51.4 Jointly Developed Materials

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials or Intellectual Property are developed jointly by,
- (i) Project Co or any Subcontractor and Contracting Authority to the exclusion of any other party pursuant to this Project Agreement or in relation to the Project Co System Infrastructure, the New Metrolinx Infrastructure, the Metrolinx Lands or the Project Operations (the “**Contracting Authority Jointly Developed Materials**”);
 - (ii) Project Co or any Subcontractor and the City of Mississauga to the exclusion of any other party in relation to the New City of Mississauga Infrastructure or the City of Mississauga’s lands (the “**City of Mississauga Jointly Developed Materials**”);
 - (iii) Project Co or any Subcontractor and the City of Brampton to the exclusion of any other party in relation to the New City of Brampton Infrastructure or the City of Brampton’s lands (the “**City of Brampton Jointly Developed Materials**”);
 - (iv) Project Co or any Subcontractor and MTO to the exclusion of any other party in relation to the New MTO Infrastructure or the Province’s lands (the “**MTO Jointly Developed Materials**”);

- (v) Project Co or any Subcontractor and Region of Peel to the exclusion of any other party in relation to the New Region of Peel Infrastructure or the Region of Peel's lands (the "**Region of Peel Jointly Developed Materials**");
- (vi) Project Co or any Subcontractor and each Railway Company Owner to the exclusion of any other party in relation to the Railway Company Owner's New Railway Company Infrastructure (the "**Railway Company Owner Jointly Developed Materials**"); or
- (vii) Project Co or any Subcontractor and 407 ETR to the exclusion of any other party in relation to the New 407 ETR Infrastructure or 407 ETR's or the Province's lands (the "**407 ETR Jointly Developed Materials**")

(together, the "**Jointly Developed Materials**"), then the Parties hereby acknowledge and agree that,

- (viii) Contracting Authority shall be the sole and exclusive owner of all right, title and interest in and to the Contracting Authority Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and Project Co shall, at the request of Contracting Authority, execute such further agreements and cause the Subcontractors to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision;
- (ix) the City of Mississauga shall be the sole and exclusive owner of all right, title and interest in and to the City of Mississauga Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and that Project Co shall, at the request of the City of Mississauga, execute such further agreements and cause the Subcontractors to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision;
- (x) the City of Brampton shall be the sole and exclusive owner of all right, title and interest in and to the City of Brampton Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and that Project Co shall, at the request of the City of Brampton, execute such further agreements and cause the Subcontractors to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision;
- (xi) MTO shall be the sole and exclusive owner of all right, title and interest in and to the MTO Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and that Project Co shall, at the request of MTO, execute such further agreements and cause the Subcontractors to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision;
- (xii) Region of Peel shall be the sole and exclusive owner of all right, title and interest in and to the Region of Peel Jointly Developed Materials, any Intellectual Property associated

therewith and any and all Modifications thereto and that Project Co shall, at the request of Region of Peel, execute such further agreements and cause the Subcontractors to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision;

- (xiii) each Railway Company Owner shall be the sole and exclusive owner of all right, title and interest in and to its Railway Company Owner Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and that Project Co shall, at the request of each Railway Company Owner, execute such further agreements and cause the Subcontractors to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision; and
 - (xiv) 407 ETR shall be the sole and exclusive owner of all right, title and interest in and to the 407 ETR Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and that Project Co shall, at the request of 407 ETR, execute such further agreements and cause the Subcontractors to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) Contracting Authority hereby grants Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Subcontractor, to use the Contracting Authority Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable. For clarity, the licence granted to Project Co in accordance with this Section 51.4(b) shall not extend to any City of Mississauga Jointly Developed Materials, City of Brampton Jointly Developed Materials, MTO Jointly Developed Materials, Region of Peel Jointly Developed Materials, Railway Company Owner Jointly Developed Materials or 407 ETR Jointly Developed Materials.
- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to,
- (i) Contracting Authority, in the case of the Contracting Authority Jointly Developed Materials;
 - (ii) the City of Mississauga, in the case of the City of Mississauga Jointly Developed Materials;
 - (iii) the City of Brampton, in the case of the City of Brampton Jointly Developed Materials;
 - (iv) MTO, in the case of MTO Jointly Developed Materials;
 - (v) Region of Peel, in the case of Region of Peel Jointly Developed Materials;

- (vi) each Railway Company Owner in the case of its Railway Company Owner Jointly Developed Materials; and
 - (vii) 407 ETR, in the case of 407 ETR Jointly Developed Materials;.
- (d) In the event of any inconsistency between this Section 51.4 and any provision of Schedule 37 – Intellectual Property, the wording of this Section 51.4 shall prevail.

51.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this Section 51 or Schedule 37 – Intellectual Property are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of Contracting Authority, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable Contracting Authority or its nominee to access and otherwise use, subject to the payment by Contracting Authority of any relevant fee, such data, materials and documents in accordance with rights granted pursuant to Schedule 37 – Intellectual Property.
- (b) For the purposes of Section 51.5(a), “use” has the meaning set out in Schedule 37 – Intellectual Property, and includes the Limited Modification Rights.
- (c) Without limiting the obligations of Project Co under Section 51.5(a), Project Co shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in this Section 51 in accordance with Good Industry Practice. Project Co shall submit to the Contracting Authority Representative Project Co’s proposals for the back-up and storage in safe custody of such data, materials and documents and Contracting Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the Contracting Authority Representative has not objected. Project Co may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Contracting Authority Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 51.5(c) may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure with reference to Good Industry Practice.

51.6 Contracting Authority Trade-Marks

- (a) Project Co shall not:
 - (i) use any Contracting Authority Trade-Marks without obtaining a trade-mark licence on terms and conditions mutually satisfactory to Contracting Authority and Project Co, each acting reasonably; or
 - (ii) use the names or any identifying logos or otherwise of Contracting Authority or the Contracting Authority Representative in any advertising or permit them so to be used except with the prior written consent of Contracting Authority.

51.7 Confidential Information

- (a) It is expressly acknowledged and agreed that nothing in this Section 51 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.

51.8 Government Use of Documents

- (a) Project Co hereby disclaims any right, title or interest of any nature whatsoever it may have in or to this Project Agreement that might prohibit or otherwise interfere with Contracting Authority's ability to use this Project Agreement in any manner desired by Contracting Authority.
- (b) Project Co hereby consents to the use by Contracting Authority of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by Contracting Authority (in consultation with Project Co) of any information supplied in confidence to Contracting Authority by Project Co in circumstances where disclosure may be refused under Section 17(1) of FIPPA.

51.9 Restrictions

- (a) The Parties hereby agree that either Party may use the Project Know-How for any purpose, provided, however, that neither Project Co nor any Subcontractor 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 Contracting Authority, the Intellectual Property of any Contracting Authority Party or any third party provided by Contracting Authority, the Confidential Information of Contracting Authority or the Confidential Information of any Contracting Authority Party or any third party provided by Contracting Authority, including the Output Specifications unless such use is otherwise permitted pursuant to this Project Agreement in order to enable Project Co and the Project Co Parties to meet Project Co's obligations under this Project Agreement.
- (b) Project Co hereby covenants and agrees that it will not make any commercial use, including 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 Contracting Authority, the Intellectual Property of any Contracting Authority Party or any third party provided by Contracting Authority, the Confidential Information of Contracting Authority or the Confidential Information of any Contracting Authority Party or any third party provided by Contracting Authority, including the Output Specifications, 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 Contracting Authority, the Intellectual Property of any Contracting Authority Party provided by Contracting Authority, the Confidential Information of Contracting Authority or the Confidential Information of any Contracting Authority Party provided by Contracting Authority, including the Output Specifications.

- (c) Nothing in this Section 51.9 shall be deemed to grant to any party (including any Subcontractor or any personnel thereof) any right or license in respect of any other party's or other persons' Intellectual Property.

52. CONFIDENTIALITY/COMMUNICATIONS

52.1 Disclosure

- (a) Subject to Sections 52.1(b), 52.1(c) and 52.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, Contracting Authority has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as Contracting Authority, in its sole discretion, may consider appropriate. In exercising its discretion, Contracting Authority will be guided by the principles set out in Sections 52.1(b) and 52.1(c).
- (b) Contracting Authority will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under Section 17(1) of FIPPA.
- (c) Notwithstanding Section 52.1(b), but subject to Section 52.2, 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 Project Co (or any Project Co Party), Contracting Authority may disclose such information.
- (d) Notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that this Project Agreement and any or all of the terms thereof are subject to the Open Data Directive and that the Ontario ministries and agencies are required to disclose or publish certain data in accordance with the Open Data Directive.

52.2 Redaction

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), Contracting Authority shall provide to Project Co a redacted version of this Project 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 52.1(b). The Parties acknowledge and agree that the Annual Service Payment, but not the breakdown thereof, may be disclosed.

- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 52.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, and Contracting Authority 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.

52.3 Disclosure to Government

- (a) Project Co acknowledges and agrees that subject to compliance with FIPPA, Contracting Authority will be free to use, disclose or publish (including on websites) any information, including Confidential Information, on such terms and in such manner as Contracting Authority sees fit.
- (b) For greater certainty, Project Co acknowledges and agrees that, subject only to the removal of any information which Project Co is (or would be) entitled to refuse to disclose pursuant to section 17(1) of FIPPA, this Project Agreement, any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) are public documents and information and, as such, may be disclosed by Contracting Authority.

52.4 Freedom of Information and Protection of Privacy Act (Ontario)

- (a) The Parties acknowledge and agree that FIPPA applies to Contracting Authority, and that Contracting Authority is required to fully comply with FIPPA.
- (b) Contracting Authority shall, within the time periods provided in FIPPA for a party to exercise rights to prevent disclosure of information, advise Project Co of any request for Confidential Information that relates to Project Co (or any Project Co Party) or of Contracting Authority's intention to voluntarily release any information or documents which contain Confidential Information that relates to Project Co (or any Project Co Party).

52.5 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 52 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 Project Agreement.
- (b) Project Co may:

- (i) disclose in confidence to the Lenders and prospective Lenders, including any trustee and agents of the Lenders and their respective professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Project Operations or which Project Co is obliged to supply by the terms of the Lending Agreements; and
 - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement, except that with respect to any Confidential Information relating to or in respect of the Vehicle Supplier Activities, any such disclosure shall require the prior written consent or agreement of the Revenue Vehicle Manufacturer.
- (c) Project Co acknowledges that Contracting Authority may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, including such governmental purposes as:
- (i) the development of Contracting Authority's alternate procurement and financing policies and framework; or
 - (ii) any procurement or tendering process to be carried out by Contracting Authority prior to the Termination Date with a view to entering into an agreement with a person(s) for one or more services, which services may be similar to any one or more of the Project Co Services.
- Contracting Authority will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes contemplated by this Section 52.5(c).
- (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 Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
 - (e) Each Party shall,
 - (i) 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 with less than a reasonable degree of care;
 - (ii) if legally compelled to disclose any Confidential Information,
 - (A) provide the disclosing Party with prompt Notice to that effect to allow the disclosing Party to seek any appropriate remedies and cooperate with the disclosing Party and its legal counsel; and

- (B) disclose only that portion of the Confidential Information that it is legally required to disclose; and
- (iii) provide Confidential Information to the disclosing Party upon demand by the disclosing Party.

Section 52.5(e)(iii) shall not apply to Confidential Information in relation to which a Party has been provided a licence pursuant to Schedule 37 – Intellectual Property provided that the use of such Confidential Information is in accordance with Schedule 37 – Intellectual Property.

- (f) Without limiting the generality of this Section 52.5, Project Co shall comply with the document control and security protocol submitted by Project Co pursuant to Section 20.10 and approved by Contracting Authority, which protocol shall prescribe limitations on the use, disclosure and storage of this Project Agreement and any other Confidential Information specified by Contracting Authority.

52.6 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 Commercial Close, 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 and the Confidant came into possession of such information without being in breach of this Project Agreement;
 - (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 and an opportunity to contest such requirement prior to disclosure;
- (viii) the information is disclosed to Contracting Authority upon a termination of this Project Agreement, pursuant to Section 48 or is otherwise required by Contracting Authority for the purposes of performing (or having performed) the Project Operations, including the design or construction of the Project Co System Infrastructure, the operation, maintenance or improvement of the Project Co System Infrastructure, or any other operations or services the same as, or similar to, the Project Operations, or to exercise any right granted pursuant to Schedule 37 – Intellectual Property that survives the termination of this Project Agreement; or
- (ix) the information would not be exempt from disclosure under FIPPA.

52.7 Survival of Confidentiality

- (a) The obligations in Section 52.1 to Section 52.6 will cease on the date that is 3 years after the Termination Date and accordingly shall survive the termination of the Project Agreement.

52.8 Communication and Public Engagement Protocol

- (a) The Parties shall comply with the provisions of Schedule 18 - Communication and Public Engagement Protocol.

52.9 Confidentiality of Intellectual Property

- (a) Nothing in this Section 52 shall prevent Contracting Authority from exercising any right granted to Contracting Authority pursuant to Schedule 37 – Intellectual Property. Contracting Authority shall have the right to disclose Confidential Information of Project Co Parties when exercising the rights granted pursuant to Schedule 37 – Intellectual Property in accordance therewith.

53. PERSONAL INFORMATION

53.1 General

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of Contracting Authority and: (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform Project Co's obligations under this Project Agreement; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by Contracting Authority.

- (c) Project Co shall, and shall require each Project Co 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 Project Co, each Project Co Party or to the Project Operations.
- (d) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 53.
- (e) Project Co shall allow Contracting Authority on reasonable Notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 53 including the measures used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of Contracting Authority with respect to Project Co or each Project Co Party's handling of Personal Information.
- (f) Project Co shall not subcontract or delegate to any third party any of the Project Operations that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of Contracting Authority and without obtaining written contractual commitments of such third party substantially the same as those of this Section 53.

53.2 Protection of Personal Information

- (a) Project Co shall implement and use, and shall require each Project Co 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 Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Project Co shall and shall cause each Project Co Party to restrict access to Personal Information to only those authorized employees and permitted Project Co Parties that require access to such Personal 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 53.
- (c) Upon termination of this Project Agreement or upon request of Contracting Authority, whichever comes first, Project Co shall immediately cease all use of and return to Contracting Authority or, at the direction of Contracting Authority, 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 Section 53.2(c), 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) Project Co shall immediately inform Contracting Authority of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Project Co or any Project Co Party or any other breach of this Section 53.
- (f) Contracting Authority may from time to time require that Project Co and any Project Co Party or member of its or their staff execute and deliver within two Business Days of such request an agreement satisfactory to Contracting Authority, acting reasonably, requiring such person to keep Personal Information confidential.

53.3 Personal Information

- (a) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to Contracting Authority and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Law 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 53 and any other provision of the Project Agreement, this Section 53 shall prevail.
- (c) The obligations in this Section 53 shall survive the termination of this Project Agreement.

54. INSURANCE AND PERFORMANCE SECURITY

54.1 General Requirements

- (a) Project Co and Contracting Authority shall comply with the provisions of Schedule 25 - Insurance and Performance Security Requirements.

54.2 No Relief from Liabilities and Obligations

- (a) Neither compliance nor failure to comply with the insurance provisions of this Project Agreement shall relieve Project Co or Contracting Authority of their respective liabilities and obligations under this Project Agreement.

55. TITLE

55.1 Title

- (a) Subject to the provisions of Section 33, title to each item and part of the Project Co System Infrastructure or the New Third Party Infrastructure, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to Contracting Authority (or as Contracting Authority may direct) upon the receipt of such item on the Metrolinx Lands, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the Project Co System Infrastructure and the New Third Party Infrastructure or are to be affixed or attached to the Project Co System Infrastructure and the New Third Party Infrastructure prior to Substantial Completion shall pass to Contracting Authority (or as Contracting Authority may direct) at the time that such items are included in the Project Co System Infrastructure and the New Third Party Infrastructure or are to be affixed or attached to the Project Co System Infrastructure and the New Third Party Infrastructure.

56. INDEMNITIES**56.1 Project Co Indemnities to Contracting Authority**

- (a) Project Co shall indemnify and save harmless Contracting Authority and the Province Persons and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
- (i) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
 - (ii) any physical loss of or damage to all or any part of the Lands, lands owned by Metrolinx that are adjacent to the Lands (but that are not Metrolinx Lands), the Project Co System Infrastructure or the New Third Party Infrastructure, or to any equipment, assets or other property related thereto;
 - (iii) the death or personal injury of any person;
 - (iv) any physical loss of or damage to property or assets of any third party including, for clarity, any physical loss of or damage to Existing Third Party Infrastructure, or New Third Party Infrastructure after Handover to the applicable third party;
 - (v) any other loss or damage of any third party; or
 - (vi) Injurious Affection claims made by third parties,

in the case of Section 56.1(a)(i) to Section 56.1(a)(v), arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Project

Agreement by Project Co or any act or omission of Project Co or any Project Co Party, and in the case of Section 56.1(a)(vi) arising, directly or indirectly, out of, or in consequence of, or involving or relating to, any breach of this Project Agreement by Project Co or any Project Co Party or arising pursuant to Section 56.1(f), except, in all cases, to the extent caused, or contributed to, by:

- (vii) the breach of this Project Agreement by Contracting Authority; or
- (viii) in respect of Section 56.1(a)(i), deliberate or negligent act or omission of Contracting Authority or any Province Person; or
- (ix) in respect of Sections 56.1(a)(ii), 56.1(a)(iii), 56.1(a)(iv) or 56.1(a)(v), any act or omission of Contracting Authority or any Province Person; or
- (x) a deliberate or negligent act or omission of a System User that results in undue interference with Project Co's performance of the Project Co Services and Project Co 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 Contracting Authority or an appropriate Province Person, except to the extent:
 - (A) any such deliberate or negligent act or omission is caused or contributed to by Project Co or any Project Co Party; or
 - (B) the System User is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party.
- (b) Project Co shall indemnify and save harmless Contracting Authority and each of its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.
- (c) Project Co shall indemnify and save harmless Contracting Authority and each of its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
 - (i) the performance by Project Co of this Project 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 Project Co to obtain all necessary Project Co Permits, Licences and Approvals in accordance with this Project Agreement;
 - (ii) any Contamination or Worsened Contamination for which Project Co is responsible pursuant to Section 16.2; or

- (iii) the provision of assistance by Contracting Authority to Project Co pursuant to Section 9.7(e),

except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by Contracting Authority or by any act or omission of Contracting Authority or any Contracting Authority Party.

- (d) Without prejudice to Contracting Authority's rights under Section 45 and any other rights under this Project Agreement, if Contracting Authority exercises its step-in rights under any Direct Agreement, Project Co shall indemnify Contracting Authority for all obligations of Project Co assumed by Contracting Authority under the Contracts, and for all reasonable costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights.
- (e) Project Co shall indemnify Contracting Authority for damages suffered or incurred on account of: (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to Contracting Authority under Schedule 27 - Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by Contracting Authority, or from the date identified (if any) applicable to an amount determined as payable by Project Co to Contracting Authority under Schedule 27 - Dispute Resolution Procedure, up to and including the date of payment.
- (f) The Project Co indemnity set out in Section 56.1(a)(vi) shall also apply in the event of a third party Injurious Affection claim to the extent arising from Project Co's failure to comply with its obligation set out in Section 3.10 of Schedule 40 – Property Access Matters. For clarity,
- (i) this Section 56.1(f) shall apply only to the extent that the third party Injurious Affection claim is in respect of the specific property or properties that were affected by Project Co's failure to comply with its obligation set out in Section 3.10 of Schedule 40 – Property Access Matters; and
- (ii) to the extent that Project Co is obliged to pay a Property Access Closure Adjustment in respect of the specific property or properties that gave rise to the third party Injurious Affection claim that is the subject of the indemnity pursuant to this Section 56.1(f), such Property Access Closure Adjustment amount shall be applied to decrease the quantum of Project Co's indemnity to Contracting Authority in respect of the corresponding third party Injurious Affection claim.
- (g) Project Co shall defend, in accordance with the procedures of Section 56.3, and indemnify and save harmless Contracting Authority and the Province Persons and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:

- (i) any breach of Section 51.3;
 - (ii) any claim, suit, action or proceeding by a Person alleging that (x) any Intellectual Property licensed or assigned to and used by Contracting Authority pursuant to this Project Agreement; or (y) any Intellectual Property or other materials used by Project Co or any Project Co Party or any Subcontractor in the performance of the Project Operations and the Project, infringes or misappropriates any Intellectual Property rights of that Person, other than where such claim, suit, action or proceeding is directly caused by,
 - (A) the use of such Intellectual Property by Contracting Authority not in accordance with this Project Agreement or the applicable Technical Information; or
 - (B) the use of such Intellectual Property by Contracting Authority in combination with other products, software or equipment not supplied by or on behalf of Project Co or the Subcontractors and not authorized by any of them; and
 - (iii) any claim, suit, action or proceeding by any Licensor alleging that Project Co or any Project Co Party or any Subcontractor has used any Contracting Authority Supplied Third Party Intellectual Property in breach of Sections 3.1(a)(ii), 3.1(b), 3.1(c) or 3.1(d) of Schedule 37 – Intellectual Property.
- (h) Without limiting and in addition to the obligations in Section 56.1(g), if, as a result of a claim under Section 56.1(g)(i) or Section 56.1(g)(ii), all or any part of any Intellectual Property licensed or assigned to and used by Contracting Authority pursuant to this Project Agreement; or any Intellectual Property or other materials used by Project Co or any Subcontractor in the performance of the Project Operations and the Project (any or all of the foregoing the “**Infringing Material**”) becomes, or in Project Co’s opinion is likely to be, enjoined from use, Project Co will:
- (i) give notice to Contracting Authority of the same; and
 - (ii) at its sole option and expense, either:
 - (A) procure for itself and Contracting Authority, to the extent required, the right to continue to use the infringing element or component of the Infringing Material as contemplated in this Project Agreement; or
 - (B) modify the infringing element or component of the Infringing Material so that it is non-infringing without materially affecting the quality, performance and functionality of such infringing element or component, or replace the infringing element or component with a substitute of materially equivalent quality, performance and functionality.
- (i) Project Co shall defend, in accordance with the procedures of Section 56.3, and indemnify and save harmless Contracting Authority and the Province Persons and each of their respective

directors, officers, employees, agents and representatives from and against any and all Direct Losses and Indirect Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any third party claims on the grounds that any of the Revenue Vehicle Deliverables, the Warranty Spares or the LRV Software infringe the LRV Intellectual Property of the applicable third party, provided that:

- (i) if at any time, any allegation of infringement is made or in Project Co's opinion is likely to be made Project Co will inform Contracting Authority promptly and Project Co may, at Project Co's own expense, procure for Contracting Authority the right to continue using the infringing items on terms not restricting use of the same or modify or replace the infringing items so that the same cease to be infringing provided that such modification or replacement does not detract in any way from the performance or quality of any item of the Revenue Vehicle Deliverables, any Warranty Spare or the use of the LRV Software; and
- (ii) Project Co shall have no liability to Contracting Authority under this Section 56.1(i) to the extent that such alleged infringement arises in respect of property or rights supplied or granted by Contracting Authority to Project Co.

56.2 Contracting Authority Indemnities to Project Co

- (a) Contracting Authority shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them 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 or breach of this Project Agreement by Contracting Authority or any act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
 - (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by Contracting Authority or any deliberate or negligent act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co 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 Project Agreement by Contracting Authority or any deliberate or negligent act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

provided that there shall be excluded from the indemnity given by Contracting Authority any liability for the occurrence of risks against which Project Co is required to insure under this Project Agreement to the extent of the proceeds available or that should have been available but for a failure by Project Co to comply with its obligations to properly insure under this Project Agreement.

- (b) Contracting Authority shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Contracting Authority herein.
- (c) Contracting Authority shall indemnify Project Co for damages suffered or incurred on account of:
 - (i) any payment not duly made by Contracting Authority pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Contracting Authority; or (iii) an amount determined as payable by Contracting Authority to Project Co under Schedule 27 - Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by Contracting Authority to Project Co under Schedule 27 - Dispute Resolution Procedure, up to and including the date of payment.
- (d) IO shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by IO set out in Section 5.2(a).
- (e) Metrolinx shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Metrolinx set out in Section 5.2(b).

56.3 Conduct of Claims

- (a) This Section 56.3 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 Project 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 56, the Beneficiary shall give written Notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such Notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.

- (c) Subject to Sections 56.3(d), 56.3(e) and 56.3(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 56.3 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 Project Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 56.3(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 56.3(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 56.3(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 56.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where Contracting Authority is the Beneficiary, Contracting Authority 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 56.3(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 56.3 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 Project Agreement.

56.4 Mitigation - Indemnity Claims

- (a) For greater certainty, Section 64.4 applies to any indemnity given under this Project 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.

57. LIMITS ON LIABILITY**57.1 Indirect Losses**

(a) Subject to Section 57.1(b), without prejudice to Contracting Authority's rights under the Payment Mechanism, or the Parties' rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:

- (i) for punitive, exemplary or aggravated damages;
- (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
- (iii) a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,

(collectively, "**Indirect Losses**").

(b) With respect to the indemnity in Section 56.1(a)(i), the exceptions in Sections 57.1(a)(ii) and (iii) shall not apply as a result of, or in relation to, Contracting Authority's loss of use of the Project Co System Infrastructure or the New Third Party Infrastructure or a portion thereof, which for the purposes of Section 56.1(a)(i), shall be Direct Losses.

57.2 No Liability in Tort

(a) Subject to the indemnities provided herein, neither Contracting Authority nor any Province Persons shall be liable in tort to Project Co or any Project Co Party, and neither Project Co nor any Project Co Party shall be liable in tort to Contracting Authority or any Province Person in respect of any negligent act or omission of any such person relating to or in connection with this Project Agreement and no such person shall bring such a claim.

57.3 Sole Remedy

(a) Subject to:

- (i) any other rights of Contracting Authority expressly provided for in this Project Agreement; and
- (ii) Contracting Authority's right to claim, on or after termination of this Project Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Project Agreement by Project Co except to the extent that the same has already been recovered by Contracting Authority pursuant to this Project Agreement or has been taken into

account to reduce any compensation payable by Contracting Authority pursuant to Section 49,

the sole remedy of Contracting Authority in respect of a failure to perform the Project Co Services in accordance with this Project Agreement shall be the operation of the Payment Mechanism.

- (b) Nothing in Section 57.3(a) shall prevent or restrict the right of Contracting Authority 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 Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 25 - Insurance and Performance Security Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project 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 Project Agreement, or otherwise.
- (d) For clarity, the following shall apply with respect to the following deductions and liquidated damages set out in the Project Agreement:
 - (i) the liquidated damages paid by Project Co pursuant to Section 2.3(c) shall be the sole remedy of Contracting Authority for Project Co's failure to deliver to Contracting Authority any of the documents referred to in Section 1 of Schedule 2 – Completion Documents by the date of this Project Agreement (other than as a direct result of a breach by Contracting Authority of its obligations under Section 2.3(b)(ii)) if Contracting Authority does not waive such requirement, or for Financial Close not occurring by the Financial Close Target Date (other than as a direct result of a breach by Contracting Authority of its obligations under Section 2.3(b)(ii));
 - (ii) except as otherwise set out in Section 3.1 of Schedule 19 – Liquidated Damages, the Lakeshore West Line GO Train Delay Liquidated Damages paid by Project Co pursuant to Schedule 19 – Liquidated Damages for an individual Lakeshore West Line GO Train Delay shall be Contracting Authority's sole remedy for Contracting Authority's Specified Costs and the costs related to customer ticket refunds resulting from such Lakeshore West Line GO Train Delay, but shall not be Contracting Authority's sole remedy with respect to amounts that are not Specified Costs or are not costs related to customer ticket refunds;
 - (iii) the Lakeshore West Line Alternative Transportation Event Liquidated Damages paid by Project Co pursuant to Schedule 19 – Liquidated Damages for an individual Lakeshore West Line Alternative Transportation Event shall be Contracting Authority's sole remedy for Contracting Authority's Specified Costs and the other costs associated with operating a bus bridge or any other alternative transportation resulting from such Lakeshore West

Line Alternative Transportation Event, but shall not be Contracting Authority's sole remedy with respect to amounts that are not Specified Costs or are not the other costs associated with operating a bus bridge or any other alternative transportation;

- (iv) except as otherwise set out in Section 3.3 of Schedule 19 – Liquidated Damages, any CN Rail Train Delay Liquidated Damages paid by Project Co pursuant to Schedule 19 – Liquidated Damages for an individual CN Rail Train Delay, shall be Contracting Authority's sole remedy for damages that Contracting Authority is obliged to pay to CN Rail in respect of such CN Rail Train Delay;
- (v) the Cancelled Minor Track Closure Liquidated Damages paid by Project Co pursuant to Schedule 19 – Liquidated Damages for an individual Cancelled Minor Track Closure shall be Contracting Authority's sole remedy for the Specified Costs for such Cancelled Minor Track Closure, but shall not be Contracting Authority's sole remedy with respect to amounts that are not Specified Costs;
- (vi) the Failure to Vacate Liquidated Damages paid by Project Co pursuant to Schedule 19 – Liquidated Damages for an individual Failure to Vacate shall be Contracting Authority's sole remedy for the Specified Costs for such Failure to Vacate, but shall not be Contracting Authority's sole remedy with respect to amounts that are not Specified Costs;
- (vii) the Cancelled Major Track Closure Liquidated Damages paid by Project Co pursuant to Schedule 19 – Liquidated Damages for an individual Cancelled Major Track Closure shall be Contracting Authority's sole remedy for the Specified Costs for such Cancelled Major Track Closure, but shall not be Contracting Authority's sole remedy with respect to amounts that are not Specified Costs;
- (viii) **[Intentionally Deleted];**
- (ix) the Category A Key Individual Failure Liquidated Damages paid by Project Co pursuant to Schedule 19 – Liquidated Damages shall be Contracting Authority's sole remedy for Contracting Authority's Specified Costs arising from Project Co's failure to comply with Section 10.4(a), but shall not be Contracting Authority's sole remedy with respect to damages that may otherwise be incurred by Contracting Authority with respect to a delay to the Project caused by Project Co as a result of Project Co's contravention of Section 10.4(a);
- (x) the Category A Key Individual Replacement Liquidated Damages paid by Project Co pursuant to Schedule 19 – Liquidated Damages shall be Contracting Authority's sole remedy for Contracting Authority's Specified Costs arising from Project Co's failure to replace the applicable Key Individual in accordance with Section 10.4(c), but shall not be Contracting Authority's sole remedy with respect to damages that may otherwise be incurred by Contracting Authority with respect to a delay to the Project caused by Project Co as a result of Project Co's contravention of Section 10.4(c);

- (xi) the Specified Costs Substantial Completion Liquidated Damages paid by Project Co pursuant to Schedule 19 – Liquidated Damages shall be the sole remedy of Contracting Authority for the Specified Costs that may be claimed by Contracting Authority as a result of Project Co failing to achieve the requirements for the issuance of the Substantial Completion Certificate and the Substantial Completion Certificate not being issued on or before the Substantial Completion LD Commencement Date, but shall not be Contracting Authority’s sole remedy with respect to amounts that are not Specified Costs in connection with Project Co failing to achieve the requirements for the Substantial Completion Certificate and a Substantial Completion Certificate not being issued on or before the Substantial Completion LD Commencement Date;
- (xii) the LEED Silver Rating Liquidated Damages paid by Project Co pursuant to Schedule 19 – Liquidated Damages shall be the sole remedy of Contracting Authority in respect of Project Co’s failure to satisfy either or both of the requirements of Section 23.6(d)(i) or Section 23.6(d)(ii);
- (xiii) the amounts deducted from the Substantial Completion Payment pursuant to Schedule 7 – Mobility Matters and Schedule 40 – Property Access Matters shall not be Contracting Authority’s sole remedy with respect to exceedances in Lane Closures or Property Access Closures, which exceedances are contemplated in Schedule 7 – Mobility Matters or Schedule 40 – Property Access Matters, respectively; and
- (xiv) the amounts deducted from the Substantial Completion Payment pursuant to Schedule 21 – Construction Period Payments shall not be Contracting Authority’s sole remedy in respect of Project Co’s failure to perform in accordance with the Project Agreement.

57.4 Maximum Liability

- (a) Subject to Section 57.4(b), the maximum aggregate liability of each Party, shall,
 - (i) in respect of all claims under Section 56 which arise prior to the Substantial Completion Date or are related to the performance of the Works on or following the Substantial Completion Date, not exceed \$[REDACTED] (the “**Construction Period Limit**”); and
 - (ii) in respect of all claims under Section 56 which arise during the Operational Term and are related to the performance of the Project Operations other than the Works, not exceed \$[REDACTED] (the “**Operational Term Limit**”),

provided that the Construction Period Limit and the claims associated therewith shall be exclusive of the Operational Term Limit and the claims associated therewith. The Construction Period Limit and Operational Term Limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 - Insurance and Performance Security Requirements. Neither the Construction Period Limit nor the Operational Term Limit shall apply in cases of wilful misconduct or deliberate acts of wrongdoing.

- (b) Project Co’s maximum aggregate liability in respect of all claims under Section 56.1(a)(i) shall not exceed \$[REDACTED]. This limit 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 25 - Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (c) Nothing in this Section 57.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.
- (d) For clarity, nothing in this Section 57.4 shall restrict or limit, or establish any maximum liability, in respect of any amount payable, by Project Co to Contracting Authority, as the Lane Closure Adjustments or the Property Access Closure Adjustments pursuant to Schedule 7 – Mobility Matters or Schedule 40 – Property Access Matters.

57.5 Maximum Liability for Liquidated Damages and Total Construction Period Deductions

- (a) Project Co’s maximum aggregate liability in respect of its obligations to pay the following liquidated damages pursuant to Schedule 19 – Liquidated Damages shall not exceed \$[REDACTED]:
 - (i) Lakeshore West Line GO Train Delay Liquidated Damages;
 - (ii) Lakeshore West Line Alternative Transportation Event Liquidated Damages; and
 - (iii) CN Rail Train Delay Liquidated Damages.
- (b) Project Co’s maximum aggregate liability in respect of the following liquidated damages and Construction Period Deductions shall not exceed \$[REDACTED]:
 - (i) in respect of Project Co’s obligation to pay the following liquidated damages pursuant to Schedule 19 – Liquidated Damages:
 - (A) Cancelled Minor Track Closure Liquidated Damages;
 - (B) Failure to Vacate Liquidated Damages;
 - (C) Cancelled Major Track Closure Liquidated Damages;
 - (D) **[Intentionally Deleted]**;
 - (E) Category A Key Individual Failure Liquidated Damages;
 - (F) Category A Key Individual Replacement Liquidated Damages;
 - (G) Specified Costs Substantial Completion Liquidated Damages; and

- (H) LEED Silver Rating Liquidated Damages; and
- (ii) the amount of Total Construction Period Deductions calculated in accordance with Schedule 21 – Construction Period Payments.
- (c) None of the limits set out in Section 57.5(a) and Section 57.5(b) shall apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (d) Nothing in this Section 57.5 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

58. DISPUTE RESOLUTION PROCEDURE

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule 27 - Dispute Resolution Procedure.

59. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

59.1 Project Co Assignment

- (a) Project Co shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Project Agreement, any of the Contracts or any agreement entered into in connection with this Project Agreement without the prior written consent of Contracting Authority, which shall not be unreasonably withheld or delayed, and which shall, in any event, be conditional upon Project Co paying to Contracting Authority any amount calculated under Section 59.6(a)(ii) and that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliate is a Restricted Person or a person whose standing or activities may compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of any of the public transit systems within the Region of Peel so as to affect public confidence in any of the public transit systems within such area or the Project.
- (b) Section 59.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if Contracting Authority so requires.

59.2 Contracting Authority Assignment

- (a) Contracting Authority may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and Contracting Authority are parties:
 - (i) to the Province;
 - (ii) as may be required to comply with Applicable Law;
 - (iii) to any minister of the Province;

- (iv) to an agency of the Province having the legal capacity, power, authority and ability to become a party to and to perform the obligations of Contracting Authority under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of Contracting Authority's obligations hereunder and under the other Project Documents to which Contracting Authority is party in respect of the period from and after the assignment; and
 - (v) in circumstances other than those described in Sections 59.2(a)(i) to 59.2(a)(iv), with the prior written consent of Project Co; 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 Project Co that it will perform all the obligations of Contracting Authority hereunder and under any agreement in connection with this Project Agreement to which Project Co and Contracting Authority are parties in respect of the period from and after the assignment.
- (b) Contracting Authority shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 59.2.

59.3 Subcontractors

- (a) Project Co shall not subcontract any interest in this Project Agreement, or any of the Contracts, and shall not permit the Contractors to subcontract any interest in any of the Contracts to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities may compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of any of the public transit systems within the Region of Peel so as to affect public confidence in any of the public transit systems within such area or the Project.
- (b) Project Co shall not terminate, agree to the termination of or replace any Contractor unless Project Co has complied with Sections 7.2(a), 59.3(c) and 59.3(d) or received the prior written consent of Contracting Authority.
- (c) Subject to Section 59.3(d), if any of the Contracts shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Contractor, shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to Contracting Authority's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor or Service Provider that, and Project Co shall require that, any replacement enter into a contract upon the same or substantially similar terms as the person so replaced and into a direct agreement on the same terms as the Direct Agreement entered into by the person so replaced, unless any material variations are approved by Contracting Authority, acting reasonably.

59.4 Changes in Ownership and Control

- (a) No Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project.
- (b) No Change in Ownership of Project Co, or of any Control Party, shall be permitted:
- (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities may compromise (A) Contracting Authority's reputation or integrity, or (B) the nature of any of the public transit systems within the Region of Peel so as to affect public confidence in any of the public transit systems within such area or the Project; or
 - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Project Operations, the Governmental Activities or the availability of the Project Co System Infrastructure to System Users.
- (c) In the event that a person having Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project becomes a Restricted Person, Contracting Authority may:
- (i) in the case of an individual who becomes a Restricted Person, require that such Restricted Person be divested of his or her Direct or Indirect Power or Control; or
 - (ii) in any other circumstance, require a Change in Ownership so that the Restricted Person shall be divested of its Direct or Indirect Power or Control,
- in each case, on such terms as are satisfactory to Contracting Authority, in its discretion.
- (d) Project Co shall provide notice to Contracting Authority of any Change in Ownership of Project Co or of any Control Party, as the case may be, that is not a Change in Control within 5 Business Days after such Change in Ownership, and such notice shall include:
- (i) a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests, in each case prior to and following such Change in Ownership; and
 - (ii) a statement identifying the Excess Equity Gain arising from such Change in Ownership together with supporting calculations and documents.
- (e) Subject to Sections 59.4 (a), (b) and (c) and to the payment by Project Co of any Excess Equity Gain under Section 59.6(a)(i), no Change in Control of Project Co, or of any Control Party, shall

be permitted without the prior written consent of Contracting Authority, not to be unreasonably withheld or delayed.

- (f) Project Co shall provide notice to Contracting Authority of any proposed Change in Control of Project Co or of any Control Party, as the case may be, not less than 20 Business Days prior to such proposed Change in Control, and such notice shall include:
- (i) a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests in each case prior to and following any such proposed Change in Control;
 - (ii) as applicable, the legal name, registered address, directors and officers of, and nature of the business and activities carried on by, the person who would acquire control over Project Co or the relevant Control Party pursuant to such Change in Control; and
 - (iii) a statement identifying the Excess Equity Gain which would arise from such proposed Change in Control together with supporting calculations and documents.

Following the delivery to Contracting Authority of the notice referred to in this Section 59.4(f), Project Co shall provide Contracting Authority with such other information pertaining to the proposed Change in Control as Contracting Authority may reasonably request.

- (g) Upon request by Project Co and delivery of the information required by Contracting Authority, Contracting Authority shall advise Project Co whether the person described in such particulars is a Restricted Person or a person whose standing or activities may compromise (A) Contracting Authority's reputation or integrity, or (B) the nature of any of the public transit systems within the Region of Peel so as to affect public confidence in the public transit systems within such area or the Project.
- (h) This Section 59.4 shall not apply to a Change in Ownership or Change in Control or acquisition of Direct or Indirect Power or Control of persons whose equity securities, ownership units or any other ownership interests are listed on a recognized stock exchange.
- (i) Section 59.4(d) shall not apply to a Change in Ownership of a Control Party that arises from a change in the shareholdings of such Control Party or an Affiliate of such Control Party (the "**Relevant Entity**") owned by an employee of such Relevant Entity, unless such changes (i) individually or in the aggregate determined since the date of this Project Agreement, would result in a Change in Control of Project Co, in which case Section 59.4(f) shall apply; or (ii) would result in an obligation to compensate Contracting Authority in accordance with Section 59.6 of this Project Agreement, in which case Section 59.4(d) and Section 59.6 shall apply.

59.5 Contracting Authority's Due Diligence

- (a) Project Co shall promptly reimburse Contracting Authority for Contracting Authority's reasonable due diligence costs (including fees of professional advisors) in connection with any

consent required of Contracting Authority pursuant to, or Contracting Authority's determination of Project Co's compliance with, Sections 59.1, 59.3 or 59.4, whether or not such consent is granted.

59.6 Gain Share

- (a) Contracting Authority shall be entitled to receive a [REDACTED]% share of:
- (i) any Excess Equity Gain arising from a Change in Ownership of Project Co; and
 - (ii) the amount from the proceeds of a sale of any of Project Co's assets to a third party, which sale includes an assignment, transfer, disposition of or other alienation of an interest in the Project Agreement by Project Co made in accordance with Section 59.1, that is equal to the amount that would have been payable in accordance with Section 59.6(a)(i) if such sale had proceeded as a Change in Ownership of Project Co.

60. PROHIBITED ACTS

60.1 Definition

- (a) The term "**Prohibited Act**" means:
- (i) offering, giving or agreeing to give to Contracting Authority 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 Project Agreement or any other agreement with Contracting Authority 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 Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project;

provided that this Section 60.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to Contracting Authority or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, to Contracting Authority 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 Contracting Authority, provided that this Section 60.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to Contracting Authority 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 Project Co under this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project without contravening the intent of this Section 60;

- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud Contracting Authority or any other public body.

60.2 Remedies

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then Contracting Authority shall be entitled to act in accordance with the following:
 - (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then Contracting Authority may give written Notice to Project Co and Section 45 shall apply;
 - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then Contracting Authority may give written Notice to Project Co and Section 45 shall apply, unless, within 30 days of receipt of such Notice, Project Co 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 Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then Contracting Authority may give written Notice to Project Co and Section 45 shall apply, unless, within 30 days of receipt of such Notice, Project Co 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 59.3;
 - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then Contracting Authority may give Notice to Project Co and Section 45 shall apply, unless, within 30 days of receipt of such Notice, Project Co 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 Project Co or a Project Co Party by a person not specified in Sections 60.2(a)(i) to 60.2(a)(iv), then Contracting Authority may give Notice to Project Co and Section 45 shall apply, unless, within 30 days of receipt of such Notice, Project Co 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 60.2 shall specify:
 - (i) the nature of the Prohibited Act;
 - (ii) the identity of the person whom Contracting Authority believes has committed the Prohibited Act; and
 - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 60.2, Contracting Authority shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 60.

60.3 Permitted Payments

- (a) Nothing contained in this Section 60 shall prevent Project Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

60.4 Notification

- (a) Project Co shall notify Contracting Authority of the occurrence and details of any Prohibited Act promptly on Project Co becoming aware of its occurrence.

60.5 Replacement of Project Co Party

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 60, the party replacing such Project Co Party shall from the time of the replacement be deemed to be a Project Co Party and the provisions of this Project Agreement shall be construed accordingly.

61. NOTICES

61.1 Notices to Parties

- (a) All notices, requests, demands, instructions, certificates, consents and other communications (each being a "**Notice**") required or permitted under this Project Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable

provision of this Project Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Project Co:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

If to IO:

Ontario Infrastructure and Lands
Corporation
1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5

Fax: [REDACTED]

Attn.: [REDACTED]

If to Metrolinx:

Metrolinx
10 Bay Street,
17th Floor
Toronto, Ontario M5J 2S3

Fax: [REDACTED]

Attn.: [REDACTED]

With a copy to:

Metrolinx
97 Front Street West
3rd Floor
Toronto, Ontario M5J 1E6

Fax: [REDACTED]

Attn.: [REDACTED]

61.2 Notices to Representatives

- (a) In addition to the notice requirements set out in Section 61.1, where any Notice is to be provided or submitted to the Contracting Authority Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

If to Project Co Representative: [REDACTED]
Fax: [REDACTED]
Attn.: [REDACTED]

If to the Contracting Authority Representative: Metrolinx
10 Bay Street,
17th Floor
Toronto, Ontario M5J 2S3

Fax: [REDACTED]
Attn.: [REDACTED]

with a copy to: Ontario Infrastructure and Lands Corporation
1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5

Fax: [REDACTED]
Attn.: [REDACTED]

61.3 Facsimile

- (a) 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 61.3.

61.4 Change of Address

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 61.1 or 61.2 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.

61.5 Deemed Receipt of Notices

- (a) Subject to Sections 61.5(b), 61.5(c) and 61.5(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 61.
- (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.

61.6 Service on Contracting Authority

- (a) Where any Notice is required to be served on Contracting Authority, the obligation to serve such Notice shall be fulfilled by serving it on Contracting Authority in accordance with the provisions of this Section 61.

62. EMERGENCY MATTERS

62.1 Emergency

- (a) From Financial Close until the completion of the Works, upon the occurrence of an Emergency, Project Co shall comply with the Emergency Response Plan and the Contractor Site Specific Safety Manual.
- (b) **[Intentionally Deleted].**
- (c) If, in respect of any Emergency, Contracting Authority notifies Project Co that it requires compliance with any additional or overriding procedures as may be determined by Contracting Authority or any other statutory body, then Project Co shall, subject to Schedule 22 – Variation Procedure (if compliance with such procedures constitutes a Variation), comply with such procedures (whether such procedures are specific to the particular Emergency or of general application and on the basis that such procedures shall take precedence to the extent that they overlap with the procedures mentioned in Section 62.1(a)).

63. CONTRACTING AUTHORITY’S DESIGNATE

63.1 Right to Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Project Agreement (including review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to Contracting Authority for review, approval, comment, evaluation or otherwise as described in this Project Agreement, engagement in discussions, consultations and meetings with Project Co, submission of notices and documentation to Contracting Authority, issuances of notices, documentation, Variation Confirmations and related matters) and Project Co may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, and comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co in writing of any designation hereunder. The rights and obligations of the parties to this Project Agreement shall be in no way affected by reason of any such designation. Project Co acknowledges the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 63.1.

64. GENERAL

64.1 Amendments

- (a) This Project 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 Project Agreement.

64.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Project 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 Party. 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. No further waiver in writing is required in order to give effect to the waivers provided for in accordance with the terms of Sections 25.3(j) and 25.10(h).
- (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.

64.3 Relationship Between the Parties

- (a) The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between Contracting Authority and any Project Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Project Agreement), of principal and agent, and does not create or establish any relationship whatsoever between Contracting Authority and any representative or employee of Project Co or the Project Co Parties.
- (b) The Parties further agree that:
- (i) except as expressly provided in this Project 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 that it 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 for Employment Insurance, Canada Pension Plan, Workers' Compensation 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 Project 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 Project 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 Project 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.

64.4 General Duty to Mitigate

- (a) Contracting Authority and Project Co 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 Project Agreement.

64.5 Actual Knowledge

- (a) Except where limited to actual knowledge and/or such knowledge which they, at law, may from time to time, be deemed to have, Project Co and Contracting Authority shall, for all purposes of this Project Agreement, be deemed to have such knowledge in respect of the Project as is actually held (or ought reasonably to be held) by the directors, officers and senior management of Project Co and in the case of Contracting Authority, its directors, officers and senior management, and the Contracting Authority Representative or the Project Co Representative, as applicable. For

clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the “knowledge” of Project Co or of Contracting Authority shall be construed in a manner consistent with the foregoing sentence.

64.6 Entire Agreement

- (a) Except where provided otherwise in this Project Agreement, this Project 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 Project Agreement.

64.7 No Reliance

- (a) Each of the Parties acknowledge that:
- (i) it has not entered into this Project 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 Project Agreement or not, except those expressly made, given or repeated in this Project 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 Project Agreement; and
 - (ii) this Section 64.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

64.8 Severability

- (a) Each provision of this Project Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project 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 Project Agreement. If any such provision of this Project 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 Project Agreement as near as possible to its original intent and effect.

64.9 Enurement

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

64.10 Governing Law and Jurisdiction

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project 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 27 - Dispute Resolution Procedure, the 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 Project Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

64.11 Cumulative Remedies

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

64.12 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 Project Agreement.

64.13 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 Project Agreement.

64.14 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Project 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 déclare 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 Project Agreement shall be in English.

64.15 Proof of Authority

- (a) Contracting Authority and Project Co each reserve the right to require any person executing this Project Agreement on behalf of the other Party to provide proof, in a form acceptable to Contracting Authority or Project Co, as applicable, that they have the requisite authority to execute this Project Agreement on behalf of and to bind Contracting Authority or Project Co, as applicable.

64.16 Counterparts

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

64.17 Province Persons as Third Party Beneficiaries

- (a) The provisions of Sections 6.1, 6.2(a), 6.3(a), 8.1(c), 9.2(a)(i), 9.2(a)(ii), 9.4(b), 9.5(a)(v), 16.1(a), 20.3(g), 21.1, 35.7, 36.2(e), 56.1, and 57.2(a) and each other provision of this Project Agreement which is expressed to be for the benefit of a Province Person or a Contracting Authority Party, as applicable, are:
- (i) intended for the benefit of each Province Person, or Contracting Authority Party, as applicable and, if so set out in the relevant Section, each Province Person's or Contracting Authority Party's, as applicable, 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, in respect of each Province Person, the "**Province Person Third Party Beneficiaries**", and in respect of each Contracting Authority Party, the "**Contracting Authority Third Party Beneficiaries**"); and
 - (ii) are in addition to, and not in substitution for, any other rights that the Province Person Third Party Beneficiaries may have in contract or otherwise.
- (b) Contracting Authority shall hold the rights and benefits of Sections 6.1, 6.2(a), 6.3(a), 8.1(c), 9.2(a)(i), 9.2(a)(ii), 9.4(b), 9.5(a)(v), 16.1(a), 20.3(g), 21.1, 35.7, 36.2(e), 56.1, and 57.2(a) and each other provision of this Project Agreement which is to the benefit of each Province Person or Contracting Authority Party, as applicable, in trust for and on behalf of the Province Person Third Party Beneficiaries or Contracting Authority Third Party Beneficiaries, as applicable, and Contracting Authority hereby accepts such trust and agree to hold the benefit of and enforce performance of such covenants on behalf of the Province Person Third Party Beneficiaries or Contracting Authority Third Party Beneficiaries, as applicable.

64.18 Copyright Notice

- (a) The Parties acknowledge that the Queen's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement.

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

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

By:

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

METROLINX

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation.

**MOBILINX HURONTARIO GENERAL
PARTNERSHIP, [REDACTED]**

[REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
 - 1.1 “**10-Day Notice**” has the meaning given in Section 25.3(a) of the Project Agreement.
 - 1.2 “**407 ETR**” means 407 ETR Concession Company Limited, and its successors.
 - 1.3 “**407 ETR Jointly Developed Materials**” has the meaning given in Section 51.4(a)(vii) of the Project Agreement.
 - 1.4 “**407 ETR Road Allowance**” has the meaning given in Schedule 35 – Lands.
 - 1.5 [REDACTED].
 - 1.6 [REDACTED].
 - 1.7 “**Acceptance**” means, in relation to any Revenue Vehicle Deliverable, the time and date of the issue of the Acceptance Certificate in respect of such Revenue Vehicle Deliverable, and “**Accepted**” and similar expressions shall be construed accordingly.
 - 1.8 “**Acceptance Certificate**” has the meaning given in the Revenue Vehicle Supply Contract.
 - 1.9 “*Accessibility for Ontarians with Disabilities Act (Ontario)*” means the *Accessibility for Ontarians with Disabilities Act*, S.O. 2005, c. 11, as amended from time to time.
 - 1.10 “**Account Trustee**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
 - 1.11 “**Accumulated Points**” has the meaning given in Schedule 20 – Payment Mechanism.
 - 1.12 “**Actual Relevant Insurance Cost**” has the meaning given in Section 7.1(a) of Schedule 25 – Insurance and Performance Security Requirements.
 - 1.13 “**Additional Contractor**” means any independent contractor (not being, for the avoidance of doubt, any of the Third Party Contractors or Project Co) or Contracting Authority’s own forces, engaged by Contracting Authority to carry out the Additional Works. For greater certainty, an Extension Contractor who is not Project Co may, if applicable, be an Additional Contractor.
 - 1.14 “**Additional Lands**” has the meaning given in Section 14.6(b) of the Project Agreement.
 - 1.15 “**Additional Lands Request**” has the meaning given in Section 14.6(a) of the Project Agreement.

- 1.16 “**Additional Works**” means those works or services, in relation to any of the Project Co System Infrastructure or in relation to any New Third Party Infrastructure, which are not Works or Project Co Services and which are to be carried out by an Additional Contractor, including works or services to be performed either before or after Substantial Completion.
- 1.17 “**Adjacent Developments**” means any development works or like activity carried out during the Project Term by or on behalf of any third party within the Metrolinx Development Review Zone and which otherwise affects or may potentially affect any part of the Works, the Project Co Services, the Lands, the Project Co System Infrastructure or the New Third Party Infrastructure.
- 1.18 “**Adjudicator**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.19 “**Adjusted Estimated Fair Value**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.20 “**Adjusted Highest Qualifying Tender Price**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.21 “**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 Project Co, shall include each of its unitholders, shareholders, partners or owners as the case may be.
- 1.22 “**Aggregate Actual Lane Closure Cost**” or “**AALCC**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.23 “**Aggregate Actual Lane Closures**” or “**AALC**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.24 “**Aggregate Actual Property Access Closures**” or “**AAPAC**” has the meaning given in Schedule 40 – Property Access Matters.
- 1.25 “**Aggregate Actual Property Access Closures Cost**” or “**AAPACC**” has the meaning given in Schedule 40 – Property Access Matters.
- 1.26 “**All Availability Failures**” means Trip Availability Failures and Passenger Facility Availability Failures.
- 1.27 “**Alstom Direct Agreement**” has the meaning given in the Revenue Vehicle Supply Contract.
- 1.28 “**Alstom Party**” means any person engaged by the Revenue Vehicle Manufacturer from time to time as may be permitted by the Revenue Vehicle Supply Contract to procure or manage the provision of the Vehicle Supplier Activities (or any of them), and in respect of each such person, their subcontractors of any tier, agents, employees, officers and directors, and “**Alstom Parties**” shall be construed accordingly.
- 1.29 [REDACTED].

- 1.30 [REDACTED].
- 1.31 “**Ancillary Documents**” means, collectively:
- (a) the Construction Contract;
 - (b) the Service Contract;
 - (c) the Revenue Vehicle Supply Contract;
 - (d) [REDACTED];
 - (e) [REDACTED];
 - (f) [REDACTED];
 - (g) [REDACTED]; and
 - (h) [REDACTED].
- 1.32 “**Annual Insurance Report**” has the meaning given in Section 7.2 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.33 “**Annual Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.34 “**Annual Service Payment – Capital Portion**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.35 “**Anticipated Final Completion Date**” has the meaning given in Section 25.9A(a) of the Project Agreement.
- 1.36 “**Anticipated Substantial Completion Date**” has the meaning given in Section 25.6(a) of the Project Agreement.
- 1.37 “**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, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, Contracting Authority, any Contracting Authority Party or any other Province Person.

- 1.38 “**Apprenticeship Declaration**” means the declaration set out in Schedule 38 – Apprenticeship Declaration.
- 1.39 “**Apprenticeship Plan**” has the meaning given in Section 20.14 of the Project Agreement.
- 1.40 “**Appropriate Person**” has the meaning given in Schedule 11 – Quality Management.
- 1.41 “**Arbitration Act, 1991 (Ontario)**” means the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended from time to time.
- 1.42 “**Archaeological Reports**” means the reports set out in Appendix A to this Schedule 1 – Definitions and Interpretation.
- 1.43 “**Architect**” means an architect licensed by the Ontario Association of Architects to practice in the Province of Ontario.
- 1.44 “**As-Built Drawings**” means drawings prepared by Project Co to reflect the installed, constructed or commissioned condition of the Works, in a format and with content and details that, as applicable, Contracting Authority, each City, the Region of Peel, MTO, 407 ETR, GO Transit, each Railway Company, or each Utility Company, acting reasonably, considers appropriate.
- 1.45 “**Asset Management Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.46 “**Associated Liabilities**” has the meaning given in Section 35.7(b)(iv) of the Project Agreement.
- 1.47 “**Audit of Temporary Traffic Management**” means an audit of the Traffic and Transit Management Plan using the sample site form, or equivalent, set out in Appendix H of Schedule 11 – Quality Management.
- 1.48 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority and includes, for clarity, any direction or instruction from Transport Canada arising from any contractual arrangement or board orders involving Transport Canada and one or both of MTO or Metrolinx with respect to the Rail Corridor.
- 1.49 “**Availability Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.50 “**Background Information**” means any and all drawings, reports (including the Environmental Reports, the Archaeological Reports, the Geotechnical Reports, the Cultural Heritage Reports and the Environmental Assessments), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by Contracting Authority or any Contracting Authority Party, or which was obtained from or through any other sources prior to Commercial Close.
- 1.51 “**Bank**” has the meaning given in Schedule 30 – Insurance Trust Agreement.

- 1.52 “**Bank Act (Canada)**” means the *Bank Act*, S.C. 1991, c. 46, as amended from time to time.
- 1.53 “**Bankruptcy and Insolvency Act (Canada)**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended from time to time.
- 1.54 “**Base Case Equity IRR**” means [REDACTED]%, which for greater certainty, is calculated on a pre-tax basis.
- 1.55 “**Base Relevant Insurance Cost**” has the meaning given in Section 7.1(b) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.56 “**Baseline Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.57 “**Bench Test Equipment**” means the bench test equipment for or relating to the Revenue Vehicles designated as such in Schedule 15 – Output Specifications, including any additional such bench test equipment to be supplied by Revenue Vehicle Manufacturer as contemplated pursuant to Schedule 15 – Output Specifications.
- 1.58 “**Beneficiary**” has the meaning given in Section 56.3(a) of the Project Agreement.
- 1.59 “**Bill of Sale**” has the meaning given in Schedule 43 – Revenue Vehicles.
- 1.60 “**Bondholders**” has the meaning given to it in the Common Terms and Intercreditor Agreement.
- 1.61 “**Brampton Transit**” means The Corporation of the City of Brampton.
- 1.62 “**Breach of Refinancing Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.63 “**Burn-In Test**” has the meaning given in the Revenue Vehicle Supply Contract.
- 1.64 “**Burnhamthorpe and Duke of York Municipal ROW Construction Activities Notice**” has the meaning given in Schedule 15 – Output Specifications.
- 1.65 “**Burnhamthorpe Water Project Contracts Shaft Area Lands Construction Activities Notice**” has the meaning given in Schedule 15 – Output Specifications.
- 1.66 “**Business Corporations Act (Ontario)**” means that *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended from time to time.
- 1.67 “**Business Day**” means any day other than Saturday, Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.

- 1.68 “**Business Opportunities**” has the meaning given in Section 4.1(a) of the Project Agreement.
- 1.69 “**CA Post-CC Alectra Utilities Design Work Notice**” has the meaning given in Section 14.6(g)(ii) of the Project Agreement.
- 1.70 “**CaGBC**” means the Canadian Green Building Council.
- 1.71 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.72 “**Canadian Content Certificate**” means the certificate provided by the Revenue Vehicle Manufacturer to the Construction Contractor upon the successful completion of the acceptance test of each Revenue Vehicle pursuant to the provisions of the Revenue Vehicle Supply Contract.
- 1.73 “**Canadian Content Policy**” means the Canadian Content for Transit Vehicle Procurement Policy, as issued by the Province of Ontario’s Ministry of Transportation in September of 2008.
- 1.74 “**Canadian Content Requirements**” means the requirement for compliance with the Canadian Content Policy in respect of Revenue Vehicles, including achievement of a minimum 25% Canadian content (calculated in compliance with the Canadian Content Policy).
- 1.75 “**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.
- 1.76 “**Cancelled Major Track Closure**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.77 “**Cancelled Major Track Closure Liquidated Damages**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.78 “**Cancelled Minor Track Closure**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.79 “**Cancelled Minor Track Closure Liquidated Damages**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.80 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.

- 1.81 “**Capital Spares**” means the Spares designated as capital spares for the Revenue Vehicles in Schedule 15 – Output Specifications.
- 1.82 “**Category 1 Utility Company**” means any one of [REDACTED],
and “**Category 1 Utility Companies**” shall be construed accordingly.
- 1.83 “**Category 2 Utility Company**” means any Utility Company that is not defined as a Category 1 Utility Company.
- 1.84 “**Category A Key Individual Failure Liquidated Damages**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.85 “**Category A Key Individual Replacement Liquidated Damages**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.86 “**CC Warranty Period**” has the meaning given in Part 1 of the Construction Contract.
- 1.87 “**Cemeteries Act (Revised) (Ontario)**” means the *Cemeteries Act (Revised)*, R.S.O. 1990, c. C.4, as amended from time to time.
- 1.88 “**Certificate of Recognition**” means the certification issued by IHSA to a person confirming that the health and safety management systems of such person comply with the terms, provisions and conditions of the COR Program.
- 1.89 “**Certification Services**” has the meaning given in the Independent Certifier Agreement.
- 1.90 “**Certification Services Variation**” has the meaning given in the Independent Certifier Agreement.
- 1.91 “**Certified H&S Inspector**” means an individual who is an employee or contractor of the IHSA and has the necessary credentials recognized by the COR Program for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 13(b) of the Project Agreement.
- 1.92 “**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 power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
 - (c) any other change of direct or indirect power or authority through any contractual right or other power or interest with or over a person to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the

management, actions or policies of such person, to direct or cause the direction of the management, actions or policies of such person.

- 1.93 “**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 Commercial Close.
- 1.94 “**Change in Ownership**” means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.
- 1.95 “**Changed Cost for Utilities**” means an amount equal to:
- (a) the total aggregate of the prices actually paid by Project Co for the Eligible Utilities Costs minus any Ineligible Cost Increase; minus
 - (b) the sum of all Original Eligible Utilities Costs.
- 1.96 “**City**” means either the City of Brampton or the City of Mississauga, as the context requires; and “**Cities**” means both of them.
- 1.97 “**City of Brampton**” means The Corporation of the City of Brampton, and its successors.
- 1.98 “**City of Brampton Jointly Developed Materials**” has the meaning given in Section 51.4(a)(iii) of the Project Agreement.
- 1.99 “**City of Brampton Standards**” has the meaning given in Schedule 15 – Output Specifications.
- 1.100 “**City of Brampton Warranty Deliverables**” means, in respect of New City of Brampton Infrastructure only, each of the following:
- (a) for storm water sewers, soft and hard copies of each of the following:
 - (i) material testing results;
 - (ii) performance test results; and
 - (iii) video report and detailed written report and electronic files containing chainage-specific defect codes from a CCTV inspection, and where deficiencies have been identified by a CCTV inspection, delivery of evidence that all deficiencies have been rectified;
 - (b) if significant repairs were carried out by Project Co to correct any defects, deficiencies or non-compliant items in the New City of Brampton Infrastructure during the warranty inspection period for the New City of Brampton Infrastructure

set out in Section 25.15 of the Project Agreement, a written certification of the New City of Brampton Infrastructure in the form attached as Attachment 1 of Appendix B of Schedule 14 – Commissioning from professionals licensed in the Province of Ontario qualified to certify the specific type of work and equipment being certified, each such certificate shall be stamped, signed and dated by the licensed professional; and

- (c) for trees, a written report on the results of an arborist inspection, conducted two years after planting, to demonstrate that trees are in good health.

1.101 “**City of Mississauga**” means The Corporation of the City of Mississauga, and its successors.

1.102 “**City of Mississauga Jointly Developed Materials**” has the meaning given in Section 51.4(a)(ii) of the Project Agreement.

1.103 “**City of Mississauga Standards**” has the meaning given in Schedule 15 – Output Specifications.

1.104 “**City of Mississauga Warranty Deliverables**” means, in respect of New City of Mississauga Infrastructure only, each of the following:

- (a) for storm water sewers soft and hard copies, of each of the following:
 - (i) material testing results;
 - (ii) performance test results; and
 - (iii) video report and detailed written report and electronic files containing chainage-specific defect codes from a CCTV inspection, and where deficiencies have been identified by a CCTV inspection, delivery of evidence that all deficiencies have been rectified;
- (b) if significant repairs were carried out by Project Co to correct any defects, deficiencies or non-compliant items in the New City of Mississauga Infrastructure during the warranty inspection period for the New City of Mississauga Infrastructure set out in Section 25.15 of the Project Agreement, a written certification of the New City of Mississauga Infrastructure in the form attached as Attachment 1 of Appendix A of Schedule 14 – Commissioning from professionals licensed in the Province of Ontario qualified to certify the specific type of work and equipment being certified, each such certificate shall be stamped, signed and dated by the licensed professional; and
- (c) for trees, a written report on the results of an arborist inspection, conducted two years after planting, to demonstrate that trees are in good health.

1.105 “**City PLA Deadline**” has the meaning given in Section 9.4(g) of the Project Agreement.

- 1.106 “**City Standards**” means any of the City of Brampton Standards, the City of Mississauga Standards or the Region of Peel Standards, as the context requires.
- 1.107 “**Civil Remedies Act (Ontario)**” means the *Civil Remedies Act*, S.O. 2001, c.28, as amended from time to time.
- 1.108 “**Civil Structure**” has the meaning given in Schedule 15 – Output Specifications.
- 1.109 “**Closing Equity Support Agreement**” means the closing equity support agreement dated on or about the date of the Project Agreement entered into in respect of the Project by Project Co, [REDACTED] and [REDACTED], in its capacity as collateral trustee.
- 1.110 “**CN Rail**” means Canadian National Railway Company.
- 1.111 “**CN Rail Train Delay**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.112 “**CN Rail Train Delay Liquidated Damages**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.113 “**Commercial Close**” means the date of the Project Agreement.
- 1.114 “**Commissioning**” has the meaning given in Schedule 14 – Commissioning.
- 1.115 “**Commissioning Brief**” has the meaning given in Schedule 14 – Commissioning.
- 1.116 “**Commissioning Manuals**” has the meaning given in Schedule 14 – Commissioning.
- 1.117 “**Commissioning Plan**” has the meaning given in Schedule 14 – Commissioning.
- 1.118 “**Commissioning Program**” has the meaning given in Schedule 14 – Commissioning.
- 1.119 “**Commissioning Schedule**” has the meaning given in Schedule 14 – Commissioning.
- 1.120 “**Commissioning Submittals**” has the meaning given in Schedule 14 – Commissioning.
- 1.121 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 – Commissioning;
 - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;
 - (c) recommended by the manufacturer of any part of the Project Co System Infrastructure or the New Third Party Infrastructure; and
 - (d) required to be included in the Commissioning Program by the Independent Certifier, the Contracting Authority Commissioning Agent or the Contracting Authority Representative pursuant to Section 25.2 of the Project Agreement.

- 1.122 “**Common Terms and Intercreditor Agreement**” means the common terms and intercreditor agreement dated on or about the date of the Project Agreement entered into in respect of the Project by, *inter alios*, Project Co, as borrower, [REDACTED], [REDACTED], in its capacity as administrative agent, [REDACTED], in its capacity as indenture trustee, and [REDACTED], in its capacity as collateral trustee.
- 1.123 “**Communications and Public Engagement Lead**” has the meaning given in Schedule 9 – Key Individuals.
- 1.124 “**Communications Equipment**” means that portion of the Voice and Data Radio System which is to be installed onto the Revenue Vehicles.
- 1.125 “**Community Benefits and Liaison Plan**” has the meaning given in Section 20.15(a) of the Project Agreement.
- 1.126 “**Companies’ Creditors Arrangement Act (Canada)**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended from time to time.
- 1.127 “**Compensation Event**” has the meaning given in Section 41.1(a) of the Project Agreement.
- 1.128 “**Completion Holdback**” has the meaning given in Section 25.7(a) of the Project Agreement.
- 1.129 “**Complex Structure**” means any post-tensioned or pre-tensioned structure that has undergone significant structural alteration making it difficult for personnel at the Site to predict the direction of forces or likely collapse mechanism to be experienced by such structure in connection with any Demolition of all or any part of such structure.
- 1.130 “**Complex Structure Demolition**” means any Demolition where:
- (a) significant structural elements, such as girders, columns, shearwalls or slabs, or Complex Structures are being removed, de-stressed, altered or removed;
 - (b) large penetrations are being created through slabs;
 - (c) any Demolition may cause the collapse of any building or structure (or any portion thereof) and such collapse may directly impact adjacent occupied areas of a building or structure and potentially jeopardize the safety of workers, staff or the general public using such building or structure; and
 - (d) the Demolition of any building or structure (or any portion thereof) has the potential to result in any materials collapsing onto or interfering with any pedestrian right-of-way or into an occupied part of any building or structure
- 1.131 “**Confidant**” has the meaning given in Section 52.6(a)(i) of the Project Agreement.

- 1.132 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after Commercial Close.
- 1.133 “**Consents**” means all permissions, consents, approvals, certificates, permits, licences and authorizations required under any Applicable Law for the Revenue Vehicles to be brought into use in Revenue Service or that are otherwise necessary for the performance of Revenue Vehicle Manufacturer’s obligations under the Revenue Vehicle Supply Contract.
- 1.134 “**Construction Act (Ontario)**” means the *Construction Act*, R.S.O. 1990, c.C.30 and regulations enacted thereunder, all as amended from time to time and subject to the application of the transition provisions in s. 87.3 of the Construction Act.
- 1.135 “**Construction Activities**” means construction, rehabilitation, Reinstatement Work, rectification work, and any other aspect of the Works that:
- (a) comprises the alteration, augmenting, upgrading, construction, completion, supply, delivery, inspection, calibration, testing or commissioning of any part of the Project Co System Infrastructure and the New Third Party Infrastructure;
 - (b) comprises the assessment of any Project Co System Infrastructure or New Third Party Infrastructure;
 - (c) may affect the structural integrity of any Project Co System Infrastructure or New Third Party Infrastructure, and including any such aspect of the Works carried out as part of any Force Majeure event, Relief Event, Variation, or Innovation Proposal accepted by Contracting Authority; or
 - (d) comprises Construction Clearing and Grubbing.
- 1.136 “**Construction Certificate**” means a certificate with contents described in Attachment 2 to Appendix A of Schedule 10 – Review Procedure.
- 1.137 “**Construction Clearing and Grubbing**” means the stage of the Works in which vegetation and debris is cleared from the Lands (clearing) and a root rake or similar device is employed to remove roots remaining in the soil (grubbing).
- 1.138 “**Construction Contract**” means the construction contract between Project Co and the Construction Contractor dated on or about the date of the Project Agreement.
- 1.139 “**Construction Contractor**” means [REDACTED], engaged by Project Co to perform the Works and any substitute construction contractor engaged by Project Co as may be permitted by the Project Agreement.
- 1.140 “**Construction Contractor’s Direct Agreement**” means the direct agreement between Contracting Authority, Project Co, the Construction Contractor and each of the Construction Guarantors (other than [REDACTED]), in the form set out in Schedule 5-1 - Construction Contractor’s Direct Agreement.

- 1.141 “**Construction Document Submittals**” has the meaning given in Section 20.3(d)(iii) of the Project Agreement.
- 1.142 “**Construction Guarantors**” means, collectively, [REDACTED].
- 1.143 “**Construction Period**” means the period of time commencing on Financial Close to and including the Final Completion.
- 1.144 “**Construction Period Complaints Protocol**” has the meaning given in Schedule 18 – Communication and Public Engagement.
- 1.145 “**Construction Period Deduction**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.146 “**Construction Period Lands**” has the meaning given in Schedule 35 – Lands.
- 1.147 “**Construction Period Limit**” has the meaning given in Section 57.4(a)(i) of the Project Agreement.
- 1.148 “**Construction Period Payment**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.149 “**Construction Period Quality Failure**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.150 “**Construction Quality Management Plan**” or “**CQMP**” has the meaning given in Schedule 11 – Quality Management.
- 1.151 “**Construction Quality Manager**” has the meaning given in Schedule 11 – Quality Management.
- 1.152 “**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 Project Agreement.
- 1.153 “**Contract Drawings**” means the drawings, including progress drawings, to be provided by Revenue Vehicle Manufacturer in relation to any Revenue Vehicle or any Revenue Vehicle Equipment.
- 1.154 “**Contract Month**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.155 “**Contract Year**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.156 “**Contracting Authority**” means, collectively, (i) IO and (ii) Metrolinx.

- 1.157 “**Contracting Authority Activities**” means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with light rail transit and other similar services.
- 1.158 “**Contracting Authority Commissioning**” means the commissioning activities to be carried out by Contracting Authority or any other person on behalf of Contracting Authority in accordance with the Commissioning Program.
- 1.159 “**Contracting Authority Commissioning Agent**” means the person appointed by Contracting Authority as its commissioning agent.
- 1.160 “**Contracting Authority Commissioning Period**” means the period during which Contracting Authority, or any other person on behalf of Contracting Authority, is performing the Contracting Authority Commissioning.
- 1.161 “**Contracting Authority Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.162 “**Contracting Authority Design Team**” means any of Contracting Authority, its agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the Project Co System Infrastructure or the New Third Party Infrastructure or the Contracting Authority Activities, but excluding Project Co and any Project Co Party.
- 1.163 “**Contracting Authority Event of Default**” has the meaning given in Section 46.1(a) of the Project Agreement.
- 1.164 “**Contracting Authority HR Policy**” means Contracting Authority’s human resources policies and guidelines, as they may be amended from time to time and provided to Project Co in writing.
- 1.165 “**Contracting Authority Jointly Developed Materials**” has the meaning given in Section 51.4(a)(i) of the Project Agreement.
- 1.166 “**Contracting Authority Party**” means any of Contracting Authority’s agents, contractors and subcontractors of any tier engaged with respect to the Project Operations and its or their directors, officers and employees, but excluding Project Co and any Project Co Party, and “**Contracting Authority Parties**” shall be construed accordingly.
- 1.167 “**Contracting Authority Permits, Licences and Approvals**” means those permissions, consents, approvals, certificates, permits, licences, agreements and authorizations, including Railway Approvals, Railway Orders, utility agreements, and Development Approvals which are the responsibility of Contracting Authority to obtain as set out Schedule 34 – Contracting Authority Permits, Licences and Approvals, but for greater certainty shall not include any permission, consent, approval, certificate, permit, licence, agreement or authorization not set out in Schedule 34 – Contracting Authority Permits, Licenses and Approvals but required by the terms of any such item set out in such Schedule.

- 1.168 “**Contracting Authority Representative**” means the person designated as such by Contracting Authority on the date of the Project Agreement and any permitted replacement.
- 1.169 “**Contracting Authority Taxes**” means taxes, or payments in lieu of taxes, imposed on Contracting Authority and HST and property taxes for which Contracting Authority is responsible pursuant to Section 35 of the Project Agreement.
- 1.170 “**Contracting Authority Third Party Beneficiaries**” has the meaning given in Section 64.17(a)(i) of the Project Agreement.
- 1.171 “**Contracting Authority Trade-Marks**” means any and all Trade-Marks used by Contracting Authority in any manner whatsoever.
- 1.172 “**Contractor Site Specific Safety Manual**” means the document developed by Project Co pursuant to Schedule 29 – Construction Safety that describes the Construction Contractor’s health and safety management program for the Project and the Site during the Construction Period, all in accordance with the minimum requirements set out in Schedule 29 – Construction Safety.
- 1.173 “**Contractors**” means, collectively, the Construction Contractor and the Service Provider.
- 1.174 “**Contracts**” means the Construction Contract and the Service Contract.
- 1.175 “**Control Party**” means:
- (a) any person with any form of direct ownership interest in Project Co; and
 - (b) any of the following persons:
 - (i) [REDACTED]
- 1.176 “**Controlled Elements**” means any of (i) the Metrolinx Lands, (ii) the Project Co System Infrastructure and, (iii) during the Construction Period, the Site.
- 1.177 “**Copyrights**” means all copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by multinational treaties or conventions.
- 1.178 “**COR Certification**” means, in respect of a person, receipt by such person of its: (i) Certificate of Recognition; and (ii) Letter of Good Standing.
- 1.179 “**COR Program**” means the national safety program known as “The Certificate of Recognition (COR™)”, being a safety program that enables persons to assess their health and safety management systems to manage risks, establish controls, and minimize the incidence of injury and illness to their workers, and being nationally trademarked and endorsed by participating members of the Canadian Federation of Construction Safety Associations, or such other national safety program approved by Contracting Authority.

- 1.180 “**COR-Certified Construction Project Co Party**” has the meaning given in Section 9.6(a)(ii) of the Project Agreement.
- 1.181 “**COR-Certified Service Provider Project Co Party**” has the meaning given in Section 9.6(b)(ii) of the Project Agreement.
- 1.182 “**COR-Qualified Construction Project Co Party**” means one of the following:
- (a) where the Construction Contractor is a single legal entity, the Construction Contractor; or
 - (b) where the Construction Contractor is a joint venture, each member of the joint venture, or
 - (c) where the Construction Contractor is a partnership, each partner of the partnership,
- provided that each such person has current OHSAS 18001 Accreditation in good standing
- 1.183 “**COR-Qualified Service Provider Project Co Party**” means one of the following:
- (a) where the Service Provider is a single legal entity, the Service Provider; or
 - (b) where the Service Provider is a joint venture, each member of the joint venture other than the Operator; or
 - (c) where the Service Provider is a partnership, each partner of the partnership other than the Operator.
- 1.184 “**Corrective and Preventive Actions Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.185 “**Cost Adjustment – Utilities**” has the meaning given in Section 34.1(d) of the Project Agreement.
- 1.186 “**CP Rail**” means Canadian Pacific Railway Company Ltd., and its successors.
- 1.187 “**CPI**” means CPI-XFET for Canada, 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 27 – Dispute Resolution Procedure, which most closely resembles such index.
- 1.188 “**CPI_n**” is the value of CPI on April 1 of the relevant Contract Year “n”, to be determined by reference to the relevant index in the month immediately preceding the indexation date.
- 1.189 “**CPI₀**” is the value of CPI on the Inflation Base Date, to be determined by reference to the relevant index in the month immediately preceding the Inflation Base Date.

- 1.190 “**Credit Agreement**” has the meaning given in the Common Terms and Intercreditor Agreement.
- 1.191 “**Crisis Communication Plan**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.192 “**Critical Non-Conformance**” means any Non-Conformance or combination of Major Non-Conformances that:
- (a) In the reasonable opinion of Contracting Authority, demonstrates that Project Co is performing the Works in a manner that may result in Project Co becoming unable to satisfy the requirements for Substantial Completion;
 - (b) Is persistent, ongoing or repeated; or
 - (c) In the reasonable opinion of Contracting Authority, by its continued existence or through the process of rectification, would:
 - (i) result in a Critical Qualifying NCR;
 - (ii) result or is reasonably expected to result in material disruption to the public or a materially adverse disruption to traffic flow or the public transit system in the City of Mississauga or the City of Brampton;
 - (iii) prejudice or is reasonably expected to materially prejudice the performance of any Governmental Activities;
 - (iv) create or is reasonably expected to create a serious threat to the health, safety or security of any person, including any System User or Province Person;
 - (v) materially increase Contracting Authority’s risk or risk transfer to Contracting Authority or any Contracting Authority Party;
 - (vi) materially adversely affect the ability of any Contracting Authority Party or Other Contractor to perform their activities as permitted or contemplated by the Project Agreement;
 - (vii) materially adversely affect or change the critical path of the Project as defined in the current Progress Works Schedule, adversely affect Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date, require a material resequencing of the Works or cause any delay in achieving Substantial Completion; or
 - (viii) potentially compromise (A) the reputation or integrity of Contracting Authority and/or any Contracting Authority Party; or (B) the nature of the public transit system in the City of Mississauga or the City of

Brampton so as to affect public confidence in the public transit system in such City or the Project.

- 1.193 “**Critical Qualifying NCR**” has the meaning given to it in Schedule 21 – Construction Period Payments.
- 1.194 “**Crown**” means Her Majesty the Queen in right of Ontario.
- 1.195 “**Crown Agency Act (Ontario)**” means the *Crown Agency Act*, R.S.O. 1990, c.48, as amended from time to time.
- 1.196 “**CSA**” means the Canadian Standards Association.
- 1.197 “**CSA Standards**” means, at the applicable time, the Canadian Standards Association standards.
- 1.198 “**Cultural Heritage Reports**” means the reports set out in Appendix D to this Schedule 1 – Definitions and Interpretation.
- 1.199 “**Currency Act (Canada)**” means the *Currency Act*, R.S.C., 1985, c. C-52, as amended from time to time.
- 1.200 “**Custodian**” means the person appointed as the Custodian pursuant to the Custody Agreement and as may be permitted pursuant to the Project Agreement.
- 1.201 “**Custody Agreement**” means the custody agreement between Project Co, Contracting Authority, the Custodian and the Lenders’ Agent in the form set out in Schedule 3 – Custody Agreement.
- 1.202 “**Daily Performance Report**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.203 “**Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.204 “**Default Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.205 “**Delay Event**” has the meaning given in Section 40.1(a) of the Project Agreement.
- 1.206 “**Delivery**” and “**Delivered**” means the delivery of any Revenue Vehicle Deliverable to Construction Contractor in accordance with the Revenue Vehicle Supply Contract.
- 1.207 “**Demolition**” means the removal of a building or structure, as the case may be, or of any material part of a building or structure.
- 1.208 “**Demolition Default Event**” has the meaning given in Section 9.12(b) of the Project Agreement.

- 1.209 “**Demolition Guidelines**” means those guidelines set forth in the document entitled “Professional Engineers Providing Services for Demolition of Buildings and other Structures” published by the Professional Standards Committee established by the Professional Engineers of Ontario and having a publication date of April, 2011.
- 1.210 “**Demolition Plan**” means a plan or other document prepared by a professional engineer, limited licence holder or provisional licence holder in accordance with subsection (3) of the Performance Standards Regulation with respect to the Demolition of a building or structure, and includes any changes to the plan or other document that are made by a professional engineer, limited licence holder or provisional licence holder.
- 1.211 “**Demolition Requirements**” has the meaning given in Section 9.12(a) of the Project Agreement.
- 1.212 “**Demolition Specifications**” means those specifications relating to any Demolition prepared by Project Co in accordance with Section 9.12(a)(iv)(A) of the Project Agreement.
- 1.213 “**Demolition Supervisor**” has the meaning given in Section 9.12(a)(ii) of the Project Agreement.
- 1.214 “**Design and Bid Fee**” has the meaning given in the Request for Proposals.
- 1.215 “**Design and Construction Certification Procedure**” has the meaning given in Schedule 11 – Quality Management.
- 1.216 “**Design and Construction Requirements**” means the relevant specifications, standards, procedures and other requirements for the design and construction of the Project Co System Infrastructure and the New Third Party Infrastructure as set out in Schedule 15-2 – Output Specifications – Design and Construction Requirements.
- 1.217 “**Design and Construction Specifications**” means Schedule 15-2 – Output Specifications – Design and Construction Requirements.
- 1.218 “**Design Brief**” means a narrative document to accompany Works Submittals with contents described in Schedule 10 – Review Procedure.
- 1.219 “**Design Certificate**” means a certificate with contents described in Attachment 1 to Appendix A of Schedule 10 – Review Procedure.
- 1.220 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations, and other data prepared or obtained by Project Co relating to the design, construction, supply, delivery, testing or monitoring of the Project Co System Infrastructure and the New Third Party Infrastructure, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction, and provided further that to the extent that any of the foregoing relates to or is in respect of any of the Vehicle Supplier Activities and/or the Revenue Vehicle Deliverables, such drawings, reports, documents, plans, software, formulae, calculations

and other data shall only be those supplied by the Revenue Vehicle Manufacturer to Construction Contractor pursuant to the Revenue Vehicle Supply Contract.

- 1.221 “**Design Development Submittals**” has the meaning given in Section 20.3(d)(ii) of the Project Agreement.
- 1.222 “**Design Quality Management Plan**” or “**DQMP**” has the meaning given in Schedule 11 – Quality Management.
- 1.223 “**Design Quality Manager**” has the meaning given in Schedule 11 – Quality Management.
- 1.224 “**Design Review Meetings**” has the meaning given in Section 20.5(a) of the Project Agreement.
- 1.225 “**Design Team**” means, [REDACTED], engaged by Project Co to design the Project Co System Infrastructure and the New Third Party Infrastructure and any substitute design team engaged by Project Co as may be permitted by the Project Agreement.
- 1.226 “**Designated Substances Survey Reports**” means the reports listed in Appendix C to this Schedule 1 – Definitions and Interpretation.
- 1.227 “**Detailed Construction Work Plan**” has the meaning given in Schedule 42 – Rail Corridor Access and Flagging.
- 1.228 “**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 Project Co System Infrastructure and the New Third Party Infrastructure.
- 1.229 “**Direct Agreements**” means the Construction Contractor’s Direct Agreement and the Service Provider’s Direct Agreement.
- 1.230 “**Direct Cost**” has the meaning given in Schedule 22 –Variation Procedure.
- 1.231 “**Direct Losses**” means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- 1.232 “**Direct or Indirect Power or Control**” means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:
- (a) ownership, beneficial or otherwise, of greater than 5 percent of any of the shares, units or equity interests of a person;

- (b) the direct or indirect power to vote any of the shares, units or equity interests of a person where an individual's ownership, beneficial or otherwise, is equal to or exceeds 5 percent of the voting securities, units or equity interests of such person; or
 - (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.
- 1.233 “**Discount Rate**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.234 “**Discriminatory Change in Law**” means any Change in Law which applies expressly to:
- (a) transit systems, including light rail transit systems whose design, construction, financing, maintenance, operation and rehabilitation and facilities management are procured by a contract similar to the Project Agreement and not to other similar transit systems;
 - (b) the Project Co System Infrastructure or New Third Party Infrastructure and not to other transit systems, including light rail transit systems;
 - (c) Project Co and not to other persons; or
 - (d) Persons undertaking projects for design, construction, financing, operation, maintenance and rehabilitation and facilities management that are procured by a contract similar to the Project Agreement and not 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 Project Co 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 Project Co is greater than its effect on other companies; or
 - (g) where such Change in Law affects companies generally.
- 1.235 “**Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.236 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 – Dispute Resolution Procedure.
- 1.237 “**Distribution**” has the meaning given in Schedule 28 – Refinancing.

- 1.238 “**Economic Interest**” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend, distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment-related benefits.
- 1.239 “**ELC/SAR Memo**” means Hurontario LRT Air Photo Ecological Land Classification and Species at Risk Birds Habitat Assessment, issued by AECOM and dated June 27, 2017.
- 1.240 “**Eligible Utilities Costs**” means the total aggregate of the prices charged to Project Co by the Category 1 Utility Companies in respect of the Works described in the Final Utility Baseline Documents.
- 1.241 “**Embargo Period**” means the dates when Utility Companies do not permit works to be undertaken.
- 1.242 “**Emergency**” means any situation, event, occurrence, multiple occurrences or circumstances:
- (a) that:
 - (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize or pose a threat to health and safety of any persons (including System Users and Province Persons) or any part of or the whole of the Project Co System Infrastructure or New Third Party Infrastructure;
 - (ii) causes or may cause damage or harm to property, buildings and/or equipment;
 - (iii) constitutes a hostage situation or state of emergency declared as such by the Contracting Authority Representative or Contracting Authority (acting reasonably);
 - (iv) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Project Co System Infrastructure or New Third Party Infrastructure, any part of the Lands, the conduct of Project Operations, or the conduct of Governmental Activities; or
 - (v) constitutes a period of transition to or from war;and which, in the opinion of Contracting Authority, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing;
or
 - (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) an Emergency Service Provider.
- 1.243 “**Emergency Response Plan**” means the plan to be prepared, submitted and implemented by Project Co in accordance with Schedule 15 – Output Specifications.

- 1.244 “**Emergency Service Providers**” means any Police Service, firefighting service, ambulance service, armed forces or other authority with emergency service authority pursuant to Applicable Law which may require access to the Project Co System Infrastructure or New Third Party Infrastructure from time to time.
- 1.245 “**Encumbrances**” means the Encumbrances listed in Schedule 16 – Encumbrances and any other encumbrances deemed to be Encumbrances as described in and for the purposes set out in Section 15.2(d) of the Project Agreement.
- 1.246 “**Endemic/Epidemic Protection Period**” means the period commencing on the date of Acceptance of the last Revenue Vehicle under the Revenue Vehicle Supply Contract and ending on the fifth anniversary of such date.
- 1.247 “**Energy Analysis Report**” has the meaning given in Schedule 8 – Energy Matters.
- 1.248 “**Energy Model**” has the meaning given in Schedule 8 – Energy Matters.
- 1.249 “**Energy Target Letter**” has the meaning given in Schedule 8 – Energy Matters.
- 1.250 “**Environmental Approvals**” means:
- (a) any authorization(s) issued by the MOECP relating to the Environmental Assessments; and
 - (b) any Permits, Licences and Approvals relating to environmental matters or relating to Environmental Law, and any Permits, Licences and Approvals relating to self-assessment standards that must be followed to demonstrate compliance with Environmental Law.
- 1.251 “**Environmental Assessments**” means, collectively:
- (a) Hurontario-Main LRT Project, Environmental Project Report dated June, 2014, including all appendices, technical reports, and reference documents noted therein;
 - (b) Hurontario Light Rail Transit Project – Environmental Project Report Addendum for Minor Changes, dated September, 2017, including all appendices, technical reports and reference documents noted therein;
 - (c) Hurontario Light Rail Transit Project – Environmental Project Report Addendum for Not Significant Changes, dated December 20, 2017, including all appendices, technical reports and reference documents noted therein,

and any and all amendments and supplements to the foregoing documents as may be made after Commercial Close or in connection with the Project from time to time during the Project Term.

- 1.252 “**Environmental Law**” means all Applicable Law relating to environmental assessment processes or public health and safety or the protection of the environment or Species-at-Risk.
- 1.253 “**Environmental Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.254 “**Environmental Quality Management Plan**” or “**EQMP**” has the meaning given in Schedule 11 – Quality Management.
- 1.255 “**Environmental Quality Manager**” has the meaning given in Schedule 11 – Quality Management.
- 1.256 “**Environmental Reports**” means Cultural Heritage Reports, Phase 1 and Phase 2 Environmental Site Assessment Reports, Designated Substances Survey Reports, Archaeological Reports and Environmental Assessments.
- 1.257 “**Epidemic Defect**” means a defect in a Revenue Vehicle or part which occurs as a result of the same fault (i.e. a fault with the same root cause as such defect) in any period of 12 months during the Endemic/Epidemic Protection Period on either:
- (a) 9 or more Revenue Vehicles; or
 - (b) [REDACTED]% or more of the same parts where fewer than three such parts (excluding consumables) are installed on a Revenue Vehicle; or
 - (c) [REDACTED]% or more of the same parts (excluding consumables) where three or more such parts (excluding consumables) are installed on a Revenue Vehicle.
- 1.258 “**Equipment Warranty Period**” means, for any Revenue Vehicles or any of the Revenue Vehicle Equipment (other than the Key Components) the period commencing on the date of Acceptance and ending on the earlier of the date being:
- (a) the date that the subject Revenue Vehicle has travelled 200,000 kilometres as part of the Project Co System Infrastructure (such travel to include kilometres traveled as part of the Burn-In Test); and
 - (b) the date that is four years after the date of Acceptance.
- 1.259 “**Equity Capital**” means the aggregate (without double counting) of all subscribed share capital, shareholder loans, loans made or capital contributed to Project Co by any Affiliate of Project Co or of a Project Co Party, and other contributed capital of Project Co, excluding, for greater certainty, any amounts advanced to Project Co under the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders.

- 1.260 “**Equity Contribution Agreement**” means the equity contribution agreement dated on or about the date of the Project Agreement entered into in respect of the Project by Project Co, [REDACTED], and [REDACTED], in its capacity as collateral trustee.
- 1.261 “**Equity Gain**” means an amount equal to the greater of zero and the difference between:
- (a) the amount paid in consideration of the percentage of Equity Capital (as at the date of the Project Agreement) sold in a particular sale of Equity Capital; and
 - (b) the amount, calculated on a pre-tax basis, paid in consideration of the percentage of Equity Capital (as at the date of the Project Agreement) sold in a particular sale of Equity Capital received in full on the day of the sale of Equity Capital, taken together with all Distributions paid in respect of the Equity Capital, and taking account of the actual timing of payment of all such amounts.
- 1.262 “**Equity IRR**” means the projected internal rate of return to the Equity Provider over the full term of this Project Agreement, taking into account the aggregate of all its investments and of all Distributions made and projected to be made.
- 1.263 “**Equity Providers**” means, collectively, the following entities:
- (a) [REDACTED]
- 1.264 “**Equity Sale Amount**” means the gross amount, without taking into account any transaction costs and fees, received in consideration of a percentage of Equity Capital.
- 1.265 “**Equity Sale IRR**” means the annualized internal rate of return realized by the seller on a sale of any percentage Equity Capital, between the date on which such seller initially invests in or acquires such percentage of Equity Capital, and the date on which the sale of such percentage of Equity Capital occurs. Equity Sale IRR shall be calculated using the XIRR function in Excel, by taking into account the Equity Sale Amount, together with all Distributions received by the seller with respect to such percentage of Equity Capital, and the amount initially paid by the same seller to invest in or acquire the percentage of the Equity Capital in question, as well as the actual timing of payment and/or receipt of all such amounts.
- 1.266 “**ESA**” means the *Endangered Species Act, 2007 (Ontario)*.
- 1.267 “**Escrow Account**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.268 “**Estimate**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.269 “**Estimated Fair Value**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.270 “**Event of Vandalism**” has the meaning given in Schedule 20 – Payment Mechanism.

- 1.271 “**Excess Equity Gain**” means an amount equal to the greater of zero and the difference between:
- (a) the Equity Sale Amount; and
 - (b) the Threshold Equity Sale Amount.
- 1.272 “**Excise Tax Act (Canada)**” means the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended from time to time.
- 1.273 “**Excusing Cause**” has the meaning given in Section 42.1(a) of the Project Agreement.
- 1.274 “**Executive Council Act (Ontario)**” means the *Executive Council Act*, R.S.O. 1990, c. E. 25, as amended from time to time.
- 1.275 “**Executive Project Meeting**” has the meaning given in Section 20.17(a) of the Project Agreement.
- 1.276 “**Executive Project Meeting Document**” has the meaning given in Section 20.17(e) of the Project Agreement.
- 1.277 “**Existing Abandoned Utility Infrastructure**” has the meaning given in Schedule 15 – Output Specifications.
- 1.278 “**Existing Metrolinx Infrastructure**” means existing infrastructure located on the Lands that is owned by Metrolinx, including, for clarity, railway tracks, signals, any existing GO Transit buildings, structures and improvements, rail platforms, vehicles, signage, shelters, parking lots, bus loops, access roads, and electrical, mechanical and communication systems.
- 1.279 “**Existing Third Party Infrastructure**” means existing public realm, road, highway, Utility Infrastructure, bus and railway infrastructure, or any other infrastructure situated on the Lands, owned by the MTO, the City of Mississauga, the City of Brampton, the Region of Peel, 407 ETR, Utility Companies, Railway Companies, or any other third party.
- 1.280 “**Expert**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.281 “**Expiry Date**” means the 30th anniversary of the Scheduled Substantial Completion Date and in no event will the Expiry Date be adjusted.
- 1.282 “**Expiry Rehabilitation Costs**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.283 “**Expiry Transition Amount**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.284 “**Expiry Transition Procedure**” means the procedure for expiry transition described in Schedule 24 – Expiry Transition Procedure.

- 1.285 “**Expiry Transition Process Asset Preservation Work Schedule**” has the meaning given in Schedule 15 – Output Specifications.
- 1.286 “**Expiry Transition Requirements**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.287 “**Expiry Transition Security**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.288 “**Expiry Transition Works**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.289 “**Expiry Transition Works Costs**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.290 “*Expropriations Act (Ontario)*” means the *Expropriations Act*, R.S.O. 1990, c. E.26, as amended from time to time.
- 1.291 “**Extension Contractor**” has the meaning given in Schedule 39 – System Extension.
- 1.292 “**External Quality Audit**” has the meaning given in Schedule 11 – Quality Management.
- 1.293 “**Facilities**” has the meaning given in Schedule 15 – Output Specifications.
- 1.294 “**Failure Points**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.295 “**Failure to Vacate**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.296 “**Failure to Vacate Liquidated Damages**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.297 “**Final Completion**” means the completion of the Works in accordance with the Project Agreement, including the completion of all Minor Deficiencies, other than any minor work that is seasonal in nature and cannot be completed by the Final Completion Date.
- 1.298 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.10 of the Project Agreement.
- 1.299 “**Final Completion Countdown Notice**” has the meaning given in Section 25.9A(a) of the Project Agreement.
- 1.300 “**Final Completion Date**” means the date on which Final Completion is achieved as evidenced by the Final Completion Certificate, as such date shall be stated therein.
- 1.301 “**Final Completion Notice**” has the meaning given in Section 25.10(b) of the Project Agreement.

- 1.302 “**Final Design Development Submittals**” has the meaning given in Section 20.3(d)(ii)(B) of the Project Agreement.
- 1.303 “**Final Project Co System Infrastructure Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.304 “**Final Utility Baseline Documents**” means, collectively, the final utility baseline documents attached as Appendix G to this Schedule 1 – Definitions and Interpretation.
- 1.305 “**Financial Administration Act, R.S.O. 1990, c. F.12**” means the *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended from time to time.
- 1.306 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.307 “**Financial Close Target Date**” means October 21, 2019, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.308 “**Financial Model**” means the computer spreadsheet model for the Project incorporating statements of Project Co’s cash flows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.309 “**Financial Obligations**” means the obligation to pay any application fees, third party fees, costs or charges (including all applicable taxes thereon), the provision of any letters of credit, instruments of guarantee, bonds or security deposits, or any other financial security obligations.
- 1.310 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 1.311 “**Fisheries Act Authorizations**” means the authorization(s) issued by Fisheries and Oceans Canada in connection with the Project, and any amendment or supplement to the authorization(s) as may be issued after Commercial Close or required in connection with the Project from time to time during the Project Term.
- 1.312 “**Fixed Infrastructure**” has the meaning given in Schedule 15 – Output Specifications.
- 1.313 “**Force Majeure**” has the meaning given in Section 44.1(a) of the Project Agreement.
- 1.314 “**Freedom of Information and Protection of Privacy Act (Ontario)**” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended from time to time.
- 1.315 “**Funeral, Burial and Cremations Services Act, 2002 (Ontario)**” means the *Funeral, Burial and Cremations Services Act*, S.O. 2002, c. 33, as amended from time to time.

- 1.316 **“Further Warranty Period”** means, in respect of an item of a Revenue Vehicle or Revenue Vehicle Equipment that is replaced and fitted by Revenue Vehicle Manufacturer and is functional when fitted (including a Warranty Spare which replaces a Spare or a Special Tool) (a **“Replacement Part”**):
- (a) where such item is not a Key Component, the period beginning on the date such item is so replaced and fitted by Revenue Vehicle Manufacturer with a Replacement Part and ending on the date being the later of:
 - (i) the date that the Equipment Warranty Period expires for the subject Revenue Vehicle; and
 - (ii) the date that is two years after the date such item is so replaced and fitted; and
 - (b) where such item is a Key Component and the Warranty Period applicable thereto is five years commencing on the date of Acceptance of the applicable Revenue Vehicle, a further period that is the longer of one year from the date upon which such item is so replaced and fitted by Revenue Vehicle Manufacturer with a Replacement Part, and the expiry of the original five year Warranty Period.
- 1.317 **“Gainshare Adjustment”** has the meaning given in Schedule 8 – Energy Matters.
- 1.318 [REDACTED]
- 1.319 **“Geotechnical Reports”** means the reports listed in Appendix E to this Schedule 1 – Definitions and Interpretation.
- 1.320 **“GO Transit”** means GO Transit, an operating division of Metrolinx, or UP Express, as applicable, and its successors.
- 1.321 **“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.
- 1.322 **“Government Sensitive Information”** means any information which is designated as such by Contracting Authority 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, and (ii) any record, the disclosure of which could be injurious to the interests of Contracting Authority.
- 1.323 **“Governmental Activities”** means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with the Lands, Project Co System Infrastructure and New Third Party Infrastructure by any Governmental Authority or Emergency Service Provider, and includes the Contracting Authority Activities.

- 1.324 “**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 Contracting Authority (including the Management Board of Cabinet), any aspect of the performance of the Project Agreement, the operation of the Hurontario LRT or the Governmental Activities, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.325 “**GTA**” means the Greater Toronto Area.
- 1.326 “**Guarantors**” means the Construction Guarantors and the Service Guarantors.
- 1.327 “**Guideway**” has the meaning given in Schedule 15 – Output Specifications.
- 1.328 “**H&S Certification Default Event**” has the meaning given in Section 9.6(c) of the Project Agreement.
- 1.329 “**H&S Certification Maintenance Plan**” has the meaning given in Section 9.6(b)(vii)(B) of the Project Agreement.
- 1.330 “**H&S Certification Reinstatement Plan**” has the meaning given in Section 9.6(b)(vi)(B) of the Project Agreement.
- 1.331 “**H&S Construction Inspection**” has the meaning given in Section 13(b) of the Project Agreement.
- 1.332 “**H&S Construction Inspection Report**” has the meaning given in Section 13(d) of the Project Agreement.
- 1.333 “**H&S Construction Re-Inspection**” has the meaning given in Section 13(f)(ii) of the Project Agreement.
- 1.334 “**H&S Construction Re-Inspection Report**” has the meaning given in Section 13(f)(iii) of the Project Agreement.
- 1.335 “**H&S Conviction**” has the meaning given in Section 45.1(a)(xix) of the Project Agreement.
- 1.336 “**H&S Maintenance Inspection**” has the meaning given in Section 13(b) of the Project Agreement.
- 1.337 “**H&S Maintenance Inspection Report**” has the meaning given in Section 13(e) of the Project Agreement.
- 1.338 “**H&S Maintenance Re-Inspection**” has the meaning given in Section 13(f)(ii) of the Project Agreement.

- 1.339 “**H&S Maintenance Re-Inspection Report**” has the meaning given in Section 13(f)(iv) of the Project Agreement.
- 1.340 “**Handover**” means, as applicable, the successful handover, by Project Co of,
- (a) the New 407 ETR Infrastructure, or a component thereof, to Contracting Authority or, where Notice of Delegation has been provided by Contracting Authority in respect of New 407 ETR Infrastructure, to 407 ETR, in accordance with Section 25.13 of the Project Agreement, including, for clarity, the receipt of Contracting Authority’s or 407 ETR’s (as the case may be) confirmation that Handover has been successfully achieved and the provision of the Notice to Contracting Authority in accordance with Section 25.13(g) of the Project Agreement;
 - (b) the New City of Brampton Infrastructure, or a component thereof, to Contracting Authority or, where Notice of Delegation has been provided by Contracting Authority in respect of New City of Brampton Infrastructure, to the City of Brampton, in accordance with Section 25.13 of the Project Agreement, including, for clarity, the receipt of Contracting Authority’s or City of Brampton’s (as the case may be) confirmation that Handover has been successfully achieved and the provision of the Notice to Contracting Authority in accordance with Section 25.13(g) of the Project Agreement;
 - (c) the New City of Mississauga Infrastructure, or a component thereof, to Contracting Authority or, where Notice of Delegation has been provided by Contracting Authority in respect of New City of Mississauga Infrastructure, to the City of Mississauga, in accordance with Section 25.13 of the Project Agreement, including, for clarity, the receipt of Contracting Authority’s or City of Mississauga’s (as the case may be) confirmation that Handover has been successfully achieved and the provision of the Notice to Contracting Authority in accordance with Section 25.13(g) of the Project Agreement;
 - (d) the New Metrolinx Infrastructure, or a component thereof, to Contracting Authority or, where Notice of Delegation has been provided by Contracting Authority in respect of New Metrolinx Infrastructure, to GO Transit, in accordance with Section 25.13 of the Project Agreement, including, for clarity, the receipt of Contracting Authority’s or GO Transit’s (as the case may be) confirmation that Handover has been successfully achieved and the provision of the Notice to Contracting Authority in accordance with Section 25.13(g) of the Project Agreement;
 - (e) the New MTO Infrastructure, or a component thereof, to Contracting Authority or, where Notice of Delegation has been provided by Contracting Authority in respect of New MTO Infrastructure, to MTO, in accordance with Section 25.13 of the Project Agreement, including, for clarity, the receipt of Contracting Authority’s or MTO’s (as the case may be) confirmation that Handover has been successfully achieved and the provision of the Notice to Contracting Authority in accordance with Section 25.13(g) of the Project Agreement;

- (f) the New Region of Peel Infrastructure, or a component thereof, to Contracting Authority or, where Notice of Delegation has been provided by Contracting Authority in respect of New Region of Peel Infrastructure, to Region of Peel, in accordance with Section 25.13 of the Project Agreement, including, for clarity, the receipt of Contracting Authority's or Region of Peel's (as the case may be) confirmation that Handover has been successfully achieved and the provision of the Notice of Contracting Authority in accordance with Section 25.13(g) of the Project Agreement;
- (g) the New Railway Company Infrastructure, or a component thereof, to Contracting Authority or, where Notice of Delegation has been provided by Contracting Authority in respect of New Railway Company Infrastructure, to the applicable Railway Company Owner, in accordance with Section 25.13 of the Project Agreement, including, for clarity, the receipt of Contracting Authority's or the applicable Railway Company Owner's (as the case may be) confirmation that Handover has been successfully achieved and the provision of the Notice to Contracting Authority in accordance with Section 25.13(g) of the Project Agreement; or
- (h) the New Utility Company Infrastructure to the Utility Companies in accordance with the requirements agreed to between Project Co and the Utility Companies.
- 1.341 “**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.
- 1.342 “**Hazardous Waste Soils**” has the meaning given in Section 16.2(k)(ii)(A) of the Project Agreement.
- 1.343 “**Hazardous Waste Soils or PCB Soils Variation**” has the meaning given in Section 16.2(k)(ii)(D) of the Project Agreement.
- 1.344 “**Hedge Provider**” means a person that has entered into a Hedging Agreement with Project Co pursuant to the Lending Agreements, together with their successors and permitted assigns.
- 1.345 “**Hedging Agreement**” means an agreement relating to interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.346 “**Highway 401 Structure**” has the meaning given in Schedule 15 – Output Specifications.
- 1.347 “**Highway 403 Structure**” has the meaning given in Schedule 15 – Output Specifications.
- 1.348 “**Highway 407 ETR Mainline**” has the meaning given in Schedule 15 – Output Specifications.
- 1.349 “**Highway 407 ETR Mainline Construction Activities Notice**” has the meaning given in Schedule 15 – Output Specifications.

- 1.350 “**Highway 407 ETR Structure**” has the meaning given in Schedule 15 – Output Specifications.
- 1.351 “**HLRT System**” means the integrated passenger light rail transit system in respect of the Project, including: (a) the Project Co System Infrastructure; (b) the New Third Party Infrastructure and the Existing Third Party Infrastructure used for the passenger light rail transit system; and (c) the associated operation and maintenance of the passenger light rail transit system.
- 1.352 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.353 “**Hurontario LRT**” or “**HLRT**” means the infrastructure of the passenger light rail transit system in respect of the Project, including the Guideway, the Civil Structures, the Systems, the Facilities, the Vehicles, the Hurontario OMSF, and all associated and/or related data, records, drawings, plans, reports and systems, all as described and specified in Schedule 15 – Output Specifications.
- 1.354 “**Hurontario OMSF**” or “**Hurontario Operations, Maintenance and Storage Facility**” has the meaning given in Schedule 15 – Output Specifications.
- 1.355 “**IC Construction Period Payment Authorization Certificate**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.356 “**IC Construction Period Payment Confirmation Certificate**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.357 “**IC Initial Capital Investment Certificate**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.358 “**IC Substantial Completion Deliverables Confirmation**” has the meaning given in Section 25.3(c)(i) of the Project Agreement
- 1.359 “**IC Substantial Completion Deliverables Deficiencies List**” has the meaning given in Section 25.3(c)(ii) of the Project Agreement.
- 1.360 “**IHSA**” means Infrastructure Health and Safety Association, a not-for-profit occupational safety organization formed on January 1, 2010 that provides health and safety training material and services to Ontario construction, electrical utilities and transportation industries, and is accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing, or such other person so accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing.
- 1.361 “**Income Tax Act (Canada)**” means the *Income Tax Act*, R.S.C., 1985, c. 1, as amended from time to time.
- 1.362 “**Income Tax Act (Ontario)**” means the *Income Tax Act*, R.S.O. 1990, c. I.2, as amended from time to time.

- 1.363 “**Indemnifiable Taxes**” has the meaning given in Section 35.7(b)(iii) of the Project Agreement.
- 1.364 “**Indemnifier**” has the meaning given in Section 56.3(a) of the Project Agreement.
- 1.365 “**Independent Certifier**” means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Project Agreement.
- 1.366 “**Independent Certifier Agreement**” means the contract entered into between Project Co, Contracting Authority and the Independent Certifier in substantially the form attached hereto as Schedule 6 – Independent Certifier Agreement.
- 1.367 “**Independent Inspector**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.368 “**Independent Safety Assessor**” means an independent party appointed by Project Co to assess:
- (a) the safety and security of the Works prior to Substantial Completion; and
 - (b) changes to Project Co System Infrastructure after Substantial Completion, if any.
- 1.369 “**Indirect Losses**” has the meaning given in Section 57.1(a) of the Project Agreement.
- 1.370 “**Ineligible Cost Increase**” means any cost increase attributable to,
- (a) Works that Project Co could have self-performed but elected to have the Category 1 Utility Company perform on Project Co’s behalf;
 - (b) Works carried out during an Embargo Period;
 - (c) any failure by Project Co to diligently enforce the applicable Utility Agreement and to diligently monitor a Category 1 Utility Company’s compliance with the applicable Utility Agreement; or
 - (d) a failure by Project Co to carry out its obligations in accordance with the Project Agreement including, for clarity, a failure of Project Co to comply with a Utility Agreement or a failure of Project Co to coordinate the Utility Infrastructure Work.
- 1.371 “**Inferred TPSS Contamination**” has the meaning given in Section 16.2(k)(i) of the Project Agreement.
- 1.372 “**Inflation Base Date**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.373 “**Initial Capital Investment Amount**” has the meaning given in Schedule 21 – Construction Period Payments.

- 1.374 “**Initial Capital Investment Date**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.375 “**Initial Capital Investment Date Notice**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.376 “**Injurious Affection**” has the meaning given in the *Expropriations Act*, R.S.O. 1990, c. E. 26, as amended from time to time.
- 1.377 “**Innovation Proposal**” has the meaning given in Section 39.2(b) of the Project Agreement.
- 1.378 “**Inspection and Test Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.379 “**Inspection and Test Sub-Plans**” has the meaning given in Schedule 11 – Quality Management.
- 1.380 “**Insurance Adjustment**” has the meaning given in Section 7.1(d) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.381 “**Insurance Cost Factor**” has the meaning given in Section 7.1(c) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.382 “**Insurance Policies**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.383 “**Insurance Proceeds**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.384 “**Insurance Review Date**” has the meaning given in Section 7.1(e) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.385 “**Insurance Review Period**” has the meaning given in Section 7.1(f) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.386 “**Insurance Trust Account**” means Account No. [REDACTED] at [REDACTED].
- 1.387 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between Contracting Authority, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 – Insurance Trust Agreement.
- 1.388 “**Integrated System Extension**” has the meaning given in Schedule 39 – System Extension.
- 1.389 “**Intellectual Property**” means all intellectual and industrial property, including without limitation: (i) Trade-Marks; (ii) Patents; (iii) Copyrights; (iv) inventions, whether or not patentable, whether or not reduced to practice or whether or not yet made the subject of a pending patent application or applications; (v) ideas and conceptions of potentially patentable subject matter, including, without limitation, any patent disclosures, whether or

not reduced to practice and whether or not yet made the subject of a pending patent application or applications; (vi) trade secrets and confidential, technical or business information (including ideas, formulas, compositions, designs, inventions, and conceptions of inventions whether patentable or unpatentable and whether or not reduced to practice); (vii) whether or not confidential, technology (including know-how and show-how), manufacturing and production processes and techniques, methodologies, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, marketing and business data, pricing and cost information, business and marketing plans; (viii) copies and tangible embodiments of all the foregoing, in whatever form or medium; (ix) all rights to obtain and rights to apply for any of the foregoing and all rights therein provided by multinational treaties or conventions; (x) all rights under any agreements or instruments with respect to items in (i) to (ix) above; and (xi) all rights to sue and recover and retain damages and costs and attorneys' fees for present and past infringement or other violation of any of the intellectual property rights hereinabove set out, other than any LRV Intellectual Property.

- 1.390 “**Intellectual Property Rights**” means all right, title and interest in, to and under the 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 Commercial Close created, brought into existence, acquired, used or intended to be used by Project Co, any Subcontractor or by other third parties (for such third parties' use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:
- (a) the Works, including the design and construction of the Project Co System Infrastructure and the New Third Party Infrastructure (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction);
 - (b) the Project Co Services, including the maintenance, improvement, testing and rehabilitation of the Project Co System Infrastructure;
 - (c) any other Project Operations; or
 - (d) the Project Agreement.
- 1.391 “**Interchange**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.392 “**Interface Agreement**” means the interface agreement dated on or about the date of the Project Agreement between Project Co, Construction Contractor and Service Provider.
- 1.393 “**Interim Baseline Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.394 “**Internal Quality Audit**” has the meaning given in Schedule 11 – Quality Management.

- 1.395 “**IO**” or “**Infrastructure Ontario**” means Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*.
- 1.396 “**IPFP Framework**” means the alternative financing and procurement project framework which complies with the principles set out in *MOI’s Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector*.
- 1.397 “**Issued For Construction**” has the meaning given in Schedule 10 – Review Procedure.
- 1.398 “**Jointly Developed Materials**” has the meaning given in Section 51.4(a) of the Project Agreement.
- 1.399 “**Junior Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.400 “**Junior Debt Makewhole**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.401 “**Junior Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Junior Lenders in the normal course under the Lending Agreements.
- 1.402 “**Junior Lenders**” [Not Used.] This definition is not applicable as of the date of the Project Agreement and, accordingly, any references to “Junior Lenders”, “Junior Debt Amount”, “Junior Debt Makewhole” and “Junior Debt Service Amount” throughout the Project Agreement and any Ancillary Documents are not applicable as of the date of the Project Agreement.
- 1.403 “**Key Component**” means those components, including corrosion protection for car body shells, which are identified as such in Schedule 15 – Output Specifications.
- 1.404 “**Key Individual**” means those Project Co Parties listed in Schedule 9 – Key Individuals.
- 1.405 “**Key Individual Category A**” means those Key Individuals who are indicated as being in Category “A” in Schedule 9 – Key Individuals.
- 1.406 “**Lakeshore West Line Alternative Transportation Event**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.407 “**Lakeshore West Line Alternative Transportation Event Liquidated Damages**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.408 “**Lakeshore West Line GO Train Delay**” has the meaning given in Schedule 19 – Liquidated Damages.

- 1.409 “**Lakeshore West Line GO Train Delay Liquidated Damages**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.410 “**Lakeshore West Rail Structure**” has the meaning given in Schedule 15 – Output Specifications.
- 1.411 “**Lands**” has the meaning given in Schedule 35 – Lands.
- 1.412 “**Lane Closure**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.413 “**Lane Closure Adjustment**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.414 “**Lane Closure Target Letter**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.415 “**LEED**” means Leadership in Energy & Environmental Design.
- 1.416 “**LEED Rating System**” means CaGBC’s Leadership in Energy and Environmental Design (LEED) for Building Design and Construction (BD+C) New Construction and Major Renovations latest v4 with Addenda, including optional Canadian Alternative Compliance Paths (ACPs).
- 1.417 “**LEED Silver Rating**” means the achievement of a “Silver” certification from the CaGBC, with respect to the LEED Rating System.
- 1.418 “**LEED Silver Rating Liquidated Damages**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.419 “**LRT Rules**” has the meaning given in Schedule 15 – Output Specifications.
- 1.420 “**LRT Rules and Standard Operating Procedures**” has the meaning given in Schedule 15 – Output Specifications.
- 1.421 “**Lenders**” means all or any of the persons acting at all times at arm’s length to Project Co and each Project Co Party who provide financing to Project Co in respect of the Project Operations under the Lending Agreements, including the Senior Lenders and, where the context so permits, prospective financiers or lenders, and for greater clarity, excludes any Affiliate of Project Co or a Project Co Party.
- 1.422 “**Lenders’ Agent**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.423 “**Lenders’ Consultant**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.424 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between Contracting Authority, the Lenders’ Agent and Project Co in the form set out in Schedule 4 – Lenders’ Direct Agreement.

- 1.425 “**Lending Agreements**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.426 “**Letter of Credit Provider**” has the meaning given in the Request for Proposals.
- 1.427 “**Letter of Good Standing**” means the document issued by IHSA to a person confirming that the internal maintenance audit performed by such person regarding its health and safety management systems has been approved by IHSA, and that such person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program.
- 1.428 “**Limitations Act, 2002 (Ontario)**” means the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, as amended from time to time.
- 1.429 “**Limited Modification Rights**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.430 “**Liquid Market**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.431 “**Listed Project Co PLAs**” means those Project Co Permits, Licences and Approvals listed in Appendix F to this Schedule 1 – Definitions and Interpretation.
- 1.432 “**Load-Path Diagram**” means a graphically illustrated diagram that indicates in all relevant detail (including by use of colour-coded arrows indicating the directions of forces caused by dead loads, live loads, vertical loads and lateral loads) how the structural loads are transferred throughout a building or structure that is to be the subject of a Demolition.
- 1.433 “**Longstop Date**” has the meaning given in Section 45.1(a)(ii) of the Project Agreement.
- 1.434 “**LRV Intellectual Property**” means LRV Software and rights, title and/or interests in intellectual property subsisting anywhere in the world including in:
- (a) patents, petty patents and utility models, design patents, inventors certificates and any form of protection for inventors;
 - (b) trade marks, domain names and trade and business names (including service marks);
 - (c) semi-conductor chip or mask work rights;
 - (d) design rights, including industrial designs;
- whether the above rights are registered, unregistered or form pending applications;
- (e) goodwill;
 - (f) copyrights (including copyrights in LRV Software), neighbouring rights and moral rights;

- (g) database rights;
 - (h) know-how (including trade secrets, confidential business information and rights in inventions, processes, formulae and ideas); and
 - (i) any similar or analogous rights to any of the above, whether arising or granted under the laws of Canada, France or of any other jurisdiction.
- 1.435 “**LRV Software**” means the executable object code version of software relating to the Revenue Vehicle Deliverables, including any software to be provided in accordance with the Revenue Vehicle Supply Contract, which is supplied in machine readable form and loaded upon the relevant piece of equipment or computer system to which it relates.
- 1.436 “**Mainline Track**” has the meaning given in Schedule 15 – Output Specifications.
- 1.437 “**Maintenance Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.438 “**Maintenance Services**” has the meaning given in Schedule 15 – Output Specifications.
- 1.439 “**Maintenance Spares**” means the Spares specified for the Revenue Vehicles in Schedule 15 – Output Specifications.
- 1.440 “**Maintenance Vehicles**” has the meaning given in Schedule 15 – Output Specifications.
- 1.441 “**Major Existing Third Party Infrastructure**” means each of
- (a) the Lakeshore West Rail Structure;
 - (b) the QEW Structure;
 - (c) the Whittle Road Structure;
 - (d) the Highway 403 Structure;
 - (e) the Highway 401 Structure; and
 - (f) the Highway 407 Structure.
- 1.442 “**Major Non-Conformance**” means any Non-Conformance that
- (a) contains significant deficiencies or does not generally conform with the requirements of the Project Agreement;
 - (b) is reasonably expected to result in a Medium Qualifying NCR; or
 - (c) the continued existence of which is reasonably expected to result in Project Co being unable to satisfy the requirements of Substantial Completion.

- 1.443 “**Major Track Closure**” has the meaning given in Schedule 42 – Rail Corridor Access and Flagging.
- 1.444 “**Make Good**”, “**Made Good**” and derivatives thereof, means repairing, restoring, replacing, refurbishing, rehabilitating or performing filling operation on the Works as required under the Project Agreement or any existing components disturbed due to the Works (including any Existing Metrolinx Infrastructure), to at least the condition existing at the commencement of the Works, in terms of construction integrity, finishes, alignment with existing adjoining surfaces, compatibility of materials, sound attenuation criteria, exfiltration/infiltration requirements, air/vapour barrier and thermal continuity and including with respect to Revenue Vehicles, the criteria and specifications set forth in Schedule 43 – Revenue Vehicles.
- 1.445 “**Management Services Agreements**” means, collectively, the following agreements:

[REDACTED].
- 1.446 “**Mandatory Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.447 “**Manuals**” means the manuals for the Revenue Vehicles (in electronic format and a maximum of 6 hard copies upon request) which describe how those Revenue Vehicles should be repaired, operated, serviced and maintained, and shall be revised to reflect the modifications to the Revenue Vehicles, all as set out in Schedule 15 – Output Specifications and which include parts information so that the appropriate parts can be identified and procured.
- 1.448 “**Master Agreement**” means any agreement in relation to the Project from time to time entered into between Metrolinx and a Municipality, between Contracting Authority and a Stakeholder, between Metrolinx and a Stakeholder or between Infrastructure Ontario and a Stakeholder, which is referred to by Contracting Authority as a “master agreement”; and “**Master Agreements**” shall be construed accordingly.
- 1.449 “**Maximum Available Points**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.450 “**Maximum Service Payment**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.451 “**Medium Qualifying NCR**” has the meaning given to it in Schedule 21 – Construction Period Payments.
- 1.452 “**Metrolinx**” means Metrolinx; a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c.48 and includes any successors thereto.
- 1.453 “**Metrolinx Act, 2006 (Ontario)**” means the *Metrolinx Act, 2006*, S.O. 2006, c.16, as amended from time to time.

- 1.454 “**Metrolinx Developer Review Process**” means the process set out in Section 3 of the Metrolinx Developer’s Guide.
- 1.455 “**Metrolinx Developer’s Guide**” means the Metrolinx Developer’s Guide (2018), as may be amended from time to time, that is to be used by Metrolinx, each Municipality, Project Co and third parties to support planning and coordination efforts for proposed developments within the Metrolinx Development Review Zone.
- 1.456 “**Metrolinx Development Review Zone**” means any location within 60 metres of any Lands, Project Co System Infrastructure or New Third Party Infrastructure.
- 1.457 “**Metrolinx Lands**” has the meaning given in Schedule 35 – Lands.
- 1.458 “**Metrolinx Lands Discrete Parcels**” means all Metrolinx Lands, other than those Metrolinx Lands that are located on the Municipal Road Allowance.
- 1.459 “**Minimum Required Fleet**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.460 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Substantial Completion, and that would not materially impair:
- (a) the public’s, System Users’, or Contracting Authority’s use and enjoyment of the Project Co System Infrastructure or any third parties use and enjoyment of their respective New Third Party Infrastructure (including any Contracting Authority Commissioning);
 - (b) the performance of the Governmental Activities;
 - (c) the performance of the Project Co Services by Project Co;
 - (d) safety, security, or traffic flow on the Project Co System Infrastructure or New Third Party Infrastructure in any relevant respect.
- 1.461 “**Minor Deficiencies List**” has the meaning given in Section 25.7(a) of the Project Agreement.
- 1.462 “**Minor Non-Conformance**” means any Non-Conformance that:
- (a) generally conforms to the requirements of the Project Agreement, but in which immaterial deficiencies have been found; or
 - (b) the continued existence of which is not reasonably expected to result in Project Co becoming unable to satisfy the requirements for Substantial Completion but may result in a Minor Deficiency.

- 1.463 “**Minor System User Contamination**” means Contamination where the costs of clean up or remediation shall not exceed \$5000 on a per occurrence basis (and not in the aggregate).
- 1.464 “**Minor Track Closure**” has the meaning given in Schedule 42 – Rail Corridor Access and Flagging.
- 1.465 “**Mislocated Utility Infrastructure**” means:
- (a) Utility Infrastructure that is discovered more than 200mm horizontally from the provided surveyed point via any Quality Level A investigation in the Subsurface Utility Engineering (SUE) Report;
 - (b) Utility Infrastructure that is discovered more than 150mm vertically from the provided surveyed point via any Quality Level A investigation in the Subsurface Utility Engineering (SUE) Report;
 - (c) Utility Infrastructure that is discovered more than 1500mm horizontally from the location provided via any Quality Level B investigation in the Subsurface Utility Engineering (SUE) Report;
 - (d) Utility Infrastructure that is discovered more than 2000mm horizontally from the location provided in the Quality Level C investigation in the Subsurface Utility Engineering (SUE) Report;
 - (e) Utility Infrastructure that is discovered more than 3000mm horizontally from the location provided in the Quality Level D investigation in the Subsurface Utility Engineering (SUE) Report; or
 - (f) any watermain, combined sewer, storm sewer or sanitary sewer that is discovered more than 600mm vertically from the location provided in the Subsurface Utility Engineering (SUE) Report,
- provided, however, that the following shall be excluded from the definition of “Mislocated Utility Infrastructure”:
- (g) any relocations of Utility Infrastructure pursuant to (a) through (f) above, carried out at the Site subsequent to the applicable dates specified in the Subsurface Utility Engineering (SUE) Report, including with respect to,
 - (i) the Works; and
 - (ii) Third Party Works and Additional Works (including, for greater certainty, the Preparatory Activities).
- 1.466 “**MiWay**” means The Corporation of the City of Mississauga.
- 1.467 “**Modification**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.468 “**MOECP**” has the meaning given in Schedule 17 – Environmental Obligations.

- 1.469 “**MOI**” means Her Majesty The Queen in right of Ontario as represented by the Minister of Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.470 “**Monitoring Notice**” has the meaning given in Section 31.5(a) of the Project Agreement.
- 1.471 “**Monthly Performance Monitoring Report**” has the meaning given in Schedule 11 – Quality Management.
- 1.472 “**Monthly Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.473 “**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 delegate power and such Minister’s authority.
- 1.474 “**MTO Jointly Developed Materials**” has the meaning given in Section 51.4(a)(iv) of the Project Agreement.
- 1.475 “**MTO Road Allowance**” has the meaning given in Schedule 35 – Lands.
- 1.476 “**Municipal**” means in respect of a Municipality.
- 1.477 “**Municipal Road Allowance**” has the meaning given in Schedule 35 – Lands.
- 1.478 “**Municipal Utility Work**” means the temporary and permanent installation, relocation, upgrading, reinstatement, restoration, downsizing, designing and/or building works by Project Co relating to the Utility Infrastructure for a Municipality, carried out in connection with or as part of the Project Operations.
- 1.479 “**Municipality**” means any of the City of Brampton, the City of Mississauga or the Region of Peel, as the context requires; “**Municipalities**” means all of them.
- 1.480 “**New 407 ETR Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, reinstated, restored, refurbished, downsized, designed and/or built by Project Co for 407 ETR in accordance with the Project Agreement. For the purposes of Sections 25.13, 25.15 and 25.16 of the Project Agreement and Schedule 14 – Commissioning, “New 407 ETR Infrastructure” means “New 407 ETR Infrastructure or any component thereof”.
- 1.481 “**New Agreement**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.482 “**New City of Brampton Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, reinstated, restored, refurbished, downsized, designed and/or built by Project Co for the City of Brampton in accordance with the Project Agreement (including, for greater certainty, in accordance with the applicable City of Brampton Standards), which, for clarity, includes the New City of Brampton Utility Infrastructure. For the purposes of Sections 25.13, 25.15 and 25.16 of the Project

Agreement and Schedule 14 – Commissioning, “New City of Brampton Infrastructure” means “New City of Brampton Infrastructure or a component thereof”.

- 1.483 “**New City of Brampton Utility Infrastructure**” means the Utility Infrastructure to be installed, relocated, upgraded, reinstated, downsized, restored, refurbished, designed and/or built by Project Co for the City of Brampton in accordance with the Project Agreement (including, for greater certainty, in accordance with the applicable City of Brampton Standards).
- 1.484 “**New City of Mississauga Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, reinstated, restored, refurbished, downsized, designed and/or built by Project Co for the City of Mississauga in accordance with the Project Agreement (including, for greater certainty, in accordance with the applicable City of Mississauga Standards), which, for clarity, includes the New City of Mississauga Utility Infrastructure. For the purposes of Sections 25.13, 25.15 and 25.16 of the Project Agreement and Schedule 14 – Commissioning, “New City of Mississauga Infrastructure” means “New City of Mississauga Infrastructure or a component thereof”.
- 1.485 “**New City of Mississauga Utility Infrastructure**” means the Utility Infrastructure to be installed, relocated, upgraded, reinstated, downsized, restored, refurbished, designed and/or built by Project Co for the City of Mississauga in accordance with the Project Agreement (including, for greater certainty, in accordance with the applicable City of Mississauga Standards).
- 1.486 “**New Metrolinx Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, reinstated, refurbished, downsized, restored, designed and/or built by Project Co for GO Transit in accordance with the Project Agreement. For the purposes of Sections 25.13, 25.15 and 25.16 of the Project Agreement and Schedule 14 – Commissioning, “New Metrolinx Infrastructure” means “New Metrolinx Infrastructure or any component thereof”.
- 1.487 “**New MTO Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, reinstated, downsized, restored, refurbished, designed and built by Project Co for MTO in accordance with the Project Agreement. For the purposes of Sections 25.13, 25.15 and 25.16 of the Project Agreement and Schedule 14 – Commissioning, “New MTO Infrastructure” means “New MTO Infrastructure or any component thereof”.
- 1.488 “**New Municipal Infrastructure**” means the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure and/or the New Region of Peel Infrastructure, as the context requires.
- 1.489 “**New Municipal Utility Infrastructure**” means, collectively, the New City of Mississauga Utility Infrastructure, the New City of Brampton Utility Infrastructure, and the New Region of Peel Utility Infrastructure.
- 1.490 “**New Railway Company Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, reinstated, refurbished, downsized, restored, designed

and/or built by Project Co for a Railway Company in accordance with the Project Agreement. For the purposes of Sections 25.13, 25.15 and 25.16 of the Project Agreement and Schedule 14 – Commissioning, “New Railway Company Infrastructure” means “New Railway Company Infrastructure or a component thereof”.

- 1.491 “**New Region of Peel Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, reinstated, downsized, restored, refurbished, designed and/or built by Project Co for Region of Peel in accordance with the Project Agreement (including, for greater certainty, in accordance with the applicable Region of Peel Standards), which, for clarity, includes the New Region of Peel Utility Infrastructure. For the purposes of Sections 25.13, 25.15 and 25.16 of the Project Agreement and Schedule 14 – Commissioning, “New Region of Peel Infrastructure” means “New Region of Peel Infrastructure or any component thereof”.
- 1.492 “**New Region of Peel Utility Infrastructure**” means the Utility Infrastructure to be installed, relocated, upgraded, reinstated, downsized, restored, refurbished, designed and/or built by Project Co for the Region of Peel in accordance with the Project Agreement (including, for greater certainty, in accordance with the applicable Region of Peel Standards).
- 1.493 “**New Third Party Infrastructure**” means new public realm, highway, utility, rail facility, bus and railway infrastructure, as described in Schedule 15 – Output Specifications, to be installed, relocated, upgraded, abandoned, reinstated, restored, refurbished, designed and/or built by Project Co for third parties, in accordance with the Project Agreement. For clarity, New Third Party Infrastructure includes all of the New Municipal Infrastructure, the New Utility Company Infrastructure, the New MTO Infrastructure, the New 407 ETR Infrastructure, the New Metrolinx Infrastructure and the New Railway Company Infrastructure.
- 1.494 “**New Utility Company Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, abandoned, reinstated, restored, refurbished, designed and/or built by Project Co for a Utility Company in accordance with the Project Agreement and with reference to the applicable Utility Company standards. For greater certainty, New Utility Company Infrastructure does not include any New Municipal Utility Infrastructure.
- 1.495 “**Noise and Vibration Control Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.496 “**Noise and Vibration Survey**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.497 “**Non-Conformance**” means any failure by Project Co to perform any of its obligations under the Project Agreement in respect of any aspect of the Works or Project Co Services and which failure is not rectified by Project Co within the applicable time period, if any, stipulated in the Project Agreement.
- 1.498 “**Non-Conformance Tracking System**” has the meaning given in Schedule 11 – Quality Management.

- 1.499 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.500 “**Non-Disclosure Agreement**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.501 “**Non-Project Co Cause**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.502 “**Non-Resident**” means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 1.503 “**Notice**” has the meaning given in Section 61.1(a) of the Project Agreement.
- 1.504 “**Notice of Delegation**” has the meaning given in Section 25.13(b) of the Project Agreement.
- 1.505 “**Notice of Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.506 “**Notice Period**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.507 “**OCC**” has the meaning given in Schedule 15 – Output Specifications.
- 1.508 “**Occupational Health and Safety Act (Ontario)**” means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended from time to time.
- 1.509 “**Off-Peak Period**” has the meaning given in Schedule 15 – Output Specifications.
- 1.510 “**OHSAS 18001**” means the international standard for occupational health and safety management systems developed by the Occupational Health and Safety Advisory Services Project Group, a British body formed to develop the standard.
- 1.511 “**OHSAS 18001 Accreditation**” means, in respect of a person, such person having received certification in respect of its health and safety management systems that such systems comply with the requirements of OHSAS 18001.
- 1.512 “**OMSF**” means the Hurontario OMSF.
- 1.513 “**Ontario Heritage Act (Ontario)**” means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended from time to time.
- 1.514 “**Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011**” means the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Sch. 32, as amended from time to time.
- 1.515 “**Open Data Directive**” means the Management Board of Cabinet’s Open Data Directive dated April 29, 2016, as may be amended from time to time.

- 1.516 “**Operational Response**” means the initial response to a failure of, damage to, danger or other incident, occurring on the Project Co System Infrastructure (including an Emergency) which actually or, in Contracting Authority's or Project Co's reasonable opinion, may potentially interrupt or delay the Revenue Service or adversely affects safety in performance of the Operations Services.
- 1.517 “**Operational Term**” means the period from the Substantial Completion Date and expiring at midnight on the Termination Date.
- 1.518 “**Operational Term Lands**” has the meaning given in Schedule 35 – Lands.
- 1.519 “**Operational Term Limit**” has the meaning given in Section 57.4(a)(ii) of the Project Agreement.
- 1.520 “**Operations Control Centre**” has the meaning given in Schedule 15 – Output Specifications.
- 1.521 “**Operations Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.522 “**Operations Service Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.523 “**Operations Services**” has the meaning given in Schedule 15 – Output Specifications.
- 1.524 “**Operator**” means any person directly engaged by Project Co or the Service Provider to carry out the Operations Services and any substitute person engaged by Project Co or the Service Provider to perform such activities and services as may be permitted by the Project Agreement.
- 1.525 “**Optional Lands**” means the lands owned or to be acquired by Metrolinx or lands in respect of which Metrolinx has acquired or will acquire certain rights, all as set out in the table in Part B of Schedule 35 and as indicated by “Optional Land” in the “Restrictions and Requirements” column.
- 1.526 “**Order**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.527 “**Original Eligible Utilities Costs**” means, in respect of each Category 1 Utility Company, the costs set out in the Final Utility Baseline Documents identified as “Original Eligible Utilities Costs”.
- 1.528 “**Other Contractor**” means an Additional Contractor or a Third Party Contractor.
- 1.529 “**Other Works**” means the Additional Works and the Third Party Works.
- 1.530 “**Output Specifications**” means Schedule 15 – Output Specifications, and includes Schedule 15-1 – Technical Terms and Reference Documents, Schedule 15-2 - Design and Construction Requirements and Schedule 15-3 – Operations and Maintenance Requirements.

- 1.531 “**Ownership**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.532 “**PA Parties**” or “**PA Party**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.533 “**Painshare Adjustment**” has the meaning given in Schedule 8 – Energy Matters.
- 1.534 [REDACTED].
- 1.535 “**Party**” means either Contracting Authority or Project Co, and “**Parties**” means, collectively, Contracting Authority and Project Co, but, for greater certainty, such definitions do not include MOI.
- 1.536 “**Party Representative**” and “**Party Representatives**” have the meanings given in Schedule 27 – Dispute Resolution Procedure.
- 1.537 “**Passenger**” means a natural person using any segment of the Hurontario LRT.
- 1.538 “**Passenger Facility**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.539 “**Passenger Facility Availability Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.540 “**Passenger Facility Availability Failure Hours**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.541 “**Passenger Facility Event**” had the meaning given in Schedule 20 – Payment Mechanism.
- 1.542 “**Patents**” includes all national (including the United States and Canada), regional and multinational statutory invention registrations, patents, patent registrations, patent applications, provisional patent applications, industrial designs, industrial models, including all reissues, divisions, continuations, continuations-in-part, extensions and re-examinations, and all rights therein provided by multinational treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application.
- 1.543 “**Payment Adjustment Report**” has the meaning given in Section 34.6(i)(ii) of the Project Agreement.
- 1.544 “**Payment Certifier**” means the professional architect of record or engineer of record for the Project.
- 1.545 “**Payment Commencement Date**” means the date that is two Business Days after the Substantial Completion Date.
- 1.546 “**Payment Compensation Amount**” means, with respect to an amount and a specified period of time, such amount multiplied by (i) such period of time in days divided by the actual number of days in the current year multiplied by (ii) the rate of interest per annum

in effect on each such day 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.

- 1.547 “**Payment Mechanism**” means the payment mechanism set out in Schedule 20 – Payment Mechanism.
- 1.548 “**Payment Periods**” means the payment periods of one calendar month (as adjusted in this definition) established by Contracting Authority 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 Payment Commencement Date and the Expiry Date within the Payment Periods otherwise established in accordance with the foregoing.
- 1.549 “**PCB Soils**” has the meaning given in Section 16.2(k)(ii)(B) of the Project Agreement.
- 1.550 “**Peak Period**” has the meaning given in Schedule 15 – Output Specifications.
- 1.551 “**Performance Audit**” has the meaning given in Section 31.1(a) of the Project Agreement.
- 1.552 “**Performance Criteria**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.553 “**Performance Guarantees**” means the guarantees to Project Co in respect of the Construction Contract and the Service Contract provided by each of the Construction Guarantors and the Service Guarantors, respectively.
- 1.554 “**Performance Monitoring Program**” means the monitoring of performance by Project Co through the Non-Conformance reporting process detailed in Schedule 11 – Quality Management and the Monthly Performance Monitoring Reports prepared and submitted in accordance with Schedule 11 – Quality Management.
- 1.555 “**Performance Security**” means the performance security required pursuant to Article 19 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.556 “**Performance Standards Regulation**” means Ontario Regulation 260/08 made under the *Professional Engineers Act* (Ontario).
- 1.557 “**Permits, Licences and Approvals**” means the Contracting Authority Permits, Licences and Approvals and the Project Co Permits, Licences and Approvals.
- 1.558 “**Permitted Borrowing**” means:
- (a) any advance to Project Co under the Lending Agreements;
 - (b) any additional financing approved by Contracting Authority in accordance with Section 1.9 of Schedule 22 – Variation Procedure to the Project Agreement; and

- (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-In Period that does not increase Contracting Authority’s liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.559 “**Personal Information**” means all personal information (as the term “personal information” is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the custody or control of Project Co or any Project Co Party other than personal information of the employees of Project Co or the Project Co Parties and other than personal information that is wholly unrelated to the Project Operations and not derived directly or indirectly from Contracting Authority in respect of the Project.
- 1.560 “**Personal Information Protection and Electronic Documents Act (Canada)**” means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended from time to time.
- 1.561 “**Phase 1 and Phase 2 Environmental Site Assessment Reports**” means the reports set out in Appendix B to this Schedule 1 – Definitions and Interpretation.
- 1.562 “**Planned Closure Event**” and “**Planned Closure Events**” each have the meaning given in the Output Specifications.
- 1.563 “**Police Service**” means the Royal Canadian Mounted Police, the Ontario Provincial Police, the Peel Regional Police and any other law enforcement agency with jurisdiction pursuant to Applicable Law, as applicable.
- 1.564 [REDACTED]
- 1.565 “**Potentially Contaminated TPSS Lands**” means the portions of the Metrolinx Lands identified as the locations for “Traction Power Substation #5”, “Traction Power Substation #9”, and “Traction Power Substation #14” in rows #189, #190, #247, #248, #328, #329 and #330 respectively of Part B of Schedule 35 – Lands.
- 1.566 “**Pre-Existing Environmental Site Conditions**” means the environmental condition of the Lands as set out in the Environmental Reports.
- 1.567 “**Pre-Final Design Development Submittals**” has the meaning given in Section 20.3(d)(ii)(A) of the Project Agreement.
- 1.568 “**Preliminary Acceptance Certificate**” has the meaning given in the Revenue Vehicle Supply Contract.
- 1.569 “**Preliminary New Municipal Infrastructure Design Development Submittals**” has the meaning given in Section 20.3(d)(i) of the Project Agreement.
- 1.570 “**Preparatory Activities**” has the meaning given in Schedule 15 – Output Specifications.

- 1.571 “**Private Capital Advance Confirmations**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.572 “**Private Capital Funding Confirmations**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.573 “**Private Capital Invested**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.574 “**Proceeding at Risk**” means that Project Co is proceeding with the Works in a manner determined by the Independent Certifier to constitute a valid Proceeding at Risk Matter in the Independent Certifier’s opinion, based on the Independent Certifier’s analysis of Critical Non-Conformance criteria, its review and analysis of Contracting Authority’s reasoning set out in the Proceeding at Risk Notice, Project Co’s response provided pursuant to Section 11.6(c) of the Project Agreement, and the additional information disclosed pursuant to the process set out in Section 11.6 of the Project Agreement.
- 1.575 “**Proceeding at Risk Matter**” has the meaning given in Section 11.6(a)(ii) of the Project Agreement.
- 1.576 “**Proceeding at Risk Notice**” has the meaning given in Section 11.6(a) of the Project Agreement.
- 1.577 “**Proceedings Against the Crown Act (Ontario)**” means the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, as amended from time to time.
- 1.578 “**Product**” or “**Products**” means material, machinery, equipment and fixtures forming the New 407 ETR Infrastructure, the New City of Brampton Infrastructure, the New City of Mississauga Infrastructure, the New Metrolinx Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure, as applicable, but does not include machinery and equipment used to prepare, fabricate, convey or erect the New 407 ETR Infrastructure, the New City of Brampton Infrastructure, the New City of Mississauga Infrastructure, the New Metrolinx Infrastructure, the New MTO Infrastructure, the New Region of Peel Infrastructure or the New Railway Company Infrastructure, as applicable, which is referred to as construction machinery and equipment.
- 1.579 “**Professional Engineer**” means a professional engineer licensed by Professional Engineers Ontario to practice in the Province of Ontario.
- 1.580 “**Progress Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.581 “**Prohibited Act**” has the meaning given in Section 60.1(a) of the Project Agreement.
- 1.582 “**Project**” has the meaning given in the recitals to the Project Agreement.
- 1.583 “**Project Agreement**” has the meaning given in the recitals to the Project Agreement.

- 1.584 “**Project Agreement Arbitration**” has the meaning given in Schedule 27- Dispute Resolution Procedure.
- 1.585 “**Project Co**” means Mobilinx Hurontario General Partnership and any successor or permitted assign.
- 1.586 “**Project Co Communications Protocol**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.587 “**Project Co Construction Communications Plan**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.588 “**Project Co Event of Default**” has the meaning given in Section 45.1(a) of the Project Agreement.
- 1.589 “**Project Co Group**” means Project Co together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of Project Co.
- 1.590 “**Project Co Party**” means:
- (a) the Construction Contractor;
 - (b) the Service Provider
 - (c) any person engaged by Project Co, and/or any of the Contractors from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Project Operations (or any of them) (including, for clarity, the Revenue Vehicle Manufacturer); and
 - (d) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and “**Project Co Parties**” shall be construed accordingly.
- 1.591 “**Project Co Permits, Licences and Approvals**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations required to perform the Project Operations in accordance with the Project Agreement and as required by Applicable Law, and including those permissions, consents, approvals, certificates, permits, licences, agreements and authorizations which are the responsibility of Project Co to obtain as set out in Schedule 34 – Contracting Authority Permits, Licences and Approvals or which is the responsibility of Project Co to perform or fulfill as set out in Schedule 34 – Contracting Authority Permits, Licences and Approvals, and all necessary consents, approvals, certificates, permits, licences, agreements and authorizations from and with any third parties (including, to the extent applicable, all Development Approvals, Railway Approvals and Utility Agreements, and the approval of the Fire Marshal of Ontario), needed to perform the Project Operations in accordance with the Project Agreement and as required by Applicable Law, but other than the Contracting Authority Permits, Licences and Approvals.

- 1.592 “**Project Co Post-CC Alectra Utilities Design Work Notice**” has the meaning given in Section 14.6(g)(i) of the Project Agreement.
- 1.593 “**Project Co Proposal Extracts**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.594 “**Project Co Quality Audit Report**” has the meaning given in Schedule 11 – Quality Management.
- 1.595 “**Project Co Representative**” means the person designated as such by Project Co on the date of the Project Agreement and any permitted replacement.
- 1.596 “**Project Co Services**” means the works and services to be performed by Project Co during and related to the Operational Term, including the provision of:
- (a) the Maintenance Services; and
 - (b) the Operations Services,
- as described Schedule 15 – Output Specifications, as such works and services may from time to time be varied in accordance with the Project Agreement, but specifically excluding Governmental Activities.
- 1.597 “**Project Co Services Quality Management Plan**” or “**PSQMP**” has the meaning given in Schedule 11 – Quality Management.
- 1.598 “**Project Co Services Requirements**” means Schedule 15-3 – Operations and Maintenance Requirements.
- 1.599 “**Project Co System Infrastructure**” means the Hurontario LRT, excluding, for clarity, the New Third Party Infrastructure.
- 1.600 “**Project Co System Infrastructure Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.601 “**Project Co System Infrastructure Performance Demonstration**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.602 “**Project Co Variation Notice**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.603 “**Project Co’s Expiry Transition Process Asset Preservation Work Schedule**” has the meaning given in Schedule 15 – Output Specifications.
- 1.604 “**Project Data**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.605 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.

- 1.606 “**Project Know-How**” means all ideas, concepts, alternatives, methodologies, processes, recommendations and suggestions developed by or through Project Co or any Project Co Party and revealed to or discovered by Contracting Authority, whether before or after Commercial Close, which may be connected in any way to:
- (a) the Works, including the design and construction of the Project Co System Infrastructure and the New Third Party Infrastructure;
 - (b) the Project Co Services, including the operations, maintenance, rehabilitation, improvement and testing of the Project Co System Infrastructure;
 - (c) any other Project Operations; or
 - (d) the Project Agreement.
- 1.607 “**Project Operations**” means:
- (a) the performance of the Works;
 - (b) the performance of the Project Co Services; and
 - (c) the performance of all other obligations of Project Co under the Project Agreement.
- 1.608 “**Project Scheduler**” means the manager responsible for developing and maintaining the Project Works Schedules and related reports.
- 1.609 “**Project Schedules Quality Management Plan**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.610 “**Project Term**” means the period commencing on Commercial Close and expiring at midnight on the Termination Date.
- 1.611 “**Project Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.612 “**Property Access Area**” has the meaning given in Schedule 40 – Property Access Matters.
- 1.613 “**Property Access Closure**” has the meaning given in Schedule 40 – Property Access Matters.
- 1.614 “**Property Access Closure Adjustment**” or “**PACA**” has the meaning given in Schedule 40 – Property Access Matters.
- 1.615 “**Property Access Closure Target Letter**” has the meaning given in Schedule 40 – Property Access Matters.
- 1.616 “**Proponent**” has the meaning given in the Request for Proposals.
- 1.617 “**Proposal**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.

- 1.618 “**Proposal Part**” means a part of Project Co’s proposal submitted in response to the RFP, including any revisions to such part of the submission that were agreed upon by Contracting Authority and Project Co as part of the RFP process.
- 1.619 “**Proposed Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.620 “**Proprietor**” has the meaning given in Section 52.6(a) of the Project Agreement.
- 1.621 “**Protesters**” has the meaning given in Section 9.7(a) of the Project Agreement.
- 1.622 “**Province**” means Her Majesty the Queen in right of Ontario.
- 1.623 “**Province Person Third Party Beneficiaries**” has the meaning given in Section 64.17(a)(i) of the Project Agreement.
- 1.624 “**Province Persons**” means the Contracting Authority Parties and, while attending in their official capacity at the Lands, Project Co System Infrastructure or New Third Party Infrastructure, the following:
- (a) any person to which authority is designated pursuant to Section 63.1 of the Project Agreement and any agents and employees of any such person;
 - (b) contractors of Contracting Authority or of any person to which authority is delegated pursuant to Section 63.1 of the Project Agreement and subcontractors of any tier and its or their directors, officers and employees;
- but excluding Project Co and any Project Co Party.
- 1.625 “**Public Road Allowance**” has the meaning given in Schedule 35 – Lands.
- 1.626 “**Public Transit Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the design, construction, maintenance, operation or rehabilitation of public transit systems.
- 1.627 “**QEW Structure**” has the meaning given in Schedule 15 – Output Specifications.
- 1.628 “**Qualifying Tender**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.629 “**Quality Audit**” has the meaning given in Schedule 11 – Quality Management.
- 1.630 “**Quality Documentation**” means all documentation to be prepared, submitted (where applicable) and implemented by Project Co in accordance with Schedule 11 – Quality Management.
- 1.631 “**Quality Failure**” has the meaning given in Schedule 20 – Payment Mechanism.

- 1.632 “**Quality Management System**” has the meaning given in Schedule 11 – Quality Management.
- 1.633 “**Quality Plans**” means (i) the Quality Manual; (ii) the Design Quality Management Plan; (iii) the Construction Quality Management Plan; (iv) the Project Co Services Quality Management Plan; (v) the Traffic Quality Management Plan; (vi) the Environmental Quality Management Plan; (vii) Project Schedules Quality Management Plan; and (viii) Quality Audit Plan (all as defined in Schedule 11 – Quality Management) to be prepared, submitted and implemented by Project Co in accordance with Schedule 11 – Quality Management.
- 1.634 “**Rail Corridor**” means the portion of the rail corridor owned by Metrolinx that is characterized by the Canadian Transportation Agency as the “Oakville Subdivision”, from Mile 12.5 to Mile 13.1.
- 1.635 “**Rail Corridor Access**” has the meaning given in Schedule 42 – Rail Corridor Access and Flagging.
- 1.636 “**Rail Corridor Access Permit**” has the meaning given in Schedule 42 – Rail Corridor Access and Flagging.
- 1.637 “**Railway Approvals**” means all consents, approvals, permissions and agreements, and amendments thereto, required to be obtained from a Railway Company pursuant to a Railway Order or Applicable Laws, for the carrying out of Works on land or improvements of a Railway Company, but does not include any Railway Orders.
- 1.638 “**Railway Company**” means CN Rail, CP Rail, GO Transit and any other railway company that owns a railway, any part of which is on any part of the Lands during the Project Term.
- 1.639 “**Railway Company Owner**” means either CN Rail or CP Rail, as the context requires; and, “**Railway Company Owners**” means both of them.
- 1.640 “**Railway Company Owner Jointly Developed Materials**” has the meaning given in Section 51.4(a)(vi) of the Project Agreement.
- 1.641 “**Railway Order**” means any order of the Canadian Transportation Agency:
- (a) granted in favour of Contracting Authority allowing or providing for:
 - (i) infrastructure comprising or to comprise Project Co System Infrastructure or New Third Party Infrastructure to be located upon and across land or improvements of a Railway Company; and
 - (ii) the construction, maintenance and use of such infrastructure upon and across such land or improvements; or
 - (b) for the carrying out of any Works on land or improvements of a Railway Company;

and all amendments thereto.

- 1.642 “**Record Drawings**” means signed and sealed drawings prepared by the inspecting Professional Engineer, using as-built information, after verifying in detail the actual conditions of the completed project or applicable components as they are constructed, including any changes that were initiated due to site conditions or other causes and where all such changes are clearly identified through redlines or by means of any other format agreed by Contracting Authority.
- 1.643 “**Recovery Amount**” has the meaning given in Section 56.3(g) of the Project Agreement.
- 1.644 “**Recovery Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.645 “**Rectification Time**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.646 “**Reference Plans**” has the meaning given in Schedule 15 – Output Specifications.
- 1.647 “**Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.648 “**Region of Peel**” means The Regional Municipality of Peel, and its successors.
- 1.649 “**Region of Peel Jointly Developed Materials**” has the meaning given in Section 51.4(a)(v) of the Project Agreement.
- 1.650 “**Region of Peel Standards**” has the meaning given in Schedule 15 – Output Specifications.
- 1.651 “**Region of Peel Warranty Deliverables**” means, in respect of New Region of Peel Infrastructure only, each of the following:
- (a) for sanitary sewers, soft and hard copies of each of the following:
 - (i) material testing results;
 - (ii) performance test results; and
 - (iii) video report and detailed written report and electronic files containing chainage-specific defect codes from a CCTV inspection, and where deficiencies have been identified by a CCTV inspection, delivery of evidence that all deficiencies have been rectified; and
 - (b) if significant repairs were carried out by Project Co to correct any defects, deficiencies or non-compliant items in the New Region of Peel Infrastructure during the warranty inspection period for the New Region of Peel Infrastructure set out in Section 25.15 of the Project Agreement, a written certification of the New Region of Peel Infrastructure in the form attached as Attachment 1 of Appendix C of Schedule 14 – Commissioning from professionals licensed in the

Province of Ontario qualified to certify the specific type of work and equipment being certified, each such certificate shall be stamped, signed and dated by the licensed professional.

- 1.652 “**Reimbursement Event**” has the meaning given in Section 32.5(a) of the Project Agreement.
- 1.653 “**Reinstatement Plan**” has the meaning given in Section 30.2(a) of the Project Agreement.
- 1.654 “**Reinstatement Work**” has the meaning given in Section 30.1(a) of the Project Agreement.
- 1.655 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Public Transit Specific Change in Law.
- 1.656 “**Relevant Conviction**” means a charge or conviction, at any time within the previous 6 years, of any offense: (i) of moral turpitude in Canada or elsewhere; (ii) for which records exist under the *Criminal Records Act*; or (iii) otherwise designated as a Relevant Conviction by Contracting Authority from time to time, and that conviction remains in effect at that time and is one for which a pardon has not been granted.
- 1.657 “**Relevant Insurance**” has the meaning given in Section 7.1(h) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.658 “**Relevant Insurance Inception Date**” has the meaning given in Section 7.1(i) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.659 “**Relief Event**” has the meaning given in Section 43.1(a) of the Project Agreement.
- 1.660 “**Remedial Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.661 “**Replacement Part**” has the meaning given to such term in the definition of “Further Warranty Period”.
- 1.662 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on August 17, 2017, as amended from time to time.
- 1.663 “**Required Documents**” means all installation, commissioning, operations, maintenance and procedure manuals and associated and/or related drawings, plans, reports, records, documents, data and information in respect of or relating to the Revenue Vehicles and the Revenue Vehicle Equipment as set forth and described in Schedule 15 – Output Specifications, including the Manuals and Contract Drawings.
- 1.664 “**Response**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.665 “**Response Time**” has the meaning given in Schedule 20 – Payment Mechanism.

- 1.666 “**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 or Ontario;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (c) in the case of an individual, (i) he or she has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
 - (d) in the case of a person other than an individual, (i) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder;
 - (e) 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;
 - (f) is subject to a material claim of Contracting Authority 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 Contracting Authority’s view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or
 - (g) has a material interest in the production of tobacco products.
- 1.667 “**Revenue Service**” has the meaning given in Schedule 15 – Output Specifications.

- 1.668 “**Revenue Service Demonstration**” has the meaning given in Schedule 14 – Commissioning.
- 1.669 “**Revenue Service Hours**” has the meaning given in Schedule 15 – Output Specifications.
- 1.670 “**Revenue Vehicle Acceptance Testing**” has the meaning given in Schedule 43 – Revenue Vehicles.
- 1.671 “**Revenue Vehicle Deliverables**” means the Revenue Vehicles, the Revenue Vehicle Equipment and the Required Documents, and all test equipment and other items to be supplied by Revenue Vehicle Manufacturer to Construction Contractor under the Revenue Vehicle Supply Contract as specified in or as contemplated pursuant to Schedule 15 – Output Specifications.
- 1.672 “**Revenue Vehicle E&M**” means all electrical and mechanical equipment, machinery and computer hardware and systems comprised or contained within, or included in the Revenue Vehicles together with all LRV Intellectual Property as provided for in the Output Specifications.
- 1.673 “**Revenue Vehicle Equipment**” means the Spares, the Special Tools and the Bench Test Equipment.
- 1.674 “**Revenue Vehicle Fleet**” means [REDACTED].
- 1.675 “**Revenue Vehicle Manufacturer**” means ALSTOM Transport Canada Inc., a company incorporated under the laws of Canada, and the manufacturer of the Revenue Vehicles, and its successors.
- 1.676 “**Revenue Vehicle Supply Contract**” means the revenue vehicle supply agreement entered into between the Construction Contractor and the Revenue Vehicle Manufacturer in respect of the Revenue Vehicles dated the date of the Project Agreement in substantially the form of attached hereto as Schedule 44 – Revenue Vehicle Supply Contract.
- 1.677 “**Revenue Vehicle Warranties**” means the representations and warranties to be provided by Revenue Vehicle Manufacturer in respect of each Revenue Vehicle Deliverable as specified in and required pursuant to the Revenue Vehicle Supply Contract.
- 1.678 “**Revenue Vehicles**” or “**LRVs**” means all light rail transit vehicles used to carry passengers on the passenger light rail transit system in respect of the Project, including all Revenue Vehicle E&M contained therein and as further described in Schedule 15 – Output Specifications, including any part or parts of the same (but not the Spares or the Special Tools) to be supplied by Project Co in accordance with the Project Agreement.
- 1.679 “**Review Procedure**” means the procedure set out in Schedule 10 – Review Procedure.
- 1.680 “**Review Procedure Activities Register**” means a register of all activities associated with the implementation of Schedule 10 – Review Procedure of the Project Agreement during the Project Term, including the submission dates for all Submittals and the time periods

required to review such Submittals in accordance with, as applicable, Section 2.1 of Part A of Schedule 10 – Review Procedure and Section 1.3 of Part B of Schedule 10 – Review Procedure.

- 1.681 [REDACTED].
- 1.682 “**Revised Project Co System Infrastructure Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.683 “**Road Section**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.684 “**Road Vehicles**” has the meaning given in Schedule 15 – Output Specifications.
- 1.685 “**Safety and Security Management Committee**” has the meaning given in Schedule 15 – Output Specifications.
- 1.686 “**Safety Management Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.687 “**Schedule**” means a schedule to the Project Agreement.
- 1.688 “**Scheduled Final Completion Date**” means the date that is six months and two days following Substantial Completion.
- 1.689 “**Scheduled Initial Capital Investment Date**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.690 “**Scheduled Passenger Facility Hours**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.691 “**Scheduled Special Trips**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.692 “**Scheduled Substantial Completion Date**” means September 24, 2024, as such date may be amended pursuant to Section 40 of the Project Agreement.
- 1.693 “**Scheduled Trips**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.694 “**Security**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.695 “**Security Documents**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.696 “**Security Management Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.697 “**Senior Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.698 “**Senior Debt Makewhole**” has the meaning given in Schedule 23 – Compensation on Termination.

- 1.699 “**Senior Debt Service Amount**” means, for any period, the scheduled payments of principal and interest payable by Project Co or any Project Co Party to the Senior Lenders with respect to the Senior Debt Amount under the Lending Agreements, provided that at any time where any portion of the interest payable to the Senior Lenders under the Lending Agreements is subject to the Hedging Agreement(s), interest payable on account of such portion of interest shall be calculated based on the fixed rate payable by Project Co as specified under the Hedging Agreement(s), whether the fixed amounts with respect to such fixed rate are payable to a Senior Lender or the Hedge Provider(s) and all references to interest payable to the Senior Lenders under this Agreement shall be construed accordingly.
- 1.700 “**Senior Lenders**” means, [REDACTED], and each of their permitted successors and assigns, and, for greater clarity, excludes (i) the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns; and (ii) any Affiliate of Project Co or of a Project Co Party.
- 1.701 “**Sensitive Information**” means financial or commercial information which would, if disclosed to a competitor of Project Co or any Project Co Party, give that competitor a competitive advantage over Project Co or such Project Co Party and thereby prejudice the business of Project Co or such Project Co Party.
- 1.702 “**Service Contract**” means the agreement between Project Co and the Service Provider or such other party as shall be approved by Contracting Authority to perform the Project Co Services with respect to the Project Co System Infrastructure.
- 1.703 “**Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.704 “**Service Guarantors**” means, collectively, [REDACTED].
- 1.705 “**Service Level**” has the meaning given in Schedule 15 – Output Specifications.
- 1.706 “**Service Provider**” means [REDACTED], engaged by Project Co to perform the Project Co Services and any substitute person engaged by Project Co to perform such work and services as may be permitted by the Project Agreement.
- 1.707 “**Service Provider’s Direct Agreement**” means the direct agreement to be entered into amongst Contracting Authority, the Service Provider and each of the Service Guarantors [REDACTED], in the form set out in Schedule 5-2 – Service Provider’s Direct Agreement.
- 1.708 “**Service Submittals**” has the meaning given in Section 1.1 of Part B of Schedule 10 – Review Procedure.
- 1.709 “**Severe Insurance Market Price Increase**” has the meaning given in Section 7.1(g) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.710 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada which:

- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
 - (b) adversely affect access by Project Co to such markets.
- 1.711 “**Signalling and Train Control System**” has the meaning given in Schedule 15 – Output Specifications
- 1.712 “**Site**” means, at any time and from time to time, that portion of the Lands,
- (a) on which Project Co or any Project Co Party is engaged in any construction or demolition activities or is otherwise engaged in completing the Works;
 - (b) on which any of the Works have been commenced but not completed in their entirety;
 - (c) that are hoarded, cordoned, or otherwise fenced off by Project Co, and any Lands immediately surrounding such hoarding, cordons or fencing; or
 - (d) within the active construction footprint of the Works.
- 1.713 “**Site Conditions**” means the condition of the Lands, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.714 “**Site Investigation Plan**” has the meaning given in Section 14.6(c)(iii) of the Project Agreement.
- 1.715 “**Site Investigation Report**” has the meaning given in Section 14.6(c)(iii) of the Project Agreement.
- 1.716 “**Small Works**” means any works, including facilities and equipment, of a minor nature that are requested by Contracting Authority to be performed having an individual cost or aggregate cost with other linked works, including 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 facilities and equipment, which will increase the likelihood of an Availability Failure or Quality Failure, will increase the cost to Project Co of performing the Project Operations or will materially hinder Project Co in the performance of the Project Co Services.
- 1.717 “**Spares**” means the spares, parts and tooling for or relating to the Revenue Vehicles to be supplied to Construction Contractor by Revenue Vehicle Manufacturer as set forth in Schedule 15 – Output Specifications, including the Capital Spares and the Maintenance Spares, including any additional such spares, parts and tooling to be supplied to Construction Contractor by Revenue Vehicle Manufacturer as contemplated pursuant to Schedule 15 – Output Specifications.
- 1.718 “**Special Tools**” means the special tools (including test equipment) for or relating to the Revenue Vehicles designated as such in Schedule 15 – Output Specifications, including

any additional such tools to be supplied to Construction Contractor by Revenue Vehicle Manufacturer as contemplated pursuant to Schedule 15 – Output Specifications. The Special Tools do not include the Bench Test Equipment being the “off-train” test bench equipment used for repair and overhaul.

- 1.719 “**Species-at-Risk**” means any member of a species, subspecies, variety or genetically or geographically distinct population of animal, plant or other organism that is listed in the Species at Risk in Ontario List maintained pursuant to the ESA and any analogous federal list under the *Species at Risk Act* (Canada), and any other species that has been classified as being threatened or endangered under Applicable Law.
- 1.720 “**Specified Costs**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.721 “**Specified Costs Substantial Completion Liquidated Damages**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.722 “**Stakeholders**” means individuals and organizations with an interest in the Project, including those listed in Schedule 15 – Output Specifications, but excluding Contracting Authority.
- 1.723 “**Standard Operating Procedures**” has the meaning given in Schedule 15 – Output Specifications.
- 1.724 “**Standards & Guidelines for Conservation of Provincial Heritage Properties**” means the Standards & Guidelines for Conservation of Provincial Heritage Properties issued under the *Ontario Heritage Act* (Ontario) on April 28, 2010, as amended from time to time.
- 1.725 “**Standby Letter of Credit**” means the letter of credit delivered in accordance with section 9.1(2) of the Request for Proposals.
- 1.726 “**Start-Up Meeting**” has the meaning given in Section 20.4(a) of the Project Agreement.
- 1.727 “**Station**” has the meaning given in Schedule 15 – Output Specifications.
- 1.728 “**Station Plaza**” has the meaning given for “Plaza” in Schedule 15 – Output Specifications.
- 1.729 “**Station Plaza Licence**” has the meaning given in Section 26.1(b) of the Project Agreement.
- 1.730 “**Station Plaza Licencee**” has the meaning given in Section 26.1(b) of the Project Agreement.
- 1.731 “**Step-In Period**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.732 “**Stop**” has the meaning given in Schedule 15 – Output Specifications.
- 1.733 “**Stormwater Management Plan**” has the meaning given in Schedule 15 – Output Specifications.

- 1.734 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Project Operations, including any of the Contractors, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.735 “**Subcontractor Losses**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.736 “**Subcontracts**” means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including any of the Contractors, and any other Subcontractor at any tier in relation to any aspect of the Project Operations.
- 1.737 “**Submittal**” means a Works Submittal or a Service Submittal.
- 1.738 “**Subsequent Indebtedness Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.739 “**Substantial Completion**” means the point at which (i) the Project Co System Infrastructure and the New Third Party Infrastructure have been completed in accordance with the Project Agreement; (ii) the Payment Certifier appointed pursuant to Section 15.3(g) of the Project Agreement has certified the substantial performance of the Construction Contract and the related certificate of substantial performance of the Works is published pursuant to Section 32(1) of the *Construction Act* (Ontario); and (iii) all requirements for Substantial Completion described in Schedule 14 – Commissioning, other than in respect of Minor Deficiencies, have been satisfied in respect of the Project Co System Infrastructure and the New Third Party Infrastructure as a whole.
- 1.740 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.3 of the Project Agreement.
- 1.741 “**Substantial Completion Countdown Notice**” has the meaning given in Section 25.6(a) of the Project Agreement.
- 1.742 “**Substantial Completion Date**” means the date on which Substantial Completion is achieved as evidenced by the Substantial Completion Certificate, as such date shall be stated therein.
- 1.743 “**Substantial Completion Deliverables**” has the meaning given in Section 25.6(d) of the Project Agreement
- 1.744 “**Substantial Completion Deliverables List**” has the meaning given in Section 25.6(d) of the Project Agreement.
- 1.745 “**Substantial Completion LD Commencement Date**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.746 “**Substantial Completion Notice**” has the meaning given in Section 25.3(b) of the Project Agreement.

- 1.747 “**Substantial Completion Payment**” means \$[REDACTED].
- 1.748 “**Substantial Completion Payment Commencement Date**” means the date that is two Business Days after the Substantial Completion Date.
- 1.749 “**Substitute**” has the meaning given in the applicable Direct Agreement.
- 1.750 “**Subsurface Utility Engineering (SUE) Report**” means the Hurontario LRT Subsurface Utility Engineering Report prepared by T2 Utility Engineers dated February 22, 2019.
- 1.751 “**Suitable Substitute**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.752 “**Supplier**” means a person who supplies to Project Co, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Project Operations.
- 1.753 “**Surveyor’s Real Property Reports**” has the meaning given in Schedule 15 – Output Specifications.
- 1.754 “**System Event**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.755 “**System Extension**” has the meaning given in Schedule 39 – System Extension.
- 1.756 “**System Extension Lenders’ Consent**” has the meaning given in Schedule 39 – System Extension.
- 1.757 “**System Management Committee**” has the meaning given in Section 12.1(a) of the Project Agreement.
- 1.758 “**System User**” means any member of the public, any Province Person and any other person that is on or about the Project Co System Infrastructure or is otherwise making use of the Project Co System Infrastructure for any purpose.
- 1.759 “**Systems**” has the meaning given in Schedule 15 – Output Specifications.
- 1.760 “**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 Contracting Authority Taxes.
- 1.761 “**Technical Information**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.762 “**Technical Reports**” means the Environmental Reports, the Geotechnical Reports and the Archaeological Reports.
- 1.763 “**Technical Submission Deadline**” means April 18, 2019.

- 1.764 “**Temporary Works**” means works that are performed to serve a specific temporary function in the execution of the Works and in respect of which any resulting infrastructure is removed at such time when its temporary use is no longer required.
- 1.765 “**Termination Date**” means the earlier of the Expiry Date and such other date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.766 “**Terminus**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.767 “**Third Party Arbitration**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.768 “**Third Party Contractors**” means any person (not being, for the avoidance of doubt, Project Co or any Project Co Party or Additional Contractors) that carries out any Third Party Works.
- 1.769 “**Third Party Facilities**” means transit shelters, telephone facilities, infrastructure and other property of Utility Companies and Railway Companies and other public facilities and associated equipment, plant, materials and apparatus installed and operated or to be installed and operated on the Lands by any transit authority, communications provider, Utility Company, Railway Company or other third party (not including, for the avoidance of doubt, Project Co or any Project Co Party).
- 1.770 “**Third Party Lands**” has the meaning given in Schedule 35 – Lands.
- 1.771 “**Third Party Litigation**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.772 “**Third Party Works**” means any work performed by a Third Party Contractor on the Lands, including works in relation to,
- (a) an Encumbrance;
 - (b) Existing Third Party Infrastructure;
 - (c) Third Party Facilities; and
 - (d) Utility Work and work pursuant to a Utility Agreement, Railway Order or an encroachment permit or other permitting authority of any Governmental Authority under Applicable Law.
- 1.773 “**Threshold Equity Sale Amount**” means an Equity Sale Amount that would result in an Equity Sale IRR equal to the Base Case Equity IRR.
- 1.774 “**Total Construction Period Deduction**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.775 “**TPSS**” has the meaning given in Schedule 15 – Output Specifications.

- 1.776 “**Track Protection Access**” has the meaning given in Schedule 42 – Rail Corridor Access and Flagging.
- 1.777 “**Track Protection Barrier Access**” has the meaning given in Schedule 42 – Rail Corridor Access and Flagging.
- 1.778 “**Track Protection Confirmation**” has the meaning given in Schedule 42 – Rail Corridor Access and Flagging.
- 1.779 “**Trade-Marks**” means all trademarks, service marks, trade dress, logos, distinguishing guises and indicia, trade names, corporate names, business names, domain names, whether or not registered, including all common law rights, and registrations, applications for registration and renewals thereof, including, but not limited to, all marks registered in the Canadian Intellectual Property Office and the trademark offices of other nations throughout the world, and all rights therein provided by multinational treaties or conventions.
- 1.780 “**Traffic and Transit Management Plan**” or “**TTMP**” has the meaning given in Schedule 15 – Output Specifications.
- 1.781 “**Traffic Control Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.782 “**Traffic Quality Management Plan**” or “**TQMP**” has the meaning given in Schedule 11 – Quality Management.
- 1.783 “**Traffic Quality Manager**” has the meaning given in Schedule 11 – Quality Management.
- 1.784 “**Train Control System**” means that portion of the Signalling and Train Control System which is to be installed onto the Revenue Vehicles.
- 1.785 “**Train Delay**” has the meaning given in Schedule 19 – Liquidated Damages.
- 1.786 “**Trespasser**” has the meaning given in Section 9.7(a) of the Project Agreement.
- 1.787 “**Trip Availability Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.788 “**Trust Indenture**” means the trust indenture dated on or about the date of the Project Agreement entered into in respect of the Project by Project Co, [REDACTED], and [REDACTED], in its capacity as indenture trustee.
- 1.789 “**Uninsurable Event**” means any event which arises directly and solely from an Uninsurable Risk.
- 1.790 “**Uninsurable Risk**” has the meaning given in Schedule 25 – Insurance and Performance Security Requirements to the Project Agreement.
- 1.791 “**Unit Rate Price**” has the meaning given in Schedule 7 – Mobility Matters.

- 1.792 “**Unpaid Construction Period Payments**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.793 “**UP Express**” means Union Pearson Express, an operating division of Metrolinx, and its successors.
- 1.794 “**Utilities**” means energy/power supplies, communications, data transmission and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste and storm water.
- 1.795 “**Utility Agreement**” means any agreement entered into by Project Co with a Utility Company in connection with the design, removal, construction, installation, repair, preservation, relocation or maintenance of Utility Infrastructure in, on, under, over or adjacent to the Lands, and includes any site or other permits issued thereunder or pursuant thereto, all as amended, supplemented or replaced from time to time.
- 1.796 “**Utility Company**” means the owner or operator of any Utility Infrastructure.
- 1.797 “**Utility Infrastructure**” means privately, publicly or cooperatively owned lines, facilities or systems for transmitting or distributing electricity, lighting, data, communications, gas, oil and petroleum products, water, storm water or sewage, wireless, or other similar commodity or substance which serve the public directly or indirectly, including underground, surface and overhead facilities as well as facilities which use common poles, ducts or conduits on a shared basis, and all related infrastructure. For greater certainty, the term “Utility Infrastructure” includes Existing Abandoned Utility Infrastructure.
- 1.798 “**Utility Work**” means temporary and permanent installation, protection, removal, relocation, upgrading, reinstatement, restoration, downsizing, designing, and/or building works relating to Utility Infrastructure carried out in connection with or as part of the Project Operations, including design, construction, installation, commissioning, protection, removal and relocation of poles, pole lines, conduits, gas pipes, oil pipes, sewers and tile lines, and related and ancillary works. For clarity, “Utility Work” shall include all “Municipal Utility Work”.
- 1.799 “**Variation**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.800 “**Variation Confirmation**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.801 “**Variation Directive**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.802 “**Variation Enquiry**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.803 “**Variation Procedure**” means the procedure set out in Schedule 22 – Variation Procedure.
- 1.804 “**Vehicle Supplier Activities**” means the design, engineering, construction, manufacture, commissioning, supply and delivery of 28 Revenue Vehicles and the Revenue Vehicle Equipment and the performance of all other obligations in respect of or relating to the Revenue Vehicle Deliverables under and pursuant to this Project Agreement.

- 1.805 “**Vehicle Supplier Guarantee**” has the meaning given in the Revenue Vehicle Supply Contract.
- 1.806 “**Vehicles**” means, collectively, the Revenue Vehicles and the Maintenance Vehicles but, for clarity, excludes the Road Vehicles.
- 1.807 “**Voice and Data Radio System**” has the meaning given in Schedule 15 – Output Specifications.
- 1.808 “**VSC Change in Law**” means any change to:
- (a) any Applicable Law, Consent or Authority Requirement; or
 - (b) the requirements of any Governmental Authority,
- with which Revenue Vehicle Manufacturer is required to comply pursuant to the Revenue Vehicle Supply Contract, and the effect of such change is to increase the obligations of Revenue Vehicle Manufacturer thereunder, or to make compliance by Revenue Vehicle Manufacturer with such obligations more costly or burdensome including by way of causing delay.
- 1.809 “**VSC Event of Default**” has the meaning given in Part 2 Section 45.1(a) of the Revenue Vehicle Supply Contract.
- 1.810 “**Warning Notice**” has the meaning given in Section 31.4(a) of the Project Agreement.
- 1.811 “**Warranty Claim**” means any claim by Construction Contractor that a warranty given in the Revenue Vehicle Supply Contract has been breached.
- 1.812 “**Warranty Period**” means, in respect of a Revenue Vehicle Deliverable, the warranty period specified in relation to such Revenue Vehicle Deliverable as set forth in the Output Specifications, being as follows:

| Item | Warranty Period |
|---|---------------------------|
| Each Revenue Vehicle and each item of Revenue Vehicle Equipment | Equipment Warranty Period |
| Each Replacement Part | Further Warranty Period |
| Key Components | |

| | |
|--|---|
| Car body shells | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |
| Bogie Frame | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |
| Suspension | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |
| Axle/wheel bearings | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |
| Car body structure, including underframe, articulations (excluding parts subject to normal wear and tear or maintenance) | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |
| Gangways | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |
| Gear box | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |
| Traction drive gear (excluding drive coupling) | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |
| Traction Motors | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |
| Sub-floor and floor covering | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |
| Exterior sidewalls | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |
| Painting | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |
| Seat supporting structure | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |

| | |
|--|---|
| Corrosion protection for car body shells | [REDACTED] years commencing on the date of Acceptance of the applicable LRV |
|--|---|

- 1.813 “**Warranty Spares**” has the meaning given in Schedule 43 – Revenue Vehicles.
- 1.814 “**Warranty Work**” is defined in Section 25.15(b)(i) of the Project Agreement.
- 1.815 “**Whittle Road Structure**” has the meaning given in Schedule 15 – Output Specifications.
- 1.816 “**WHMIS**” means the system for labelling, warning and worker education of Hazardous Substances used in the workplace, commonly referred to as workplace hazardous materials information system, prescribed by Applicable Law over the delivery, storage and use of Hazardous Substances in the Province of Ontario.
- 1.817 “**Working Day**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.818 “**Workplace Safety and Insurance Act, 1997 (Ontario)**” means the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sch. A, as amended from time to time.
- 1.819 “**Works**” means the design, construction, installation, testing, supply, delivery, commissioning and completion of the Project Co System Infrastructure and the New Third Party Infrastructure, including for clarity, the Revenue Vehicles and the integration of the Revenue Vehicles into and with the other parts or components of the Project Co System Infrastructure, rectification of any Minor Deficiencies, Warranty Work, and any other activities required to enable or facilitate the commencement of the Project Co Services, and all other work under the Permits, Licences and Approvals, except for (i) all work which is expressly described in Schedule 34 – Contracting Authority Permits, Licences and Approvals as being the responsibility of Contracting Authority, and (ii) any Contracting Authority Commissioning.
- 1.820 “**Works Change in Law**” means any Change in Law that:
- (a) is not a Relevant Change in Law;
 - (b) occurs after Commercial Close;
 - (c) requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Project Co System Infrastructure or the New Third Party Infrastructure which is similar in nature to the Works but is not Works or capital replacement work which Project Co would otherwise be required to perform in order to comply with its obligations under the Project Agreement; and
 - (d) was not reasonably foreseeable at Commercial Close by an experienced contractor carrying out activities and/or performing design and/or other operations similar to

those to be carried out and/or performed by any Project Co Party in relation to the Project.

- 1.821 “**Works Committee**” has the meaning given in Section 11.1(a) of the Project Agreement.
- 1.822 “**Works Micro-Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.823 “**Works Milestone**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.824 “**Works Report**” has the meaning given in Section 22.4(a) of the Project Agreement.
- 1.825 “**Works Schedule Report**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.826 “**Works Submittal**” has the meaning given in Section 1.1 of Schedule 10 – Review Procedure.
- 1.827 “**Worsened Contamination**” means Contamination which has been Worsened, but only to the extent of the Worsening, and excluding the Contamination itself (prior to the Worsening of it.)
- 1.828 “**Worsens**” means any act or omission of Project Co or any Project Co Party in the performance of the Project Operations, including for clarity, in the performance of work to remediate Contamination which excavates, disturbs, exposes, spills, releases or otherwise affects (directly or indirectly) any Contamination with the effect of aggravating, exacerbating, migrating, diverting or otherwise increasing the area, volume, impact or costs of dealing with such Contamination, and “**Worsened**” and “**Worsening**” shall have the corresponding meanings wherever used in Section 16.2 of the Project Agreement.
- 1.829 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).
2. **Interpretation.** The Project 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 Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project 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 Project Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project

- 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 Project Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project 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 15 – Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project 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 Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and interpreted as if the words “Project Co 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, limited liability company, joint stock company, 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 Project Agreement, all accounting and financial terms used in the Project 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 Project 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 Project 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 any Province Person shall be construed having regard to the interactive nature of the activities of the Province Person and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications;
 - (b) acts or omissions in the ordinary course of the Governmental Activities and expressly or reasonably inferred from the Output Specifications to be taken into account by Project Co in the performance of the Project Co Services; or
 - (c) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co's and Contracting Authority's respective obligations shall be construed as separate obligations owed to the other.

- 2.20 References containing terms such as:
- (a) “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 Project Agreement taken as a whole; and
 - (b) “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”.
- 2.21 In construing the Project 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 Project Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “such as” 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.
- 2.22 Where the Project 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.
- 2.23 Where the Project 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.
- 2.24 Where the Project 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.
- 2.25 Any reference to time of day or date means the local time or date in Toronto, Ontario. Any reference to a stipulated “day” which is not specifically referred to as a “Business Day” shall be deemed to be a calendar day measured from midnight to midnight.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to Project Co or Contracting Authority they shall be construed and interpreted as synonymous and to read “Project Co shall” or “Contracting Authority shall” as the case may be.
- 2.28 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.

- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to Contracting Authority shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood by the transit system construction and maintenance industry in Ontario will be construed as having that meaning unless the context otherwise requires.
- 2.31 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:

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

- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in the Project Agreement, shall be interpreted by taking into consideration Project Co’s and any Project Co Party’s experience and the investigations, inspections and examinations of the Background Information and in respect of the Lands carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.

**APPENDIX A
ARCHAEOLOGICAL REPORTS**

| | Report Title | File Name | Author/Firm | Project Component | Report Date | Report Type & Status |
|---|--|---|------------------------------------|--------------------------|--------------------|--|
| 1 | Stage 1 Archaeological Assessment Hurontario-Main Street LRT Regional Municipality of Peel, Ontario | EPR | Archeologica l Services Inc. | Mainline | May 20 14 | Final Stage 1 Archaeolog ical Assessment Report |
| 2 | Stage 1 Archaeological Assessment Report Hurontario LRT Geographic Township of Toronto, Peel County, City of Brampton and City of Mississauga, Regional Municipality of Peel, Ontario | RPT-2017-11-08- Stage1AA- 60494276.pdf | AECOM Canada Ltd. | Mainline | 8-Nov- 17 | Final Stage 1 Archeologi cal Assessment Report |
| 3 | Stage 2 Archaeological Assessment Hurontario LRT Geographic Township of Toronto, Peel County, City of Brampton and City of Mississauga, Regional Municipality of Peel, Ontario | P131-0011- 2016_04July2017 _RR_St2AA_Hur ontario LRT.PDF | AECOM Canada Ltd. | Mainline | 4-Jul-17 | Stage 2 Archaeolog ical Assessment Report |
| 4 | Stage 2 Archaeological Assessment Hurontario LRT Geographic Township of Toronto, Peel County, City of Brampton and City of Mississauga, Regional Municipality of Peel, Ontario | RPT-2018-10-31- Stage2AA- 60494276.pdf | AECOM Canada Ltd. | Mainline | 31-Oct- 18 | Stage 2 Archaeolog ical Assessment Report |

| | Report Title | File Name | Author/Firm | Project Component | Report Date | Report Type & Status |
|---|---|------------------------------------|-------------------|----------------------------|-------------|--|
| 5 | <p>Stage 1-2 Archaeological Assessment Hurontario LRT - Traction Power Substations</p> <p>Geographic Township of Toronto, Peel County, City of Brampton and City of Mississauga, Regional Municipality of Peel, Ontario</p> | RPT-2018-11-01-Stage1-2AA-60494276 | AECOM Canada Ltd. | Traction Power Substations | 01-Nov-18 | Stage 1 and 2 Archaeological Assessment Report |

**APPENDIX B
PHASE 1 AND PHASE 2 ENVIRONMENTAL SITE ASSESSMENT REPORTS**

| | Report Title | File Name | Author/Firm | Project Component | Report Date | Report Type & Status |
|---|--|---|--------------------|--------------------------|--------------------|--|
| 1 | Limited Phase I Environmental Site Assessment Hurontario LRT Corridor Mississauga, Ontario | RPT-2017-11-08-LimitedPhase1ESA-60494276.pdf | AECOM Canada Ltd. | Mainline | 8-Nov-17 | Final Limited Phase One ESA Report |
| 2 | Environmental Characterization Report Hurontario LRT | RPT-2017-11-09-EnvCharacterization-60494276.pdf | AECOM Canada Ltd. | Mainline | 9-Nov-17 | Final Environmental Characterization Report |
| 3 | Phase Two Environmental Site Assessment (ESA) for Hurontario LRT OMSF Property, Brampton, ON | RPT-2018-01-30-Phase2ESAOMSF-60494276.pdf | AECOM Canada Ltd. | OMSF | 30-Jan-18 | Final Phase Two ESA Report |
| 4 | Geo-Environmental Characterization Report Addendum | RPT-2018-06-05-EnvironmentalCharacterizationAddendum-60494276.pdf | AECOM Canada Ltd. | Mainline | 5-Jun-18 | Final Environmental Characterization Report Addendum |
| 5 | Hurontario Light Rail Transit Project – Limited Phase I ESA Addendum | MEM-2018-03-23-LimitedPhase1ESAAddendum-60494276.pdf | AECOM Canada Ltd. | Mainline | 23-Mar-18 | Final Addendum to the Limited Phase One ESA Report |

**APPENDIX C
DESIGNATED SUBSTANCE SURVEY REPORTS**

| | Report Title | File Name | Author/Firm | Project Component | Report Date | Report Type & Status |
|---|---|---|--------------------|--------------------------|--------------------|---|
| 1 | Designated Substance and Hazardous Materials Survey (DSHMS) for Bridges and Culverts – Hurontario LRT | RPT-2017-09-14-BridgesCulverts-DSHMS-60494276.pdf | AECOM Canada Ltd. | Mainline | 14-Sept-17 | Final Designated Substance and Hazardous Material Survey Report |
| 2 | Designated Substance and Hazardous Materials Survey (DSHMS) for the Operations, Maintenance, and Storage Facility (OMSF) Site | RPT-2018-05-03-DSHMS-OMSF-60494276.pdf | AECOM Canada Ltd | OMSF | 3-May-18 | Final Designated Substance and Hazardous Material Survey Report |

**APPENDIX D
CULTURAL HERITAGE REPORTS**

| | Report Title | File Name | Author/Firm | Project Component | Report Date | Report Type & Status |
|---|---|--|------------------------------|--|--------------------|---|
| 1 | Cultural Heritage Assessment Report | EPR | Archaeological Services Inc. | Mainline | June-14 | Final Cultural Heritage Assessment Report |
| 2 | Cultural Heritage Evaluation Report Mineola Neighbourhood Cultural Heritage Landscape (CHL 1), 1462 Hurontario Street and 1484 Hurontario Street Mississauga, Ontario | RPT-2017-09-27-1462&1484HurontarioStCHERR-CHERR-60494276.pdf | AECOM Canada Ltd. | Mainline | 27-Sept-17 | Final Cultural Heritage Evaluation Report |
| 3 | Cultural Heritage Evaluation Report Recommendations 1484 Hurontario Street, Mississauga, Ontario Prepared by AECOM for Metrolinx | RPT-2017-09-27-1462&1484HurontarioStCHERR-CHERR-60494276.pdf | AECOM Canada Ltd. | Mainline | 27-Sept-17 | Final Cultural Heritage Evaluation Report Recommendations |
| 4 | Cultural Heritage Evaluation Report Hurontario Street Overpass, QEW Mississauga, Ontario | RPT-2017-09-27-HurontarioOverpassQEWCHERR-CHERR-60494276.pdf | AECOM Canada Ltd. | Mainline | 27-Sept-17 | Final Cultural Heritage Evaluation Report |
| 5 | Cultural Heritage Evaluation Report Recommendations Hurontario Street Overpass, QEW Mississauga, Ontario | RPT-2017-09-27-HurontarioOverpassQEWCHERR-CHERR-60494276.pdf | AECOM Canada Ltd. | Hurontario Street Overpass, QEW Mississauga, Ontario | 27-Sept-17 | Final Cultural Heritage Evaluation Report Recommendations |

| | Report Title | File Name | Author/Firm | Project Component | Report Date | Report Type & Status |
|----|--|---|----------------------|---|-------------|---|
| 6 | Cultural Heritage Evaluation Report Britannia Farm Field Centre, CHL 5 Mississauga, Ontario | RPT-2017-09-28-BritanniaFarmC HERCHERR-60494276.pdf | AECOM Canada Ltd. | Britannia Farm Field Centre, CHL 5 | 28-Sept-17 | Final Cultural Heritage Evaluation Report |
| 7 | Cultural Heritage Evaluation Report Recommendations Britannia Farm Field Centre, CHL 5 Mississauga, Ontario | RPT-2017-09-28-BritanniaFarmC HERCHERR-60494276.pdf | AECOM Canada Ltd. | Britannia Farm Field Centre, CHL 5 | 28-Sept-17 | Final Cultural Heritage Evaluation Report Recommendations |
| 8 | Cultural Heritage Evaluation Report Hurontario Street Subway, Mississauga, Ontario | RPT-2017-09-28-HurontarioStreetSubwayCHERR-60494276.pdf | AECOM Canada Ltd. | Hurontario Street Subway, Mississauga, Ontario | 28-Sept-17 | Final Cultural Heritage Evaluation Report |
| 9 | Cultural Heritage Evaluation Report Recommendations Hurontario Street Subway, Mississauga, Ontario | RPT-2017-09-28-HurontarioStreetSubwayCHERR-60494276.pdf | AECOM Canada Ltd. | Hurontario Street Subway, Mississauga, Ontario | 28-Sept-17 | Final Cultural Heritage Evaluation Report Recommendations |
| 10 | Cultural Heritage Evaluation Report 1312 and 1322 Hurontario Street, Mississauga, Ontario | RPT-2017-09-28-1312&1322HurontarioStCHERRs-60494276.pdf | AECOM Canada Ltd. | 1312 and 1322 Hurontario Street, Mississauga, Ontario | 28-Sept-17 | Final Cultural Heritage Evaluation Report |
| 11 | Cultural Heritage Evaluation Report Recommendations 1312 Hurontario Street, Mississauga, Ontario | RPT-2017-09-28-1312&1322HurontarioStCHERRs-60494276.pdf | AECOM Canada Ltd. | 1322 Hurontario Street, Mississauga, Ontario | 28-Sept-17 | Final Cultural Heritage Evaluation Report Recommendations |

| | Report Title | File Name | Author/Firm | Project Component | Report Date | Report Type & Status |
|--------|---|---|-------------------|---|-------------|---|
| 1 2 | Cultural Heritage Evaluation Report Recommendations 1322 Hurontario Street, Mississauga, Ontario | RPT-2017-09-28-1312&1322HurontarioStCHERRs-60494276.pdf | AECOM Canada Ltd. | 1312 Hurontario Street, Mississauga, Ontario | 28-Sept-17 | Final Cultural Heritage Evaluation Report Recommendations |
| 1 3 | Cultural Heritage Evaluation Report 1461 and 1471 Hurontario Street, Mississauga, Ontario | RPT-2017-10-23-CHERR-CHERR1461&1471Hurontario St-60494276.pdf | AECOM Canada Ltd. | 1461 and 1471 Hurontario Street, Mississauga, Ontario | 23-Oct-17 | Final Cultural Heritage Evaluation Report |
| 1 4 | Cultural Heritage Evaluation Report Recommendations 1461 Hurontario Street, Mississauga, Ontario | RPT-2017-10-23-CHERR-CHERR1461&1471Hurontario St-60494276.pdf | AECOM Canada Ltd. | 1461 Hurontario Street, Mississauga, Ontario | 23-Oct-17 | Final Cultural Heritage Evaluation Report Recommendations |
| 1 5 | Cultural Heritage Evaluation Report Recommendations 1471 Hurontario Street, Mississauga, Ontario | RPT-2017-10-23-CHERR-CHERR1461&1471Hurontario St-60494276.pdf | AECOM Canada Ltd. | 1471 Hurontario Street, Mississauga, Ontario | 23-Oct-17 | Final Cultural Heritage Evaluation Report Recommendations |

**APPENDIX E
GEOTECHNICAL REPORTS**

| | Report Title | File Name | Author/Firm | Project Component | Report Date | Report Type & Status |
|---|--|---|--------------------|------------------------------|--------------------|--|
| 1 | Hurontario Light Rail Transit Geotechnical Data Report Part I | RPT-2017-10-18-GeotechnicalDataPtI-60494276.pdf | AECOM Canada Ltd. | Mainline and OMSF | 18-Oct-17 | Final Geotechnical Data Report Part I |
| 2 | Hurontario Light Rail Transit Geotechnical Engineering Design Report Part 1 | RPT-2017-10-18-GeotechnicalEngineeringPtI-60494276.pdf | AECOM Canada Ltd. | Mainline and OMSF | 18-Oct-17 | Final Geotechnical Engineering Design Report Part I |
| 3 | Hurontario Light Rapid Transit Geotechnical Data Report Part II | RPT-2017-10-27-GeotechnicalDataPtII-60494276.pdf | AECOM Canada Ltd. | Mainline | 27-Oct-17 | Final Geotechnical Data Report Part II |
| 4 | Hurontario Light Rail Transit Geotechnical Engineering Design Report Part II | RPT-2017-10-31-GeotechnicalEngineeringPartII-60494276.pdf | AECOM Canada Ltd. | Mainline | 31-Oct-17 | Final Geotechnical Engineering Design Report Part II |
| 5 | Hurontario Light Rail Transit Geotechnical Investigation and Design Report, Lakeshore West Diversion Track | RPT-2018-04-24-GeoInvstDesignLSWDiversion-60494276 | AECOM Canada Ltd. | Rail Corridor at Port Credit | 24-Apr-18 | Final Geotechnical Investigation and Design Report |
| 6 | Hydrogeological Investigation at Proposed Port Credit | MEM-2018-05-31- | AECOM Canada Ltd, | Port Credit | 31-May-18 | Final HDR Memo |

| | Report Title | File Name | Author/Firm | Project Component | Report Date | Report Type & Status |
|----|---|--|-------------------|-------------------|-------------|--|
| | GO Station Diversion Track Memo | PortCreditHydrog-60494276 | | | | |
| 7 | Hydraulic Test at Port Credit Go Station | MEM-2018-03-12-PortCreditPumpingTest-60494276 | AECOM Canada Ltd. | Port Credit | 12-Mar-2018 | Final HDR Pumping Test Memo |
| 8 | Port Credit LRT Station – Long Term Groundwater Drainage Estimate | MEM-2018-09-14-PortCreditGWM Modelling-60494276 | AECOM Canada Ltd. | Port Credit | 14-Sep-18 | Final Pumping Test Memo |
| 9 | Hurontario Light Rail Transit Geotechnical Investigation and Design Report, Mary Fix Creek Widening | RPT-2018-06-18-GeoInvstDesign MaryFixCreek Widening-60494276 | AECOM Canada Ltd. | Mary Fix Creek | 18-Jun-18 | Final Geotechnical Investigation and Design Report |
| 10 | Hydrogeological Investigation at Port Credit GO Station for Mary Fix Creek Widening Memo | MEM-2018-08-23-MaryFixCreekHydrogeoInv-60494276 | AECOM Canada Ltd. | Mary Fix Creek | 23-Aug-18 | Final HDR Memo |
| 11 | Hydrogeological Investigation at TPSS #1 Memo | MEM-2018-08-27-TPSS1HydrogeologyInvest-60494276 | AECOM Canada Ltd. | TPSS #1 | 27-Aug-18 | Final HDR Memo |
| 12 | Hurontario Light Rail Transit Addendum TPSS #1 | ADD-2018-05-23-GeoDataDesign TPSS1-60494276 | AECOM Canada Ltd. | TPSS #1 | 23-May-18 | Final Addendum Report |
| 13 | Geotechnical and Hydrogeological Data | ADD-2018-08-23-GeoDataDesign | AECOM Canada Ltd. | TPSS #2 to #15 | 23-Aug-18 | Final Geotechnical and Hydrogeol |

| | Report Title | File Name | Author/Firm | Project Component | Report Date | Report Type & Status |
|----|--|---|---------------------|-------------------|-------------|-----------------------------------|
| | and Design Report for TPSS #2 to TPSS #15 | TPSS2to15-60494276 | | | | ogical Data and Design Report |
| 14 | Hydrogeological Data Report | RPT-2017-10-17-Hydrogeological Data-60494276.pdf | AECOM Canada Ltd. | Mainline | 17-Oct-17 | Final Hydrogeological Data Report |
| 15 | Hydrogeological Data Report Addendum | ADD-2018-09-17-Hydrogeological-Data-60494276 | AECOM Canada Ltd. | Mainline | 17-Sep-18 | Final Quarterly Monitoring Report |
| 16 | Hurontario Light Rail Transit Addendum Additional Geotechnical Investigation In Market Period | ADD-2018-05-16-GeoDataAddIn Market-60494276.pdf | AECOM Canada Ltd. | Mainline | 16-May-18 | Final Report Addendum |
| 17 | Hydrogeological Report Hurontario Light Rail Transit Project from Queen Elizabeth Way to Highway 407 | PML 16TF028-HuLRT Hydrogeological Report (Final) May 25, 2018.pdf | Peto MacCallum Ltd. | Mainline | 25-May-18 | Final Hydrogeological Data Report |
| 18 | GER Addendum – Preliminary Construction Dewatering Assessment | MEM-2018-09-18-GERAddendum Dewatering-60494276 | AECOM Canada Ltd. | Mainline | 18-Sep-18 | Final Dewatering Report |
| 19 | Hydrogeological Investigation at Etobicoke Creek | MEM-2018-10-19-EtobicokeCreek-60494276 | AECOM Canada Ltd. | Etobicoke Creek | 17-Oct-18 | Final HDR Memo |
| 20 | Preliminary Pavement Design Report Hurontario Light Rail Transit Project Queen Elizabeth Way Traffic | 16TF028-HuLRT-Preliminary Pavement Design Report 2018-04-24 | PML | Pavement at QEW | 24-April-18 | Final Pavement Design Report |

| | Report Title | File Name | Author/Firm | Project Component | Report Date | Report Type & Status |
|----|--|--|-------------------|---------------------|-------------|------------------------------|
| | Staging Mississauga, Ontario | | | | | |
| 21 | Hurontario Light Rail Transit Geotechnical Pavement Design Report, Park Street Temporary Parking Lot | RPT-2018-05-16-GeoPvmtDsn-Park St Parking Lot-60494276 | AECOM | Park St Parking Lot | 16-May-18 | Final Pavement Design Report |
| 22 | Hurontario Light Rail Transit Addendum Geotechnical Data and Engineering Report TPSS #12 | ADD-2018-09-17-GeoDataDesign TPSS12-60494276 | AECOM | TPSS#12 | 17-Sep-18 | Final TPSS Report |
| 23 | Hurontario Light Rail Transit Addendum Geotechnical Data and Engineering Report TPSS #3 | ADD-2019-01-09-GeoDataDesign TPSS3-60494276 | AECOM | TPSS#3 | 09-Jan-19 | Final TPSS Report |
| 24 | Hurontario Light Rail Transit Addendum Geotechnical Data and Engineering Report TPSS #10 | ADD-2019-01-09-GeoDataDesign TPSS10-60494276 | AECOM | TPSS#10 | 09-Jan-19 | Final TPSS Report |
| 25 | Hydrogeological Investigation at TPSS #10 Memo | MEM-2019-03-21-TPSS1HydrogeologyInvest-60494276 | AECOM Canada Ltd. | TPSS #10 | 21-Mar-19 | Final HDR Memo |
| 26 | Update to GDRs/GERs Information | MEM-2018-01-31-UpdateToGDRs GERs-60494276 | AECOM Canada Ltd. | Mainline | 31-Jan-18 | Final Report Addendum |

**APPENDIX F
LISTED PROJECT CO PLAs**

| Listed Project Co PLA | Number of Business Days for Final Determination by the applicable City (City PLA Deadline) |
|--|--|
| CITY OF MISSISSAUGA | |
| Site Plan Review (Port Credit Station and Cooksville Stop) | [REDACTED] |
| CITY OF BRAMPTON | |
| Site Plan Review (OMSF) | [REDACTED] |

* For the purposes of this Appendix F, the number of Business Days is counted commencing on the date of Project Co’s complete application for the applicable Listed Project Co PLA.

**APPENDIX G
FINAL UTILITY BASELINE DOCUMENTS**

[REDACTED]

SCHEDULE 2**COMPLETION DOCUMENTS**

In this Schedule 2, “certified” shall mean that the relevant document is certified as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate by an officer or director of the relevant corporation.

1. DOCUMENTS TO BE DELIVERED BY PROJECT CO

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, executed by the parties to such agreement other than Contracting Authority and in form and substance satisfactory to Contracting Authority, acting reasonably) is to be delivered by Project Co to Contracting Authority on or prior to the date of the Project Agreement:

- 1.1 an original of the Project Agreement;
- 1.2 an original of the Custody Agreement;
- 1.3 an original of the Lenders’ Direct Agreement;
- 1.4 an original of the Construction Contractor’s Direct Agreement;
- 1.5 an original of the Service Provider’s Direct Agreement;
- 1.6 an original of the Independent Certifier Agreement;
- 1.7 an original of the Insurance Trust Agreement;
- 1.8 an original Notice of appointment of the Project Co Representative;
- 1.9 an original of the undertaking and acknowledgement in the form attached as Appendix A to this Schedule 2;
- 1.10 the Lending Agreements;
- 1.11 an original of the Construction Contract;
- 1.12 an original of the Service Contract;
- 1.13 an original of the Revenue Vehicle Supply Contract;
- 1.14 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by the Construction Contractor for the period prior to the Substantial Completion Date in accordance with the Project Agreement;
- 1.15 one (1) printed copy of the Financial Model (as revised pursuant to Section 2.3(d) of the Project Agreement, if applicable) and two (2) copies on CD-Rom;

-
- 1.16 a certificate of an officer of Project Co certifying:
- (a) a true copy of the Financial Model audit report dated [REDACTED] prepared by [REDACTED]; and
 - (b) that the Financial Model algorithms have not changed from the audit report referred to in (a) above;
- 1.17 the Interim Baseline Works Schedule in accordance with the requirements set out in Schedule 12 – Works Schedule Requirements;
- 1.18 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
- 1.19 a certificate of an officer of each Contractor substantially in the form attached as Appendix B to this Schedule 2;
- 1.20 a certificate of an officer of each of the Construction Guarantors and of each of the Service Guarantors substantially in the form attached as Appendix B to this Schedule 2;
- 1.21 an original of the opinion from counsel to Project Co, each of the Contractors, each of the Construction Guarantors, each of the Service Guarantors and such other Project Co Parties as Contracting Authority may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to Contracting Authority and its counsel;
- 1.22 a final Lane Closure Target Letter;
- 1.23 a final Energy Target Letter and supporting Energy Model;
- 1.24 a final Property Access Closure Target Letter;
- 1.25 written confirmation that the list of Key Individuals with respect to the Works submitted by Project Co as part of its proposal in the RFP process, is unchanged;
- 1.26 evidence that the COR-Certified Construction Project Co Party has its COR Certification in good standing (or to the extent that the COR-Qualified Construction Project Co Party does not have its COR Certification by the date of the Project Agreement, evidence that the COR-Qualified Construction Project Co Party has its current OHSAS 18001 Accreditation in good standing and has made an application to IHSA for its COR Certification);
- 1.27 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a WSIB clearance certificate, or if a WSIB clearance certificate is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.28 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as

- applicable), a CAD-7, or, if a CAD-7 is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.29 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a Workplace Injury Summary Report (WISR) or, if a WISR is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.30 an original of the Alstom Direct Agreement;
- 1.31 an original of the opinion from counsel to the Revenue Vehicle Manufacturer as Construction Contractor may reasonably require substantially in the form attached as Appendix C to Attachment 2 of the Revenue Vehicle Supply Contract or as otherwise acceptable to Construction Contractor and its counsel in respect of the Revenue Vehicle Supply Contract;
- 1.32 a copy of the Equity Contribution Agreement;
- 1.33 a copy of the Interface Agreement;
- 1.34 a copy of each of the Management Services Agreements;
- 1.35 a copy of the corporate ownership structure of Project Co;
- 1.36 a copy of each of the documents comprising the Performance Security;
- 1.37 a certified copy of the Closing Equity Support Agreement;
- 1.38 an original of the opinion from counsel to Alstom Parent Company delivered pursuant to Section 1.11 of Attachment 2 of the Revenue Vehicle Supply Contract;
- 1.39 a copy of the Vehicle Supplier Guarantee;
- 1.40 an original of the undertaking to Contracting Authority dated the date of the Project Agreement in respect of: (i) the delivery of a WSIB clearance certificate, the OHSAS 18001 Accreditation, and COR Certification for [REDACTED]; and (ii) the delivery of a WSIB clearance certificate for [REDACTED].
- 1.41 [REDACTED]; and
- 1.42 such other documents as the Parties may agree, each acting reasonably.

2. DOCUMENTS TO BE DELIVERED BY CONTRACTING AUTHORITY

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, where an entity comprising Contracting Authority is a party to such document, executed by such Contracting Authority entity and, if applicable, any Contracting Authority Party or Governmental Authority) is to be delivered by Contracting Authority to Project Co on or prior to the date of the Project Agreement:

-
- 2.1 an original of the Project Agreement;
 - 2.2 an original of the Custody Agreement;
 - 2.3 an original of the Lenders' Direct Agreement;
 - 2.4 an original of the Construction Contractor's Direct Agreement;
 - 2.5 an original of the Service Provider's Direct Agreement;
 - 2.6 an original of the Independent Certifier Agreement;
 - 2.7 an original of the Insurance Trust Agreement;
 - 2.8 an original Notice of appointment of the Contracting Authority Representative;
 - 2.9 a certificate of an officer of IO and a declaration of management signed by an officer of IO substantially in the forms attached as Appendix D-1 and Appendix E respectively to this Schedule 2;
 - 2.10 a certificate of an officer of Metrolinx signed by an officer of Metrolinx substantially in the form attached as Appendix D-2 to this Schedule 2;
 - 2.11 an original of the Alstom Direct Agreement;
 - 2.12 an original of the waiver from Contracting Authority dated the date of the Project Agreement in respect of the delivery by Project Co of: (i) evidence of COR Certification or current OHSAS 18001 Accreditation and application to IHSAS for its COR Certification, a WSIB clearance certificate, CAD-7 or equivalent documentation and Workplace Injury Summary Report for **[REDACTED]**; (ii) a WSIB clearance certificate, CAD-7 or equivalent documentation and Workplace Injury Summary Report for **[REDACTED]**; and (iii) CAD-7 or equivalent documentation for **[REDACTED]**; and
 - 2.13 such other documents as the Parties may agree, each acting reasonably.

APPENDIX A

FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

- TO:** ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended (“**IO**”)
- TO:** METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48 (“**Metrolinx**”)
- (IO and Metrolinx are, collectively, “**Contracting Authority**”)
- TO:** The Minister of Infrastructure (the “**Minister**”)
- RE:** Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the [•] day of [•], 20• between Contracting Authority and Mobilinx Hurontario General Partnership (“**Project Co**”)

1. The undersigned acknowledges that:
 - (a) The Project will proceed as an alternative financing and procurement project under the MOI’s *ReNew Ontario* infrastructure investment plan, and complies with the principles which guide the financing and procurement of public infrastructure projects in Ontario.
 - (b) The 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
 - (i) The public interest is paramount.
 - (ii) Value for money must be demonstrable.
 - (iii) Appropriate public control/ownership must be preserved.
 - (iv) Accountability must be maintained.
 - (v) All processes must be fair, transparent and efficient.
 - (c) Consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
2. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

DATED this ____ day of _____, 20●.

[●]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

APPENDIX B

FORM OF PROJECT CO/PROJECT CO PARTY OFFICER'S CERTIFICATE

Certificate of an Officer of

[•]

(the "Corporation")

- TO:** ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended and METROLINX (collectively, "Contracting Authority")
- AND TO:** METROLINX
- AND TO:** THE MINISTER OF INFRASTRUCTURE
- AND TO:** McCARTHY TÉTRAULT LLP
- AND TO:** [LENDERS' AGENT]
- AND TO:** [COUNSEL TO LENDERS]
-

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

1. Constatting Documents

- (a) The Corporation is a subsisting corporation duly incorporated under the laws of [the Province of Ontario].
- (b) Attached hereto as **Schedule "A"** are true and complete copies of the articles, together with all amendments thereto, of the Corporation (the "**Articles**"). The Articles are in full force and effect on the date hereof and no other articles have been issued and no proceeding has been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Articles.
- (c) Attached hereto as **Schedule "B"** are true and complete copies of the by-laws of the Corporation (the "**By-laws**") enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-laws and neither the directors nor the

shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.

- (d) Attached hereto as **Schedule “C”** is a true and complete copy of a unanimous shareholders’ agreement between the shareholders of the Corporation and the Corporation (the **“Unanimous Shareholders’ Agreement”**) executed on or before the date hereof. The Unanimous Shareholders’ Agreement has been in full force and effect from and after the date thereof as set out therein and is in full force and effect, unamended as of the date hereof.
- (e) The minute books and corporate records of the Corporation made available to [●] are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the shareholders and directors of the Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the shareholders or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.
- (f) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
- (g) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
- (h) Pursuant to the Unanimous Shareholders’ Agreement, the powers of the directors of the Corporation to manage the business and affairs of the Corporation, whether such powers arise from the [*Business Corporations Act (Ontario)* (the **“Act”**)], the Articles or the By-laws of the Corporation, or otherwise, are restricted to the fullest extent permitted by law, and, in accordance with the Act and the Unanimous Shareholders’ Agreement, the shareholders of the Corporation have and enjoy and may exercise and perform all the rights, powers, and duties of the directors of the Corporation to manage the business and affairs of the Corporation.
- (i) There are no provisions in the Articles, By-laws, Unanimous Shareholders’ Agreement or in any other agreement binding on the Corporation which:
 - (i) restrict or limit the powers of the Corporation to enter into:
 - (1) a certain project agreement with IO and Metrolinx (collectively, **“Contracting Authority”**) made as of [●], 20● (as the same may be

amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”) pursuant to which the Corporation will design, build, finance, operate and maintain a new light rail transit system;

- (2) a lenders’ direct agreement between the Corporation, Contracting Authority and the Lenders’ Agent;
- (3) direct agreements between the Contractors, the Corporation, the Guarantors and Contracting Authority;
- (4) **[Note: List other documents delivered as of the date of the Project Agreement]**,

(collectively, the “**Documents**”); or

- (ii) restrict or limit the authority of the directors or shareholders of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

2. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule “D”** are true and complete copies of the resolutions of the **[directors/shareholders]** of the Corporation (the “**Resolutions**”), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
 - (i) the Articles, By-laws or the Unanimous Shareholders’ Agreement;
 - (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or **[Ontario]** governmental body by which it is bound;
 - (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound; or
 - (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination or award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there are no actions, suits, proceedings, or investigations pending or threatened in writing against the Corporation at law or in equity before any Governmental Authority or arbitral body (whether or not

covered by insurance) of which the Corporation has received written notice and that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the Corporation or in any impairment of its ability to perform its obligations under the Documents, and the Corporation has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment.

- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or [Ontario] Governmental Authority which has not been obtained is required to permit the Corporation to execute and deliver the Documents.

3. No Breach or Default

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

4. Specimen Signatures

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

| NAME | POSITION | SIGNATURE |
|------|----------|-----------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

5. Capital

Listed below are all of the issued and outstanding shares in the capital of the Corporation and the registered owner of such shares:

| ISSUED SHARES | REGISTERED OWNER |
|---------------|------------------|
| | |

Attached hereto as **Schedule “E”** are true copies of all certificates in respect of such issued and outstanding shares. The Corporation has issued no securities, including (without limitation) securities convertible or

exchangeable into shares and/or securities in respect of debt, other than such issued and outstanding shares as are listed above.

DATED this ____ day of _____, 201●.

Name:

Title:

APPENDIX C

FORM OF PROJECT CO/PROJECT CO PARTY OPINION

[INSERT DATE]

Ontario Infrastructure and Lands Corporation
1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5

Metrolinx
97 Front Street West, 3rd Floor
Toronto, Ontario M5J 1E6

McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Dear Sirs/Mesdames:

Re: Huronario Light Rail Transit Project

We have acted as counsel to [●] (“**Project Co**”), [●] (the “**Construction Contractor**”) and [●] (the “**Service Provider**”) in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into a design, build, finance, operate and maintain agreement for a new light rail transit system in the Region of Peel, Ontario. [Note: Additional parties to be added depending on consortium structure and/or the financing package.]

This opinion is being delivered to Ontario Infrastructure and Lands Corporation, a Crown agent, and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48 (collectively, “**Contracting Authority**”) and their counsel pursuant to Section 1.21 of Schedule 2 to the project agreement made as of [●] between Contracting Authority and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”).

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

In our capacity as counsel to Project Co, the Construction Contractor and the Service Provider, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all documents are dated as of [●]):

1. the Project Agreement; and
2. the following project documents (collectively, the “**Implementation Documents**”):

- (a) the Construction Contract;
- (b) the Service Contract;
- (c) the Lenders' Direct Agreement;
- (d) the Construction Contractor's Direct Agreement;
- (e) the Service Provider's Direct Agreement;
- (f) the Lending Agreements;
- (g) the Insurance Trust Agreement;
- (h) the Custody Agreement;
- (i) the Independent Certifier Agreement; and
- (j) the Performance Guarantees.

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the “**Documents**”, and each is individually referred to as a “**Document**”. [Note: **Additional documents to be added depending on consortium structure and/or the financing package.**]

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

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

Searches and Reliance

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

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

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

In connection with the opinions set forth in paragraphs 1, 2 and 3 below, we have relied exclusively on Certificates of Status issued by the **[Ministry of Government Services (Ontario)]** of even date, copies of which are attached as Schedule "B".

In connection with the opinions set forth in paragraphs 5, 8, 11, 17 and 20 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●] (the "**CC Opinion**"), a copy of which has been delivered to you. To the extent that the CC Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the CC Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

In connection with the opinions set forth in paragraphs 6, 9, 12, 18 and 21 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●] (the "**Service Provider Opinion**"), a copy of which has been delivered to you. To the extent that the Service Provider Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the Service Provider Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

Assumptions

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

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than Project Co, the Construction Contractor and the Service Provider) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the parties (other than Project Co, the Construction Contractor and the Service Provider) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.
4. The completeness, truth and accuracy of all facts set forth in the Officer's Certificates.

5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the parties (other than Project Co, the Construction Contractor and the Service Provider) to Project Co, the Construction Contractor and the Service Provider.

Opinions

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

INCORPORATION AND EXISTENCE

1. Project Co is a corporation incorporated under the laws of [the Province of Ontario] and has not been dissolved.
2. The Construction Contractor is a corporation incorporated under the laws of [the Province of Ontario] and has not been dissolved.
3. The Service Provider is a corporation incorporated under the laws of [the Province of Ontario] and has not been dissolved.

CORPORATE POWER AND CAPACITY

4. Project Co has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Project Agreement, and to enter into and perform its obligations under each of the Documents to which it is a party.
5. The Construction Contractor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.
6. The Service Provider has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

CORPORATE AUTHORIZATION

7. Project Co has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
8. The Construction Contractor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

9. The Service Provider has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

EXECUTION AND DELIVERY

10. Project Co has duly executed and delivered each of the Documents to which it is a party.
11. The Construction Contractor has duly executed and delivered each of the Documents to which it is a party.
12. The Service Provider has duly executed and delivered each of the Documents to which it is a party.

ENFORCEABILITY

13. Each of the Documents to which Project Co is a party constitutes a legal, valid and binding obligation of Project Co, enforceable against it in accordance with its terms.
14. Each of the Documents to which the Construction Contractor is a party constitutes a legal, valid and binding obligation of the Construction Contractor, enforceable against it in accordance with its terms.
15. Each of the Documents to which the Service Provider is a party constitutes a legal, valid and binding obligation of the Service Provider, enforceable against it in accordance with its terms.

NO BREACH OR DEFAULT

16. The execution and delivery by Project Co of the Documents to which it is a party does not, and the performance by Project Co of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which Project Co is subject.
17. The execution and delivery by the Construction Contractor of the Documents to which it is a party does not, and the performance by the Construction Contractor of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Construction Contractor is subject.
18. The execution and delivery by the Service Provider of the Documents to which it is a party does not, and the performance by the Service Provider of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Service Provider is subject.

REGULATORY APPROVALS

19. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by Project Co of the Documents to which it is a party and the performance of its obligations thereunder.
20. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Construction Contractor of the Documents to which it is a party and the performance of its obligations thereunder.
21. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Service Provider of the Documents to which it is a party and the performance of its obligations thereunder.

Qualifications

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

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of each of the Documents and the rights and remedies set out therein is subject to and may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered, including equitable remedies such as those of specific performance and injunction, or the availability of equitable defences.
3. The enforceability of any Document will be subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.
4. Pursuant to the *Currency Act* (Canada), a judgment in money rendered by a Court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
5. To the extent that a particular contractual provision is characterized by a Court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
6. A Court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
7. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a Court as being solely the agent of Project Co notwithstanding any agreement to the contrary.

8. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
9. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act, 1991* (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which even an arbitration under such arbitration provisions may not be commenced or continued. In addition, the *Arbitration Act, 1991* (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
10. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
11. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a Court, to the extent that they relate to the failure of such person to perform such duty or liability.
12. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
13. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.
14. Any award of costs is in the discretion of a Court of competent jurisdiction.
15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on Contracting Authority for which it would be contrary to public policy to require Project Co to indemnify Contracting Authority or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.

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

Yours very truly,

[INSERT NAME OF LAW FIRM]

APPENDIX D-1

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

TO: MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED] (“Project Co”)

AND TO: [Project Co Counsel]

AND TO: [Lenders’ Agent],

AND TO: [Lenders’ Counsel]

RE: Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the [●] day of [●], 20[●] between the Corporation, a Crown agent continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011; Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48; and Project Co

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

1. Attached hereto as **Schedule “A”** is a true and complete copy of (i) the resolutions of the directors of the Corporation regarding the execution of public works projects undertaken by the Corporation and certain other matters set forth therein; and (ii) an excerpt of the resolutions of the directors of the Corporation relating to delegation of signing authority (collectively, the “**Execution Resolutions**”), which have been duly and validly passed in accordance with applicable law. The Execution Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
2. Attached hereto as Schedule “B” is a true and complete copy of the resolutions of the directors of the Corporation approving the selection of Project Co as the successful bidder for the Huronario Light Rail Transit Project (the “**Project Resolutions**”). The Project Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same is in full force and effect, unamended as of the date hereof.
3. To the knowledge of the undersigned, after due inquiry as of the date hereof, the Minister of Infrastructure (the “**Minister**”) has not given a direction pursuant to Subsection 4(3) of the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended (the

“Act”) that limits the scope of the objects of the Corporation as they are set out in Subsection 4(1) of the Act.

- 4. The following named persons, on or as of the date hereof, are duly elected or appointed officers of the Corporation, as evidenced by the holding of the office or offices set forth opposite their names, are proper signing officers of the Corporation and are authorized to execute and deliver Project Documents (as such a term is defined in the Execution Resolutions referenced in item 1(i) above) relating to the Hurontario Light Rail Transit Project on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons.

| Name | Position | Signature |
|------|----------|-----------|
| [•] | _____ | _____ |
| [•] | _____ | _____ |
| [•] | _____ | _____ |
| [•] | _____ | _____ |

DATED this ____ day of _____, 20●.

Name: [•]
Title: Secretary

APPENDIX D -2
FORM OF CERTIFICATE
OF AN OFFICER OF METROLINX

(the “Corporation”)

TO: MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED] (“Project Co”)

AND TO: [PROJECT CO COUNSEL]

AND TO: [LENDERS’ AGENT]

AND TO: [LENDERS’ COUNSEL]

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

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

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

4. The following named persons, on or as of the date hereof, are duly elected or appointed officers of the Corporation, as evidenced by the holding of the office or offices set forth opposite their names, are proper signing officers of the Corporation and are authorized to execute and deliver the Project Agreement and all necessary legal agreements and related documentation to give effect to the Resolution on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons.

| Name | Position | Signature |
|-------------|-----------------|------------------|
| [•] | _____ | _____ |
| [•] | _____ | _____ |
| [•] | _____ | _____ |
| [•] | _____ | _____ |

Dated this ____ day of _____, 20●.

Name:

Title:

APPENDIX E

FORM OF DECLARATION OF MANAGEMENT

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

(the “Corporation”)

DECLARATION OF MANAGEMENT

WHEREAS the Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011; Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O 1990, c. 48; and Mobilinx Hurontario General Partnership, [REDACTED], propose to enter into a Project Agreement relating to the Hurontario Light Rail Transit Project in Toronto, Ontario (the “Hurontario Project”);

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

NOW THEREFORE THE CORPORATION’S MANAGEMENT HEREBY DECLARES THAT:

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

contrary against any person dealing with the Corporation or any person who has acquired an interest in the Hurontario Project from the Corporation.

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

DATED this _____ day of _____, 20●.

Name: [●]
Title: Secretary

SCHEDULE 3
CUSTODY AGREEMENT

THIS AGREEMENT is made as of the 17th day of October, 2019

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended (“**IO**”)

AND: METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48

(collectively, “**Contracting Authority**”)

AND:

[REDACTED]

(the “**Custodian**”)

AND:

[REDACTED]

(the “**Lenders’ Agent**”)

AND:

MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED].

(“**Project Co**”)

WHEREAS:

- A. Contracting Authority and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Custodian, and the Custodian wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties, the Lenders’ Agent and the Custodian wish to enter into this Custody Agreement in order to record the terms by which the Custodian shall perform such services.
- D. IO, as Crown agent and Metrolinx, as Crown agency, intend to enter into this Custody Agreement in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the

obligations of Contracting Authority pursuant to this Custody Agreement, save and except as provided for in this Custody Agreement.

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

1. DEFINITIONS

In this Custody Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Custody Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Contracting Authority”** has the meaning given in the preamble.
- (b) **“Contracting Authority Signatories”** has the meaning given in Section 6(a)(i).
- (c) **“Custodian”** has the meaning given in the preamble.
- (d) **“IO”** has a meaning given in the preamble.
- (e) **“Lenders' Agent”** means [REDACTED], acting as agent for and on behalf of the Lenders and not in its personal capacity.
- (f) **“Material”** means hard and electronic copies of the Financial Model.
- (g) **“PA Parties”** means Contracting Authority and Project Co, and **“PA Party”** means Contracting Authority or Project Co, as the context requires.
- (h) **“Party”** means Contracting Authority, the Custodian, Project Co or the Lenders' Agent, and **“Parties”** means Contracting Authority, the Custodian, Project Co and the Lenders' Agent.
- (i) **“Project Agreement”** means the project agreement made on or about October 17, 2019 between Contracting Authority and Project Co.
- (j) **“Project Co”** means Mobilinx Hurontario General Partnership.
- (k) **“Project Co Signatory”** has the meaning given in Section 6(a)(ii).
- (l) **“Step-Out Date”** has the meaning given in Section 14(e).

2. Interpretation

This Custody Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

-
- (a) The headings in this Custody Agreement are for convenience of reference only, shall not constitute a part of this Custody Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Custody Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Paragraphs, Subparagraphs, or divisions of this Custody Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) 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.
- (d) 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.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Custody Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Custody Agreement shall bear their natural meaning.
- (g) References containing terms such as:
- (i) “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 this Custody Agreement taken as a whole; and
 - (ii) “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”.
- (h) In construing this Custody Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Custody 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.
- (i) Where this Custody 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.

- (j) Where this Custody 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.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Custody Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. Project Co’s Duties and Warranties

- (a) Contracting Authority will, together with Project Co, verify the identity and consistency of one copy of the Material, which shall be delivered by Project Co to the Custodian on the date of this Custody Agreement.
- (b) Project Co shall at all times ensure that the Material as delivered to the Custodian is capable of being used to generate the latest version of the Financial Model issued to Contracting Authority and shall deliver further copies of the Material to the Custodian as and when necessary.
- (c) Upon creation of any new versions of the Financial Model and within 30 days from receipt of a notice served upon it by the Custodian under the provisions of Section 4(a)(v), the replacement copy of the Material shall be verified by the PA Parties in accordance with Section 3(a) and delivered by Project Co to the Custodian.
- (d) Project Co warrants that:
 - (i) it owns the Intellectual Property Rights in the Material and has authority to enter into this Custody Agreement;
 - (ii) the use of the Materials by Contracting Authority under the terms of this Custody Agreement shall not infringe any Intellectual Property Rights of any person; and
 - (iii) the Material delivered under Section 3(a) shall contain all information in human-readable form and on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain and correct the Material without the assistance of any other person.

4. Custodian’s Duties

- (a) The Custodian shall:
 - (i) hold in safe custody all versions of the Financial Model delivered to it pursuant to the terms hereof, and the provisions of this Custody Agreement shall apply (with any necessary changes being made) to any revised Financial Model;
 - (ii) hold the Material in a safe and secure environment;

- (iii) inform Project Co and Contracting Authority of the receipt of any copy of the Material;
 - (iv) at all times retain a copy of the latest verified deposit of the Material; and
 - (v) promptly notify Project Co and Contracting Authority if it becomes aware at any time during the term of this Custody Agreement that any copy of the Material held by it has been lost, damaged or destroyed.
- (b) The Custodian shall not be responsible for procuring the delivery of the Material in the event of failure by Project Co to do so.
- (c) In accordance with Section 10, the Custodian shall allow the PA Parties, the Lenders' Agent and the auditor retained by the Lenders' Agent to inspect and audit the Financial Model from time to time.

5. Payment

- (a) In consideration of the Custodian performing the services contemplated by this Custody Agreement, Project Co shall pay the Custodian's fees as agreed from time to time between the Custodian and Project Co.

6. Release Events

- (a) The Custodian shall hold the Material to the order of the PA Parties and shall honour the instructions and signatures of:
- (i) each President & CEO and designated signing officers of Contracting Authority or such other persons nominated by it and notified to the Custodian and Project Co in writing (the "**Contracting Authority Signatories**"); and
 - (ii) the President & CEO and designated signing officers of Project Co or such other person nominated by it and notified to the Custodian and Contracting Authority in writing (the "**Project Co Signatory**");

and shall, subject to Section 6(b), upon receiving signed joint instructions from the Contracting Authority Signatories and the Project Co Signatory, release one copy of the Material to the person either named in such instructions or previously identified in writing by the Contracting Authority Signatories and the Project Co Signatory.

- (b) The PA Parties each agree that they shall give joint instructions to the Custodian for the release of the Material, in accordance with Section 6(a), on each occasion that the Material is required to be released pursuant to the Project Agreement or that the Material must be released to allow the Material to be maintained and/or corrected.
- (c) The Custodian shall release the Material to a duly authorized representative of Contracting Authority on any termination of the Project Agreement prior to the Expiry Date.

7. Records

- (a) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect any records kept by the Custodian in accordance with this Custody Agreement.

8. Confidentiality

- (a) The Material shall remain the confidential property of Project Co and, in the event that the Custodian provides a copy of the Material to Contracting Authority, Contracting Authority shall be permitted to use the Material only in accordance with the intellectual property and confidentiality obligations in the Project Agreement.
- (b) The Custodian agrees for itself, its directors, officers, employees, sub-contractors and agents, to maintain all information and/or documentation in whatever form coming into its possession or to its knowledge under or in connection with this Custody Agreement in strictest confidence and secrecy. The Custodian further agrees not to make use of such information and/or documentation other than for the purposes of this Custody Agreement and will not disclose or release it other than in accordance with the terms of this Custody Agreement.
- (c) In the event that the Material is released under Section 6, Contracting Authority shall:
- (i) use the Material only for the purpose of understanding, maintaining and correcting the Financial Model exclusively on behalf of Contracting Authority;
 - (ii) not use the Material for any other purpose nor disclose it to any person, save such of its employees or contractors who need to know the same in order to understand, maintain and correct the Financial Model exclusively on behalf of Contracting Authority;
 - (iii) hold all media containing the Material in a safe and secure environment when not in use; and
 - (iv) forthwith destroy the same should Contracting Authority cease to be entitled to use the Financial Model.

9. Intellectual Property Rights

- (a) The release of the Material to Contracting Authority and to the Custodian will not act as an assignment of any Intellectual Property Rights that Project Co possesses in the Material.

10. Inspection

- (a) Subject to the following provisions of this Section 10, the Custodian shall bear no obligation or responsibility to any person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Financial Model.
- (b) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect and audit or to procure the inspection and audit of the Financial Model in accordance with this Section 10.

- (c) The Custodian shall, upon receiving duly signed instructions from both of the PA Parties (but only upon receiving such instructions), provide facilities for Contracting Authority and/or Project Co and/or such person identified in the duly signed written instructions to inspect and audit the Financial Model.
- (d) The Custodian shall maintain a record of any inspection and audit made pursuant to Section 10(b), including details of the person who made the inspection and/or audit and the date of the same.

11. Custodian's Liability

- (a) The Custodian shall not be liable for any loss or damage caused to Project Co or Contracting Authority either jointly or severally except to the extent that such loss or damage is caused by the negligent acts or omissions of or a breach of any contractual duty by the Custodian, its employees, agents or sub-contractors, and in such event, the Custodian's total liability in respect of all claims arising under or by virtue of this Custody Agreement shall not (except in the case of claims for personal injury or death) exceed the sum of \$[REDACTED].
- (b) The Custodian shall in no circumstances be liable to Project Co or Contracting Authority for indirect or consequential loss of any nature whatsoever whether for loss of profit, loss of business or otherwise.
- (c) Subject to complying with the provisions of Section 6, and save in the case of manifest error, the Custodian shall be protected in acting upon any written request, waiver, consent, receipt or other document furnished to it pursuant to this Custody Agreement, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information contained in it, which the Custodian in good faith believes to be genuine and what it purports to be.
- (d) The duties, responsibilities and obligations of the Custodian shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Custodian shall not be subject to, nor required to comply with, any other agreement between or among any or all of the other Parties or to which any Party is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other than those contained herein or delivered in accordance herewith). The Custodian shall not be required to expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder except ordinary corporate costs incurred in the performance of such duties.
- (e) If at any time the Custodian is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Material (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of property), the Custodian is authorized to comply therewith in any manner as it or its legal counsel deems appropriate, acting reasonably; provided that the Custodian, when so served, shall promptly notify Project Co and Contracting Authority, in writing, of such process and the Custodian's intended action in order to provide Project Co and Contracting Authority a reasonable opportunity to intervene or challenge such process in a court or tribunal of competent jurisdiction.

- (f) The Custodian may consult with legal counsel at the expense of Project Co and Contracting Authority as to any matter relating to this Custody Agreement, and the Custodian shall not incur any liability in acting in good faith in accordance with any advice from such counsel. All reasonable fees and disbursements incurred by the Custodian shall be added to the fees otherwise payable hereunder.
- (g) The Custodian shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Custodian (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).
- (h) The Custodian shall not be responsible in any respect for the form or content of the Material delivered to it hereunder.
- (i) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Custodian hereunder, the Custodian shall notify Project Co and Contracting Authority in writing of such ambiguity or uncertainty and request instructions to eliminate such ambiguity or uncertainty. The Custodian may, acting reasonably, refrain from taking any action other than to retain possession of the Material, unless the Custodian receives written instructions, signed by Project Co and Contracting Authority, which eliminates such ambiguity or uncertainty.
- (j) In the event of any dispute between or conflicting claims by or among the PA Parties and/or any other person or entity with respect to the Material, the Custodian shall be entitled, acting reasonably, to refuse to comply with any and all claims, demands or instructions with respect to the Material so long as such dispute or conflict shall continue, and the Custodian shall promptly notify Project Co and Contracting Authority of its intention to do so. In such circumstances, the Custodian shall not be or become liable in any way to Project Co or Contracting Authority for failure or refusal to comply with such conflicting claims, demands or instructions. The Custodian shall be entitled to refuse to act until, acting reasonably, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in writing satisfactory to the Custodian or (ii) the Custodian shall have received security or an indemnity satisfactory to it acting reasonably sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Custodian may, in addition, elect, acting reasonably, to commence an interpleader action or seek other judicial relief or orders as it may deem, acting reasonably, necessary, including, without limiting the generality of the foregoing, depositing all or any part of the Material into court. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such proceeding shall be paid by, and shall be deemed a joint and several obligation of, Project Co and Contracting Authority.
- (k) Each of Project Co and Contracting Authority shall provide to the Custodian an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Custodian hereunder. The Custodian shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Custodian shall be entitled to refuse to act upon any

instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this Section 11.

- (l) The Custodian shall be entitled to rely, and act upon, on any direction, order, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission.
- (m) This Section 11 shall survive the termination of this Custody Agreement.

12. Indemnity

- (a) Save for any claim falling within the provisions of Section 11(a), Project Co and Contracting Authority, on a joint and several basis, shall be liable for and shall indemnify and hold harmless the Custodian, and its officers, directors and employees, from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) arising from or in connection with or related to this Custody Agreement or acting as Custodian hereunder (including, but not limited to, losses incurred by the Custodian in connection with its successful defense of any claim of negligence or willful misconduct on its part), provided, however, that nothing contained herein shall require the Custodian to be indemnified for losses caused by its negligence or willful misconduct.
- (b) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Custody Agreement, shall be conducted in accordance with the conduct of claims procedure described in Appendix A – Conduct of Claims to this Custody Agreement.

13. Termination

- (a) The Custodian may terminate this Custody Agreement for failure by Project Co to pay any outstanding fee provided for herein within 30 days of receipt of written notice in respect thereof.
- (b) The Custodian may terminate this Custody Agreement by giving 120 days' prior written notice to Project Co and Contracting Authority. In that event, Project Co and Contracting Authority shall appoint a mutually acceptable new custodian on terms similar to those contained in this Custody Agreement.
- (c) If the Custodian is not notified of the new custodian within the notice period given in Section 13(b), the Custodian will destroy the Material.
- (d) Contracting Authority may terminate this Custody Agreement by giving 30 days' prior written notice to the Custodian and Project Co.
- (e) Project Co may, with the prior written consent of Contracting Authority, terminate this Custody Agreement by giving 30 days' prior written notice to the Custodian and Contracting Authority.
- (f) This Custody Agreement shall terminate upon release of the Material to Contracting Authority in accordance with Section 6(c).
- (g) Upon termination under the provisions of Sections 13(d) or 13(e), the Custodian will deliver the Material to Project Co. If the Custodian is unable to trace Project Co within 60 days of writing to

the last registered address notified by Project Co to the Custodian, the Custodian will destroy the Material.

- (h) Upon termination under the provisions of Section 13(a), the Material will be available for collection by Project Co from the Custodian for 60 days from the date of termination. After such 60-day period, the Custodian will destroy the Material.
- (i) The Custodian may forthwith terminate this Custody Agreement and destroy the Material if it is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian having used all reasonable endeavours to do so.
- (j) The provisions of Sections 8, 11 and 12 shall continue in full force and effect after termination of this Custody Agreement.
- (k) The Agreement shall terminate on the Expiry Date, at which time Project Co will write to the Custodian requesting the release of the Materials to it. The Custodian agrees that it will notify Contracting Authority of Project Co's request and, failing receipt of any notice of objection from Contracting Authority within 30 days of the receipt of the notice by Contracting Authority, it shall release the Materials to Project Co.
- (l) On termination of this Custody Agreement, Project Co shall remain liable to the Custodian for payment in full of any fee which has become due but which has not been paid as at the date of termination.

14. Step-In Rights

- (a) The Custodian shall, from time to time:
 - (i) permit Contracting Authority to perform or discharge any obligation of Project Co under this Custody Agreement, where Project Co is in breach of the same;
 - (ii) permit Project Co to perform or discharge any obligation of Contracting Authority under this Custody Agreement, where Contracting Authority is in breach of the same; and
 - (iii) following notification by the Lenders' Agent (who at the same time shall provide a copy of any such notification to Contracting Authority), permit the Lenders' Agent or another person specified in such notice with effect from the date specified in the same to perform or discharge all the obligations of Project Co under this Custody Agreement, provided that the Lenders' Agent shall have the benefit of and be entitled to enforce against the Custodian any and all of the Custodian's obligations to Project Co under this Custody Agreement and the Custodian undertakes to perform such obligations in favour of the Lenders' Agent.
- (b) Project Co consents to the performance or discharge of its obligations by Contracting Authority pursuant to Section 14(a)(i).
- (c) Contracting Authority consents to the performance or discharge of its obligations by Project Co pursuant to Section 14(a)(ii).

- (d) The PA Parties consent to the performance or discharge of Project Co’s obligations by the Lenders’ Agent pursuant to Section 14(a)(iii).
- (e) Contracting Authority or the Lenders’ Agent shall be entitled to terminate the Lenders’ Agent’s obligations pursuant to Section 14(a)(iii) on giving the Custodian prior notice (Contracting Authority or the Lenders’ Agent at the same time shall provide a copy of any such notification to the other party) of at least 15 Business Days. On and from the date of expiry of such notice (the “**Step-Out Date**”), the Lenders’ Agent shall be automatically released from all obligations pursuant to this Custody Agreement, except for any which have fallen due for performance or discharge on or before the Step-Out Date and which have not been fully and unconditionally performed or discharged.
- (f) The occurrence of the Step-Out Date shall not affect the continuation of Project Co’s obligations towards the Custodian under this Custody Agreement.
- (g) The Lenders’ Agent is a Party to this Custody Agreement solely for the purposes of taking the benefit of its rights under Section 4(c) and this Section 14 and shall have no rights or obligations or liabilities hereunder, except pursuant to the operation of Section 4(c) and this Section 14.

15. Assignment

- (a) This Custody Agreement shall be binding on, and enure to the benefit of, the Custodian, Project Co and Contracting Authority and their respective successors and permitted transferees and assigns.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.1 of the Project Agreement.
- (c) Contracting Authority may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom Contracting Authority assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement.
- (d) The Custodian shall not, without the prior written consent of the PA Parties assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person.
- (e) The Custodian acknowledges that Project Co has granted a security interest over its rights under this Custody Agreement to the Lenders’ Agent.

16. Notices

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

If to Contracting Authority: **[REDACTED]**

If to Project Co: **[REDACTED]**

If to the Custodian: **[REDACTED]**

If to the Lenders' Agent: **[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 16(b).
- (c) Any Party to this Custody Agreement may, from time to time, change any of its contact information set forth in Section 16(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 16(e), 16(f) and 16(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 16.
- (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.

17. Right to Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Custody Agreement and Project Co, the Custodian and the Lenders' Agent may deal exclusively with the designated person in respect of all such matters and are entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Custodian and the Lenders' Agent in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Custodian and the Lenders' Agent in writing of any designation hereunder. The rights and obligations of the Parties to this Custody Agreement shall be in no way affected by reason of any such designation. Project Co, the Custodian and the Lenders' Agent acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 17.

18. Amendments

- (a) This Custody 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 Custody Agreement.

19. Waiver

- (a) No waiver made or given by a Party under or in connection with this Custody 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.

20. Relationship Between the Parties

- (a) The Parties are independent contractors. This Custody Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, trustee and beneficiary, employer and employee, master and servant, or principal and agent.

21. Entire Agreement

- (a) Except where provided otherwise in this Custody Agreement, this Custody Agreement and the Project Agreement constitute the entire agreement between the Parties in connection with the subject matter of this Custody Agreement and supersede all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Custody Agreement.

22. Severability

- (a) Each provision of this Custody Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Custody 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 Custody Agreement. If any such provision of this Custody 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 Custody Agreement as near as possible to its original intent and effect.

23. Enurement

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

24. Governing Law and Jurisdiction

- (a) This Custody 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 Parties 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 Custody Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Custody Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

25. 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 Custody Agreement.

26. Language of Agreement

- (a) Each Party acknowledges having requested and being satisfied that this Custody Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ces documents soient rédigés en anglais et s'en déclare satisfaite.

27. Proof of Authority

- (a) Contracting Authority reserves the right to require any person executing this Custody Agreement on behalf of Project Co or the Lenders' Agent to provide proof, in a form acceptable to Contracting Authority, that such person has the requisite authority to execute this Custody Agreement on behalf of and to bind Project Co or the Lenders' Agent, respectively.

28. Counterparts

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

29. Joint and Several

- (a) IO, as Crown agent and Metrolinx, as Crown agency, shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Custody Agreement and for each covenant of the other under this Custody Agreement

30. Copyright Notice

- (a) The Parties acknowledge that the Queen's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement and this Custody Agreement.

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

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

By: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation.

METROLINX

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation.

[REDACTED]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

By: _____
Name:
Title:

By: _____

Name:

Title:

I/We have authority to bind the corporation.

[REDACTED]

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

By: _____

Name:

Title:

I/We have authority to bind the corporation.

APPENDIX A

CONDUCT OF CLAIMS

This Appendix A 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 Custody Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and Contracting Authority and Project Co are referred to, collectively, as the “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 12 of the Custody Agreement, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix A, 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 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. In such case, Contracting Authority may, but shall not be obligated to, assume (on prior written notice to Project Co) control of any such defence for and on behalf of itself and Project Co, and Project Co hereby consents to such assumption. 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 at its own cost and expense.
- (3) 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 Section (3) of this Appendix A relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Custody Agreement if:

-
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section (2) of this Appendix A; or
- (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) of this Appendix A or the Indemnifier notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim.
- (5) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) of this Appendix A applies. 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 (5) of this Appendix A, then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”), 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 shall be 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.
- (7) Any person taking any of the steps contemplated by this Appendix A 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 Custody Agreement.

SCHEDULE 4

LENDERS' DIRECT AGREEMENT

THIS AGREEMENT is made as of the 17th day of October, 2019

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended (“**IO**”)

AND: METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48

(collectively, “**Contracting Authority**”)

AND:

[REDACTED]

(the “**Lenders' Agent**”)

AND:

MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED]

(“**Project Co**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement.
- B. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Project Operations, conditional on, among other things, Project Co granting the Security to the Lenders' Agent.
- C. The Lenders' Agent has agreed to enter into this Lenders' Direct Agreement with Contracting Authority in relation to the Security, the exercise of its rights under the Security Documents and the remedying of breaches by Project Co under the Project Agreement.
- D. With a view to ensuring that Contracting Authority is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with Contracting Authority throughout the Project Term.
- E. IO, as Crown agent and Metrolinx, as Crown agency, intend to enter into this Lenders' Direct Agreement in accordance with Applicable Law, and to be liable, on a joint and several basis, for

all of the obligations of Contracting Authority pursuant to this Lenders' Direct Agreement, save and except as provided for in this Lenders' Direct 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

In this Lenders' Direct Agreement, unless the context otherwise requires:

- (a) “**Affiliate**” has the meaning given in the Project Agreement.
- (b) “**Appointed Representative**” means any of the following to the extent so identified in an Appointed Representative Notice:
 - (i) the Lenders' Agent, any Lender or any of their Affiliates;
 - (ii) a receiver or receiver and manager of Project Co appointed under the Security Documents;
 - (iii) a trustee in bankruptcy or court-appointed receiver of Project Co;
 - (iv) an administrator of Project Co;
 - (v) a person directly or indirectly owned or controlled by the Lenders' Agent and/or any of the Lenders; or
 - (vi) any other person approved by Contracting Authority (such approval not to be unreasonably withheld or delayed).
- (c) “**Appointed Representative Notice**” has the meaning given in Section 8(b).
- (d) “**Business Day**” has the meaning given in the Project Agreement.
- (e) “**Change in Control**” has the meaning given in the Project Agreement.
- (f) “**Change in Ownership**” has the meaning given in the Project Agreement.
- (g) “**City**” has the meaning given in the Project Agreement.
- (h) “**City of Brampton**” has the meaning given in the Project Agreement.
- (i) “**City of Mississauga**” has the meaning given in the Project Agreement.
- (j) “**Common Terms and Intercreditor Agreement**” has the meaning given in the Project Agreement.

- (k) “**Construction Period Payments**” has the meaning given in the Project Agreement.
- (l) “**Contracting Authority Project Documents**” means the Project Agreement and all other documents to which Contracting Authority and Project Co are parties pursuant to or in connection with the Project Agreement.
- (m) “**Contractors**” has the meaning given in the Project Agreement.
- (n) “**Contracts**” has the meaning given in the Project Agreement.
- (o) “**Crown**” has the meaning given in the Project Agreement.
- (p) “**Deduction**” has the meaning given in the Project Agreement.
- (q) “**Default Notice**” has the meaning given in Section 7(b)(i).
- (r) “**Direct Agreements**” has the meaning given in the Project Agreement.
- (s) “**Enforcement Action**” means any acceleration of amounts due and owing to the Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents.
- (t) “**Enforcement Event**” means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (u) “**Equity Capital**” has the meaning given in the Project Agreement.
- (v) “**Exercise Date**” has the meaning given in Section 12(b).
- (w) “**Failure Points**” has the meaning given in the Project Agreement.
- (x) “**Financial Close**” has the meaning given in the Project Agreement.
- (y) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (z) “**Indebtedness Notice**” has the meaning given in Section 7(b)(ii).
- (aa) “**Independent Certifier**” has the meaning given in the Project Agreement.
- (bb) “**Lender Representative**” means a representative (which may be the Lenders’ Agent) acting as agent or trustee for and on behalf of all of the lenders lending to a Suitable Substitute.
- (cc) “**Lenders**” has the meaning given in the Project Agreement.
- (dd) “**Lenders’ Consultant**” means [REDACTED].
- (ee) “**Lenders’ Direct Agreement**” means this Lenders’ Direct Agreement.

- (ff) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (gg) “**Longstop Date**” has the meaning given in the Project Agreement.
- (hh) “**Monitoring Notice**” has the meaning given in the Project Agreement.
- (ii) “**Notice Period**” means the period starting on the date of delivery of a Default Notice and ending 90 days later.
- (jj) “**Novation Date**” has the meaning given in Section 10(a).
- (kk) “**Novation Notice**” has the meaning given in Section 10(a).
- (ll) “**Party**” means any of Contracting Authority, Project Co or the Lenders’ Agent, and “**Parties**” means all of Contracting Authority, Project Co and the Lenders’ Agent.
- (mm) “**Private Capital Advance Confirmations**” has the meaning given in the Project Agreement.
- (nn) “**Private Capital Funding Confirmations**” has the meaning given in the Project Agreement.
- (oo) “**Project**” has the meaning given in the Project Agreement.
- (pp) “**Project Agreement**” means the project agreement made on or about October 17, 2019 between Contracting Authority and Project Co.
- (qq) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (rr) “**Project Co Party**” has the meaning given in the Project Agreement.
- (ss) “**Project Operations**” has the meaning given in the Project Agreement.
- (tt) “**Refinancing**” has the meaning given in the Project Agreement.
- (uu) “**Restricted Person**” has the meaning given in the Project Agreement.
- (vv) “**Security**” means the security interests granted to the Lenders’ Agent pursuant to the Security Documents
- (ww) “**Security Documents**” means all security granted by Project Co to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
- (i) the general security agreements made on or about the date hereof between Project Co and the Lenders’ Agent;
 - (ii) the Direct Agreements; and

- (iii) the other Security Documents (as defined in the Common Terms and Intercreditor Agreement).
- (xx) “**Step-In Date**” means the date on which Contracting Authority receives a Step-In Notice from the Lenders’ Agent.
- (yy) “**Step-In Notice**” means the notice given by the Lenders’ Agent to Contracting Authority pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (zz) “**Step-In Period**” means the period from the Step-In Date up to and including the earlier of:
 - (i) the Step-Out Date;
 - (ii) the Termination Date (provided that Contracting Authority has complied with its obligations in Section 7);
 - (iii) the date that a transfer of Project Co’s rights and obligations under the Contracting Authority Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
 - (iv) if the Step-In Date occurs prior to the Substantial Completion Date, the earlier of:
 - (A) the date falling 180 days after the Longstop Date; or
 - (B) the date falling two years after the Step-In Date.
- (aaa) “**Step-Out Date**” means the date falling 30 days after the date on which Contracting Authority receives a Step-Out Notice.
- (bbb) “**Step-Out Notice**” has the meaning given in Section 9(a).
- (ccc) “**Subsequent Indebtedness Notice**” has the meaning given in Section 7(c).
- (ddd) “**Substantial Completion Date**” has the meaning given in the Project Agreement.
- (eee) “**Suitable Substitute**” means a person, approved in writing by Contracting Authority in accordance with Sections 10(b) and 10(c), which:
 - (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Contracting Authority Project Documents; and
 - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the Contracting Authority Project Documents.

- (fff) “**Termination Date**” has the meaning given in the Project Agreement.
- (ggg) “**Unpaid Construction Period Payments**” has the meaning given in the Project Agreement.
- (hhh) “**Warning Notice**” has the meaning given in the Project Agreement.

2. INTERPRETATION

This Lenders’ Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Lenders’ Direct Agreement are for convenience of reference only, shall not constitute a part of this Lenders’ Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Lenders’ Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Lenders’ Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) 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.
- (d) 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.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Lenders’ Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Lenders’ Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
- (i) “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 this Lenders’ Direct Agreement taken as a whole; and
- (ii) “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”.

- (h) In construing this Lenders’ Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Lenders’ Direct 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.
- (i) Where this Lenders’ Direct 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.
- (j) Where this Lenders’ Direct 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.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Lenders’ Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT OF DOCUMENTS

In the event of any ambiguity, conflict or inconsistency between the provisions of this Lenders’ Direct Agreement, the Project Agreement and either of the Direct Agreements, the provisions of this Lenders’ Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

4. TERM

- (a) This Lenders’ Direct Agreement shall terminate automatically on the earliest of:
 - (i) the date on which all amounts which may be or become owing to the Lenders under the Lending Agreements have been irrevocably paid in full;
 - (ii) the Termination Date (provided that Contracting Authority has complied with its obligations in Section 7); and
 - (iii) the date that any transfer of Project Co’s rights and obligations under the Contracting Authority Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.

- (b) Within 30 days following its occurrence, the Lenders' Agent shall provide notice to Contracting Authority of the date referred to in Section 4(a)(i).

5. AGREEMENTS AND SECURITY

- (a) Project Co and the Lenders' Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 7.3(a) of the Project Agreement.
- (b) Project Co represents and warrants that the Lending Agreements have been entered into and negotiated on an arms' length basis.
- (c) Project Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.
- (d) The Lenders' Agent acknowledges having received a copy of the Project Agreement.
- (e) Contracting Authority acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to Contracting Authority as at the date of the Project Agreement.
- (f) Contracting Authority acknowledges notice of and consents to the Security, and confirms that it has not received notice of any other security interest granted over Project Co's rights under any of the Contracting Authority Project Documents.
- (g) Contracting Authority agrees that any enforcement by the Lenders' Agent of a security interest in the Equity Capital of Project Co granted in favour of the Lenders' Agent as part of the Security following an Enforcement Event shall not constitute a Change in Ownership, Change in Control or Project Co Event of Default under the Project Agreement.
- (h) Any agreement provided to Project Co pursuant to Section 14.5(a) of the Project Agreement shall be in form satisfactory to the Lenders' Agent, acting reasonably.
- (i) Project Co and the Lenders' Agent hereby authorize and instruct Contracting Authority (and Contracting Authority agrees) to pay all sums payable to Project Co under the Project Agreement to:
- (i) the "**Substantial Completion Payment Account**" for the Substantial Completion Payment at [REDACTED]; and
 - (ii) the "**Proceeds Account**" for all other payments by Contracting Authority under the Project Agreement at [REDACTED],

and Project Co and Contracting Authority agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, Contracting Authority shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.

- (j) Contracting Authority shall provide the Lenders' Agent with copies of any Warning Notice, Monitoring Notice or notice of default given to Project Co under the Project Agreement at the same time such notice is given to Project Co.
- (k) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, Contracting Authority shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.
- (l) The Lenders' Agent shall appoint the Lenders' Consultant who shall be responsible to advise the Lenders' Agent and the Lenders with respect to the amount of any Construction Period Payments or Unpaid Construction Period Payments in accordance with the Project Agreement and Schedule 21 – Construction Period Payments. The Lenders' Agent shall cause the Lenders' Consultant to provide Contracting Authority and the Independent Certifier with all Private Capital Advance Confirmations and Private Capital Funding Confirmations pursuant to Section 3 of Schedule 21 – Construction Period Payments. The Lenders' Agent acknowledges and agrees that this Section 5(l) shall constitute sufficient authority for the Lenders' Consultant to provide, without delay, all Private Capital Advance Confirmations and Private Capital Funding Confirmations to Contracting Authority and the Independent Certifier.

6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT

- (a) The Lenders' Agent shall promptly notify Contracting Authority of any Enforcement Event, any Enforcement Action, any notice from the Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements or any notice from the Lenders to Project Co to demand repayment of any amounts owing by Project Co to the Lenders under the Lending Agreements.
- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where:
 - (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Schedule 28 - Refinancing to the Project Agreement have not been complied with in connection therewith; or
 - (ii) the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person whose standing or activities compromise: (i) Contracting Authority's reputation or integrity, or (ii) the nature of any of the public transit systems within the Region of Peel so as to affect public confidence in any of the public transit systems within such area or the Project.
- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

7. TERMINATION OF PROJECT AGREEMENT BY CONTRACTING AUTHORITY

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, Contracting Authority may, at any time, serve notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.
- (b) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)), Contracting Authority shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a Project Co Event of Default unless:
- (i) Contracting Authority promptly delivers written notice (a “**Default Notice**”) to the Lenders' Agent setting out the Project Co Event of Default in reasonable detail;
 - (ii) not later than 30 days after the date of a Default Notice, Contracting Authority delivers written notice (an “**Indebtedness Notice**”) to the Lenders' Agent setting out:
 - (A) all amounts owed by Project Co to Contracting Authority and any other existing liabilities and unperformed obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, as of the date on which Contracting Authority sent the Default Notice; and
 - (B) all amounts which will become owing by Project Co to Contracting Authority and any other liabilities and obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and
 - (iii) the Notice Period has expired and the Lenders' Agent has not delivered a Step-In Notice.
- (c) At any time after Contracting Authority sends an Indebtedness Notice but before Contracting Authority receives a Step-In Notice, if Contracting Authority discovers amounts that have become owing by Project Co to Contracting Authority or any other liabilities or obligations of Project Co to Contracting Authority that have come due but which were not included in the Indebtedness Notice, Contracting Authority shall deliver written notice (a “**Subsequent Indebtedness Notice**”) to the Lenders' Agent setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, Contracting Authority shall not terminate the Project Agreement on grounds:
- (i) that the Lenders' Agent has served a Step-In Notice or enforced any Security Document; or

- (ii) arising prior to the Step-In Date of which Contracting Authority was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:
 - (A) the grounds arose prior to the Substantial Completion Date, and the Substantial Completion Date does not occur on or before the date falling 180 days after the Longstop Date; or
 - (B) the grounds arose after the Substantial Completion Date, and neither the Appointed Representative nor Project Co, as the case may be, is diligently proceeding to cure any breach of the Project Agreement that:
 - (1) arose prior to the Step-In Date;
 - (2) is continuing and capable of being cured; and
 - (3) would have entitled Contracting Authority to terminate the Project Agreement; or
 - (C) the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
- (iii) arising solely in relation to Project Co.
- (e) Contracting Authority shall be entitled to terminate the Project Agreement by written notice to Project Co and the Appointed Representative:
 - (i) if any amount referred to in Section 7(b)(ii)(A) has not been paid to Contracting Authority on or before the Step-In Date;
 - (ii) if any amount referred to in Section 7(b)(ii)(B) has not been paid on or before the last day of the Notice Period;
 - (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the later of:
 - (A) the date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent; and
 - (B) the Step-In Date; or
 - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement, provided that, except as otherwise provided in Section 10, Failure Points and/or Warning Notices that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but such Failure Points and Warning Notices (to the extent applicable under the terms of the Project Agreement) shall be taken into account after the Step-Out Date.

8. STEP-IN RIGHTS

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give Contracting Authority a Step-In Notice at any time:
 - (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served);
 - (ii) during the Notice Period; or
 - (iii) during which an Enforcement Event is subsisting.
- (b) At least 5 Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an "**Appointed Representative Notice**") to Contracting Authority of:
 - (i) its intention to deliver a Step-In Notice; and
 - (ii) the identity of its proposed Appointed Representative.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the Contracting Authority Project Documents.
- (d) During the Step-In Period, Contracting Authority shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the Contracting Authority Project Documents. Project Co agrees to be bound by all such dealings between Contracting Authority and the Appointed Representative to the same extent as if they had been between Contracting Authority and Project Co.

9. STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to Contracting Authority to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
 - (i) the rights and obligations of the Appointed Representative in relation to Contracting Authority under the Contracting Authority Project Documents arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;
 - (ii) Contracting Authority will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the Contracting Authority Project Documents; and

(iii) the Appointed Representative and Contracting Authority shall be and hereby are released from all obligations and liabilities to one another under the Contracting Authority Project Documents.

(c) There will not be more than one Step-In Period in respect of any one Default Notice.

10. NOVATION TO SUITABLE SUBSTITUTE

(a) Subject to Section 10(b), at any time:

(i) after an Enforcement Event has occurred;

(ii) during the Notice Period; or

(iii) during the Step-In Period,

the Lenders' Agent may deliver to Contracting Authority and any Appointed Representative written notice (a "**Novation Notice**") that it wishes to transfer Project Co's rights and obligations under the Contracting Authority Project Documents to a proposed transferee, together with all information reasonably necessary for Contracting Authority to decide whether the proposed transferee is a Suitable Substitute. The Novation Notice shall specify a Business Day not less than 30 days from the date on which Contracting Authority receives the Novation Notice ("**Novation Date**") for the transfer of Project Co's rights and obligations under the Contracting Authority Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

(b) Contracting Authority shall promptly notify the Lenders' Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. Contracting Authority shall notify the Lenders' Agent, in writing, as to whether the person to whom the Lenders' Agent proposes to transfer Project Co's rights and liabilities under the Contracting Authority Project Documents is approved by Contracting Authority as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by Contracting Authority of the Novation Notice and the date of receipt of any additional information requested by Contracting Authority. For greater certainty, if Contracting Authority fails to respond within such period, Contracting Authority shall be deemed not to have approved the proposed transferee.

(c) Contracting Authority shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for Contracting Authority to withhold its approval if:

(i) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to Contracting Authority, acting reasonably, in respect of such breaches;

(ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Project Co Party pursuant to the Project Agreement; or

- (iii) the proposed security interests to be granted by the Suitable Substitute to the Lender Representative are materially different from the Security, materially adversely affect the ability of the Suitable Substitute to perform under the Contracting Authority Project Documents or have the effect of increasing any liability of Contracting Authority, whether actual or potential.
- (d) If Contracting Authority withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders' Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders' Agent has good cause to believe will be acceptable to Contracting Authority, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
 - (i) Project Co and Contracting Authority will be released from their obligations under the Contracting Authority Project Documents to each other, and the Suitable Substitute and Contracting Authority will assume those same obligations towards each other;
 - (ii) each of the rights of Project Co against Contracting Authority under the Contracting Authority Project Documents and the rights of Contracting Authority against Project Co under the Contracting Authority Project Documents will be cancelled, and the Suitable Substitute and Contracting Authority will acquire those same rights against each other;
 - (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
 - (A) an agreement between Contracting Authority and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
 - (B) an agreement among Contracting Authority, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;
 - (iv) any Failure Points and Warning Notices that arose prior to the Novation Date shall be cancelled, provided that, where Contracting Authority was entitled to make Deductions under Schedule 20 - Payment Mechanism arising from such Failure Points and Warning Notices and those Deductions have not yet been made against any payments to Project Co preceding the Novation Date, those outstanding Deductions shall still apply; and
 - (v) any subsisting ground for termination by Contracting Authority of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

11. TRANSFERS

Contracting Authority shall, at Project Co's cost and expense, take whatever action the Lenders' Agent, the Appointed Representative or a Suitable Substitute may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders' Agent, the Appointed Representative or the Suitable Substitute reasonably requires.

12. DIRECT AGREEMENTS

- (a) Notwithstanding any provision in the Direct Agreements, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Direct Agreements, except as provided in Sections 12(b) to 12(f) inclusive.
- (b) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, Contracting Authority shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Direct Agreements to step into and/or novate the Contracts in accordance with the Direct Agreements.
- (c) Following the Exercise Date, Contracting Authority shall not do anything to prejudice the rights which are not transferred to it pursuant to the Direct Agreements.
- (d) Where all amounts which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of any Contract assumed or novated by Contracting Authority pursuant to a Direct Agreement.
- (e) Notwithstanding the terms of the Direct Agreements and any other provisions of this Section 12, each of the Contractors (and any guarantors thereof) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the Contracts or any one of them in respect of the period prior to the Exercise Date.
- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, Contracting Authority shall not, prior to the date on which this Lenders' Direct Agreement terminates:
 - (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Direct Agreements (and/or any of the Contracts) from the applicable Contractor;
 - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the applicable Contractor or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the applicable Contractor; or

- (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the applicable Contractor, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

Contracting Authority agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Lenders.

13. NOTICE OF PROJECT CO DELAY OR PROCEEDING AT RISK

- (a) The Parties acknowledge that if the Independent Certifier determines Project Co is Proceeding at Risk pursuant to Section 11.6(f) of the Project Agreement, Contracting Authority may, in its sole discretion, give notice to the Lenders' Agent that Project Co is Proceeding at Risk, together with a copy of the Independent Certifier's written opinion provided pursuant to such Section of the Project Agreement.
- (b) The Parties acknowledge that, if Contracting Authority delivers Notice to Project Co in relation to Sections 14.1(a) and 14.1(b) of Schedule 12 – Works Schedule Requirements of the Project Agreement, Contracting Authority may, acting reasonably, give notice to the Lenders' Agent that it has delivered such notice to Project Co, together with the relevant information supporting Contracting Authority's reasons for delivering such Notice to Project Co.

14. ASSIGNMENT

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 14.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to Contracting Authority and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, Contracting Authority and the Lenders' Agent, each acting reasonably. Contracting Authority and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) Contracting Authority may assign, transfer or otherwise dispose of the benefit of the whole or part of this Lenders' Direct Agreement to any person to whom Contracting Authority assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.

- (d) The Lenders’ Agent may only assign, transfer or otherwise dispose of any interest in this Lenders’ Direct Agreement as permitted by the Lending Agreements, and shall provide written notice to Project Co and Contracting Authority of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lenders’ Agent may not assign, transfer or otherwise dispose of any interest in this Lenders’ Direct Agreement to a Restricted Person. The Lenders’ Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and Contracting Authority on substantially the same terms as this Lenders’ Direct Agreement and Project Co and Contracting Authority shall enter into such new agreement with the assignee. Project Co and Contracting Authority shall, at the Lenders’ Agent’s cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

15. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Lenders’ Direct Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Lenders’ Direct Agreement) and served by sending the same by registered mail or by hand (in each case, with a copy by electronic submission), as follows:

If to Contracting Authority: **[REDACTED]**

If to the Lenders’ Agent: **[REDACTED]**

If to Project Co: **[REDACTED]**

- (b) Any Party to this Lenders’ Direct Agreement may, from time to time, change any of its contact information set forth in Section 15(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.
- (c) Subject to Sections 15(d) and 15(e):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
- (d) 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 by personal delivery in accordance with this Section 15.

- (e) If any notice delivered by hand is so delivered 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 following Business Day.

16. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Lenders' Direct Agreement and Project Co and the Lenders' Agent may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co and the Lenders' Agent in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co and the Lenders' Agent in writing of any designation hereunder. The rights and obligations of the parties to this Lenders' Direct Agreement shall be in no way affected by reason of any such designation. Project Co and the Lenders' Agent acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 16.

17. AMENDMENTS

This Lenders' Direct 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 Lenders' Direct Agreement.

18. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Lenders' Direct 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.

19. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Lenders' Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Lenders' Direct Agreement, of principal and agent.

20. ENTIRE AGREEMENT

Except where provided otherwise in this Lenders' Direct Agreement, this Lenders' Direct 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 Lenders' Direct Agreement.

21. SEVERABILITY

Each provision of this Lenders' Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Lenders' Direct 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 Lenders' Direct Agreement. If any such provision of this Lenders' Direct 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 Lenders' Direct Agreement as near as possible to its original intent and effect.

22. ENUREMENT

This Lenders' Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

23. GOVERNING LAW AND JURISDICTION

- (a) This Lenders' Direct 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 Parties 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 Lenders' Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Lenders' Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

24. DISPUTE RESOLUTION PROCEDURE

The Parties agree that the dispute resolution procedure provided for in Schedule 27 - Dispute Resolution Procedure to the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

25. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Lenders' Direct Agreement.

26. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Lenders' Direct 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 déclare satisfaite.

27. COUNTERPARTS

This Lenders' Direct 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 Lenders' Direct Agreement which was so faxed.

28. JOINT AND SEVERAL

IO, as Crown agent and Metrolinx, as Crown agency, shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Lenders' Direct Agreement and for each covenant of the other under this Lenders' Direct Agreement.

29. CONFIDENTIALITY

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 52 of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent will be permitted to disclose to any relevant regulatory authority only such Confidential Information (as defined in the Project Agreement) as is necessary for the Lenders' Agent to comply with Applicable Law.

30. COPYRIGHT NOTICE

The Parties acknowledge that Queen's Printer for Ontario is the exclusive owner of copyright in the Project Agreement and this Lenders' Direct Agreement.

[This section intentionally left blank]

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

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

By: _____

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

METROLINX

By: _____

Name: [REDACTED]

Title: [REDACTED]

By: _____

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation.

[REDACTED]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

**MOBILINX HURONTARIO GENERAL
PARTNERSHIP**

[REDACTED]

[REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 5-1

CONSTRUCTION CONTRACTOR’S DIRECT AGREEMENT

THIS AGREEMENT is made as of the 17th day of October, 2019

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended (“**IO**”)

- AND -

METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48

(collectively, “**Contracting Authority**”)

- AND -

MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED]

(“**Project Co**”)

- AND -

[REDACTED]

(the “**Construction Contractor**”)

- AND -

[REDACTED]

(collectively, the “**Construction Guarantors**” and each is a “**Construction Guarantor**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Construction Contractor and the Construction Guarantors to enter into, this Construction Contractor’s Direct Agreement with Contracting Authority.
- B. Project Co and the Construction Contractor have entered into the Construction Contract, which requires the Construction Contractor and the Construction Guarantors to enter into this Construction Contractor’s Direct Agreement with Contracting Authority.

- C. IO, as Crown agent and Metrolinx, as Crown agency, intend to enter into this Construction Contractor's Direct Agreement in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of Contracting Authority pursuant to this Construction Contractor's Direct Agreement, save and except as provided for in this Construction Contractor's Direct 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

In this Construction Contractor's Direct Agreement, unless the context otherwise requires:

- (a) **"Applicable Law"** has the meaning given in the Project Agreement.
- (b) **[REDACTED]**
- (c) **"Business Day"** has the meaning given in the Project Agreement.
- (d) **"Construction Contract"** has the meaning given in the Project Agreement.
- (e) **"Construction Contractor's Direct Agreement"** means this Construction Contractor's Direct Agreement.
- (f) **"Crown"** has the meaning given in the Project Agreement.
- (g) **"Default Notice"** has the meaning given in Section 5(a).
- (h) **"Governmental Authority"** has the meaning given in the Project Agreement.
- (i) **"Lenders"** has the meaning given in the Project Agreement.
- (j) **"Lenders' Direct Agreement"** has the meaning given in the Project Agreement.
- (k) **"Party"** means Contracting Authority, the Construction Contractor, the Construction Guarantors or Project Co, and **"Parties"** means Contracting Authority, the Construction Contractor, the Construction Guarantors and Project Co.
- (l) **"Project"** has the meaning given in the Project Agreement.
- (m) **"Project Agreement"** means the project agreement made on or about October 17, 2019 between Contracting Authority and Project Co.
- (n) **"Step-In Notice"** has the meaning given in Section 6(a).
- (o) **"Substitute"** has the meaning given in Section 6(a).

- (p) “**Variation**” has the meaning given in the Project Agreement.

2. INTERPRETATION

This Construction Contractor’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Construction Contractor’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Construction Contractor’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Construction Contractor’s Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Construction Contractor’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) 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.
- (d) 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.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Construction Contractor’s Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Construction Contractor’s Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
- (i) “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 this Construction Contractor’s Direct Agreement taken as a whole; and
- (ii) “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”.

- (h) In construing this Construction Contractor’s Direct Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Construction Contractor’s Direct 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.
- (i) Where this Construction Contractor’s Direct 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.
- (j) Where this Construction Contractor’s Direct 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.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Construction Contractor’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor’s Direct Agreement, the Project Agreement and the Construction Contract, this Construction Contractor’s Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

4. AGREEMENTS

- (a) Project Co and the Construction Contractor shall not amend, modify, or depart from the terms of the Construction Contract without the prior written consent of Contracting Authority, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Construction Contractor’s Direct Agreement and does not have the effect of increasing any liability of Contracting Authority, whether actual or potential. Project Co and the Construction Contractor shall provide to Contracting Authority a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.

- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Construction Contract.
- (c) If the Construction Contractor gives Project Co any notice of any default(s) under the Construction Contract that may give the Construction Contractor a right to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder, then the Construction Contractor shall concurrently provide Contracting Authority with a copy of such notice and set out in reasonable detail the default(s).

5. NO TERMINATION BY CONSTRUCTION CONTRACTOR WITHOUT DEFAULT NOTICE

The Construction Contractor shall not exercise any right it may have to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder unless:

- (a) the Construction Contractor first delivers a written notice (a "**Default Notice**") to Contracting Authority setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder; and
- (b) within a period of 5 Business Days of Contracting Authority receiving the Default Notice:
 - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder have not been remedied; and
 - (ii) the Construction Contractor has not received a Step-In Notice from Contracting Authority,

provided that if, within such period of 5 Business Days, Contracting Authority agrees to pay the Construction Contractor's reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

6. STEP-IN RIGHTS

- (a) Contracting Authority may at any time:
 - (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of Contracting Authority receiving a Default Notice; or
 - (ii) if Contracting Authority has not received a Default Notice and if Contracting Authority's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a “**Step-In Notice**”) electing to replace Project Co under the Construction Contract either with Contracting Authority or a third party designated by Contracting Authority in the Step-In Notice (the “**Substitute**”), provided that Contracting Authority can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Construction Contract.

- (b) Subject to Section 6(d), upon receipt by the Construction Contractor of a Step-In Notice:
- (i) Project Co and the Construction Contractor will be deemed to be released from their existing and future obligations under the Construction Contract to each other (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Construction Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
 - (ii) the existing and future rights of Project Co against the Construction Contractor under the Construction Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Construction Contractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Construction Contractor to Contracting Authority if Contracting Authority pays for the Construction Contractor’s reasonable costs of continued performance pursuant to Section 5;
 - (iii) any guarantee (including, for clarity, [REDACTED]), bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Construction Contractor to be performed, observed or carried out by the Construction Contractor as contained in, referred to, or inferred from the Construction Contract shall be assigned, novated or granted, as required by Contracting Authority or the Substitute, as applicable, each acting reasonably, to Contracting Authority or the Substitute, as applicable, and the Construction Contractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and

- (iv) at Contracting Authority's request, the Construction Contractor shall enter into, and shall cause each of the Construction Guarantors and any other guarantor (including, for greater certainty, [REDACTED]), covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and Contracting Authority shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including an agreement between Contracting Authority or the Substitute, as applicable, and the Construction Contractor, acceptable to Contracting Authority and the Construction Contractor, each acting reasonably, on substantially the same terms as the Construction Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Construction Contract to Contracting Authority or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Construction Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Construction Contractor receives a Step-In Notice, the Construction Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If Contracting Authority gives a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Construction Contract or treated it as having been repudiated by Project Co or discontinued the Construction Contractor's performance thereunder in accordance with the terms of this Construction Contractor's Direct Agreement, the Construction Contractor agrees that the Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Contracting Authority shall pay the Construction Contractor's reasonable costs for re-commencing the obligations it has under the Construction Contract and the Construction Contractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Construction Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

7. CONSTRUCTION CONTRACTOR LIABILITY

- (a) The liability of the Construction Contractor hereunder shall not be modified, released, diminished or in any way affected by:
 - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for Contracting Authority, or by any failure or omission to carry out any such inspection, investigation or enquiry; or

- (ii) the appointment by Contracting Authority of any other person to review the progress of or otherwise report to Contracting Authority in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to Contracting Authority,

provided always that nothing in this Section 7 shall modify or affect any rights which the Construction Contractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event Contracting Authority delivers a Step-In Notice, the Construction Contractor shall have no greater liability to Contracting Authority or any Substitute than it would have had to Project Co under the Construction Contract, and the Construction Contractor shall be entitled in any proceedings by Contracting Authority or any Substitute to rely on any liability limitations in the Construction Contract.

8. PROJECT CO AS PARTY

Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Construction Contract by complying with its obligations hereunder.

9. CONSTRUCTION GUARANTOR AS PARTY

Each of the Construction Guarantors agrees with Contracting Authority that it has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Construction Contractor of a Step-In Notice and without the requirement of any further action on the part of Contracting Authority, and agrees that the Construction Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Construction Guarantors enter into this Construction Contractor's Direct Agreement solely for the purposes of this Section 9.

10. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor's Direct Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Construction Contractor of such assignment or disposition.
- (c) The Construction Contractor shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise

dispose of any interest in this Construction Contractor’s Direct Agreement except as may be permitted under the Construction Contract.

11. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Construction Contractor’s Direct Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Construction Contractor’s Direct Agreement) and served by sending the same by registered mail, facsimile or by hand (in each case, with a copy by electronic transmission), as follows:

If to Contracting Authority: **[REDACTED]**

If to Project Co: **[REDACTED]**

If to the Construction Contractor: **[REDACTED]**

If to the Construction Guarantors: **[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 11(b).
- (c) Any Party to this Construction Contractor’s Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(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 11(e), 11(f) and 11(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 11.
- (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. AMENDMENTS

This Construction Contractor's Direct 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 Construction Contractor's Direct Agreement.

13. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Construction Contractor's Direct 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.

14. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Construction Contractor's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Construction Contractor's Direct Agreement, of principal and agent.

15. ENTIRE AGREEMENT

Except where provided otherwise in this Construction Contractor's Direct Agreement, this Construction Contractor's Direct 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 Construction Contractor's Direct Agreement.

16. SEVERABILITY

Each provision of this Construction Contractor's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Construction Contractor's Direct 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 Construction Contractor's Direct Agreement. If any such provision of this Construction Contractor's Direct 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 Construction Contractor's Direct Agreement as near as possible to its original intent and effect.

17. ENUREMENT

This Construction Contractor's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

18. GOVERNING LAW AND JURISDICTION

- (a) This Construction Contractor's Direct 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 Parties 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 Construction Contractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Construction Contractor's Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

19. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Construction Contractor's Direct Agreement and Project Co, the Construction Contractor and the Construction Guarantors may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Construction Contractor and the Construction Guarantors in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Construction Contractor and the Construction Guarantors in writing

of any designation hereunder. The rights and obligations of the parties to this Construction Contractor's Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Construction Contractor and each of the Construction Guarantors acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 19.

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Construction Contractor's Direct Agreement.

21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Construction Contractor's Direct 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.

22. COUNTERPARTS

This Construction Contractor's Direct 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 Construction Contractor's Direct Agreement which was so faxed.

23. JOINT AND SEVERAL

IO, as Crown agent and Metrolinx, as Crown agency, shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Construction Contractor's Direct Agreement and for each covenant of the other under this Construction Contractor's Direct Agreement.

24. COPYRIGHT NOTICE

The Parties acknowledge that Queen's Printer for Ontario is the exclusive owner of copyright in the Project Agreement and this Construction Contractor's Direct Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the Parties have executed this Construction Contractor’s Direct Agreement as of the date first above written.

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

By: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation.

METROLINX

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation.

MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED]

[REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 5-2

SERVICE PROVIDER’S DIRECT AGREEMENT

THIS AGREEMENT is made as of the 17th day of October, 2019

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended (“**IO**”)

- AND -

METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48

(collectively, “**Contracting Authority**”)

- AND -

MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED].

(“**Project Co**”)

- AND -

[REDACTED]

(the “**Service Provider**”)

- AND -

[REDACTED]

(collectively, the “**Service Guarantors**” and each is a “**Service Guarantor**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Service Provider and the Service Guarantors to enter into, this Service Provider’s Direct Agreement with Contracting Authority.
- B. Project Co and the Service Provider have entered into the Service Contract, which requires the Service Provider and the Service Guarantors to enter into this Service Provider’s Direct Agreement with Contracting Authority.

- C. IO, as a Crown agent and Metrolinx, as Crown agency, intend to enter into this Service Provider's Direct Agreement in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of Contracting Authority pursuant to this Service Provider's Direct Agreement, save and except as provided for in this Service Provider's Direct 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

In this Service Provider's Direct Agreement, unless the context otherwise requires:

- (a) “**Applicable Law**” has the meaning given in the Project Agreement.
- (b) [REDACTED].
- (c) “**Business Day**” has the meaning given in the Project Agreement.
- (d) “**Crown**” has the meaning given in the Project Agreement.
- (e) “**Default Notice**” has the meaning given in Section 5(a).
- (f) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (g) “**Lenders**” has the meaning given in the Project Agreement.
- (h) “**Lenders' Direct Agreement**” has the meaning given in the Project Agreement.
- (i) “**Party**” means Contracting Authority, the Service Provider, the Service Guarantors or Project Co, and “**Parties**” means Contracting Authority, the Service Provider, the Service Guarantors and Project Co.
- (j) “**Project**” has the meaning given in the Project Agreement.
- (k) “**Project Agreement**” means the project agreement made on or about October 17, 2019 between Contracting Authority and Project Co.
- (l) “**Service Contract**” has the meaning given in the Project Agreement.
- (m) “**Service Provider's Direct Agreement**” means this Service Provider's Direct Agreement.
- (n) “**Step-In Notice**” has the meaning given in Section 6(a).
- (o) “**Substitute**” has the meaning given in Section 6(a).

- (p) “**Variation**” has the meaning given in the Project Agreement.

2. INTERPRETATION

This Service Provider’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Service Provider’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Service Provider’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Service Provider’s Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Service Provider’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) 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.
- (d) 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.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Service Provider’s Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Service Provider’s Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
- (i) “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 this Service Provider’s Direct Agreement taken as a whole; and
- (ii) “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”.

- (h) In construing this Service Provider’s Direct Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Service Provider’s Direct 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.
- (i) Where this Service Provider’s Direct 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.
- (j) Where this Service Provider’s Direct 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.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Service Provider’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Service Provider’s Direct Agreement, the Project Agreement and the Service Contract, this Service Provider’s Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Service Provider’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

4. AGREEMENTS

- (a) Project Co and the Service Provider shall not amend, modify, or depart from the terms of the Service Contract without the prior written consent of Contracting Authority, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Service Provider’s Direct Agreement and does not have the effect of increasing any liability of Contracting Authority, whether actual or potential. Project Co and the Service Provider shall provide a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.

- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Service Contract.
- (c) If the Service Provider gives Project Co any notice of any default(s) under the Service Contract that may give the Service Provider a right to terminate the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder, then the Service Provider shall concurrently provide Contracting Authority with a copy of such notice and set out in reasonable detail the default(s).

5. NO TERMINATION BY SERVICE PROVIDER WITHOUT DEFAULT NOTICE

The Service Provider shall not exercise any right it may have to terminate the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder unless:

- (a) the Service Provider first delivers a written notice (a "**Default Notice**") to Contracting Authority setting out in reasonable detail the default(s) on which the Service Provider intends to rely in terminating the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder; and
- (b) within the period ending 30 days after the Service Provider notifies Contracting Authority of the expiry of any relevant period for the exercise of step-in or similar rights by the Lenders, or, if the Lenders have no such step-in or similar rights, then 30 days after the later of Contracting Authority receiving Default Notice or the expiry of the applicable cure period under the Service Contract:
 - (i) the default(s) on which the Service Provider intends to rely in terminating the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder have not been remedied; and
 - (ii) the Service Provider has not received a Step-In Notice from Contracting Authority, provided that, until such time as Contracting Authority gives the Service Provider a notice that Contracting Authority will not be exercising its step-in rights, Contracting Authority shall pay the Service Provider's reasonable costs of continued performance.

6. STEP-IN RIGHTS

- (a) Contracting Authority may at any time:
 - (i) within the period referred to in Section 5(b); or
 - (ii) if Contracting Authority has not received a Default Notice and if Contracting Authority's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a “**Step-In Notice**”) electing to replace Project Co under the Service Contract either with Contracting Authority or a third party designated by Contracting Authority in the Step-In Notice (the “**Substitute**”), provided that Contracting Authority can demonstrate to the Service Provider, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Service Contract.

- (b) Subject to Section 6(d), upon receipt by the Service Provider of a Step-In Notice:
- (i) Project Co and the Service Provider will be deemed to be released from their existing and future obligations under the Service Contract to each other (except with respect to any and all indemnities from Project Co or the Service Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Service Provider will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
 - (ii) the existing and future rights of Project Co against the Service Provider under the Service Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Service Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Service Provider will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Service Provider to Contracting Authority if Contracting Authority pays for the Service Provider’s reasonable costs of continued performance pursuant to Section 5;
 - (iii) any guarantee (including, for clarity, [REDACTED]), bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Service Provider to be performed, observed or carried out by the Service Provider as contained in, referred to, or inferred from the Service Contract shall be assigned, novated or granted, as required by Contracting Authority or the Substitute, as applicable, each acting reasonably, to Contracting Authority or the Substitute, as applicable, and the Service Provider shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the Service Provider, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and

- (iv) at Contracting Authority's request, the Service Provider shall enter into, and shall cause each of the Service Guarantors and any other guarantor (including, for greater certainty, [REDACTED]), covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and Contracting Authority shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including an agreement between Contracting Authority or the Substitute, as applicable, and the Service Provider, acceptable to Contracting Authority and the Service Provider, each acting reasonably, on substantially the same terms as the Service Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Service Contract to Contracting Authority or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Service Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Service Provider receives a Step-In Notice, the Service Provider has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Service Contract that it is or has validly exercised those step-in rights. If the Service Provider receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If Contracting Authority gives a Step-In Notice within the time provided hereunder at any time after the Service Provider has terminated the Service Contract or treated it as having been repudiated by Project Co or discontinued the Service Provider's performance thereunder in accordance with the terms of this Service Provider's Direct Agreement, the Service Provider agrees that the Service Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Contracting Authority shall pay the Service Provider's reasonable costs for re-commencing the obligations it has under the Service Contract and the Service Provider shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Service Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

7. SERVICE PROVIDER LIABILITY

- (a) The liability of the Service Provider hereunder shall not be modified, released, diminished or in any way affected by:
- (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for Contracting Authority, or by any failure or omission to carry out any such inspection, investigation or enquiry;
 - (ii) the appointment by Contracting Authority of any other person to review the progress of or otherwise report to Contracting Authority in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to Contracting Authority,

provided always that nothing in this Section 7 shall modify or affect any rights which the Service Provider might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event Contracting Authority delivers a Step-In Notice, the Service Provider shall have no greater liability to Contracting Authority or any Substitute than it would have had to Project Co under the Service Contract, and the Service Provider shall be entitled in any proceedings by Contracting Authority or any Substitute to rely on any liability limitations in the Service Contract.

8. PROJECT CO AS PARTY

Project Co acknowledges and agrees that the Service Provider shall not be in breach of the Service Contract by complying with its obligations hereunder.

9. SERVICE GUARANTOR AS PARTY

Each of the Service Guarantors agrees with Contracting Authority that it has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Service Provider of a Step-In Notice and without the requirement of any further action on the part of Contracting Authority, and agrees that the Service Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Service Guarantors enter into this Service Provider's Direct Agreement solely for the purposes of this Section 9.

10. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Service Provider's Direct Agreement except to the extent entitled to do so under the Project Agreement.

- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Service Provider’s Direct Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Service Provider of such assignment or disposition.
- (c) The Service Provider shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Service Provider’s Direct Agreement, except as may be permitted under the Service Contract.

11. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Service Provider’s Direct Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Service Provider’s Direct Agreement) and served by sending the same by registered mail, facsimile or by hand (in each case, with a copy by electronic transmission), as follows:

If to Contracting Authority: **[REDACTED]**

If to Project Co: **[REDACTED]**

If to the Service Provider: **[REDACTED]**

If to the Service Guarantors: **[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 11(b).
- (c) Any Party to this Service Provider’s Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(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 11(e), 11(f) and 11(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 11.
- (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. AMENDMENTS

This Service Provider's Direct 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 Service Provider's Direct Agreement.

13. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Service Provider's Direct 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.

14. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Service Provider's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Service Provider's Direct Agreement, of principal and agent.

15. ENTIRE AGREEMENT

Except where provided otherwise in this Service Provider's Direct Agreement, this Service Provider's Direct 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 Service Provider's Direct Agreement.

16. SEVERABILITY

Each provision of this Service Provider's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Service Provider's Direct 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 Service Provider's Direct Agreement. If any such provision of this Service Provider's Direct 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 Service Provider's Direct Agreement as near as possible to its original intent and effect.

17. ENUREMENT

This Service Provider's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

18. GOVERNING LAW AND JURISDICTION

- (a) This Service Provider's Direct 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 Parties 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 Service Provider's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Service Provider's Direct Agreement affects the rights protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

19. CONTRACTING AUTHORITY

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Service Provider's Direct Agreement and Project Co, the Service Provider and the Service Guarantors may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Service Provider and the Service Guarantors in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Service Provider and the Service Guarantors in writing of any designation hereunder. The rights and obligations of the parties to Service Provider's Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Service Provider and each of the Service Guarantors acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 19.

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Service Provider's Direct Agreement.

21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Service Provider's Direct 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 déclare satisfaite.

22. COUNTERPARTS

This Service Provider's Direct 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 Service Provider's Direct Agreement which was so faxed.

23. JOINT AND SEVERAL

IO, as Crown agent and Metrolinx, as Crown agency, shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Service Provider's Direct Agreement and for each covenant of the other under this Service Provider's Direct Agreement.

24. COPYRIGHT NOTICE

The Parties acknowledge that Queen’s Printer for Ontario is the exclusive owner of the copyright in the Project Agreement and this Service Provider’s Direct Agreement.

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IN WITNESS WHEREOF the Parties have executed this Service Provider’s Direct Agreement as of the date first above written.

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

By: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation.

METROLINX

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation.

MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED]

[REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 6

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the 17th day of October, 2019

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011* S.O. 2011, c.9, Schedule 32, as amended (“**IO**”)

AND: METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006* (Ontario) and a Crown agency in accordance with the *Crown Agency Act* (Ontario) (collectively, “**Contracting Authority**”)

AND

MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED]. (“**Project Co**”)

AND

ALTUS GROUP LIMITED (the “**Independent Certifier**”)

WHEREAS:

- A. Contracting Authority and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA 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.
- D. IO, as Crown agent and Metrolinx, as Crown agency, intend to enter into this Independent Certifier Agreement in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of Contracting Authority pursuant to this Independent Certifier Agreement, save and except as provided for in this Independent Certifier Agreement.

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

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 Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Certification Services”** means:
 - (A) all of the functions and obligations described in the Project 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 functions or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
 - (ii) **“Certification Services Variation”** means any change to the Certification Services.
 - (iii) **“Contracting Authority”** has the meaning given in the preamble.
 - (iv) **“Contract Material”** means all material:
 - (A) provided to the Independent Certifier or created or required to be created by either PA 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).
 - (v) **“Fee”** means the fees payable by Contracting Authority and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
 - (vi) **“Hourly Rate”** means the rate charged by each Independent Certifier Team Member per hour as listed in Appendix B to this Independent Certifier Agreement for Certification Services identified in item (bb) of Appendix A to this Independent Certifier Agreement, including any services required to provide additional work.
 - (vii) **“IC Monthly Report”** has the meaning given in Appendix A to this Schedule 6.
 - (viii) **“IC Quarterly Report”** has the meaning given in Appendix A to this Schedule 6.
 - (ix) **“Independent Certifier”** has the meaning given in the preamble.

- (x) “**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.
- (xi) “**IO**” has the meaning given in the preamble.
- (xii) “**PA Parties**” means both Contracting Authority and Project Co, and “**PA Party**” means either Contracting Authority or Project Co, as the context requires.
- (xiii) “**Project Agreement**” means that certain project agreement made on or about the date hereof between Contracting Authority and Project Co with respect to the design, construction, financing, maintenance, operation and rehabilitation of the Project Co System Infrastructure and the design, construction and financing of the New Third Party Infrastructure.
- (xiv) “**Project Co**” has the meaning given in the preamble.
- (xv) “**Total Fixed Fee**” means the Fee for all Certification Services other than those identified in item (bb) of Appendix A to this Independent Certifier Agreement, which shall not exceed the amount specified in Appendix B to this Independent Certifier Agreement.

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.

2.2 Obligations and Exercise of Rights by PA Parties

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

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

- (a) The PA 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 PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co 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 Project Co 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.
- (e) The PA Parties acknowledge and agree that the Independent Certifier may rely on the assessment report prepared by the Independent Safety Assessor with respect to the safety certification of the Project Co System Infrastructure. The Independent Certifier acknowledges and agrees that, in carrying out the Certification Services, it shall be bound to the assessment report and shall consider the Independent Safety Assessor’s views with respect to the safety of the Project Co System

Infrastructure in making its determination as to whether Project Co has satisfied the conditions of Substantial Completion.

3.2 Acknowledgement of Independent Certifier

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

3.4 Duty of Independent Judgment

- (a) In exercising its Certification Services, the Independent Certifier must:
- (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project 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 Project Agreement; or
 - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
 - (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project 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 PA 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 PA 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 PA Party;
 - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
 - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

3.6 Knowledge of the PA 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 Project 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 Project 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 and facilities at the Project Co System Infrastructure, the New Third Party Infrastructure and the Lands 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 PA Parties and their consultants and advisors;
 - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
 - (iii) carefully co-ordinate the Certification Services with the safety assessment performed by the Independent Safety Assessor;

- (iv) 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 PA Parties;
- (v) include both PA Parties in all discussions, meetings, or any other communications regarding the Project; and
- (vi) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party.

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 technical advisor to the Lenders or as an advisor to either of the PA Parties or any of their respective related entities in respect of the Project Agreement (including, but not limited to, acting as a transaction advisor to either PA 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 PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the PA 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 any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) Any replacement of any of the individuals listed in Appendix C is subject to the PA Parties' prior written approval.
- (c) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Works shall:
 - (i) possess a current professional designation of not less than membership in Professional Engineers Ontario (PEO), the Ontario Association of Certified Engineering Technicians and Technologists or such similar professional or consulting designation recognized in North America for Mechanical, Electrical, Civil, Structural, Transportation, Geotechnical, Mining, Tunnels, Environmental, Utilities, Rail Systems, and Vehicles and Industrial leads;
 - (ii) possess a current professional designation of not less than Professional Quantity Surveyors (PQS) for the Cost Estimator and any individuals who will prepare and evaluate

- construction and development information for the cost control and Works measurements for payment;
- (iii) with respect to the “Dispute Resolution Lead” required by Appendix C, have no less than 10 years of experience with construction claims, contractual interpretation and dispute resolution relating to projects of similar size, scope, complexity and delivery model as the Project;
 - (iv) with respect to the “Scheduling Lead” required by Appendix C, have no less than 10 years of experience with construction scheduling, schedule forecasting, and delay analysis relating to projects of similar size, scope, complexity, and delivery model as the Project;
 - (v) have demonstrated competence in the planning, design, construction and commissioning of comparable and complex facilities and in having completed or monitored the planning, design, construction and commissioning of a comparable light rail transit systems;
 - (vi) have an understanding of the appropriate standards, guidelines and policies related to planning, design, construction and commissioning for light rail transit systems;
 - (vii) have an understanding of any documentation to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but any pre-commissioning and post-commissioning activities; and
 - (viii) have the relevant qualifications for their specified area of expertise and membership to the relevant professional bodies which licences them to give their opinions and carry out the relevant works as detailed within this Independent Certifier Agreement.
- (d) The Independent Certifier shall furnish Contracting Authority with evidence satisfactory to Contracting Authority 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 Works.
- (e) The Independent Certifier shall engage the personnel listed in Appendix C in all day-to-day activities relevant to their area of expertise for the Certification Services.

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 PA PARTIES

4.1 Assistance

- (a) The PA 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 Project Agreement, all instructions to the Independent Certifier by the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

4.3 Information and Services

- (a) The PA 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 certify Construction Period Payments and 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.
- (b) Project Co shall promptly provide all information received from the Independent Safety Assessor, including the assessment report, required in order for the Independent Certifier to determine whether Substantial Completion and Final Completion have occurred.

4.4 Additional Information

- (a) 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 PA Parties, then:
- (i) the Independent Certifier must give notice in writing to the Project Co Representative or the Contracting Authority 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
 - (ii) Project Co or Contracting Authority, 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 Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Metrolinx Lands, the Project Co System Infrastructure, the New Third Party Infrastructure or the 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 Project Co as to safety and security for the Metrolinx Lands, the Project Co System Infrastructure, the New Third Party Infrastructure and the Works;
 - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence on the Metrolinx Lands, the Project Co System Infrastructure, the New Third Party Infrastructure or the Works; and
 - (iii) not causing any damage to the Metrolinx Lands, the Project Co System Infrastructure, the New Third Party Infrastructure or the Works.

4.6 PA Parties Not Relieved

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

4.7 PA Parties not Liable

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project 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 PA Party against or any obligation or liability of either PA Party to the other PA 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, including but not limited to timelines, deliverables and input required from the PA Parties, that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the Contracting Authority Representative and the Project Co Representative;
 - (ii) within 30 days after the date of this Independent Certifier Agreement, provide a draft of such certification quality plan to each of the Contracting Authority Representative and the Project Co Representative;
 - (iii) within 60 days after the date of this Independent Certifier Agreement, provide the final certification quality plan to each of the Contracting Authority Representative and the Project Co Representative;
 - (iv) if satisfactory to each of the Contracting Authority Representative and the Project Co Representative, implement such certification quality plan; and
 - (v) if not satisfactory to each of the Contracting Authority Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the Contracting Authority Representative and the Project Co Representative, and implement it if satisfactory to each of the Contracting Authority Representative and the Project Co 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 Contracting Authority Representative or the Project Co Representative.

6. SUSPENSION

6.1 Notice

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

6.2 Costs of Suspension

- (a) The Independent Certifier will:
 - (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) valued as a Certification Services Variation under Section 9; and
 - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(a)(i).

6.3 Recommencement

- (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 PA Parties requiring it to do so.

7. INSURANCE AND LIABILITY

7.1 Independent Certifier’s 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 \$[REDACTED] per claim and \$[REDACTED] in the aggregate, a deductible of not more than \$[REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA 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 PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and

- (ii) commercial general liability insurance in the amount of \$[REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$[REDACTED] per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA 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 PA 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.

8. PAYMENT FOR SERVICES

8.1 Payment of Fee

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA 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 PA Party to pay one half of the Fee to the Independent Certifier is a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for HST), overheads and profit, all labour and materials, insurance costs, travel, hospitality, food and incidental expenses, and all other overhead including any fees or other charges required by law to perform the Certification Services.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of \$100,000 is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project 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 PA 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 PA 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 Contracting Authority Representative and the Project Co 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.

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, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

9.4 Certification Services Variation Procedure

- (a) The Contracting Authority Representative and the Project Co 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 PA 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 Contracting Authority Representative and the Project Co 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 Contracting Authority Representative and the Project Co 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

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:
- (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
 - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the Contracting Authority Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

10. TERM AND TERMINATION**10.1 Term**

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
- (i) the completion of the Works and the performance of the Certification Services set forth herein; or
 - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

10.2 Notice of Breach

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA 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 PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

10.4 Termination for Financial Difficulty or Change in Control

- (a) The PA Parties may, without prejudice to any other rights which the PA 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 PA 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 PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA 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

- (a) Upon a termination under Section 10.5, the Independent Certifier will:
- (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
 - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
 - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

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 PA Parties with respect to the transition of the Certification Services to a replacement certifier;
 - (ii) deliver to the PA 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 PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA 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 PA Parties to recover damages from the Independent Certifier).

10.9 Survival

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.7 and 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 PA Parties to Save Independent Certifier Harmless

- (a) The PA 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 PA 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 PA Parties Harmless

- (a) The Independent Certifier hereby indemnifies and saves the PA 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.

- (b) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
- (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA 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 PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.3 Conduct of Claims

- (a) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix D – Conduct of Claims to 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 PA 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.

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, (in each case, with a copy by electronic transmission), as follows:

If to Contracting Authority: **[REDACTED]**

If to Project Co: **[REDACTED]**

If to the Independent Certifier: **[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 the PA Parties, which each PA 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 PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project 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 PA 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 hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Independent Certifier Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

12.7 Contracting Authority Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Independent Certifier Agreement and Project Co and the Independent Certifier may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative

matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co and the Independent Certifier in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co and the Independent Certifier in writing of any designation hereunder. The rights and obligations of the parties to this Independent Certifier Agreement shall be in no way affected by reason of any such designation. Project Co and the Independent Certifier acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 12.7.

12.8 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 PA 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 PA 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 PA Parties, relating to the non-disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

12.9 Contract Material

- (a) The PA 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 PA Party.
- (b) As between the PA 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 PA 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 PA 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 PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.9(b).

12.10 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 PA 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.

12.11 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.

12.12 Enurement

- (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.

12.13 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.

12.14 Joint and Several

- (a) IO, as Crown agent and Metrolinx, as Crown agency, shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Independent Certifier Agreement and for each covenant of the other under this Independent Certifier Agreement.

12.15 Copyright Notice

- (a) The Parties acknowledge that Queen's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement and this Independent Certifier Agreement.

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

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

Per:

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

METROLINX

Per:

Name: [REDACTED]

Title: [REDACTED]

Per:

Name: Phil Verster

Title: President and Chief Executive Officer

We have authority to bind the corporation.

MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED]

[REDACTED]

By:

Name: [REDACTED]

Title: [REDACTED]

By:

Name:

Title:

I/We have authority to bind the corporation.

[REDACTED]

By:

Name:

Title:

By:

Name:

Title:

I/We have authority to bind the corporation.

APPENDIX A**CERTIFICATION SERVICES**

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

- (a) Develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services including timelines, deliverables and a description of the input required from the PA Parties to carry out the Certification Services.
- (b) Receive, monitor and review all relevant Project documentation, including drawings, plans, reports, certifications, schedules, letters, notices and test results as necessary for the Independent Certifier to be informed as to the progress of the Works (including, for certainty, the schedules and reports described in Schedule 12 – Works Schedule Requirements of the Project Agreement), and to provide an opinion in the event of a Dispute related to the development of the design. The Independent Certifier personnel listed in Appendix C shall be up to date with all Project documentation relevant to their area of expertise. For clarity, the Independent Certifier shall not rely solely on the content of the Works Report, Works Schedule Report, and updates provided at the Works Committee to be informed as to the progress of the Works. Independent Certifier personnel shall proactively monitor and review all relevant Project documentation on an ongoing basis.
- (c) Review information relating to Construction Period Quality Failures, Delay Events and the events described in Section 40.2 of the Project Agreement, and Compensation Events.
- (d) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consultation with the relevant party.
- (e) In accordance with Section 11.1(b) of the Project Agreement, attend all meetings of and participate, as necessary, in the activities of the Works Committee. During each Works Committee meeting, the Independent Certifier shall provide a verbal update, and any supporting material that it wishes to discuss, on the following matters:
 - (i) the progress of all Certification Services that occurred during the preceding month;
 - (ii) the Independent Certifier’s readiness for the certification of the Works;
 - (iii) the status of any determinations required by the Independent Certifier pursuant to Schedule 27 – Dispute Resolution Procedure of the Project Agreement; and
 - (iv) past and forecasted performance of the Works against the applicable Progress Works Schedules.
- (f) Identify any risks that may impede the issuance of the Substantial Completion Certificate or the Final Completion Certificate and inform the PA Parties thereof,
- (g) In accordance with Section 25.15(b)(ii) of the Project Agreement, certify the cost of remediation and correction of Warranty Work related to New Third Party Infrastructure.

-
- (h) In accordance with Section 11.6 of the Project Agreement, perform all responsibilities of the Independent Certifier in connection with Proceeding at Risk Matters.
- (i) Review the draft Commissioning Submittals and the detailed test, test methodology and expected test results proposed by Project Co, including any review comments from Contracting Authority, and provide a report on the effectiveness of the Commissioning Program, to identify any errors or omissions and to report any risks.
- (j) Monitor, and report on, the implementation of the Commissioning Plan (as indicatively described in Schedule 14 – Commissioning to the Project Agreement) and other tests, including re-tests, to be performed as set out in the Commissioning Program or as otherwise required for Project Co to achieve Substantial Completion and Final Completion.
- (k) Witness the implementation of a sample of the Commissioning Tests and a sample of the other testing and commissioning procedures at random times, locations and frequencies, in each case to the extent required for the Independent Certifier to verify that the requirements of Substantial Completion and Final Completion have been met.
- (l) In accordance with Sections 25.16(a)(ii) and 25.16(a)(iii) of the Project Agreement, make a determination with respect to unresolved Commissioning or Handover issues.
- (m) Prior to any certification, consider the views and comments of Project Co, Contracting Authority (including its consultants and advisors) and the Independent Safety Assessor, as applicable, in relation to the satisfaction of the conditions for certification.
- (n) Employing the relevant personnel, conduct regular inspections of the Works and attend site progress meetings at a minimum on a monthly basis or more regularly as deemed necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement. Report on the observations, findings and potential risks to certification as a result of the regular inspections as part of the IC Monthly Report.
- (o) Upon receipt of notice from Project Co requesting the issuance of an IC Initial Capital Investment Certificate, Substantial Completion Certificate or Final Completion Certificate, as applicable, (i) with respect to the Substantial Completion Certificate, perform the activities set out in Section 25.3(c) of the Project Agreement, and (ii) with respect to each of the Substantial Completion Certificate and the Final Completion Certificate, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
- (A) issue the applicable certificate; or
 - (B) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate
- (p) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Works or re-consider the matters specified to be performed, and repeat the procedures in Section (o) of this Appendix A until the issuance of the applicable certificate.
- (q) In accordance with Sections 25.7, 25.8 and 25.9 of the Project Agreement, perform all responsibilities of the Independent Certifier in connection with the Minor Deficiencies regime.

-
- (r) After Substantial Completion, reconcile Project Co invoices for expenditure recovery against the budgets of Contracting Authority.
- (s) Review and monitor the installation of all equipment, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (collectively, the “**Installed Equipment**”) into the Project Co System Infrastructure or the New Third Party Infrastructure by Contracting Authority or any agent or contractor of Contracting Authority either before or after Substantial Completion and provide a report to Contracting Authority and Project Co identifying any damage to the Project Co System Infrastructure or the New Third Party Infrastructure which has been caused as a result of the installation of such Installed Equipment into the Project Co System Infrastructure or the New Third Party Infrastructure by Contracting Authority, its contractors and/or agents.
- (t) Provide any determinations required by the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 – Dispute Resolution Procedure of the Project Agreement. Without limiting the generality of the foregoing, any determinations required by the Independent Certifier pursuant to Schedule 27 – Dispute Resolution Procedure of the Project Agreement shall be managed and provided by the “Dispute Resolution Lead” with input from any other relevant personnel. For clarity, any determinations in relation to potential and actual Delay Events and Compensation Events shall also be reviewed by the “Scheduling Lead.”
- (u) In advance of the submission of each IC Quarterly Report, the “Scheduling Lead” shall open, run and review the native P6 schedule file from the most recent Progress Works Schedule. The Independent Certifier shall be prepared to discuss any questions on the Progress Works Schedule at the Works Committee meeting.
- (v) Participate in and give the PA 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 PA Parties that relate to the Certification Services.
- (w) Provide periodic reports to the PA Parties, as follows:
- (i) a progress report on the progress of the Works no later than twenty Business Days following the end of each month of the Construction Period in respect of the previous month or as otherwise agreed by the PA Parties (the “**IC Monthly Report**”) which includes the following:
 - (A) summary of activities carried out by the Independent Certifier, making specific reference to each of the Independent Certifier’s obligations;
 - (B) the status of any risks that may impede the issuance of the Substantial Completion Certificate or the Final Completion Certificate;
 - (C) an opinion on Non-Conformances, if any, and whether or not such Non-Conformances are of the extent and nature that would normally be expected on projects of this kind;
 - (D) progress on all aspects of the Works; and

- (E) Commencing no less than 180 days prior to Scheduled Substantial Completion Date, the IC Monthly Report shall contain specific reference to and listing of the work that needs to be done before a Substantial Completion Certificate or Final Completion Certificate can be issued;
- (ii) no later than five Business Days following the submission of the IC Monthly Reports delivered for the months of May, August, November and February, a quarterly report (the “**IC Quarterly Report**”) for the quarters ending March 31st, June 30th, September 30th and December 31st respectively, in substantially the form as that in Appendix E and that contains the following information certified in accordance with the standard of care set out in Section 3.3 of the Independent Certifier Agreement:
 - (A) the extent (expressed as a percentage) of completion of the Works as of the last day of the applicable quarter;
 - (B) the value of the Works completed as of the last day of the applicable quarter;
 - (C) the forecasted extent (expressed as a percentage) of completion of the Works as of the last day of the applicable quarter and for the next four quarters; and
 - (D) the forecasted value of the Works anticipated to be completed as of the last day of the applicable quarter and for the next four quarters.
- (x) Participate in meetings with the PA Parties as required for the Independent Certifier to perform Certification Services.
- (y) Acknowledge receipt of all Design Certificates and Construction Certificates delivered by Project Co in accordance with Schedule 10 – Review Procedure to the Project Agreement.
- (z) Provide the Certification Services with respect to Construction Period Payments set out in Schedule 21 – Construction Payments.
- (aa) Provide the Certification Services set out in the Project Agreement with respect to Vehicles.
- (bb) Provide advice on other matters that may arise that both PA Parties may jointly require.
- (cc) Prepare the Substantial Completion Deliverables List pursuant to Section 25.6(d) of the Project Agreement and, if applicable, amend such list pursuant to Section 25.6(e) of the Project Agreement.

APPENDIX B

INDEPENDENT CERTIFIER FEE

A. Disbursements and Expenses

The Total Fixed Fee and Hourly Rates set out in Sections B and C, respectively, of this Appendix B to the Independent Certifier Agreement, shall be all inclusive and include all taxes (except for HST) overheads and profit, all labour and materials, insurance costs, travel, hospitality, food and incidental expenses, disbursements (examples: duplicating delivery and communications) and all other overhead including any fees or other charges required by law.

The Independent Certifier shall not be reimbursed for any disbursements or any travel, hospitality, food or incidental expenses. For greater certainty, disbursements and any travel, hospitality, food or incidental expenses shall not appear on invoices to the PA Parties.

B. Total Fixed Fee for all Certification Services (other than Certification Services Identified in Item (bb) of Appendix A to this Independent Certifier Agreement)

The Total Fixed Fee for all Certification Services (other than the Certification Services identified in item (bb) of Appendix A to this Independent Certifier Agreement) shall not exceed, in aggregate, \$[REDACTED] Canadian Dollars, excluding HST.

C. Hourly Rates for Certification Services Identified in Item (bb) of Appendix A to this Independent Certifier Agreement for each Independent Certifier Team Member

The Hourly Rates are for Certification Services identified in item (bb) of Appendix A to this Independent Certifier Agreement and for all certification services, labour and materials required to provide additional work.

The provision of Certification Services identified in item (bb) of Appendix A to this Independent Certifier Agreement and of any additional work must be pre-approved by the PA Parties, in their sole discretion and in writing. If the PA Parties decide to proceed with such certification services, the Independent Certifier will be reimbursed at the following noted hourly rates (excluding HST):

| Name | Hourly Rate |
|------------|-------------|
| [REDACTED] | [REDACTED] |

D. Invoicing

The Fee for the Certification Services shall be payable monthly in arrears, subject to the PA Parties receipt of invoices reflecting the performance of the Certification Services which is in form and substance satisfactory to the PA Parties.

| IC Monthly Report Number | Periods Covered | Rate / Month | Total for Noted Periods |
|--------------------------|-----------------|--------------|-------------------------|
|--------------------------|-----------------|--------------|-------------------------|

| | | (Excluding HST) | (Excluding HST) |
|-------------------|-------------------|------------------------|------------------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

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

| Name | Position |
|-------------------|-------------------|
| [REDACTED] | [REDACTED] |

APPENDIX D

CONDUCT OF CLAIMS

This Appendix D 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 Independent Certifier Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and a party giving the indemnity is referred to as an “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 11 of the Independent Certifier Agreement, the Beneficiary shall give written notice to each Indemnifier potentially obligated in respect thereof, as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix D, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such 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 such 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 the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both Contracting Authority and Project Co are given notice in respect of the same claim, they shall cooperate in the conduct of the claim and give each other such reasonable access and assistance as may be necessary or desirable for purposes of considering, resisting and defending such claim.
- (3) With respect to any claim conducted by an 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 Section (3) of this Appendix D relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Independent Certifier Agreement if:
- (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section (2) of this Appendix D;
 - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) of this Appendix D or each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (iii) none of the Indemnifiers complies in any material respect with Section (3) of this Appendix D.
- (5) The Beneficiary shall be free at any time to give notice to the applicable 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 (2) of this Appendix D applies. For greater certainty, the Independent Certifier acknowledges and agrees that where Contracting Authority is the Beneficiary, Contracting Authority 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 applicable 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 Section (5) of this Appendix D, then the applicable Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If an 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 that 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 such 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 shall be 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.

- (7) Any person taking any of the steps contemplated by this Appendix D 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 Independent Certifier Agreement.

APPENDIX E

FORM OF IC QUARTERLY REPORT

[ON THE INDEPENDENT CERTIFIER’S LETTERHEAD]

[date]

Ontario Infrastructure and Lands Corporation
[REDACTED]

Metrolinx
[REDACTED]

with a copy to:

Metrolinx
[REDACTED]

and to:

Mobilinx Hurontario General Partnership
[REDACTED]

Dear [•],[•] and [•]:

This report, for the quarter ending [•], is delivered to you pursuant to Section v(ii) of Appendix A of the Independent Certifier Agreement between Ontario Infrastructure and Lands Corporation, Metrolinx, and Mobilinx Hurontario General Partnership, and is dated [•] (the “**IC Agreement**”). Terms not otherwise defined herein have the meaning ascribed to them in the IC Agreement.

All values stated herein are based on the cost of the Works and are exclusive of HST. This report has taken into account the following information: **[insert particulars of sources of information (e.g., works reports, site visits) used to prepare the report].**

Based on our analysis of the foregoing, we confirm the following to the **[best of our professional knowledge and judgment:]**

- As of the date hereof, the value of the Works is \$• and the Works are •% complete.
- At the end of this quarter, the estimated value of the Works will be \$• and the Works are forecasted to be •% complete.

We estimate that the value of the Works and the extent of their completion will be as follows for the next four quarters (not including the present quarter):

| | | | | |
|--|--------------------|--------------------|--------------------|--------------------|
| | [quarter end date] | [quarter end date] | [quarter end date] | [quarter end date] |
|--|--------------------|--------------------|--------------------|--------------------|

| | | | | |
|----|--|--|--|--|
| \$ | | | | |
| % | | | | |

We have prepared this report for the specific use of Ontario Infrastructure Lands Corporation, Metrolinx and Mobilinx Hurontario General Partnership. This letter is not intended for general circulation, publication or reproduction for any other person or purpose without express written permission to each specific instance.

Yours truly,

[Name and Signature of Independent Certifier]

SCHEDULE 7

MOBILITY MATTERS

1. DEFINITIONS

In this Schedule 7, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 7) shall have the meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 “**Actual Lane Closure Costs**” or “**ALCC**” means the total cost of all Actual Lane Closures for a Road Section in respect of a given calendar month, which total cost shall be calculated by multiplying the number of Actual Lane Closures for the applicable Road Section by the applicable Unit Rate Prices.
- 1.2 “**Actual Lane Closures**” or “**ALC**” means all actual Lane Closures that occur in a given calendar month for a Road Section.
- 1.3 “**Aggregate Actual Lane Closure Costs**” or “**AALCC**” means the sum of all Actual Lane Closure Costs for a Road Section from Financial Close to Substantial Completion, as set out in the final Lane Closure Analysis Report.
- 1.4 “**Aggregate Actual Lane Closures**” or “**AALC**” means all Actual Lane Closures for a Road Section from Financial Close to Substantial Completion, as set out in the final Lane Closure Analysis Report.
- 1.5 “**Aggregate Target Lane Closure Costs**” or “**ATLCC**” means the total cost of all target Lane Closures for a Road Section from Financial Close to Substantial Completion, as set out in the Lane Closure Target Letter.
- 1.6 “**Aggregate Target Lane Closures**” or “**ATLC**” means the total target Lane Closures for a Road Section from Financial Close to Substantial Completion, which
 - (a) are set forth in the Lane Closure Target Letter; and
 - (b) satisfy all of the requirements of this Schedule 7 and all of the applicable requirements of Schedule 15 - Output Specifications.
- 1.7 “**Arterial**”:
 - (a) in the City of Mississauga, has the meaning given in Chapter 8 of the Mississauga Official Plan; and
 - (b) in the City of Brampton, means Major Arterial and Minor Arterial, as the context requires.
- 1.8 “**Blocks**” are the physical units within a Road Section for which Lane Closure costs are to be calculated for the purposes of this Schedule 7, including,

- (a) the physical units delineated as “Blocks” in the table in Appendix C to this Schedule 7 (which include, for clarity, sections of Hurontario Street, Rathburn Road, and Kennedy Road that span across two or more intersections); and
 - (b) for any streets proposed to be occupied by Project Co for the performance of the Works, the physical units between two adjacent intersections, irrespective of whether the intersections are signalized or unsignalized. For the purposes of this Section 1.8(b), a laneway opening shall not constitute an intersection.
- 1.9 **“Collector”**:
- (a) in the City of Mississauga, means Major Collector or Minor Collector, as the context requires; and
 - (b) in the City of Brampton, has the meaning given in Schedule B of the City of Brampton Official Plan.
- 1.10 **“Lane Closure”** means any restriction or closure of a lane to bus or vehicular traffic within a Block in contravention of the minimum lane width requirements set out in Section 2.4(c) of Part 7 of Schedule 15-2 – Design and Construction Requirements as a result of or in connection with the Works. For the purposes of this Schedule 7:
- (a) each Lane Closure will be measured on a per Block, per hour basis;
 - (b) any partial Lane Closure shall be deemed to be a full Lane Closure;
 - (c) any lane that has a limited opening, such as “local traffic only”, shall be deemed to be a Lane Closure;
 - (d) any restriction or closure of a lane within an intersection (as delineated by the curb return for each leg of such intersection) shall not constitute a Lane Closure. For clarity, any restriction or closure of a travel lane into or out of an intersection related to Works within that intersection shall constitute a Lane Closure;
 - (e) any restriction or closure of a lane that is solely the result of a Utility Company carrying out activities with respect to its own New Utility Company Infrastructure following the Handover of the applicable New Utility Company Infrastructure to such Utility Company shall not constitute a Lane Closure; and
 - (f) any restriction or closure of a lane that is solely the result of a Utility Company carrying out self-performed work that must be carried out by that Utility Company as part of the Works shall not constitute a Lane Closure.
- 1.11 **“Lane Closure Adjustment”** or **“LCA”** means the amount calculated pursuant to Section 5 and, for clarity, adjusted pursuant to Section 5.3.
- 1.12 **“Lane Closure Analysis Report”** has the meaning given in Section 2.1.
- 1.13 **“Lane Closure Measurement and Verification Plan”** has the meaning given in Section 3.5.

- 1.14 “**Lane Closure Target Letter**” means the letter attached to Appendix D to this Schedule 7.
- 1.15 “**Left Turn Lane Closure**” means a Lane Closure of an exclusive left turn lane.
- 1.16 “**Local**” has the meaning given in Chapter 8 of the Mississauga Official Plan or Schedule B of the City of Brampton Official Plan, as the context requires.
- 1.17 “**Major Arterial**” has the meaning given in Schedule B of the City of Brampton Official Plan.
- 1.18 “**Major Collector**” has the meaning given in Chapter 8 of the Mississauga Official Plan.
- 1.19 “**Minor Arterial**” has the meaning given in Schedule B of the City of Brampton Official Plan.
- 1.20 “**Minor Collector**” has the meaning given in Chapter 8 of the Mississauga Official Plan.
- 1.21 “**Mobility Matters Review Meeting**” has the meaning given in Section 3.6.
- 1.22 “**Night/Weekend**” or “**N/W**” means all hours not defined as Weekday Off Peak, Weekday Peak, or Weekend Peak.
- 1.23 “**Right Turn Lane Closure**” means a Lane Closure of an exclusive right turn lane.
- 1.24 “**Road Sections**” means each of the seven road sections described in Appendix C to this Schedule 7, each of which has a unique Unit Rate Price structure for Lane Closure costs per Block as set out in Appendix B to this Schedule 7.
- 1.25 “**Through Lane Closure**” means a Lane Closure of a through lane. For clarity, this includes a lane which allows both a through and right turn movement, or a lane which allows both a through and left turn movement.
- 1.26 “**Unit Rate Price**” means the hourly rate that applies to a Through Lane Closure, Left Turn Lane Closure or Right Turn Lane Closure for each Block of each Road Section, which shall depend on the road classification (Arterial, Collector or Local) and the time of day of the Lane Closure, all as set out in Appendix B to this Schedule 7.
- 1.27 “**Weekday Off Peak**” or “**WDOP**” means Monday through Friday between the hours of 9:00 – 15:00, or 19:00 – 22:00, excluding statutory holidays.
- 1.28 “**Weekday Peak**” or “**WDP**” means Monday through Friday between the hours of 6:00 – 9:00, or 15:00 – 19:00, excluding statutory holidays.
- 1.29 “**Weekend Peak**” or “**WEP**” means, in respect of Road Section 3 only, 11:00 – 19:00 on Saturday and 11:00 until 19:00 on Sunday.

2. CONTENT AND FORMAT OF THE LANE CLOSURE ANALYSIS REPORT

- 2.1 Project Co shall, on a monthly basis starting at Financial Close, monitor its Lane Closures on each Road Section and provide a report of such Lane Closures to Contracting Authority (each, a “**Lane Closure Analysis Report**”) pursuant to and in accordance with this Section 2. Project Co shall

classify and quantify all Lane Closures in each Lane Closure Analysis Report in accordance with this Schedule 7.

- 2.2 Each Lane Closure Analysis Report shall, at a minimum, include the following information:
- (a) using the template provided in Appendix A to this Schedule 7, a summary of Actual Lane Closures and Actual Lane Closure Costs for each Road Section, on a Road Section by Road Section basis, for the previous calendar month, indicating for each Lane Closure:
 - (i) road classification (Arterial, Collector, or Local);
 - (ii) location (indicating Road Section);
 - (iii) time, date, duration, and time period type (Weekday Peak, Weekday Off Peak, Weekend Peak, or Night/Weekend); and
 - (iv) lane type (Through Lane Closure, Left Turn Lane Closure, or Right Turn Lane Closure).
 - (b) a projection of anticipated Lane Closures for each Road Section for each month from the then current calendar month until the anticipated Substantial Completion Date, along with trends and potential risks associated with the anticipated Lane Closures;
 - (c) accurate and precise data in support of the items described in Sections 2.2(a) and 2.2(b);
 - (d) for each Road Section, a calculation of,
 - (i) the sum of all ALCC from Financial Close up to and including the previous calendar month; and
 - (ii) the variance between the amount described in Section 2.2(d)(i) and the cost of all projected Lane Closures from Financial Close up to and including the previous calendar month, as set out in the Lane Closure Target Letter;
 - (e) for each Road Section, a calculation of,
 - (i) the sum of all anticipated ALCC from the then current calendar month to the anticipated Substantial Completion Date based on the projected Lane Closures described in Section 2.2(b); and
 - (ii) the variance between the amount described in Section 2.2(e)(i) and the cost of all anticipated Lane Closures from the then current calendar month to the anticipated Substantial Completion Date, as set out in the Lane Closure Target Letter;
 - (f) Project Co's projected estimate of the AALCC and the Lane Closure Adjustment;
 - (g) a corrective action plan if there is a forecasted exceedance of Project Co's projected estimate of the AALCC from the ATLCC by greater than **[REDACTED]**% for any Road Section;

- (h) the progress of, and any planned adjustments to, any corrective action plan that was in place from any previous Lane Closure Analysis Reports;
 - (i) the measurement and verification of Lane Closures in accordance with the Lane Closure Measurement and Verification Plan; and
 - (j) summary tables from all previous Lane Closure Analysis Reports delivered by Project Co to Contracting Authority.
- 2.3 Subject to Section 2.4, Project Co shall prepare and deliver to Contracting Authority a Lane Closure Analysis Report in respect of each calendar month.
- 2.4 Each Lane Closure Analysis Report shall be delivered by Project Co to Contracting Authority in accordance with Schedule 10 – Review Procedure within five Business Days after the end of the calendar month that is the subject of the Lane Closure Analysis Report. Notwithstanding the foregoing, the final Lane Closure Analysis Report shall be (a) prepared and delivered by Project Co to Contracting Authority 20 Business Days before the anticipated Substantial Completion Date, and (b) updated pursuant to Section 5.3.
- 3. PROCEDURES FOR DETERMINING AND REPORTING LANE CLOSURES AND LANE CLOSURE ADJUSTMENTS**
- 3.1 If, as of Financial Close, a lane width is less than the minimum lane width requirements during construction that are specified in Section 2.4(c) of Part 7 to Schedule 15-2 – Design and Construction Requirements, and Project Co maintains the lane as open for traffic operations at the lane width existing at Financial Close during the Works, then a Lane Closure in respect of such lane shall not arise for the purposes of this Schedule 7.
- 3.2 Project Co shall use the lane configuration set out in Appendix C to Part 2 of Schedule 15-2 – Design and Construction Requirements as the basis for determining the configuration of lanes for the purposes of determining whether or not a Lane Closure has arisen pursuant to this Schedule 7. For clarity, any lane which exists at Financial Close but does not exist in the lane configuration being constructed by Project Co in accordance with the requirements of Schedule 15 – Output Specifications shall not be considered a Lane Closure for the purposes of this Schedule 7.
- 3.3 Contracting Authority shall assess Project Co for the Actual Lane Closure Costs based on the total Lane Closures that occur during Weekday Peak, Weekday Off Peak, Weekend Peak, and Night/Weekend hours in each calendar month for each Road Section. All Lane Closures shall be included in the calculation of the Lane Closure Adjustment as provided in Section 5.
- 3.4 The AALCC and ATLCC for each Road Section shall be used to calculate the Lane Closure Adjustment. The Lane Closure Target Letter shall not be amended, altered or adjusted except by the process described in Section 4.
- 3.5 No later than 30 days prior to the first Lane Closure, Project Co shall submit to Contracting Authority, in accordance with Schedule 10 – Review Procedure, a plan describing how Project Co will track all of its Lane Closures on a monthly basis for each Road Section, how Project Co will evaluate its performance on Lane Closure progress, and the verification process through which Contracting Authority and the City may audit Project Co’s Lane Closure performance (the “**Lane**

Closure Measurement and Verification Plan”). Project Co shall ensure that all subsequent Lane Closure Analysis Reports are consistent with the Lane Closure Measurement and Verification Plan.

- 3.6 No later than five Business Days following the submission of each Lane Closure Analysis Report (or as otherwise agreed to between the Parties), Project Co and Contracting Authority shall convene a review meeting (the “**Mobility Matters Review Meeting**”) to be attended by the Project Co Representative and other relevant Project Co representatives (including the Communications and Public Engagement Lead described in Schedule 9 – Key Individuals) and the Contracting Authority Representative. At the Mobility Matters Review Meeting, Project Co shall present the Lane Closure Analysis Report to Contracting Authority, and Contracting Authority and Project Co shall discuss the Lane Closure Analysis Report and the AALC for the preceding period.
- 3.7 Project Co shall assist the Contracting Authority Representative by providing information with respect to Lane Closures and access to the Lane Closure records, and by other means as may reasonably be required to confirm the information in the Lane Closure Analysis Report.

4. PROCESS FOR AMENDING THE AGGREGATE TARGET LANE CLOSURES AND ASSOCIATED COST

- 4.1 In all cases, corrections to the ATLC and ATLCC for any Road Section must be consistent with the principles outlined in the TTMP.
- 4.2 Project Co and Contracting Authority shall, acting reasonably, agree to make any adjustments to the ATLC, ATLCC, AALC and AALCC for any Road Section, but only in the event of changes implemented due to an amendment of the Project Agreement or a Variation that would cause Lane Closure changes.
- 4.3 The Party requesting an amendment to the ATLC for a Road Section in accordance with Section 4.2 shall initiate a Variation in accordance with Schedule 22 – Variation Procedure. The amended TTMP shall include a detailed analysis of the impacts to traffic and transit services, including an analysis of Lane Closure requirements. The amended TTMP shall include a recommendation regarding amendments to the applicable ATLC. Both Contracting Authority and Project Co shall agree to the amended ATLC no later than 20 Business Days following receipt of the requested amended TTMP. If there is no agreement within a further 10 Business Day period, then either Party may refer the matter for resolution pursuant to Schedule 27 – Dispute Resolution Procedure.

5. CALCULATION OF LANE CLOSURE ADJUSTMENT

- 5.1 Within two Business Days following the final determination of the AALCC for each Road Section as set out in the final Lane Closure Analysis Report, Project Co shall calculate the Lane Closure Adjustment as follows:
 - (a) if $AALCC > [\text{REDACTED}] ATLCC$ for a Road Section, then the portion of the Lane Closure Adjustment in respect of such Road Section shall be calculated as follows:

$$LCA_i = (AALCC_i - [\text{REDACTED}] ATLCC_i); \text{ where } i = \text{Road Section}$$
 - (b) if $AALCC \leq [\text{REDACTED}] ATLCC$ for a Road Section, then the portion of the Lane Closure Adjustment in respect of such Road Section shall be zero; and

- (c) the Lane Closure Adjustment shall be calculated as follows:

$$LCA = \sum_{i=0}^7 LCA_i$$

- 5.2 Before the expiry of the two Business Day period set out in Section 5.1, Project Co shall provide Notice to Contracting Authority setting out the Lane Closure Adjustment and the details supporting its calculation for Contracting Authority's review, comment and confirmation. Project Co shall promptly provide Contracting Authority with any other supporting information in respect of Project Co's calculation and adjustment of the Lane Closure Adjustment that Contracting Authority may reasonably request.
- 5.3 On the Substantial Completion Date, Project Co shall provide (a) Notice to Contracting Authority setting out any adjustment to the Lane Closure Adjustment required as a result of any Lane Closures that occurred between the date of the submission of the final Lane Closure Analysis Report pursuant to Section 2.4 and the Substantial Completion Date and the details supporting the calculation of such adjustment for Contracting Authority's review, comment and confirmation, and (b) an updated final Lane Closure Analysis Report that includes and reflects such Lane Closures.
- 5.4 The Lane Closure Adjustment shall be shown as a separate item within the invoice for the Substantial Completion Payment provided by Project Co to Contracting Authority under the Project Agreement.
- 5.5 For greater certainty,
- (a) Contracting Authority shall deduct the amount of the Lane Closure Adjustment, as reviewed and confirmed by Contracting Authority, from the Substantial Completion Payment pursuant to Section 34.1(b) of the Project Agreement; and
- (b) the Lane Closure Adjustment deduction from the Substantial Completion Payment shall not be subject to the limitations set out in Section 57.4 of the Project Agreement.
- 5.6 For the purposes of calculating the Lane Closure Adjustment in accordance with this Schedule 7, the Parties shall have regard to Sections 40.2(k) and 44.2(e) of the Project Agreement.

6. APPLICATION

- 6.1 The Lane Closure requirements of this Schedule 7 will no longer be in effect once Substantial Completion has been achieved.

APPENDIX A

LANE CLOSURE ANALYSIS REPORT SUBMITTAL REQUIREMENTS

| | | Road Section i (where i ranges from 1 to 7) | | | | | | | | Total |
|--------------|-------------------------|---|------|------------------------------|------|------------------|------|----------------|------|-------|
| | | Weekday Peak | | Weekend Peak (if applicable) | | Weekday Off Peak | | Night/ Weekend | | |
| | | ALC | ALCC | ALC | ALCC | ALC | ALCC | ALC | ALCC | |
| Arterial | Through Lane Closure | | | | | | | | | |
| | Left Turn Lane Closure | | | | | | | | | |
| | Right Turn Lane Closure | | | | | | | | | |
| Collector | Through Lane Closure | | | | | | | | | |
| | Left Turn Lane Closure | | | | | | | | | |
| | Right Turn Lane Closure | | | | | | | | | |
| Local | Through Lane Closure | | | | | | | | | |
| Total | | | | | | | | | | |

APPENDIX B

UNIT RATE PRICES FOR EACH LANE CLOSURE
(Dollars per hour per Block)

| | | Road Section 1 | | | Road Section 2 | | | Road Section 3 | | | |
|------------------|--------------------------------|----------------|------------|------------|----------------|------------|------------|----------------|------------|------------|------------|
| | | WDP | WDOP | N/W | WDP | WDOP | N/W | WDP | WEP | WDOP | N/W |
| Arterial | Through Lane Closure | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| | Left Turn Lane Closure | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| | Right Turn Lane Closure | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Collector | Through Lane Closure | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| | Left Turn Lane Closure | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| | Right Turn | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

| | | | | | | | | | | | | | |
|-----------------|--------------------------------|-----------------------|-------------|------------|-----------------------|-------------|------------|-----------------------|-------------|------------|-----------------------|-------------|------------|
| | Lane Closure | | | | | | | | | | | | |
| Local | Through Lane Closure | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| | | | | | | | | | | | | | |
| | | Road Section 4 | | | Road Section 5 | | | Road Section 6 | | | Road Section 7 | | |
| | | WDP | WDOP | N/W | WDP | WDOP | N/W | WDP | WDOP | N/W | WDP | WDOP | N/W |
| Arterial | Through Lane Closure | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| | Left Turn Lane Closure | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| | Right Turn Lane Closure | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

| | | | | | | | | | | | | | |
|------------------|--------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Collector | Through Lane Closure | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| | Left Turn Lane Closure | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| | Right Turn Lane Closure | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Local | Through Lane Closure | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

APPENDIX C

LANE CLOSURE COSTING ROAD SECTION AND BLOCK DELINEATION ALONG THE HURONTARIO LRT CORRIDOR

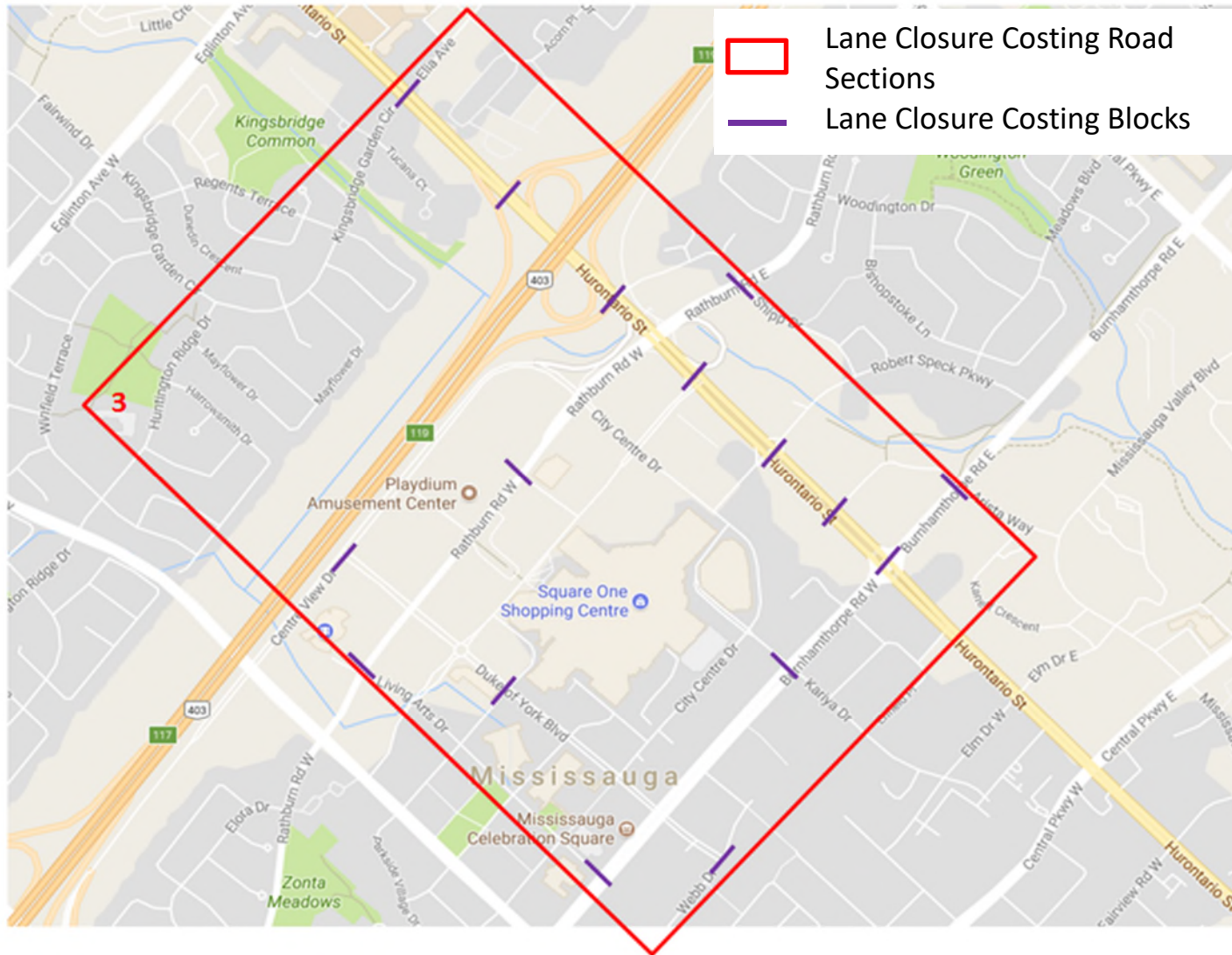
| ROAD SECTION | ROAD SECTION DELINEATION | BLOCK | BLOCK DELINEATION |
|-----------------------|--|-------|---|
| Road Section 1 | Hurontario Street, and all intersecting roads, from south of Park Street (south limit of Works) to North Service Road; | 1-A | South limit of the Works to Inglewood Drive |
| | | 1-B | Inglewood Drive to Mineola Road |
| | | 1-C | Mineola Road to Pinewood Trail |
| | | 1-D | Pinewood Trail to Pinetree Way |
| | | 1-E | Pinetree Way to QEW South Ramp/South Service Road |
| | | 1-F | QEW South Ramp/South Service Road to QEW North Ramp |
| | | 1-G | QEW North Ramp to North Service Road/Harborn Road |
| Road Section 2 | Hurontario Street, and all intersecting roads, from North Service Road to Matthews Gate | 2-A | North Service Road/Harborn Road to Sherobee Road/Bronte College Court |
| | | 2-B | Sherobee Road/Bronte College Court to Queensway |
| | | 2-C | Queensway to Paisley Blvd |
| | | 2-D | Paisley Blvd to King Street |
| | | 2-E | King Street to Dundas Street |
| | | 2-F | Dundas Street to Hillcrest Avenue/Kirwin Avenue |
| | | 2-G | Hillcrest Avenue/Kirwin Avenue to John Street |
| | | 2-H | John Street to Fairview Road |
| | | 2-I | Fairview Road to Central Parkway |
| | | 2-J | Central Parkway to Elm Drive |
| | | 2-K | Elm Drive to Mathews Gate |
| Road Section 3 | Hurontario Street, and all intersecting roads, from | 3-A | Mathews Gate to Burnhamthorpe Road |
| | | 3-B | Burnhamthorpe Road to Absolute Avenue |

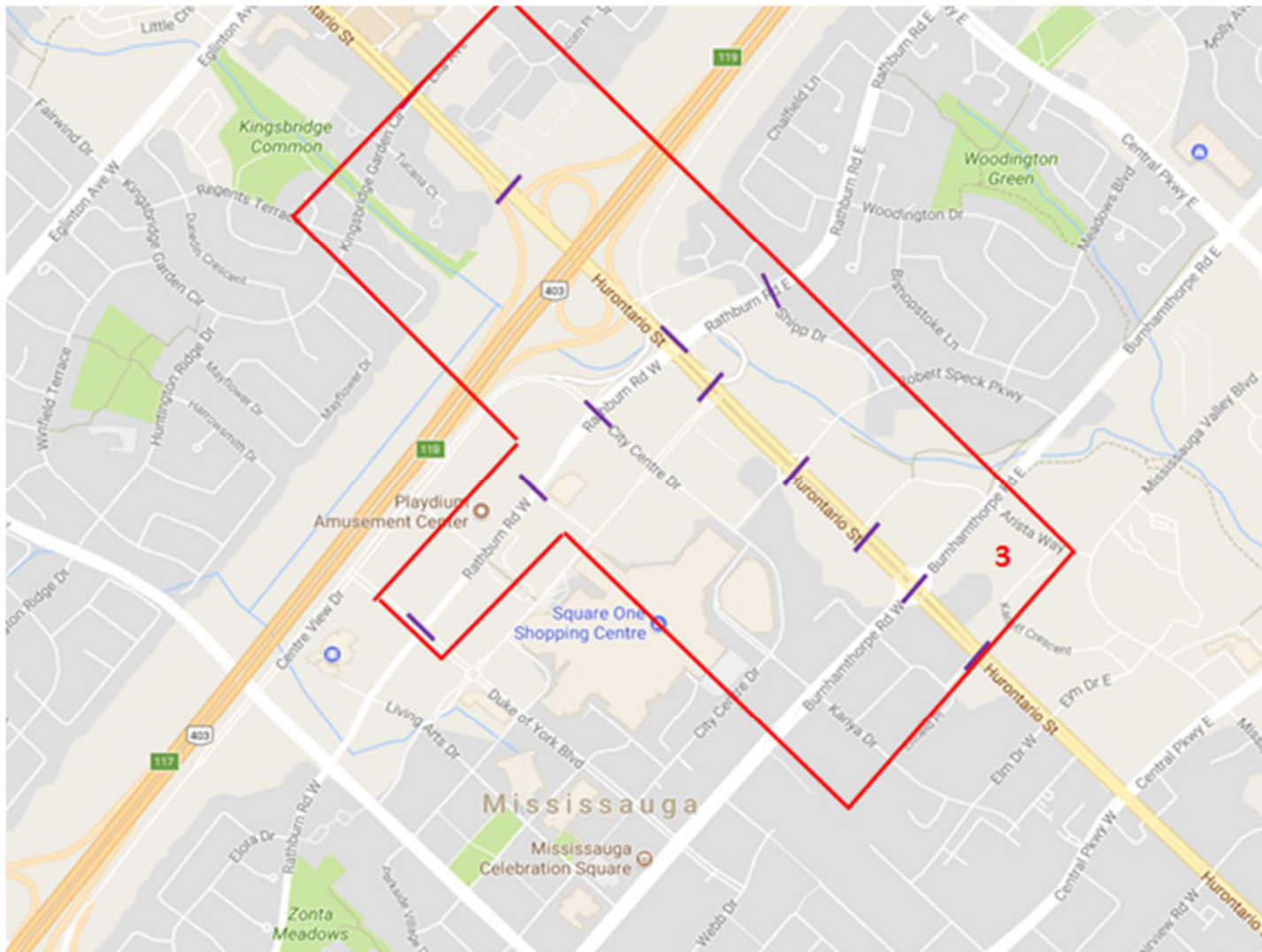
| ROAD SECTION | ROAD SECTION DELINEATION | BLOCK | BLOCK DELINEATION | | |
|-----------------------|--|-----------------------|--|-----|--|
| | Matthews Gate to Kingsbridge Garden Circle/Elia Avenue; | 3-C | Absolute Avenue to Robert Speck Parkway | | |
| | | 3-D | Robert Speck Parkway to Square One Drive | | |
| | | 3-E | Square One Drive to Hwy 403 North Ramp | | |
| | | 3-F | Hwy 403 North Ramp to Kingsbridge Garden Circle/Elia Avenue | | |
| | Rathburn Road, and all intersecting roads, from Duke of York Boulevard to Shipp Drive/Sherwood Towne Boulevard | 3-G | Duke of York Boulevard to Hammerson Drive | | |
| | | 3-H | Hammerson Drive to City Centre Drive | | |
| | | 3-J | City Centre Drive to Mississauga Transitway | | |
| | | 3-K | Mississauga Transitway to Shipp Drive/Sherwood Towne Boulevard | | |
| | | Road Section 4 | Hurontario Street from Kingsbridge Garden Circle/Elia Avenue to Britannia Road | 4-A | Kingsbridge Garden Circle/Elia Avenue to Eglinton Avenue |
| | | | | 4-B | Eglinton Avenue to Watergarden Drive |
| 4-C | Watergarden Drive to Ceremonial Drive/Nahanni Way | | | | |
| 4-D | Ceremonial Drive/Nahanni Way to Glenn Hawthorne Blvd/Trailwood Drive | | | | |
| 4-E | Glenn Hawthorne Blvd/Trailwood Drive to Bristol Road | | | | |
| 4-F | Bristol Road to Barondale Drive | | | | |
| 4-G | Barondale Drive to Matheson Blvd | | | | |
| 4-H | Matheson Blvd to Milverton Drive/Watline Avenue | | | | |
| 4-I | Milverton Drive/Watline Avenue to Aldridge Street/Traders Blvd | | | | |
| 4-J | Aldridge Street/Traders Blvd to Sandstone Drive/Brunel Road | | | | |
| 4-K | Sandstone Drive/Brunel Road to Britannia Road | | | | |
| Road Section 5 | Hurontario Street from Britannia Road to the | 5-A | Britannia Road to Hwy 401 South Ramp | | |
| | | 5-B | Hwy 401 South Ramp to Hwy 401 North Ramp | | |

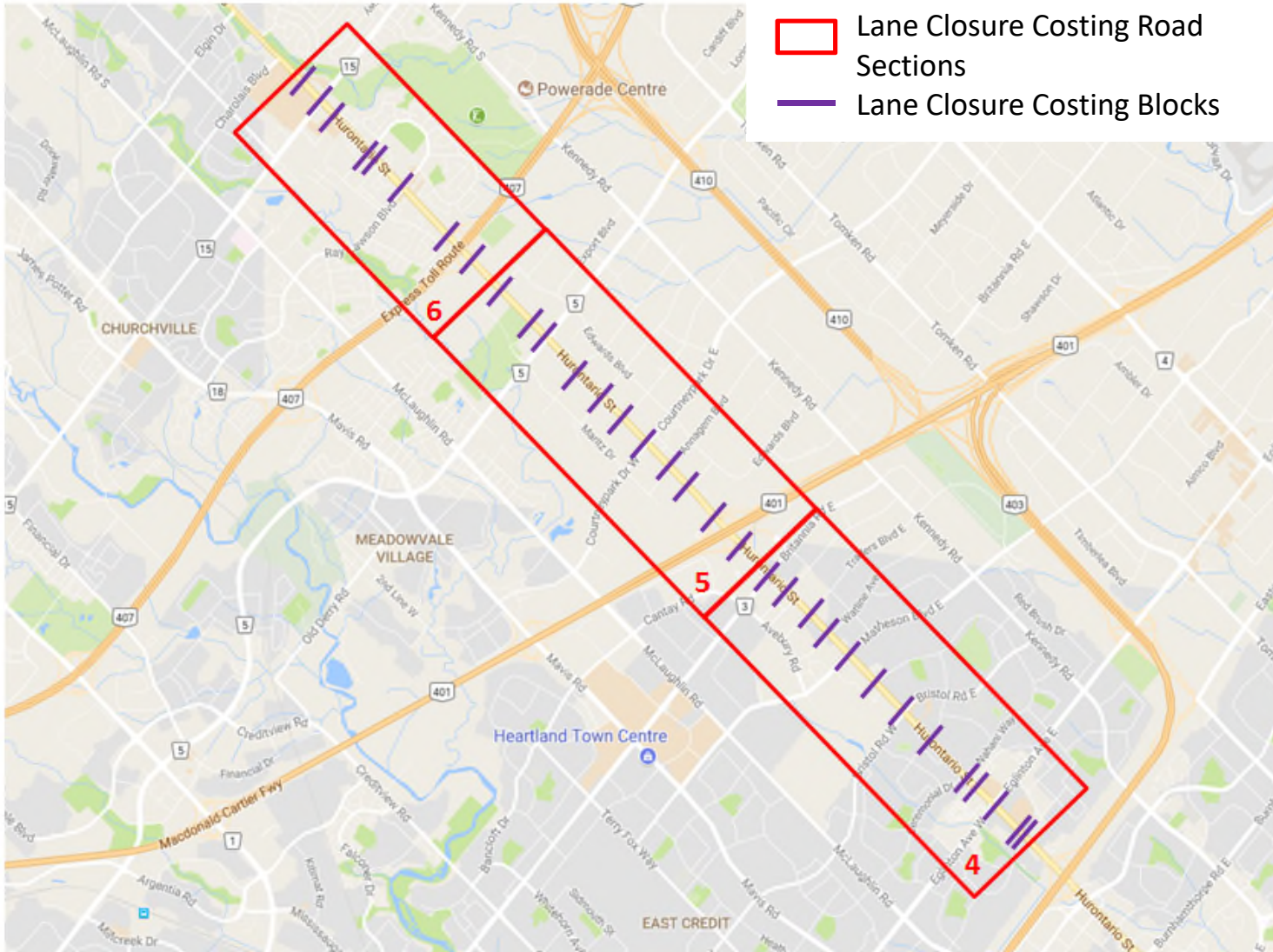
| ROAD SECTION | ROAD SECTION DELINEATION | BLOCK | BLOCK DELINEATION |
|-----------------------|--|-------|--|
| | Mississauga/Brampton City boundary | 5-C | Hwy 401 North Ramp to Capston Drive/World Drive |
| | | 5-D | Capston Drive/World Drive to Prologis Blvd/Annagem Blvd |
| | | 5-E | Prologis Blvd/Annagem Blvd to Courtneypark Drive |
| | | 5-F | Courtneypark Drive to Ambassador Drive |
| | | 5-G | Ambassador Drive to Skyway Drive/Superior Blvd |
| | | 5-H | Skyway Drive/Superior Blvd to Longside Drive/Admiral Blvd |
| | | 5-I | Longside Drive/Admiral Blvd to Derry Road |
| | | 5-J | Derry Road to Kingsway Drive |
| | | 5-K | Kingsway Drive to Mississauga/Brampton city boundary |
| Road Section 6 | Hurontario Street from the Mississauga/Brampton City boundary to north of Bartley Bull Parkway (northern limit of the Works) | 6-A | Mississauga/Brampton city boundary to 407 ETR South Ramp |
| | | 6-B | 407 ETR South Ramp to 407 ETR North Ramp |
| | | 6-C | 407 ETR North Ramp to Ray Lawson/County Court Blvd |
| | | 6-D | Ray Lawson/County Court Blvd to Plaza/County Courthouse |
| | | 6-E | Plaza/County Courthouse to Sir Lou Drive/County Court Blvd |
| | | 6-F | Sir Lou Drive/County Court Blvd to Lancashire Lane |
| | | 6-G | Lancashire Lane to Steeles Avenue |
| | | 6-H | Steeles Avenue to north of Bartley Bull Parkway (North limit of the Works) |
| Road Section 7 | Kennedy Road from the north limit of the Works to the south limit of the Works | 7-A | South limit of the Works on Kennedy Road to North limit of the Works on Kennedy Road |

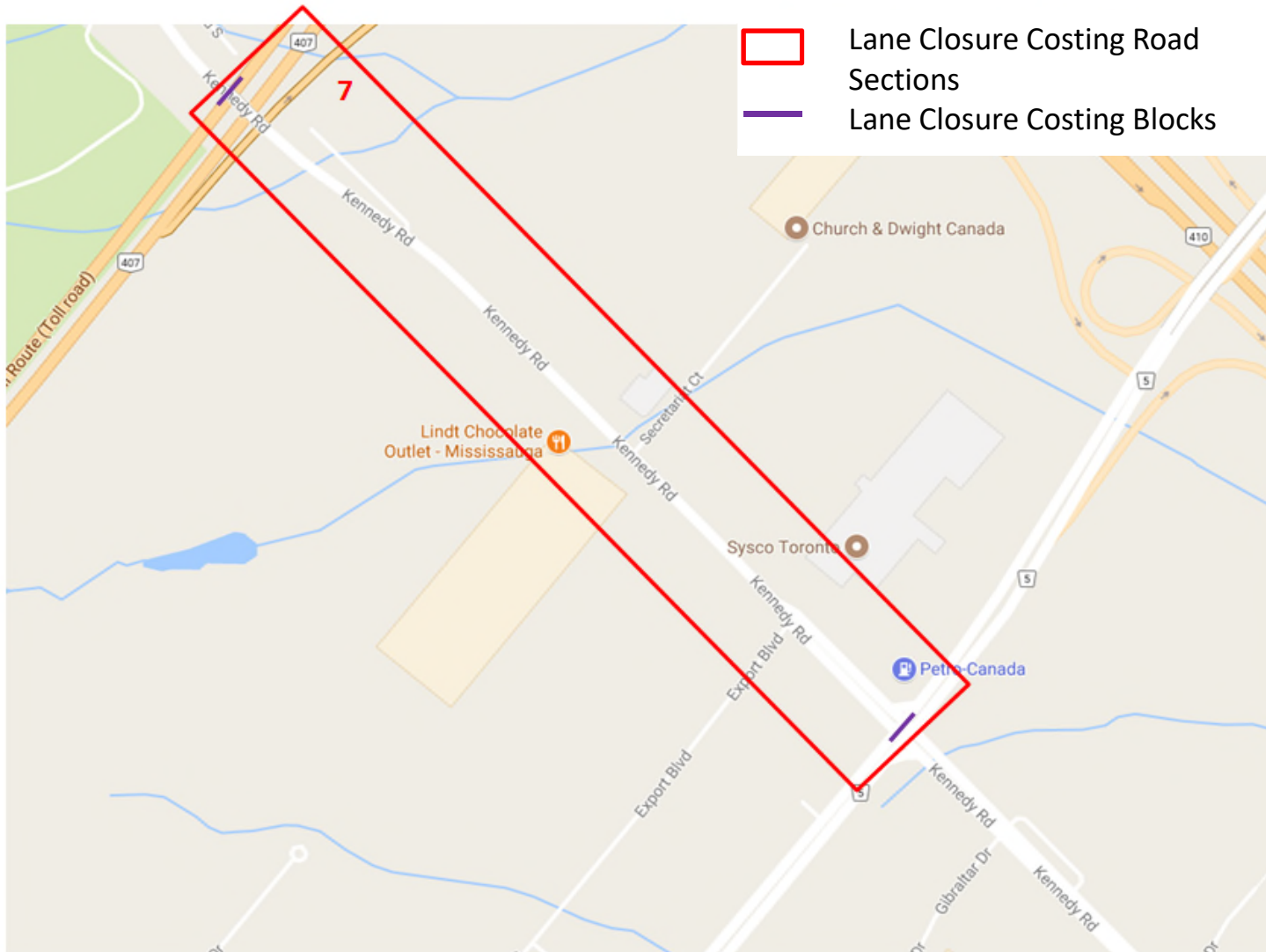
Note: The maps provided in this Appendix C are for illustrative purposes only. In case of any discrepancy between the Block and Road Section delineation shown in the table and the maps in this Appendix C, the table shall take precedence.











**APPENDIX D
LANE CLOSURE TARGET LETTER**

[REDACTED]

SCHEDULE 8
ENERGY MATTERS

1. DEFINITIONS

In this Schedule 8, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 8) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 “**Actual Energy Consumption**” means the sum of the actual, unadjusted, consumption of the following Energy Utilities for the Project as reported on the applicable invoice by the Utility Company, converted to gigajoules, for each Contract Year,
- (a) Hydro Use; and
 - (b) Natural Gas.
- 1.2 “**Alectra Utilities**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.3 “**Annual Maintenance Work Schedule**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.4 “**Annual Review Meeting**” has the meaning set out in Section 4.4(b).
- 1.5 “**Average Passenger Loading**” means the average amount of passengers using the Project Co System Infrastructure as determined by Project Co.
- 1.6 “**Average Unit Rate Price**” means the weighted average price for each standard unit of all Energy Utilities purchased by Contracting Authority during the relevant Contract Year as reported on the applicable invoice by the applicable Utility Companies responsible for the supply of such Energy Service; the Average Unit Rate Price shall be calculated in accordance with Section 7.1.
- 1.7 “**Benchmark Energy Target**” means the Calibrated Target Energy Consumption for every Contract Year as set out in the Energy Target Letter and the supporting Energy Model at Substantial Completion.
- 1.8 “**Benchmark Water Targets**” has the meaning given in 4.9(a)(iv).
- 1.9 “**Calibrated Revenue Vehicle Parameters**” means Revenue Vehicle Parameters that have been calibrated to align with the actual performance of the Revenue Vehicles using the calibration process outlined in Section 3.3.

-
- 1.10 “**Calibrated Target Energy Consumption**” means the Target Energy Consumption after calibration of the simulation in the Energy Model for Traction Power using the process outlined in Section 3.3.
- 1.11 “**Corrected Target Energy Consumption**” means the Benchmark Energy Target after correction of the simulation in the Energy Model in accordance with Section 3.5.
- 1.12 “**Developed Intellectual Property**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.13 “**Energy Analysis Report**” means the report detailed in Section 5.
- 1.14 “**Energy Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.15 “**Energy Model**” means the energy models that support the Energy Target Letter, comprising the energy models for OMSF Power, Interchange Power, and Traction Power, including the Forecast Energy Model(s) and the Reference Building Energy Model(s), all attached as Appendix C.
- 1.16 “**Energy Protocol**” means the contents of Appendix E.
- 1.17 “**Energy Service**” means any metered provision of Energy Utilities in respect of the Regulated Load and Process Load.
- 1.18 “**Energy Target Letter**” means the energy target letter setting out the Proponent’s energy targets for the Service Level attached as Appendix C.
- 1.19 “**Energy Utilities**” means energy or power including electricity, natural gas, fuel, oil and any other energy source used, including water, sustainable or renewable energy.
- 1.20 “**Energy Utilities Management Subcommittee**” has the meaning given in Section 2.3 of Appendix E.
- 1.21 “**Forecast Energy Model**” means the energy models that support the Energy Target Letter, which are:
- (a) in respect of OMSF Power, the energy model for the ‘Proposed Building’ as defined in the LEED® Canada Reference Guide for Green Building Design and Construction 2015 Rating System for Hurontario OMSF; and
 - (b) in respect of Interchange Power, the energy model for the ‘Proposed Building’ as defined in the Toronto Green Standard for the Station(s).
- 1.22 “**Gainshare Adjustment**” means the amount payable by Contracting Authority to Project Co (which amount will be included in the calculation of the Monthly Service Payment for the Contract Month following the date in which such adjustment has been determined in accordance with this Schedule 8) based on Energy Utilities (but excluding sustainable or renewable energy

from sources provided by Project Co and water) consumption for all Energy Services that fall outside the set bands set out in Section 6.

- 1.23 “**High Cost Measures**” means, in respect of a Contract Year, energy saving measures that incur capital expenditure with a Simple Payback of greater than 36 months.
- 1.24 “**Hydro Use**” means metered electricity that is drawn from the Alectra Utilities power grid, measured in megawatts (MW) and megawatt hours (MWh) and converted to gigajoules (GJ) using a conversion factor of $1\text{kWh} = 0.0036\text{GJ}$.
- 1.25 “**Independent Electricity System Operator**” means the Crown corporation responsible for operating the electricity market and directing the operation of the bulk electrical system in the province of Ontario, or successor organizations.
- 1.26 “**Interchange**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.27 “**Interchange Power**” means power used as metered at the primary side of the transformer(s) used for providing energy to Interchanges and lighting and ventilation for tunnels connected to Interchanges for pedestrians, and any power drawn from the secondary side of such transformer(s).
- 1.28 “**IPMVP**” or “International Performance Measurement and Verification Protocol” means IPMVP Core Concepts EVO 10000 – 1:2016.
- 1.29 “**Low Cost Measures**” means, in respect of a Contract Year, energy saving measures that incur capital expenditure with a Simple Payback of no greater than 36 months and are considered to be revenue items as opposed to capital investment measures.
- 1.30 “**Major Energy Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.31 “**Measurement and Verification of Energy Use Plan**” has the meaning given in Section 4.1.
- 1.32 “**Medium Energy Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.33 “**Minor Energy Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.34 “**Monthly Energy Report**” has the meaning given in Section 4.1 of Appendix E.
- 1.35 “**Monthly Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.36 “**Natural Gas**” means natural gas as drawn for the energy service provider measured in cubic metres and converted to gigajoules using a conversion factor of $1\text{m}^3_{\text{Natural Gas}} = 0.0373\text{GJ}$.
- 1.37 “**No Cost Measures**” means energy savings measures, including those related to good house-keeping, involving no material additional expenditure and/or no capital expenditure to carry out.

- 1.38 “**OMSF Power**” means power used as metered at the primary side of the transformer(s) used for providing energy to Hurontario OMSF and any power drawn from the secondary side of such transformer(s), but excluding Traction Power.
- 1.39 “**Operations Service Plan**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.40 “**OTC**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.41 “**Painshare Adjustment**” means the deduction which may be claimed by Contracting Authority from Project Co (which amount will be deducted from the calculation of the Monthly Service Payment for the Contract Month following the date in which such adjustment has been determined in accordance with this Schedule 8) based on Energy Utilities (but excluding sustainable/renewable energy from sources provided by Project Co and water) consumption for all Energy Services which fall outside the bands set out in Section 6.
- 1.42 “**Process Load**” means, for all Systems that are installed by Project Co as part of the Works and maintained by Project Co as part of the Project Operations, in respect of OMSF Power, Interchange Power, and Traction Power, for the metered provision of Energy Utilities that are not Regulated Loads, which for clarity are further described in Appendix B.
- 1.43 “**Quarterly Monitoring Meetings**” has the meaning given in Section 2.2 of Appendix E.
- 1.44 “**Rectification Time**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.45 “**Reference Building Energy Model**” means the energy models that support the Energy Target Letter, which are:
- (a) in respect of OMSF Power, the energy model for the ‘Reference Building’ as defined in the LEED® Canada Reference Guide for Green Building Design and Construction 2015 Rating System for Hurontario OMSF; and
 - (b) in respect of Interchange Power, the energy model for the ‘Reference Building’ as defined in the Toronto Green Standard for the Station(s)
- 1.46 “**Regulated Load**” means, for all Systems that are installed by Project Co as part of the Works and maintained by Project Co as part of the Project Operations,
- (a) the metered provision of Energy Utilities for Traction Power;
 - (b) in respect of OMSF Power, the metered provision of Energy Utilities for the following end-uses: (i) space heating, (ii) humidification, (iii) space cooling, (iv) dehumidification, (v) heat rejection, (vi) ventilation, (vii) fans, (viii) lighting, (ix) domestic hot water, (x) domestic hot water recirculation pumps, (xi) all pumps except for those pumps set out in Table B2 of Appendix B, (xii) exterior lighting, (xiii) workshop equipment, and (xiv) loads which are reliably predictable and not

sensitive to end-user behaviour, which, for clarity, are further described in Appendix B;
and

- (c) in respect of Interchange Power, the metered provision of Energy Utilities for the following end-uses: (i) space heating, (ii) humidification, (iii) space cooling, (iv) dehumidification, (v) heat rejection, (vi) ventilation, (vii) fans, (viii) lighting, (ix) domestic hot water, (x) domestic hot water recirculation pumps, (xi) all pumps except for those pumps set out in Table B2 of Appendix B, (xii) exterior lighting, (xiii) workshop equipment, (xiv) Escalators, and (xv) loads which are reliably predictable and not sensitive to end-user behaviour, which for clarity are further described in Appendix B.

- 1.47 **“Revenue Vehicle Parameters”** means the parameters set out in Appendix A.
- 1.48 **“Scheduled Trip”** has the meaning given in Schedule 20 – Payment Mechanism.
- 1.49 **“Service Level”** has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.50 **“Simple Payback”** means the number of years after which an investment will have paid for itself. Simple Payback is calculated by dividing the initial cost of the retrofit by the energy cost savings per year. Those projects with the shortest paybacks are assumed to be the most cost effective. For clarity, Simple Payback = initial cost of energy retrofit ÷ annual energy savings.
- 1.51 **“Target Energy Consumption”** means the sum of Project Co’s total simulated energy consumption for Interchange Power, Traction Power, and OMSF Power inclusive of all energy sources and taking into consideration the season, day, and Service Level, modelled in the Energy Model for each Contract Year and converted to gigajoules, as set out in the Energy Target Letter.
- 1.52 **“Third Party Auditor”** means a consultant with experience in the modelling of building and Traction Power energy use or water use, as applicable.
- 1.53 **“Toronto Green Standard”** means the two-tiered set of performance measures with supporting guidelines related to sustainable site and building design for new public and private development, as administered by the City of Toronto.
- 1.54 **“Traction Power”** means power used as metered at the primary side of the transformer(s) used for providing energy to the Revenue Vehicles for auxiliary power and propulsion power on the mainline, yard, or workshops, and any power drawn from the secondary side of such transformer(s).
- 1.55 **“Traction Power System”** has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.56 **“Unit of Energy”** means one gigajoule.

- 1.57 “**Weather Data**” means the actual hour-by-hour meteorological data as reported by Environment Canada in format CTMY2 for the location of Toronto Pearson International Airport, Toronto, Ontario for the Contract Year.

2. GENERAL

- 2.1 Project Co shall perform the requirements of this Schedule 8 in a manner that is consistent with the principles set out in IPMVP.

3. ENERGY TARGET LETTER AND ENERGY MODEL

3.1 Energy Model at Commercial Close

- (a) At Commercial Close, Project Co shall deliver to Contracting Authority its Energy Model for Traction Power, which must be compliant with the “IEEE Guide for Rail Transit Traction Power Systems Modeling”, by IEEE Vehicular Technology Society; IEEE Standard 1653.3 - 2012.
- (b) At Commercial Close, Project Co shall deliver to Contracting Authority its Energy Model for OMSF Power, which must be compliant with the LEED® Canada Reference Guide for Green Building Design and Construction 2015 Rating System.
- (c) At Commercial Close, Project Co shall deliver to Contracting Authority its Energy Model for Interchange Power, which must be compliant with the Toronto Green Standard required for environmental performance measurement of the Toronto Green Standard.
- (d) In connection with the Energy Model delivered at Commercial Close:
 - (i) Project Co shall use the Revenue Vehicle Parameters in the Energy Model to produce the Target Energy Consumption; and
 - (ii) Project Co shall provide in the Energy Model its calculations of the Target Energy Consumption and shall provide all supplementary documentation necessary to illustrate how any or all of the parameters (including Revenue Vehicle Parameters) are used in its calculations of the Target Energy Consumption.

3.2 Energy Target Letter at Commercial Close

- (a) At Commercial Close, Project Co shall deliver to Contracting Authority the Energy Target Letter.

3.3 Calibration of Energy Model for Traction Power in Construction Period

- (a) Project Co shall revise the Energy Model prior to Substantial Completion to determine the Calibrated Target Energy Consumption, using the Calibrated Revenue Vehicle Parameters.

- (b) **[Intentionally deleted].**
- (c) Project Co shall develop a detailed methodology to calibrate the Revenue Vehicle Parameters in order to determine the Calibrated Revenue Vehicle Parameters during the processes of testing and Commissioning, and submit the methodology to Contracting Authority for review in accordance with Schedule 10 – Review Procedure.
- (d) Project Co shall use all information available to calibrate the Revenue Vehicle Parameters, including the metering, monitoring results, the Commissioning of the Traction Power System and Revenue Vehicles, and all processes contained in Schedule 14 – Commissioning.
- (e) Project Co shall provide Contracting Authority with:
 - (i) reasonable notice of all activities to calibrate the Revenue Vehicle Parameters; and
 - (ii) access to the Site for the purposes of monitoring all activities to calibrate the Revenue Vehicle Parameters.
- (f) Project Co shall replace the Revenue Vehicle Parameters in the Energy Model with the Calibrated Revenue Vehicle Parameters and run the Energy Model to produce the Calibrated Target Energy Consumption.
- (g) Project Co shall submit the Energy Model using the Calibrated Revenue Vehicle Parameters in accordance with Schedule 10 – Review Procedure for review by Contracting Authority.

3.4 Updated Energy Target Letter and Energy Model for Substantial Completion

- (a) The Parties agree that any Variation during the Construction Period that has an impact on an Energy Target Letter, shall take into account or contemplate the corresponding changes to the Energy Target Letter and Energy Model, in accordance with Schedule 22 – Variation Procedure.
- (b) No later than the date that is three months prior to Substantial Completion, Project Co shall submit the updated Energy Target Letter containing the Benchmark Energy Target, and the supporting Energy Model, in accordance with Schedule 10 – Review Procedure for review by Contracting Authority.

3.5 Corrected Benchmark Energy Target and Energy Model in Operational Term

- (a) At the end of each Contract Year, Project Co shall correct the Benchmark Energy Target for the previous Contract Year, calculated separately for Regulated Loads and Process Loads, by taking account of the following factors over the preceding Contract Year to the extent that these factors impact the Benchmark Energy Target in the Energy Model simulations:

-
- (i) any Relief Event, event of Force Majeure, or Excusing Cause;
 - (ii) increased or decreased Scheduled Trips as compared to Scheduled Trips set out in the Operations Service Plan at Commercial Close;
 - (iii) the differential between: (1) the passenger loading simulated in the Energy Models in accordance with the Revenue Vehicle Parameters; and (2) the actual passenger loading;
 - (iv) Weather Data;
 - (v) Process Loads which are sub metered as listed in Appendix B, Table B2 of this Schedule 8 which may have a bearing on the energy consumption associated with Regulated Loads; and
 - (vi) the aggregate impact of any and all Variations.
- (b) For the purpose of the correction to the Benchmark Energy Target related to the factor set out in Section 3.5(a)(iv), Project Co shall obtain the Weather Data and shall adjust the Energy Model by revising the input data in accordance with the following:
- (i) Project Co shall only adjust the dry bulb temperature and dew point temperature inputs; and
 - (ii) Project Co shall adjust the weather file in accordance with the following:
 - a) start with the EnergyPlus weather file for the same location as specified for Weather Data (.epw extension), convert this file to a .csv file and import into Microsoft Excel;
 - b) adjust the dry bulb temperature and dew point temperature as per the Environment Canada Weather Data and save; and
 - c) convert this file back to .epw using the program eQ_WthProc (available from www.doe2.com) to convert the new .epw file into a .bin file for use with the Energy Model.
- (c) Any other modifications to the Energy Model are subject to the procedure outlined in Section 4.6(b).
- (d) Contracting Authority may, in its sole discretion, appoint a Third Party Auditor to audit Project Co's corrections made pursuant to Section 3.5(a) (including all input data related thereto). Such energy audit shall include a detailed computer simulation of Energy Utilities use by function and a comprehensive evaluation of Energy Utilities use patterns. The Third Party Auditor shall prepare a report making a recommendation regarding amendments to the Corrected Target Energy Consumption. Both Contracting Authority and Project Co must agree to the Corrected Target Energy Consumption within 20 Business Days

following receipt of such report. If there is no agreement within a further 10 Business Day period, then either Party may refer the matter to Schedule 27 – Dispute Resolution Procedure for resolution. If the energy audit concludes that Project Co has overestimated the corrections to the Energy Model, then Project Co shall reimburse Contracting Authority for its costs incurred in respect of the energy audit.

4. PROCEDURES FOR DETERMINING ENERGY COST SHARING

4.1 Planning for Measurement and Verification

- (a) Project Co shall prepare a measurement and verification of energy use plan that is compliant with IPMVP, and as described in IPMVP, Section 7, including, without limitation, a metering schedule of all proposed energy end-uses, which shall form the basis for the Energy Analysis Report (the “**Measurement and Verification of Energy Use Plan**”).
- (b) At Final Completion, Project Co shall submit a Measurement and Verification of Energy Use Plan to Contracting Authority for review in accordance with Schedule 10 – Review Procedure.

4.2 Measurement and Monthly Certification

- (a) Project Co shall measure the amount of Actual Energy Consumption in respect of each Contract Month.
- (b) Project Co shall provide to Contracting Authority in the form of a certificate the Actual Energy Consumption for Regulated Loads and Process Loads no later than five Business Days following the end of each Contract Month in respect of each metered connection for each Energy Service.
- (c) Project Co shall maintain a record of factors described in Section 3.5 that affect the Benchmark Energy Target in the Energy Model simulation in respect of each Contract Month, and provide such information to Contracting Authority no later than five Business Days following the end of each Contract Month.

4.3 Correction of Benchmark Energy Target

- (a) At the end of each Contract Year, Project Co shall correct the Benchmark Energy Target for usage, loading and other specific events experienced during that Contract Year, using the process in Section 3.5, and Project Co shall use actual data for the factors set out in Section 3.5 to revise the simulation input variables in the Energy Model.

4.4 Annual Report, Verification, and Review Meeting

- (a) Project Co shall submit to Contracting Authority in accordance with Schedule 10 – Review Procedure an Energy Analysis Report no later than 60 days following the end of

each Contract Year. The Energy Analysis Report shall be in compliance with the requirements set out in Section 5.

- (b) As soon as practicable and in any event no later than 5 Business Days following Project Co's submission of the Energy Analysis Report, Project Co and Contracting Authority shall convene an annual review meeting to be attended by the Project Co Representative and the Contracting Authority Representative (the "**Annual Review Meeting**").
- (c) At each Annual Review Meeting Project Co shall present the Energy Analysis Report to Contracting Authority, and Contracting Authority and Project Co shall discuss the Actual Energy Consumption for all Energy Services for the preceding Contract Year.
- (d) Project Co shall assist Contracting Authority and provide Contracting Authority such information and access to the applicable records of actual Traction Power, actual Interchange Power and actual OMSF Power, including records from building management systems, utility meters, and by other means as may reasonably be required for Contracting Authority to confirm the Energy Analysis Report provided by Project Co to determine the Actual Energy Consumption for each separate Energy Service for the applicable Contract Year.

4.5 Gainshare Adjustment or Painshare Adjustment

- (a) Project Co or Contracting Authority, as the case may be, shall be entitled annually to a Gainshare Adjustment or a Painshare Adjustment, as the case may be, calculated in accordance with Section 6.
- (b) In the event that (i) an Energy Failure arises and is continuing, (ii) Contracting Authority applies Deductions in accordance with Appendix F of this Schedule 8 and Schedule 20 – Payment Mechanism, and (iii) the events underlying the Energy Failure impact the calculation of a Painshare Adjustment or Gainshare Adjustment pursuant to this Schedule 8, then Contracting Authority, in its sole discretion, may either (A) continue to apply such Deductions in accordance with Appendix F of this Schedule 8 and Schedule 20 – Payment Mechanism during the period of time the Energy Failure is continuing or (B) calculate the applicable Painshare Adjustment or Gainshare Adjustment using a Third Party Auditor retained by Contracting Authority at Project Co's sole cost and expense. Project Co shall, in good faith, cooperate and promptly provide to any such Third Party Auditor all information requested by Contracting Authority or such Third Party Auditor. In the event that Contracting Authority retains any such Third Party Auditor, Contracting Authority shall (I) promptly provide Notice to Project Co identifying the Third Party Auditor retained by Contracting Authority and setting out all of the information that the Third Party Auditor requires to calculate the applicable Painshare Adjustment or Gainshare Adjustment, and (II) cease making such Deductions in the Contract Month immediately following the Contract Month within which the Third Party Auditor receives all such information from Project Co to Contracting Authority's satisfaction.
- (c) Any applicable Painshare Adjustment or Gainshare Adjustment related to the period covered by the Energy Analysis Report and the cost of any Third Party Auditor described

in Section 4.5(b) shall be directly deducted from or added to, as the case may be, the Monthly Service Payment immediately following the Contract Month when Contracting Authority approves the final report of the Third Party Auditor setting out the applicable Painshare Adjustment or Gainshare Adjustment.

4.6 Amendment of Benchmark Energy Target from Time-to-Time

- (a) At any time commencing after the first anniversary of the Substantial Completion Date, Project Co and Contracting Authority shall, acting reasonably, agree to make amendments to the Benchmark Energy Target only in the event of:
 - (i) changes implemented in accordance with the Project Agreement that would cause load changes or other changes in Energy Utilities usage; or
 - (ii) changes in the utilization of Project Co System Infrastructure from that described in the Project Agreement that would cause load changes or other changes in Energy Utilities usage.
- (b) The Party requesting an amendment to the Benchmark Energy Target shall appoint (subject to the other Party's approval, acting reasonably), and pay for a complete energy audit to be conducted by a Third Party Auditor, unless both Parties mutually agree that an audit is not required. The energy audit shall include a detailed computer simulation of Energy Utilities use by function and a comprehensive evaluation of Energy Utilities use patterns. The Third Party Auditor shall prepare a report making a recommendation regarding amendments to the Benchmark Energy Target, as applicable. Both Contracting Authority and Project Co must agree to the Benchmark Energy Target within 20 Business Days following receipt of such report. If there is no agreement within a further 10 Business Day period, then either Party may refer the matter to Schedule 27 – Dispute Resolution Procedure for resolution.

4.7 Change to Monthly Service Payments

- (a) Any correction or amendment, as applicable, to the Benchmark Energy Target pursuant to Section 4.3 or Section 4.6 shall only affect the Monthly Service Payment (as a result of any Painshare Adjustments or Gainshare Adjustments) from the date on which such correction or amendment is effective and shall not, for greater certainty, have a retroactive effect on any other previous Monthly Service Payments.

4.8 Water Consumption

- (a) Project Co shall comply with the requirement KPM-T-04 included in Appendix F of this Schedule 8. If Project Co fails to comply with the requirement, one Energy Failure shall arise and a corresponding Deduction shall apply in accordance with Appendix F of this Schedule 8 and Schedule 20 – Payment Mechanism.
- (b) In the event that an Energy Failure related to water consumption is continuing for subsequent years, Contracting Authority may either continue to (i) apply Deductions in

accordance with Section 4.8(a) above or (ii) calculate the applicable water consumption waste over a normal volume using a Third Party Auditor retained by Contracting Authority at Project Co's sole cost and expense. Any applicable additional cost to the Contracting Authority as determined by the Third Party Auditor will be deducted from the following Monthly Service Payment(s).

4.9 **Planning for Measurement and Verification for Water Consumption**

- (a) Project Co shall prepare a measurement and verification of water use plan (the “**Measurement and Verification of Water Use Plan**”) that is compliant with IPMVP, and as described in IPMVP, Section 7, including:
 - (i) calculations used for water consumption as part of the submission to obtain any LEED credits under the performance category: “Water Efficiency”;
 - (ii) description of the water consumption portion of the measurement and verification plan and process used to achieve the LEED credit “Advanced Energy Metering” under performance category: “Energy & Atmosphere”;
 - (iii) identification of all sub-metering provided at the Hurontario OMSF; and
 - (iv) the water consumption identified at the end of the measurement and verification process (the “**Benchmark Water Target**”).
- (b) At Final Completion, Project Co shall submit the Measurement and Verification of Water Use Plan in accordance with Schedule 10 – Review Procedure to Contracting Authority.

4.10 **Measurement and Monthly Certification for Water Consumption**

- (a) Project Co shall measure the amount of actual water consumed in respect of each Contract Month at each metered connection for water consumption.
- (b) Project Co shall submit to Contracting Authority for review in accordance with Schedule 10 – Review Procedure a report containing all water consumption measurements no later than five days of the end of each Contract Month.

5. **CONTENT AND FORMAT OF THE ENERGY ANALYSIS REPORT**

- 5.1 The Energy Analysis Report shall adhere to the IPMVP and the Measurement and Verification of Energy Use Plan.
- 5.2 The Energy Analysis Report shall present findings of Actual Energy Consumption for all Energy Services for the relevant Contract Year and shall include the following information:
 - (a) Actual Energy Consumption broken down by utility and represented in gigajoules;

-
- (a) calculation of the Gainshare Adjustment or Painshare Adjustment in accordance with Section 6;
 - (b) calendarized graph and table of utility consumption and costs;
 - (c) any exceptional changes (being changes of plus or minus [REDACTED]% in consumption or pattern of use or demand) in consumption or pattern of use or demand since any previous survey in the past five years;
 - (d) accurate and precise utility consumption data, in megawatts, as provided by utility metering; and
 - (e) identification of potential cost savings in respect of Energy Utilities usage and provide an estimate of potential Energy Service consumption savings broken down by fuel type, implementation costs, Simple Payback periods and projected savings along with identifying potential risks associated with each proposed cost savings measure. Project Co shall categorize these cost savings measures in the following categories: No Cost Measures, Low Cost Measures and High Cost Measures. Project Co shall also advise Contracting Authority of projected Energy Utilities usage for the next five years and cost projections in respect of such projected Energy Utilities usage along with pricing trends and potential risks associated with each.
- 5.3 The objectives of the Energy Analysis Report are to confirm Actual Energy Consumption for all Energy Services in the relevant Contract Year and to provide data to calculate Corrected Target Energy Consumption for all Energy Services and Gainshare Adjustment or Painshare Adjustment for all Energy Services.
- 5.4 Consistent with the objectives set out in Section 5.3, Project Co shall ensure that the Energy Analysis Report has the following components (including the format in Appendix D for each Energy Service and for the Service Level experienced in the Contract Year):
- (a) presentation of Actual Energy Consumption and calculation of Corrected Target Energy Consumption;
 - (b) presentation of correlated energy-Weather Data graph;
 - (c) establishment of a basis for continued monitoring of energy and utility consumption and corrections to the Benchmark Energy Target;
 - (d) utility data collected by Project Co and presented in the tables set out in Appendix D;
 - (e) detailed analysis of all sub-metered end-uses required by Schedule 15 - Output Specifications, including reconciliation with Actual Energy Consumption;
 - (f) an outline of any outstanding issues from any previous Energy Analysis Report;

- (g) corrections to the Benchmark Energy Target complete with detailed explanations of any corresponding changes made to the Energy Model;
- (h) a table showing the percentage variation in Actual Energy Consumption against the Corrected Target Energy Consumption;
- (i) tables and graphs showing the consumption, unit costs, and total costs for all purchased Energy Utilities for the applicable Contract Year, with a breakdown of Energy Utilities types and costs for each energy use and any other major energy use for the applicable Contract Year;
- (j) appendices that include graphs, calculations and miscellaneous data that are relevant to the Energy Analysis Report;
- (k) to the greatest extent possible, summary tables from the previous five years of Energy Analysis Reports delivered by Project Co to Contracting Authority; and
- (l) copies of all working papers to fully support the contents contained within the Energy Analysis Report, including the revised Energy Model, rationale for all revisions to the Energy Model and data used to support the calculation of Corrected Target Energy Consumption in accordance with Section 4.3.

6. CALCULATION OF GAINSHARE ADJUSTMENT OR PAINSHARE ADJUSTMENT

6.1 For each Contract Year, the Gainshare Adjustment and Painshare Adjustment shall be calculated in accordance with this Section 6 using Regulated Loads only. For clarity, Process Loads will not be considered as part of:

- (a) the Corrected Target Energy Consumption; or
- (b) the Actual Energy Consumption;

for the purposes of calculating a Gainshare Adjustment or Painshare Adjustment.

6.2 If Project Co intentionally does not comply with any requirement of the Project Agreement (for example, making aspects of any Project Co System Infrastructure unavailable for a period of time in contravention of the Project Agreement), then the provisions of this Schedule 8 shall apply as if Project Co had complied with the applicable requirement of the Project Agreement solely for the purposes of calculating the Actual Energy Consumption. For clarity, energy that would have otherwise been consumed as a result of Project Co's compliance with the applicable requirement of the Project Agreement (for example, energy that would have been consumed if Project Co made an aspect of Project Co System Infrastructure available for a period of time in accordance with the Project Agreement), will be added to the Actual Energy Consumption.

6.3 For the purposes of calculating Gainshare Adjustment or Painshare Adjustment, Energy Utilities from sustainable or renewable energy sources that are provided by Project Co do not apply and

will not be considered for purposes of calculating Gainshare Adjustment or Painshare Adjustment.

6.4 Comparing Corrected Target Energy Consumption with Actual Energy Consumption

- (a) Project Co shall undertake the following for each supplier of Energy Utilities:
 - (i) the Actual Energy Consumption for all Energy Services shall be compared to the Corrected Target Energy Consumption for all Energy Services.
- (b) If,
 - (i) the Actual Energy Consumption in respect of all Energy Services is greater than **[REDACTED]**% of the Corrected Target Energy Consumption in respect of all Energy Services for the relevant Contract Year;

then Project Co shall calculate the Painshare Adjustment and deduct it from the next Monthly Service Payment(s) in accordance with Schedule 20 – Payment Mechanism.

- (c) The table immediately below shows the banding mechanism used for calculating the Painshare Adjustment for each Energy Service.

| Energy Service | Variance | Painshare Adjustment then equals: |
|--|---|-----------------------------------|
| If the Actual Energy Consumption variance from Corrected Target Energy Consumption for the purposes of calculating Painshare Adjustment in the previous Contract Year was: | [REDACTED] to [REDACTED] % | [REDACTED] |
| If the Actual Energy Consumption variance from Corrected Target Energy Consumption for the purposes of calculating Painshare Adjustment in the previous Contract Year was: | > [REDACTED] % to [REDACTED] % | [REDACTED] % |
| If the Actual Energy Consumption variance from Corrected Target Energy Consumption for the purposes of calculating Painshare Adjustment in the previous Contract Year was: | > [REDACTED] % | [REDACTED] % |

- (d) If,

- (i) the Actual Energy Consumption in respect of all Energy Services is less than **[REDACTED]**% of the Corrected Target Energy Consumption in respect of all Energy Services for the relevant Contract Year;

then Project Co shall calculate the Gainshare Adjustment set out in this Section 6.4 and add it to the next Monthly Service Payment(s) in accordance with Schedule 20 – Payment Mechanism.

- (e) The table immediately below shows the banding mechanism used for calculating the Gainshare Adjustment for each Energy Service.

| Energy Service | Variance | Gainshare Adjustment then equals: |
|--|---|-----------------------------------|
| If the Actual Energy Consumption variance from Corrected Target Energy Consumption for the purposes of calculating Gainshare Adjustment in the previous Contract Year was: | [REDACTED] to [REDACTED] % | [REDACTED] |
| If the Actual Energy Consumption variance from Corrected Target Energy Consumption for the purposes of calculating Gainshare Adjustment in the previous Contract Year was: | > [REDACTED] % to [REDACTED] % | [REDACTED] % |
| If the Actual Energy Consumption variance from Corrected Target Energy Consumption for the purposes of calculating Gainshare Adjustment in the previous Contract Year was: | > [REDACTED] % | [REDACTED] % |

- (f) If Project Co is subject to a Painshare Adjustment with respect to a Contract Year, then Project Co shall submit a detailed remediation plan no later than 14 days following the calculation of the Painshare Adjustment to explain how it will reduce the relevant Actual Energy Consumption such that it will not exceed the **[REDACTED]**% threshold established in this Section 6.4 for the subsequent Contract Year. If Project Co is not successful in its remediation plan such that the Painshare Adjustment is applied with respect to such Actual Energy Consumption for the subsequent Contract Year, then the Painshare Adjustment set out in this Section 6.4 will be calculated and apply again in the subsequent year.
- (g) If Actual Energy Consumption is identified at any time as less than **[REDACTED]**% or greater than **[REDACTED]**% of the Corrected Target Energy Consumption, then a Third Party Auditor may be retained by Contracting Authority, at the sole cost and expense of

Project Co, to assess and report on the cause of the variance and make recommendations for improving energy efficiency. Project Co shall make commercially reasonable efforts to implement any recommendations made by such Third Party Auditor at its own cost and expense.

6.5 The formulae to calculate the Gainshare Adjustment and the Painshare Adjustment for Actual Energy Consumption set out in this Section 6.5 are based on Section 6.4.

(a) For the avoidance of doubt, if the Actual Energy Consumption in respect of all Energy Services falls within a set band above or below the relevant Corrected Target Energy Consumption (i.e. no more than [REDACTED]% above or below the Corrected Target Energy Consumption), then no Gainshare Adjustment or Painshare Adjustment will be made for that Energy Utility in that year.

(b) For the purposes of calculating the Gainshare Adjustment or Painshare Adjustment for Actual Energy Consumption:

A = the Actual Energy Consumption during the relevant year for all Energy Services in gigajoules; and

B = the Corrected Target Energy Consumption for the relevant year for all Energy Services in gigajoules.

(c) In respect of every year following the Substantial Completion Date:

If: $A < [\text{REDACTED}]$ then Project Co shall be entitled to claim and be paid a Gainshare Adjustment ('GS') contribution for Actual Energy Consumption for that year where,

$$\text{if: } [\text{REDACTED}] < A < [\text{REDACTED}] \text{ then } GS = [\text{REDACTED}]([\text{REDACTED}] - A) * \left(\frac{\text{Average Unit Rate}}{\text{Price}} \right);$$

$$\text{but if: } A < [\text{REDACTED}] \text{ then } GS = (([\text{REDACTED}] - A) + (B * [\text{REDACTED}])) * \left(\frac{\text{Average Unit Rate}}{\text{Price}} \right);$$

But if: $A > [\text{REDACTED}]$ then Contracting Authority shall be entitled to deduct a Painshare Adjustment ('PS') where,

$$\text{if: } [\text{REDACTED}] < A < [\text{REDACTED}] \text{ then } PS = [\text{REDACTED}](A - [\text{REDACTED}]) * \left(\frac{\text{Average Unit Rate}}{\text{Price}} \right);$$

but if: $A > [\text{REDACTED}]$ then $PS = ((A - [\text{REDACTED}]) + (B * [\text{REDACTED}])) * \left(\frac{\text{Average Unit Rate}}{\text{Price}} \right)$.

(In the above formula, a factor of 0.065 is used to multiply B. This is obtained by multiplying the range of the 2nd band by the percentage of Project Co painshare/gainshare. The range of the 2nd band is $[\text{REDACTED}]\% - [\text{REDACTED}]\% = [\text{REDACTED}]\%$ and the Project Co pain percentage is $[\text{REDACTED}]\%$. The product is $[\text{REDACTED}]\%$.)

7. CALCULATION OF AVERAGE UNIT RATE PRICE

7.1 The Average Unit Rate Price shall be calculated in accordance with the following formula,

$$\text{Average Unit Rate Price} = \frac{SC + US}{U}$$

where,

‘SC’ is the aggregate of all standing charges, levies, taxes and all other sums invoiced to Contracting Authority by its suppliers in respect of the supply of Energy Utilities during the relevant Contract Year;

‘US’ is the aggregate of all sums invoiced to Contracting Authority by its suppliers in respect of the supply of Unit of Energy during the relevant Contract Year, being, in respect of each form of Energy Utility, a price per unit multiplied by the number of units of that type of Energy Utility actually supplied; and

‘U’ is the Actual Energy Consumption in the course of the relevant Contract Year.

8. SUPPLY OF ENERGY

8.1 Contracting Authority shall from time to time as required enter into contracts with Energy Utilities suppliers for the supply of Energy Utilities and shall be responsible for all payments due pursuant to such supply contracts.

8.2 The Parties agree that it is important to maintain an appropriate balance between:

- (a) ensuring the efficient use of energy and minimizing the level of emissions of greenhouse gases and harmful substances caused by the use of energy (regardless of where the energy is generated); and
- (b) minimizing the monetary cost of energy usage.

8.3 Any design alterations due to technology changes that will potentially change the proportions of Energy Utilities, increase the cost to Contracting Authority of purchasing Energy Utilities (i.e.,

natural gas, electricity, or other energy source) and will have negative impact on lifecycle costing, increase maintenance issue, shall be approved by the Contracting Authority.

9. ENERGY PROTOCOL

9.1 Project Co shall implement the Energy Protocol.

10. ENERGY MODEL INTELLECTUAL PROPERTY OWNERSHIP AND LIABILITIES

10.1 Intellectual Property:

- (a) For greater certainty, all Energy Models and Energy Analysis Reports or Monthly Energy Reports delivered to Contracting Authority or the Service Provider pursuant to this Schedule 8 shall be deemed to be Developed Intellectual Property.
- (b) For greater certainty, Project Co acknowledges and agrees that Contracting Authority shall not be liable to Project Co for, and Project Co shall not seek to recover from Contracting Authority, any Governmental Authority or any Contracting Authority Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Energy Models, the Energy Analysis Reports, or the Monthly Energy Reports.

APPENDIX A

REVENUE VEHICLE PARAMETERS

| Parameter | Value |
|---|---|
| Vehicle length | 48.35 metres |
| Vehicle width | 2.65m at carbody level 2.80m at frangeable threshold level |
| Vehicle height | 3.775 m |
| Vehicle load (AW2) | 105,000 kg |
| Maximum gradient | 6% |
| Rotating mass factor | 5.14% of AW2 weight |
| Maximum operating speed (semi-exclusive Guideway) | 100 km/h |
| Auxiliary power (per Vehicle) | 123.2kW |
| Nominal/full load voltage | 750 VDC |
| Maximum supply voltage | 900 VDC |
| Minimum supply voltage | 500 VDC |
| Maximum regenerated voltage | 900 VDC |
| Maximum line current per car | 2000A |
| Maximum regenerated line current | 2000A |
| Maximum tractive effort (torque) | 155.4 kN |
| Maximum acceleration at maximum tractive effort | 1.34 m/s ² |
| Maximum power (per Vehicle) | 1.2MW |
| Service braking rate | 1.34 m/s ² |
| Torque taper point | 27km/h |
| Power efficiency | 0.84 |
| Regenerative brake efficiency | 0.84 |
| Vehicle rolling resistance | $R = 1962.707 + 14.497v + 0.4387v^2$ |
| Vehicle rolling resistance (Tunnel) | $R = 1962.707 + 14.497v + 0.6581v^2$ |

APPENDIX B

REGULATED LOADS AND PROCESS LOADS

Table B1 Regulated Loads

| Regulated Load | Energy Use | | | Energy Utility | | Description | Sub-Metering | Painshare/ Gainshare |
|---|------------|----------------|-------------------|------------------|-------------|---|--------------|-------------------------|
| | OMSF Power | Traction Power | Interchange Power | Elec- tricity | Natural Gas | | | |
| Plug loads | Yes | No | Yes | ■ | | Personal computers, task lighting | Included | Included |
| Interior lighting | Yes | No | Yes | ■ | | Luminaires and lighting controls | Included | Included |
| Space heating | Yes | No | Yes | | ■ | Boilers and radiant heating within shelters | Included | Included |
| Steam plant (if any) | Yes | No | No | | ■ | Boilers | Included | Included |
| Humidification | Yes | No | Yes | ■ | ■ | Electric humidifiers, gas humidifier | Included | Included |
| Space cooling (air conditionings, chiller) | Yes | No | Yes | ■ | | Chillers | Included | Included |
| Dehumidification | Yes | No | Yes | ■ | | Chillers | Included | Included |
| Heat rejection (cooling tower, dry cooling) | Yes | No | Yes | ■ | | Cooling tower fans and pumps | Included | Included |

| Regulated Load | Energy Use | | | Energy Utility | | Description | Sub-Metering | Painshare/ Gainshare |
|--|------------|----------------|-------------------|------------------|----------------|---|--------------|-------------------------|
| | OMSF Power | Traction Power | Interchange Power | Elec- tricity | Natural Gas | | | |
| Ventilation fans (roof top unit, energy recovery ventilator) | Yes | No | Yes | ■ | ■ | Energy recovery ventilators, air handling units, exhaust fans, gas-fired units | Included | Included |
| Exterior lighting | Yes | No | Yes | ■ | | Luminaires and lighting controls | Included | Included |
| Escalators | No | No | Yes | ■ | | Escalators | Included | Included |
| Workshop equipment | Yes | No | No | ■ | | Electrical loads | Included | Included |
| HVAC pumps (domestic cold water, domestic hot water,, heating and cooling circulation) | Yes | No | Yes | ■ | | Heating, chilled water and domestic water circulation | Included | Included |
| Service water heating | Yes | No | Yes | ■ | ■ | Water heater | Included | Included |
| Traction Power and Revenue Vehicle auxiliary power on mainline | No | Yes | No | ■ | | Traction Power for mainline, including propulsion power, lighting, receptacle, heating, air conditioner, air compressor, emergency panel. | Included | Included |

| Regulated Load | Energy Use | | | Energy Utility | | Description | Sub-Metering | Painshare/ Gainshare |
|--|------------|----------------|-------------------|----------------|-------------|--|--------------|-------------------------|
| | OMSF Power | Traction Power | Interchange Power | Electricity | Natural Gas | | | |
| Traction Power and Revenue Vehicle auxiliary power at OMSF | No | Yes | No | ■ | | Traction Power at Hurontario OMSF including propulsion power, lighting, receptacle, heating, air conditioner, air compressor, emergency panel. | Included | Included |

Table B2 Process Loads

| Process Load | Energy Use | | | Energy Utility | | Description | Sub-Metering | Painshare/ Gainshare |
|--|------------|----------------|-------------------|------------------|-------------|---|--------------|-------------------------|
| | OMSF Power | Traction Power | Interchange Power | Elec- tricity | Natural Gas | | | |
| Emergency generators | Yes | No | Yes | ■ | ■ | Emergency Generators and Ancillary Equipment | Included | Excluded |
| Elevators | Yes | No | Yes | ■ | | Electric motors | Included | Excluded |
| Sump pumps | Yes | No | Yes | ■ | | Pump motor | Included | Excluded |
| Irrigation system pumps | Yes | No | Yes | ■ | | Pump motor | Included | Excluded |
| Life safety/ fire safety system energy | Yes | No | Yes | ■ | | Electrical loads | Included | Excluded |
| Security system | Yes | No | Yes | ■ | | Electrical loads | Included | Excluded |
| Communication/BACS/emergency systems | Yes | No | Yes | ■ | | Electrical loads | Included | Excluded |
| Signage, billboard, pylon sign | Yes | No | Yes | ■ | | Electrical loads | Included | Excluded |
| Retail Facilities | Yes | No | Yes | ■ | ■ | Restaurant gas appliances; retail electric appliances | Included | Excluded |
| Data server, information technology equipment, (e.g. UPS loads), cooling and ventilation electrical loads for data/information | Yes | No | Yes | ■ | | Electrical loads | Included | Excluded |

| Process Load | Energy Use | | | Energy Utility | | Description | Sub-Metering | Painshare/ Gainshare |
|--|------------|----------------|-------------------|----------------|-------------|--|--------------|-------------------------|
| | OMSF Power | Traction Power | Interchange Power | Elec-tricity | Natural Gas | | | |
| technology server room, air conditioning. | | | | | | | | |
| Food service, kitchen, server | Yes | | Yes | ■ | ■ | Cafeteria/kitchen gas and electrical appliance | Included | Excluded |
| Stops that are not Interchanges | | | Yes | ■ | | Electrical loads | Included | Excluded |
| Interchange(s) Emergency Ventilation | | | Yes | ■ | | Electrical loads | Included | Excluded |
| Receptacle loads for signage/ PVIS/ SCADA/ PA system/ FCS/ PAI | | | Yes | ■ | | Various electrical loads | Included | Excluded |
| Metered provision of Traction Power other than propulsion power and Revenue Vehicle auxiliary power not fed from the onboard Revenue Vehicle power system. | | Yes | | ■ | | S&TCS for mainline and Hurontario OMSF yard, including equipment at the OCC. | Included | Excluded |
| Switch heaters and air blowers | Yes | | Yes | ■ | | Electrically-powered switch heaters and air blowers | Included | Excluded |

APPENDIX C

ENERGY TARGET LETTER AND ENERGY MODEL

[REDACTED]

APPENDIX D

TABLES FOR ENERGY ANALYSIS REPORT

| Total Energy Utilities Summary | Actual Energy Consumption | | Corrected Target Energy Consumption | | Percent Variance between ii and iv | Actual Energy Consumption contribution to the Painshare Adjustment or Gainshare Adjustment |
|--------------------------------|---------------------------|------------------------|-------------------------------------|---|------------------------------------|--|
| | Usage (Unit of Energy) | Cost for Contract Year | Usage (Unit of Energy) | Corrected Cost for Contract Year (calculated based on Corrected Target Energy Consumption for all of the Energy Utilities multiplied by the weighted average unit cost of Energy Utilities) | | |
| | i | ii | iii | iv | v | vi |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Total | | | | | | |

| Day Type (from Operations Service Plan) | Period (from Operations Service Plan) | | Passenger Loading from Operational Service Plan at Commercial Close | Average Passenger Loading Contract Year | % variance between Planned Passenger Loading and Average Passenger Loading Contract Year |
|--|---|-------|--|--|---|
| | Start | End | | | |
| Weekday | 05:00 | 05:30 | | | |
| | 05:30 | 08:30 | | | |
| | 08:30 | 15:00 | | | |
| | 15:00 | 18:00 | | | |
| | 18:00 | 22:00 | | | |
| | 22:00 | 0:15 | | | |
| Saturday | 05:00 | 09:00 | | | |
| | 09:00 | 18:00 | | | |
| | 18:00 | 0:15 | | | |
| Sunday and Statutory Holiday | 07:00 | 11:00 | | | |
| | 11:00 | 18:00 | | | |
| | 18:00 | 23:45 | | | |

APPENDIX E**ENERGY PROTOCOL****1. PROTOCOL OBJECTIVES**

1.1 Contracting Authority and Project Co shall seek efficiencies in energy usage and cost and to minimize the same within the parameters described within the Project Agreement through the design, construction, operation and efficient occupancy of Project Co System Infrastructure.

2. ENERGY UTILITIES MANAGEMENT SUBCOMMITTEE AND CONTINUAL ADVICE

2.1 Project Co shall provide an energy monitoring, energy targeting and energy management service to Contracting Authority in accordance with the Energy Protocol.

2.2 A joint working group responsible for the management of the energy provisions within this Schedule 8 shall meet each quarter throughout the Operational Term to analyze, review and discuss the monitoring of and record taking from plant and equipment (carried out by Project Co in accordance with Attachment 1 to this Appendix E) to ensure continued optimum performance (the “**Quarterly Monitoring Meetings**”).

2.3 The joint working group shall be composed of three representatives nominated by Project Co and three representatives nominated by Contracting Authority (the “**Energy Utilities Management Subcommittee**”). Project Co will propose a detailed format and agenda for such Quarterly Monitoring Meetings no later than two weeks prior to each meeting (see Attachment 2 to this Appendix E for an example agenda). At the start of each Quarterly Monitoring Meeting, the Energy Utilities Management Subcommittee shall appoint one of its members to act as chairperson, ensuring that the position is held by a Project Co Representative and then a Contracting Authority Representative on an alternating basis.

2.4 In connection with the ongoing monitoring, Project Co shall provide quarterly projections for the consumption of energy for the forthcoming 12 months. Such projections will then be used by Contracting Authority for financial planning requirements.

2.5 Without prejudice to Project Co’s obligations as articulated in the Project Agreement, prime energy usage monitoring must be undertaken on a utility by utility basis by the provision of metering which must be data logged, the results of which will be one of the inputs at the Quarterly Monitoring Meetings. Further information as to the methods of monitoring is contained in Attachment 1 to this Appendix E.

2.6 Project Co shall ensure that Operations Director, Maintenance Director, and Energy Matters Manager (as set out in Schedule 9 – Key Individuals) attend the Quarterly Monitoring Meetings.

2.7 At the Quarterly Monitoring Meetings, Project Co will report on scheduled maintenance being undertaken together with unscheduled maintenance and emergency maintenance being undertaken relevant to energy consumption to ensure best operating efficiencies for the Hurontario OMSF and

Interchange(s) and the Energy Utilities Management Subcommittee will review and provide feedback on such report.

- 2.8 Project Co shall commit to altering the Annual Maintenance Work Schedule following receipt of feedback from the Energy Utilities Management Subcommittee in the form of the Monthly Energy Report and meeting minutes.
- 2.9 Project Co will be proactive at the Quarterly Monitoring Meetings and shall undertake annual regular value management reviews for the Hurontario OMSF and Interchange(s) to ascertain whether minor design alterations, technology changes or other technological enhancements will benefit lifecycle costing and further improved energy performance of the installations to the joint and equal benefit of the Parties. Contracting Authority may, but shall not be obliged to invoke the Variation Procedure, as outlined in Schedule 22 – Variation Procedure to the Project Agreement, in respect of any such suggestion.
- 2.10 In the event that the Parties and/or the Energy Utilities Management Subcommittee are unable to reach agreement on any of the matters covered in this Appendix E, such matter shall be determined using the Dispute Resolution Procedure as set out in Schedule 27 – Dispute Resolution Procedure.
- 2.11 Project Co shall identify and implement activities to achieve the following and report them to Contracting Authority at the Energy Utilities Management Subcommittee:
 - (a) control and efficient use of space heating and cooling;
 - (b) control and efficient use of lighting;
 - (c) control and efficient use of hot water;
 - (d) control and efficient use of plugged-in equipment;
 - (e) provide advice on how Contracting Authority could achieve the items set out in Sections 2.11(a) to 2.11(d) in the pursuit of Contracting Authority Activities;
 - (f) provide energy awareness campaigns for Project Co and Contracting Authority; and
 - (g) provide other relevant energy consumption advice to Contracting Authority.

3. INITIAL MONITORING

- 3.1 Project Co shall provide a report demonstrating that during the first three Contract Months the Systems are optimized to operate at peak efficiencies and that all energy reduction techniques that form part of the design are functioning correctly.
- 3.2 Energy measurements and meter readings shall be undertaken by Project Co on a calendar month basis during the first three Contract Months and Project Co shall provide a report on the measurements and readings to Contracting Authority.

4. REPORTING SERVICES

- 4.1 From the commencement of the Operational Term, Project Co shall provide to Contracting Authority a monthly report of the energy efficiency performance (each a “**Monthly Energy Report**”).
- 4.2 Each Monthly Energy Report following the completion of the Contract Month shall compare actual performance to date with the performance targets as required by this Schedule 8 and monthly monitoring of the Huronario OMSF and Interchange(s) shall include data on the thermal efficiency of the equipment providing water heating, air heating, and air cooling, and the operational efficiency of distribution systems to ensure continued optimum performance. It will also include trend analysis that will indicate malfunctions.

5. ENERGY MONITORING

- 5.1 All energy supplied to and used within the Huronario OMSF and Interchange(s) shall be monitored using a monitoring system, such as a building management system, capable of verification by Contracting Authority.

6. COMPLIANCE

- 6.1 Contracting Authority is entitled from time to time to appoint a Third Party Auditor of its choice and at its cost to monitor and check Project Co’s compliance with the provisions of this Appendix E. Project Co shall co-operate with any such Third Party Auditor and shall allow access to the Huronario OMSF and Interchange(s), all energy records, and all facilities management maintenance data as such Third Party Auditor may reasonably require.

7. CONTRACTING AUTHORITY AND PROJECT CO’S UNDERTAKINGS

- 7.1 Contracting Authority shall assist, and shall encourage the Contracting Authority Parties to assist, Project Co to achieve the energy consumption targets through the adoption of good housekeeping techniques, to be determined by the Energy Utilities Management Subcommittee in respect of lighting, water, office equipment and space heating and air conditioning, to be achieved through management and involvement of Contracting Authority staff. Contracting Authority will ensure that Contracting Authority Parties involve management staff in energy efficiency focus in order to incorporate good practice as part of Contracting Authority and Contracting Authority Parties’ overall activities.
- 7.2 Contracting Authority and Project Co recognize that the energy consumption targets can only be achieved with the co-operation of their staff and therefore respectively undertake that their commitment to and the commitment of Contracting Authority staff and Project Co staff, service providers and other relevant parties (as the case may be) to energy efficiency will be adopted throughout their respective organizations, to ensure that staff are aware of and have been encouraged to practise the energy saving policy so that Contracting Authority, Project Co, service providers and other relevant parties will prevent excessive energy usage. This will include without limitation:

- (a) providing their respective staff with information about why energy conservation is important, describing practical and environmental benefits;
- (b) stressing that most energy is used by building occupants;
- (c) informing staff of the minimum legal or design operation temperature requirements;
- (d) including energy efficiency briefing within staff familiarization, training and new staff inductions;
- (e) switching off equipment not in use or not required, including discouraging the leaving of equipment in standby mode where technically appropriate;
- (f) sharing energy use information with managers;
- (g) obtaining feedback from staff on measures to improve energy efficiency;
- (h) appointing managers, and energy monitors to implement good housekeeping measures as set out in Section 7.1 of this Appendix E; and
- (i) distributing appropriate promotional and publicity material to raise awareness of energy efficiency measures and achievements.

7.3 Project Co shall, and Contracting Authority may, produce annual reports for the Energy Utilities Management Subcommittee summarizing the measures set out in Section 7.2 of this Appendix E, including recommendations and suggestions received from staff to enhance energy efficiency for the Hurontario OMSF and Interchange(s).

7.4 Project Co shall ensure representatives of the Service Provider attend meetings of the Energy Utilities Management Subcommittee.

7.5 Contracting Authority shall advise at each quarterly meeting of the Energy Utilities Management Subcommittee of any operational changes which may affect utilities usage. This would include changes to the assumptions on which Project Co’s original energy consumption figures were calculated, including, material increases in occupancy levels, opening times and equipment levels.

7.6 Project Co shall undertake annual value management reviews for the services installations to ascertain whether minor design alterations, involving use of in-house resources, technology changes or other technological enhancements will benefit lifecycle costing and further improve energy performance of the installations. Any outputs of such value management exercises, which have the support of the Energy Utilities Management Subcommittee, will be considered by Project Co and Contracting Authority at the System Management Committee, which will then ascertain whether minor capital works are needed to continue to ensure best possible performance targets are achieved. Should work be required to increase energy efficiency then this will be dealt with through Schedule 22 – Variation Procedure.

- 7.7 Project Co shall not intentionally alter the proportions of different types of energy consumed from the proportions in the Energy Target Letter without the prior agreement of the Energy Utilities Management Subcommittee.

ATTACHMENT 1 TO APPENDIX E**OUTLINE OF ENERGY MONITORING PROCEDURES****1. INTRODUCTION**

- 1.1 The purpose of this Attachment 1 is to outline how energy consumption will be monitored and measured at the Hurontario OMSF and Interchange(s).

2. ENERGY MONITORING

- 2.1 Project Co shall provide, as a minimum, the metering required pursuant to Schedule 15 – Output Specifications and this Schedule 8 and the following metering within the Hurontario OMSF and Interchange (s):

- (a) electrical consumption;
- (b) natural gas consumption;
- (c) cold water consumption; and
- (d) any other energy consumption.

- 2.2 The metering for Facilities will be an integral part of the building management system, which will have the ability to record and log data regarding the energy consumption.

- 2.3 The data will be collected and presented in spreadsheet format or trend graphing allowing trends to be identified in the Monthly Energy Reports.

- 2.4 Once a database of monthly consumptions has been established any significant change which is apparent will be investigated.

3. VARIATION DUE TO WEATHER AND CLIMATE DATA

- 3.1 Project Co will use Weather Data and external temperature profiles from the building management system to assist in the evaluation of quarterly energy trends in the Monthly Energy Reports, particularly in the event that extreme seasonal temperatures or longer-term trends have been experienced.

4. VARIATIONS DUE TO END USERS' CONSUMPTION

- 4.1 Project Co will use available information to determine usage and where appropriate investigate the cause of any excess consumption. This will require a period of operation under steady state conditions to allow collection of a representative database.

- 4.2 A summary of the database described in Section 4.1 of this Attachment 1 to Appendix E will be included in the Monthly Energy Report.

4.3 Project Co will evaluate all deviations as part of its duties to the Energy Utilities Management Subcommittee. The results will be logged as either:

- (a) deficient maintenance requiring rectification;
- (b) external influences outside Project Co’s control (e.g. abnormal weather conditions);
- (c) deviations subject to Schedule 22 – Variation Procedure;
- (d) incidence of misuse of energy by Contracting Authority; and
- (e) incidence of misuse of energy by Project Co or any Project Co Party.

4.4 All deviations will be reviewed at the next Quarterly Monitoring Meeting where appropriate actions will be agreed.

4.5 In the event that the Energy Utilities Management Subcommittee is unable to agree on the cause or magnitude of the deviation, the matter shall be determined using Schedule 27 – Dispute Resolution Procedure.

5. ENERGY MANAGEMENT

Project Co will evaluate energy consumption patterns. This will maximize the benefit of the database and trend logging and enable the focus of energy awareness matters particularly where less than efficient use is suspected.

6. TOTAL ENERGY CONSUMPTION

6.1 Total energy consumption for the Hurontario OMSF and Interchange (s) will be recorded on a monthly basis and included in the Monthly Energy Report, identified separately for fossil (gas), electricity, and water consumption using industry standard units of measurement.

7. ONGOING VALUE ENGINEERING

Project Co will continue to evaluate new and existing technologies in respect of rising energy costs and advise where further investment could provide cost effective energy reductions.

ATTACHMENT 2 TO APPENDIX E

QUARTERLY MONITORING MEETING AGENDA

Meeting Title: Quarterly Monitoring Meeting of the Energy Utilities Management Subcommittee

For the Period: _____

Meeting Date: _____

Venue: _____

Attendees: Representatives of Project Co (including Operations Director, Maintenance Director, and Energy Matters Manager) and Contracting Authority,

Item 1 Apologies for absence

Item 2 Recorded energy consumption for the quarter:

Gas: _____

Electric: _____

Oil: _____

Potable water: _____

Item 3 Report on Weather Data for corresponding period

Item 4 Variations under Schedule 22 – Variation Procedure

Item 5 Actual Energy Consumption compared with Target Energy Consumption

Item 6 Review Painshare Adjustment and Gainshare Adjustment mechanisms

Item 7 Report on procedures

Item 8 Report on plant and systems performance and review of future planned maintenance program

Item 9 Review of energy trends and recommendations for improved energy efficiency and training

Item 10 Asset management and lifecycle issues

Item 11 New technologies and issues for consideration under ongoing value engineering

Item 12 Rolling 12-month annual energy totals

Item 13 Disputes subject to Schedule 27 – Dispute Resolution Procedure

Item 14 Any other business and date of next meeting

APPENDIX F

ENERGY PERFORMANCE MEASURES

| Reference | Requirement to be Met | Failure Type | Failure Category | Response Time | Rectification Time or Remedial Period | Maximum Frequency of Energy Failure Occurrence |
|---------------------------------|---|--------------|------------------|---------------|---------------------------------------|---|
| Energy Monitoring and Reporting | | | | | | |
| KPM-T-01 | Project Co shall submit the Energy Analysis Report in accordance with Section 4.4(a) and Section 5 of Schedule 8 – Energy Matters | EF | Major/ Medium | N/A | 30 days | One Major Energy Failure for the first Contract Month following the Contract Month when the report is due and one Medium Energy Failure per subsequent Contract Year until the expiry of the Project Agreement thereafter or delivery of the Energy Analysis Report |
| KPM-T-02 | Project Co shall ensure each meter and sub-meter is working at all times at least 360 cumulative days per year. | EF | Medium | N/A | 360 days | One Medium Energy Failure each per meter or sub-meter per Contract Year |
| KPM-T-03 | In the event any meter or sub-meter used in the calculation of painshare/gainshare is not working, including: <ul style="list-style-type: none"> No data readings Inaccurate data Readings show a greater change than +/- [REDACTED]% comparing current year data to previous year same time period(s) Intermittent data, missing data If data is missing for more than 48 consecutive hours | EF | Minor | N/A | 5 days | One Minor Energy Failure per meter or sub-meter per non-compliance not Rectified within the Rectification Time |
| KPM-T-04 | Actual total water consumption within a Contract Year is greater than [REDACTED]% of the Benchmark Water Target | EF | Minor | N/A | 360 days | One Minor Energy Failure per occurrence |

SCHEDULE 9

KEY INDIVIDUALS

Project Co may propose multiple Key Individuals where multiple Key Individuals are allowed, as set out in this Schedule 9. Where multiple Key Individuals are allowed, Project Co shall identify the lead for each position. The lead for that position would be responsible for all functions of each Key Individual listed for that position. The functions listed below for each Key Individual position are not intended to be an exhaustive list of the functions expected to be performed by each Key Individual position.

A. Key Individuals – Works

| Project Co Party | Category | Position | Function | Multiple Key Individuals Allowed | Name and Contact Information |
|-------------------------------|-----------------|-----------------------|--|---|-------------------------------------|
| Construction Contractor Party | A | Design Build Director | The Design Build Director shall be responsible for ensuring that all activities with respect to the Works are fully integrated with each other. | No. | [REDACTED] |
| Construction Contractor Party | A | Design Manager | The Design Manager shall be responsible for: <ul style="list-style-type: none"> (i) coordinating all designs produced by the Design Team; (ii) ensuring the schedule for Design Development Submittals is reflected in each update of the Project Works Schedules; (iii) coordinating with the Contracting Authority Representative, or its designate, to prioritize the review of each of the Works Submittals, if necessary; and (iv) ensuring obligations set out in Schedule 10 - Review Procedure are satisfied for each Works Submittal. | No. | [REDACTED] |

| Project Co Party | Category | Position | Function | Multiple Key Individuals Allowed | Name and Contact Information |
|-------------------------------|----------|--|--|----------------------------------|------------------------------|
| Construction Contractor Party | B | Construction Health and Safety Manager | The Construction Health and Safety Manager shall be responsible for all activities required to satisfy Project Co’s obligations in Schedule 29 – Construction Safety. | No | [REDACTED] |
| Construction Contractor Party | A | Systems Manager | <p>The Systems Manager shall be responsible for:</p> <ul style="list-style-type: none"> (i) coordinating all aspects of the system design and the integration of the Project Co System Infrastructure with all other HLRT Systems and subsystems as required, including Vehicles; (ii) ensuring all obligations of Schedule 15-2 – Design and Construction Requirements are satisfied for each systems element; and (iii) ensuring all obligations in accordance with Article 12 of Part 1 to Schedule 15-2 – Design and Construction Requirements are satisfied for systems integration. | No. | [REDACTED] |
| Construction Contractor Party | B | Utility Works Manager | The Utility Works Manager shall be responsible for all construction activities related to Utility Infrastructure required to satisfy Project Co’s obligations in Article 5 of Part 1 to Schedule 15-2 – Design and Construction Requirements. | No | [REDACTED] |
| Construction Contractor Party | B | Utility Infrastructure Design Manager(s) | The Utility Infrastructure Design Manager(s) shall be responsible for all Utility Infrastructure design aspects of the Project, including | [REDACTED] | [REDACTED] |

| Project Co Party | Category | Position | Function | Multiple Key Individuals Allowed | Name and Contact Information |
|-------------------------------|----------|--|--|----------------------------------|------------------------------|
| | | | design, coordination, preparation of Works Submittals, and interface with Governmental Authorities and Utility Companies. | | |
| Construction Contractor Party | B | Architecture, Landscape Architecture and Urban Design Lead | The Architecture, Landscape Architecture and Urban Design Lead shall be responsible for all architectural design, landscape and urban design aspects of the Project, including design, coordination, preparation of Works Submittals, and interface with Governmental Authorities. | No. | [REDACTED] |
| Construction Contractor Party | B | Civil, Drainage, and Stormwater Engineering Design Lead | The Civil, Drainage, and Stormwater Engineering Design Lead shall be responsible for all civil, guideway, roadway, drainage, and stormwater design aspects of the Project, including design, coordination, preparation of Works Submittals, and interface with Governmental Authorities. | No | [REDACTED] |
| Construction Contractor Party | B | Structural and Geotechnical Engineering Design Lead | The Structural and Geotechnical Engineering Design Lead shall be responsible for all structural and geotechnical design aspects of the Project, including but not limited to design, coordination, preparation of Works Submittals, and interface with Governmental Authorities. | No | [REDACTED] |
| Construction Contractor Party | B | Electrical Engineering Design Lead | The Electrical Engineering Design Lead shall be responsible for all design of electrical power, communications and Systems design aspects of the Project, | No | [REDACTED] |

| Project Co Party | Category | Position | Function | Multiple Key Individuals Allowed | Name and Contact Information |
|-------------------------------|----------|--|---|----------------------------------|------------------------------|
| | | | including but not limited to design, coordination, preparation of Works Submittals, and interface with Governmental Authorities. | | |
| Construction Contractor Party | B | Mechanical Engineering Design Lead | The Mechanical Engineering Design Lead shall be responsible for all mechanical systems, HVAC, and plumbing design aspects of the Project, including but not limited to design, coordination, preparation of Works Submittals, and interface with Governmental Authorities. | No. | [REDACTED] |
| Construction Contractor Party | B | Design Excellence Manager | The Design Excellence Manager shall be responsible for all coordination activities and technical oversight pertaining to the Design Excellence Principles + Requirements (as defined in Schedule 15 – Output Specifications) across all relevant disciplines on the Project, which includes ensuring the compliance of all architectural, urban realm, landscaping design, and user experience standards / policies that will be implemented. | No. | [REDACTED] |
| Project Co | A | Environmental Director | The Environmental Director shall have the responsibilities set out in Article 3.1 of Schedule 17 – Environmental Obligations. | No | [REDACTED] |
| Construction Contractor Party | A | Permits, Licences, and Approvals Manager | The Permits, Licences, and Approvals Manager shall be responsible for: (i) coordinating with the Design Team to ensure that the designs meet the requirements of | No. | [REDACTED] |

| Project Co Party | Category | Position | Function | Multiple Key Individuals Allowed | Name and Contact Information |
|-------------------------------|----------|--|---|----------------------------------|------------------------------|
| | | | Schedule 15 – Output Specifications; (ii) ensuring that external Stakeholder agencies (including the Municipalities, Credit Valley Conservation, City of Mississauga, City of Brampton, Region of Peel, etc.) are engaged when appropriate to obtain feedback as necessary; (iii) coordinating internal and external regulatory approval processes; (iv) managing relationships with external Stakeholder agencies, including Government Authorities; and (v) leading the coordination and the scheduling of meetings with Stakeholders, as needed. | | |
| Construction Contractor Party | B | Mobility Matters and Door Access Matters Manager | The Mobility Matters and Door Access Matters Manager shall be responsible for all activities required to satisfy Project Co’s obligations set out in Schedule 7 – Mobility Matters and Schedule 40 – Property Access Matters. | No. | [REDACTED] |
| Construction Contractor Party | A | Construction Manager(s) | The Construction Manager(s) shall be responsible for all Construction Activities and for ensuring Project Co’s compliance with respect to all Construction Activities under the Project Agreement. | [REDACTED] | [REDACTED] |
| Construction Contractor Party | B | Design Quality Manager | The Design Quality Manager shall be responsible for the Design Quality Management Plan. | No. | [REDACTED] |

| Project Co Party | Category | Position | Function | Multiple Key Individuals Allowed | Name and Contact Information |
|-------------------------------|----------|----------------------------------|--|----------------------------------|------------------------------|
| Construction Contractor Party | B | Construction Quality Manager | The Construction Quality Manager shall be responsible for the Construction Quality Management Plan. | No. | [REDACTED] |
| Construction Contractor Party | A | Quality Control Manager | The Quality Control Manager shall have the responsibilities set out in Section 3.4 of Schedule 11 – Quality Management. | No. | [REDACTED] |
| Construction Contractor Party | B | Traffic Manager | The Traffic Manager shall have the responsibilities set out in Article 4.2 of Part 7 to Schedule 15-2 – Design and Construction Requirements. | No. | [REDACTED] |
| Construction Contractor Party | A | Project Co Commissioning Manager | <p>The Project Co Commissioning Manager shall be responsible for:</p> <ul style="list-style-type: none"> (i) coordinating all aspects of the Commissioning Program of the Project Co Infrastructure, including planning, scheduling, coordinating and executing the commissioning of all Project Co System Infrastructure and Revenue Vehicles; (ii) ensuring Project Co Commissioning of all New Third Party Infrastructure in accordance with the approval procedures and design requirements of each of the Cities, and other third parties, as applicable; (iii) ensuring all obligations of Project Co in Schedule 14 – Commissioning are satisfied, including | No. | [REDACTED] |

| Project Co Party | Category | Position | Function | Multiple Key Individuals Allowed | Name and Contact Information |
|-------------------------------|----------|-------------------------|---|----------------------------------|------------------------------|
| | | | (iv) compliance with Schedule 15 – Output Specifications; and coordinating with the Contracting Authority Representative, Independent Certifier and third parties to prioritize the review of each Commissioning Submittal. | | |
| Construction Contractor Party | B | Revenue Vehicle Manager | The Revenue Vehicle Manager shall be required to satisfy Project Co’s obligations with respect to Revenue Vehicles. | No. | [REDACTED] |
| Construction Contractor Party | B | Project Scheduler | The Project Scheduler shall be required to satisfy Project Co’s obligations set out in Schedule 12 – Works Schedule Requirements. | No | [REDACTED] |

B. Key Individuals – Project Co Services

| Project Co Party | Category | Position | Function | Multiple Key Individuals Allowed | Name and Contact Information |
|------------------------|----------|---|---|----------------------------------|------------------------------|
| Service Provider Party | A | Project Co Services General Manager | The Project Co Services General Manager shall have the responsibilities set out in Section 2.5 of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | No. | [REDACTED] |
| Service Provider Party | A | Operations Director | The Operations Director shall have the responsibilities set out in Section 2.6(a) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | No. | [REDACTED] |
| Service Provider Party | B | Operations Manager(s) | The Operations Manager(s) shall have the responsibilities set out in Section 2.6(b) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. [Note: The information in this row is to be provided by Project Co to Contracting Authority on or before the date that is two years prior to the Scheduled Substantial Completion Date.] | Yes. | [REDACTED] |
| Service Provider Party | A | Maintenance Director | The Maintenance Director shall have the responsibilities set out in Section 2.7(a) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | No. | [REDACTED] |
| Service Provider Party | B | Maintenance Manager(s) for Fixed Infrastructure | The Maintenance Manager(s) for Fixed Infrastructure shall have the responsibilities set out in Section 2.7(b) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. [Note: The information in this row is to be provided by Project Co to Contracting Authority on or before the date that is two years | Yes. | [REDACTED] |

| Project Co Party | Category | Position | Function | Multiple Key Individuals Allowed | Name and Contact Information |
|------------------------|----------|--|--|----------------------------------|------------------------------|
| | | | prior to the Scheduled Substantial Completion Date.] | | |
| Service Provider Party | B | Maintenance Manager for Revenue Vehicles | <p>The Maintenance Manager for Revenue Vehicles shall have the responsibilities set out in Section 2.7(c) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements.</p> <p>[Note: The information in this row is to be provided by Project Co to Contracting Authority on or before the date that is two years prior to the Scheduled Substantial Completion Date.]</p> | No. | [REDACTED] |

C. Key Individuals – Works and Project Co Services

| Project Co Party | Category | Position | Function | Multiple Key Individuals Allowed | Name and Contact Information |
|-------------------------------|----------|---------------------------------|--|----------------------------------|------------------------------|
| Project Co | A | Project Co Representative | The Project Co Representative shall have the applicable responsibilities set out in the Project Agreement. | No. | [REDACTED] |
| Construction Contractor Party | B | Chief Safety & Security Officer | <p>The Chief Safety & Security Officer shall be responsible for the safety and security of the Project, including,</p> <ul style="list-style-type: none"> (i) the design, implementation and certification of the Works; (ii) the development and implementation of the Safety Management Plan, Security Management Plan, and Emergency Response Plan; (iii) safety and security performance; (iv) participation in the Safety and Security Management Committee; and (v) acting as the point of contact with Contracting Authority in respect of the system safety | No. | [REDACTED] |

| | | | | | |
|-------------------------------|---|---|---|------------|------------|
| | | | and security activities. | | |
| Project Co | A | Quality Director | The Quality Director shall have the responsibilities set out in Article 3.2 of Schedule 11 – Quality Management. | No. | [REDACTED] |
| Construction Contractor Party | A | Health and Safety Director | The Health and Safety Director shall be responsible for developing safety, security, health and environmental policies, standards and programs for employee and passenger activities; regulatory affairs; and emergency preparedness and ensuring business continuity systems are in place. | No. | [REDACTED] |
| Service Provider Party | B | Energy Matters Manager | The Energy Matters Manager shall be responsible for all activities required to satisfy Project Co’s obligations set out in Schedule 8 – Energy Matters. | No. | [REDACTED] |
| Construction Contractor Party | A | Communications and Public Engagement Lead | The Communications and Public Engagement Lead shall be responsible for all activities required to satisfy Project Co’s obligations in Schedule 18 – Communication and Public Engagement Protocol. | No. | [REDACTED] |
| Construction Contractor Party | B | Environmental Manager(s) | The Environmental Manager(s) shall have the responsibilities set out in Article 3.2 of Schedule 17 – Environmental Obligations | [REDACTED] | [REDACTED] |

SCHEDULE 10**REVIEW PROCEDURE****PART A – WORKS****1. WORKS SUBMITTALS**

- 1.1** The provisions of Part A of this Schedule 10 shall apply to the Design Development Submittals, the Construction Document Submittals, the Design Data and any and all items, documents and anything else required or specified by the Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by Contracting Authority in accordance with the Review Procedure prior to Substantial Completion, or after Substantial Completion in respect of the completion of Minor Deficiencies, and in respect of the rectification of any Works, Project Co System Infrastructure, and New Third Party Infrastructure, or any part thereof as required pursuant to Section 20.1(b) of the Project Agreement, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Works Submittal**” or “**Works Submittals**” as applicable in Part A of this Schedule 10). For greater certainty and without limiting the generality of any of the foregoing, Works Submittals shall include any and all items, documents and anything else required or specified by Appendix A, Appendix C, Appendix D, Appendix E, Appendix F, Appendix G, and Appendix H.
- 1.2** For clarity, the provisions of Part A of this Schedule 10, including any deadlines for submission or review set out herein, shall not apply to any processing or review of any Permit, Licence or Approval.
- 1.3** Subject to Section 1.2, if the City of Mississauga, City of Brampton or Region of Peel fails to meet the timelines set out in this Schedule 10 with respect to its review of any Submittals, such failure shall be deemed to be a failure by Contracting Authority to comply with the timelines set out in this Schedule 10.

2. SCHEDULE FOR WORKS SUBMITTALS

- 2.1** Project Co shall allow the following review periods for Works Submittals for the review of and response to such Works Submittals:
- (a) 30 Business Days following receipt thereof for each of the Quality Plans, Environmental Management Plan, Safety Management Plan, Security Management Plan, Emergency Response Plan, Stormwater Management Plan, and Traffic and Transit Management Plan;
 - (b) the number of Business Days following receipt thereof for each Works Submittal for the New Third Party Infrastructure described in Section 2.2; and

- (c) 15 Business Days following receipt thereof for each other Works Submittal (including, for clarity, each Project Works Schedule) and each Service Submittal that is required to be submitted prior to Substantial Completion,

except that the Business Days during the period beginning on December 23 in a year and ending on January 1 in the following year are not to be included in the computation of time for the review of and response to any Works Submittal.

2.2 The Interim Baseline Works Schedule and the Baseline Works Schedule and any amendment thereto shall allow:

- (a) for each Works Submittal for New City of Mississauga Infrastructure, the period of time as set forth in Appendix C to this Schedule 10 (beginning on the date of the City of Mississauga's determination that the applicable Works Submittal is complete), plus an additional 5 Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority's review of and response (in concert with such City) to each Works Submittal for New City of Mississauga Infrastructure;
- (b) for each Works Submittal for New City of Brampton Infrastructure, the period of time as set forth in Appendix D to this Schedule 10 (beginning on the date of the City of Brampton's determination that the applicable Works Submittal is complete), plus an additional 5 Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority's review of and response (in concert with such City) to each Works Submittal for New City of Brampton Infrastructure;
- (c) for each Works Submittal for New Region of Peel Infrastructure, the period of time as set forth in Appendix E to this Schedule 10 (beginning on the date of the Region of Peel's determination that the applicable Works Submittal is complete), plus an additional 5 Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority's review of and response (in concert with the Region) to each Works Submittal for New Region of Peel Infrastructure;
- (d) for each Works Submittal for MTO-Reviewed Infrastructure (as defined in Appendix F to this Schedule 10), the period of time as set forth in Appendix F to this Schedule 10 (beginning on the date of MTO's determination that the applicable Works Submittal is complete), plus an additional 5 Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority's review of and response (in concert with MTO) to each Works Submittal for MTO-Reviewed Infrastructure;
- (e) for each Works Submittal for New 407 ETR Infrastructure, the period of time as set forth in Appendix G to this Schedule 10 (beginning on the date of 407 ETR's determination that the applicable Works Submittal is complete), plus an additional 5 Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority's review of and response (in concert with 407 ETR) to each Works Submittal for New 407 ETR Infrastructure; or

- (f) for each Works Submittal for New Metrolinx Infrastructure, 15 Business Days, plus an additional 5 Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority's review of and response (in concert with GO Transit) to each Works Submittal for New Metrolinx Infrastructure.

2.3 Unless Contracting Authority otherwise agrees in writing, where the Project Agreement indicates that a Works Submittal is to be developed and submitted for review pursuant to this Schedule 10 on a consecutive basis following its progressed development from a previous submission of such Works Submittal pursuant to this Schedule 10, Project Co shall:

- (a) submit such Works Submittal on a progressed and consecutive basis as indicated in this Schedule 10; and
- (b) only submit the subsequent progressed submission of such Works Submittal after Project Co becomes obligated to comply with and implement the previous submission of such Works Submittal in accordance with Section 4.2 or Section 4.4.

2.4 If, at any time, any or all of:

- (a) Project Co submits an unusually large number or volume of Works Submittals not contemplated by, as applicable, the Interim Baseline Works Schedule or the Baseline Works Schedule; or
- (b) a Works Submittal was, or Works Submittals were, received for review later than indicated in, as applicable, the Interim Baseline Works Schedule or the Baseline Works Schedule, such that the Contracting Authority Representative cannot review the Works Submittal or Works Submittals within the time permitted in such schedule,

then the Contracting Authority Representative shall, within 5 Business Days of receipt of such Works Submittal or Works Submittals, provide Project Co with a reasonable estimate of the time necessary for processing such Works Submittal or Works Submittals which estimate Project Co shall take into account for the purposes of updating the applicable Project Works Schedules.

3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS

3.1 Unless otherwise specified by the Contracting Authority Representative, Project Co shall issue printed copies of all Works Submittals to Contracting Authority, together with electronic copies in the number of copies and in the format set out in Appendix A, Appendix C, Appendix D, Appendix E, Appendix F, Appendix G, and Appendix H, as applicable, to this Schedule 10, or as prescribed by Contracting Authority acting reasonably, including an electronic copy in native file format if requested by the Contracting Authority Representative and one printed copy of each Works Submittal to the Independent Certifier.

3.2 Project Co shall, at its own cost and risk, compile and maintain a Review Procedure Activities Register, to track the status of each Works Submittal through every stage of preparation, submission, review by Contracting Authority, and approval by the applicable third party. Project

Co shall submit documentation on the proposed design, functionality, and usage of the Review Procedure Activities Register to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure no later than Financial Close. The Review Procedure Activities Register shall:

- (a) be updated on a daily basis by Project Co and be accessible by Contracting Authority, each applicable third party and any other entity as requested by Contracting Authority and Project Co, in real time, through a web-based interface, unless otherwise permitted by Contracting Authority;
- (b) be operational no later than the date upon which the first Works Submittal is submitted; and
- (c) address the requirements of the “Review Procedure Activities Register” set forth in the definition of Review Procedure Activities Register and include identification of each of the following:
 - (A) the submittal date and contents of all Works Submittals;
 - (B) the date of receipt and content of all returned Works Submittals;
 - (C) status of comments on all Work Submittals in accordance with Section 4.1;
 - (D) log numbers or tracking ID’s (in a format determined by Contracting Authority) supporting the requirements of Section 3.7; and
- (d) other items as requested by Contracting Authority.

3.3 All Works Submittals shall be in English.

3.4 All Works Submittals required by the Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional engineers, professional geo-scientists, architects or landscape architects) shall be so signed and sealed.

3.5 All Works Submittals shall:

- (a) include copies of all documents to be reviewed; and
- (b) shall clearly identify the purpose of the Works Submittal, Project Co’s proposed course of action relating to the Works Submittal and the Project Operations that are the subject of the Works Submittal.

3.6 All Works Submittals shall, where applicable, refer to and be in accordance with:

- (a) the relevant provisions of the Output Specifications, any other applicable Schedule to the Project Agreement and to any Design Data that has previously been subject to review;
- (b) the relevant provisions of Appendix A to this Schedule 10 for Design Development Submittals and Construction Document Submittals;
- (c) the relevant provisions of Appendix C, Appendix D, and Appendix E to this Schedule 10 for process and approvals protocols (including design submission milestones) for New Municipal Infrastructure;
- (d) the provisions of Appendix F to this Schedule 10 for design and construction submittal content, design submission milestones, certification process and approvals protocols (including MTO review meetings) for MTO-Reviewed Infrastructure (as defined in Appendix F to this Schedule 10);
- (e) the relevant provisions of Appendix G to this Schedule 10 for design and construction submittal content, design submission milestones, certification process and approvals protocol for New 407 ETR Infrastructure; and
- (f) the relevant provisions of Appendix H to this Schedule 10 for process and approvals protocols for New Metrolinx Infrastructure.

3.7 Each Works Submittal shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation submitted in both soft copy and hard copy, which shall include:

- (a) a list of all attached Works Submittals and for each Works Submittal;
- (b) identification of whether the Works Submittal contains Project Co System Infrastructure, New City of Mississauga Infrastructure, New City of Brampton Infrastructure, New Metrolinx Infrastructure, New 407 ETR Infrastructure, New MTO Infrastructure, New Region of Peel Infrastructure, New Railway Company Infrastructure and/or other New Third Party Infrastructure;
- (c) the document number(s) or drawing number(s);
- (d) the “Item #” and “Title/Description(s)” within Appendix A to this Schedule 10 applicable to such Works Submittal, including a list of the specific submission requirements being addressed;
- (e) revision numbers;
- (f) document or drawing title(s);
- (g) name of entity that prepared the Works Submittal;

- (h) name and signature of the Design Manager and other Key Individual(s) responsible for content of the Works Submittal;
 - (i) the Works Submittal history, including reviewer and checker initials, date and delivery information, log number of all previous submissions of that Works Submittal, Project Agreement provisions, comments from reviewers from the previous Works Submittal, all outstanding comments, and responses to addressing those comments, all submitted in a format determined by Contracting Authority; and
 - (j) identification of any previous Works Submittal superseded by the current Works Submittal.
- 3.8** To facilitate Contracting Authority's distribution of Works Submittals to each City, MTO, 407 ETR, Region of Peel, GO Transit and Railway Company Owners, all Works Submittals that are to be reviewed by a City, MTO, 407 ETR, Region of Peel, GO Transit or a Railway Company Owner, shall be separated accordingly and submitted individually, to the extent possible. Project Co shall ship any required printed copies directly to each reviewing recipient's identified point of contact.
- 3.9** Each Works Submittal shall be organized and shall have indexes and sectional dividers. Each Works Submittal shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the final calculations, reports and backup information. All Works Submittals shall include, without limitation, copies of all final approvals, design reports, correspondence and calculations, in both electronic and hard copy.
- 3.10** All Works Submittals shall include sufficient information to demonstrate that Project Co has met its obligations with respect to the Output Specifications, including:
- (a) information that demonstrates that the Design Development Submittals and Construction Document Submittals meet the Project Co Services Requirements;
 - (b) information that Design Development Submittals and Construction Document Submittals have taken into account the needs of the Service Provider; and
 - (c) description of the proposed arrangements for operation, inspection, Custodial Maintenance, Preventive Maintenance, and Corrective Maintenance as defined in Schedule 15-1 – Technical Terms and Reference Documents throughout the Operational Term.
- 3.11** If a Proposal Part corresponds to a Works Submittal, then Project Co shall ensure that its initial submission of such Works Submittal in accordance with this Schedule 10 is substantially the same content and level of detail as the corresponding Proposal Part. For clarity, this requirement shall not,

- (a) lessen, reduce or otherwise modify or amend Contracting Authority’s rights under the Project Agreement to review each Works Submittal in accordance with this Schedule 10; or
- (b) constitute acceptance or comment by Contracting Authority of any Proposal Part or any Works Submittal in accordance with Schedule 10 – Review Procedure.

4. COMMENTS

4.1 The Contracting Authority Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.1. The Contracting Authority Representative shall return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following 4 comments:

- (a) “NO COMMENT”;
- (b) “MINOR NON-CONFORMANCE”;
- (c) “MAJOR NON-CONFORMANCE”; or
- (d) “CRITICAL NON-CONFORMANCE”.

4.2 The comment “NO COMMENT” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Representative, generally conforms to the requirements of the Project Agreement. Project Co shall comply with and implement such Works Submittal.

4.3 For each Works Submittal that requires approval from third parties the Contracting Authority Representative may not issue a “NO COMMENT” or a “MINOR NON-CONFORMANCE” comment if the applicable third party has not issued a similar comment to such Work Submittal.

4.4 The comment “MINOR NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Representative, contains any Minor Non-Conformance but does not contain any Major Non-Conformance or Critical Non-Conformance. Project Co shall correct such Works Submittal and shall comply with and implement such Works Submittal after correction, including in accordance with the comments. If the Contracting Authority Representative assigns to a Works Submittal the additional comment “RE-SUBMIT”, Project Co shall correct and re-submit such Works Submittal to the Contracting Authority Representative no later than 20 Business Days after the comment has been provided to Project Co, or such longer time period as determined by the Contracting Authority Representative, acting reasonably and as set out in writing. If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped “MINOR NON-CONFORMANCE”, then Project Co will be required to modify the Works Submittals and Project Operations as required to ensure that the Works comply with the Output Specifications, any other applicable Schedule to the Project Agreement, and the Project Co Proposal Extracts and Project Co may be required, at the Contracting Authority Representative’s discretion, to resubmit the relevant Works Submittals. In such circumstances the Contracting Authority Representative shall act promptly in

considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

- 4.5** The comment “MAJOR NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Representative, contains any Major Non-Conformance but does not contain any Critical Non-Conformance. The comment “CRITICAL NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Representative contains any Critical Non-Conformance. Project Co shall correct and re-submit such Works Submittals within 10 Business Days after the comment “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” has been provided to Project Co, or such longer time period, as determined by the Contracting Authority Representative, acting reasonably and as set out in writing. The Contracting Authority Representative will then review such re-submitted Works Submittal and assign a comment to the corrected Works Submittal. The Works Submittal shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal. In addition to the above, a Works Submittal with a “CRITICAL NON-CONFORMANCE” comment will be a Proceeding at Risk Matter in accordance with Section 11.6(a)(ii) of the Project Agreement.
- 4.6** Where the Contracting Authority Representative issues the comment “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE”, the Contracting Authority Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of the Project Agreement that the Works Submittal fails to satisfy, and, if requested by the Project Co Representative, the Contracting Authority Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 4.7** If, at any time after assigning any comment to a Works Submittal, the Contracting Authority Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of the Project Agreement, the Contracting Authority Representative may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Section 5 that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.8** For the purpose of facilitating and expediting the review and correction of Works Submittals, the Contracting Authority Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.9** Where a Works Submittal is voluminous, the Contracting Authority Representative at his or her discretion may elect to issue the appropriate comment only to the cover page or first sheet of the Works Submittal, if any, and return to Project Co 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 Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by Contracting Authority.

- 4.10** In lieu of returning a Works Submittal, the Contracting Authority Representative may, by letter, notify Project Co of the comment assigned to the Works Submittal and if such comment is “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE”, the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.
- 4.11** Subject to Section 10.2, Contracting Authority acknowledges and agrees that to the extent any Works Submittal incorporates therein any VSC Submittal (as such term is defined in the Revenue Vehicle Supply Contract) having been generated by the Revenue Vehicle Manufacturer pursuant to the Revenue Vehicle Supply Contract and furnished thereunder to Construction Contractor for information purposes only, such VSC Submittal shall not be subject to comment by Contracting Authority.

5. DISPUTES

- 5.1** If Project Co disputes any act of Contracting Authority or the Contracting Authority Representative in respect of a Works Submittal under this Part A, Project Co shall promptly notify the Contracting Authority Representative and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Contracting Authority Representative shall review the Works Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the Contracting Authority Representative confirms the original comment, Project Co may request that the Independent Certifier resolve the Dispute and render a decision within 5 Business Days of such request.
- 5.2** If either Party is not satisfied, acting reasonably, with the resolution of the Independent Certifier, subject to Section 10.2 either Party may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.
- 5.3** Notwithstanding the provisions of Sections 5.1 and 5.2, the Contracting Authority Representative may direct that Project Co revise the Works Submittals in accordance with the comments of the Contracting Authority Representative and proceed to perform and complete the Works on the basis of such revised Works Submittals. For clarity, such direction shall be considered a Dispute and Project Co may proceed in accordance with this Section 5 and Schedule 27 – Dispute Resolution Procedure.

6. EFFECT OF REVIEW

- 6.1** Any review and comment by Contracting Authority or the Contracting Authority Representative of any Works Submittals are for general conformity to the obligations and requirements of the Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of Project Co’s obligations under and

requirements of the Project Agreement, and shall not create any new or additional obligations or liabilities for Contracting Authority. Without limiting the generality of the foregoing any and all errors or omissions in Works Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities in respect of the Works under the Project Agreement or exclude or limit Contracting Authority's rights in respect of the Works under the Project Agreement.

7. WORKS SUBMITTAL EXPLANATION

7.1 At any time, the Contracting Authority Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co's consultants and any other relevant personnel, at no additional cost to Contracting Authority, to explain to the Contracting Authority Representative and Contracting Authority's advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications or any other Schedule to the Project Agreement, as applicable. Project Co shall provide the explanation to the Contracting Authority Representative within 5 Business Days (or such longer period as the Parties may agree) from the date of receipt of the request from the Contracting Authority Representative.

8. REVISIONS

8.1 Project Co shall ensure that each Works Submittal keeps the same, unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.

8.2 Re-submittals shall clearly show all revisions from the previous Works Submittal. For printed copies, 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. Project Co shall use a consistent format for mark-ups of documents (e.g. deletions struck out and additions underscored). Project Co shall clearly mark revised portions of drawings (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and shall include the revision number and description of the revision on the drawing.

8.3 Re-submittals shall include all required revised documents, all documents submitted in the previous Works Submittal that do not require revisions and all responses to comments provided by Contracting Authority associated with the Works Submittal.

8.4 Project Co shall ensure that all revisions on print media be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and identify the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the Record Drawings.

- 8.5** Project Co shall keep all Design Data current. If any Design Data is revised as part of a Works 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 Works Submittal to which it relates.
- 8.6** Works Submittals that are replacements in kind shall keep the original submittal number with the next sequential revision number.
- 9. AUDIT BY THE CONTRACTING AUTHORITY REPRESENTATIVE**
- 9.1** Without limiting any other right under the Project Agreement, the Contracting Authority Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.
- 9.2** If during an audit or at any other time it is discovered by Contracting Authority or Project Co (or resolved pursuant to Section 9.3) that any Works Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the Project Operations to which they relate and shall advise the Contracting Authority Representative of all such corrections and modifications.
- 9.3** Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1, shall be referred in the first instance to the Independent Certifier for resolution.
- 10. VARIATIONS**
- 10.1** No alteration or modification to the design, quality and quantity of the Project Operations arising from the development of detailed design or from the co-ordination of the design in connection with any Works Submittal shall be construed or regarded as a Variation.
- 10.2** If, having received comments from the Contracting Authority Representative on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written Notice to Contracting Authority of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, Contracting Authority may, at its election, issue a Variation Enquiry (which shall be dealt with in accordance with Schedule 22 - Variation Procedure) or amend their comment on the Works Submittal. If the Parties do not agree that a Variation would arise if the comments were complied with, either party may proceed to resolve the matter in accordance with Section 5.3, including for clarity, the exercise by Contracting Authority of its rights under Section 5.3. Subject to the foregoing sentence, any failure by Project Co to notify Contracting Authority in accordance with this Section 10.2 that Project Co considers that compliance with any comments of the Contracting Authority Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the Contracting Authority Representative's comments shall be without cost to Contracting Authority and without any extension of time.

11. GENERAL

- 11.1** Any capitalized terms used in the appendices to this Schedule 10 – Review Procedure, that are not defined in this Schedule 10 – Review Procedure or in Schedule 1 – Definitions and Interpretation, shall have the meanings given to them in Schedule 15-1 – Technical Terms and Reference Documents.

SCHEDULE 10**REVIEW PROCEDURE****PART B – OPERATIONAL TERM – PROJECT CO SERVICES****1. SERVICE SUBMITTALS**

- 1.1** The provisions of Part B of this Schedule 10 shall apply to any and all items, documents and anything else required or specified by the Project Agreement (other than the Design Development Submittals, the Construction Document Submittals and the Design Data) to be submitted to, reviewed or otherwise processed by Contracting Authority in accordance with the Review Procedure in respect of the Project after Substantial Completion, except in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Service Submittal**” or “**Service Submittals**” as applicable in Part B of this Schedule 10). For greater certainty and without limiting the generality of any of the foregoing, Service Submittals includes any and all of the items, documents and anything else required or specified by Appendix B.
- 1.2** For clarity, the provisions of Part B of this Schedule 10, including any deadlines for submission or review set out herein, shall not apply to any processing or review of any Permit, Licence or Approval.
- 1.3** Project Co shall allow a period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt for the review of and response to each Service Submittal, except that the Business Days during the period beginning on December 23 in a year and ending on January 1 in the following year are not to be included in the computation of time for the review of and response to any Service Submittal.
- 1.4** Project Co shall, in scheduling Service Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the Service Submittals, for review of the Service Submittals and for Project Co to make changes to Service Submittals that may be required if comments are received on the Service Submittals, such review and required changes to be in accordance with Part B of this Schedule 10.

2. GENERAL REQUIREMENTS FOR SERVICE SUBMITTALS

- 2.1** Unless otherwise specified by the Contracting Authority Representative, Project Co shall issue 3 printed copies of all Service Submittals to Contracting Authority, together with an electronic copy in a format agreed by the Parties acting reasonably.
- 2.2** Project Co shall utilize the Review Procedure Activities Register provided in accordance with the requirements of Section 3.2 of Part A of this Schedule 10, to track the status of each Service Submittal through every stage of preparation, submission, review by Contracting Authority, and

approval by the applicable third party. The Review Procedure Activities Register shall be maintained in respect of Service Submittals at all times during the Operational Term and shall:

- (a) be maintained up-to-date by Project Co and be accessible by Contracting Authority, each applicable third party, any other entity as requested by Contracting Authority and Project Co in real time, through a web-based interface, unless otherwise permitted by Contracting Authority;
- (b) include identification of the following:
 - (A) the submittal date and contents of all Service Submittals;
 - (B) the date of receipt and content of all returned Service Submittals;
 - (C) the status of comments on all Service Submittals in accordance with Section 3.1;
 - (D) log numbers or tracking ID's (in a format determined by Contracting Authority) supporting the requirements of Section 2.7; and
 - (E) other items as requested by Contracting Authority.

2.3 All Service Submittals shall be in English.

2.4 All Service Submittals required by the Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional engineers or architects) shall, where applicable, be so signed and sealed.

2.5 All Service Submittals shall:

- (a) include copies of all documents to be reviewed; and
- (b) shall clearly identify the purpose of the Service Submittal, Project Co's proposed course of action relating to the Service Submittal and the Project Operations that are the subject of the Service Submittal.

2.6 All Service Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications and/or any other applicable Schedule to the Project Agreement.

2.7 All Service Submittals shall be clearly identified as a Service Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Service Submittals, and for each Service Submittal:

- (a) the document number(s) or drawing number(s);
- (b) revision numbers;

- (c) document or drawing title(s);
- (d) name of entity that prepared the Service Submittal;
- (e) name and signature of the Operations Director, Maintenance Director and/or other Key Individual(s) responsible for content of the Service Submittal;
- (f) the Service Submittal history showing date and delivery information and/or log number of all previous submissions of that Service Submittal; and
- (g) identification of any previous Service Submittal superseded by the current Service Submittal.

2.8 All Service Submittals shall be organized and shall have indexes and sectional dividers. The Service Submittals shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the final calculations, reports and backup information. Submissions shall include, without limitation, copies of all final approvals, design reports, correspondence and calculations.

2.9 If a Proposal Part corresponds to a Service Submittal, then Project Co shall ensure that its initial submission of such Service Submittal in accordance with this Schedule 10 is substantially the same content and level of detail as the corresponding Proposal Part. For clarity, this requirement shall not,

- (a) lessen, reduce or otherwise modify or amend Contracting Authority’s rights under the Project Agreement to review each Service Submittal in accordance with this Schedule 10; or
- (b) constitute acceptance or comment by Contracting Authority of any Proposal Part or any Service Submittal in accordance with Schedule 10 – Review Procedure.

3. COMMENTS

3.1 The Contracting Authority Representative shall review and respond to each Service Submittal in accordance with the time periods specified in Section 1.3. The Contracting Authority Representative shall return Service Submittals to Project Co and assign one of the following 4 comments:

- (a) “NO COMMENT”;
- (b) “MINOR NON-CONFORMANCE”;
- (c) “MAJOR NON-CONFORMANCE”; or
- (d) “CRITICAL NON-CONFORMANCE”.

- 3.2** The comment “NO COMMENT” will be assigned to those Service Submittals that, in the opinion of the Contracting Authority Representative, conform to the requirements of the Project Agreement. Project Co shall comply with and implement such Service Submittals.
- 3.3** For Service Submittals that require approval from third parties, the Contracting Authority Representative may not issue a “NO COMMENT” or a “MINOR NON-CONFORMANCE” comment if the applicable third party has not approved those Service Submittals.
- 3.4** The comment “MINOR NON-CONFORMANCE” will be assigned to those Service Submittals that, in the opinion of the Contracting Authority Representative, generally conform to the requirements of the Project Agreement, but in which immaterial deficiencies have been found by the Contracting Authority Representative’s review. Project Co shall correct these Service Submittals and shall comply with and implement such Service Submittals after correction, including in accordance with the comments. If the Contracting Authority Representative assigns to a Service Submittal the additional comment “RE-SUBMIT”, Project Co shall correct and re-submit such Service Submittal to the Contracting Authority Representative no later than 20 Business Days after the comment has been provided to Project Co, or such longer time period as determined by the Contracting Authority Representative, acting reasonably and as set out in writing. If at any time it is discovered that Project Co has not corrected the deficiencies on Service Submittals stamped “MINOR NON-CONFORMANCE”, then Project Co will be required to modify the Service Submittals and Project Operations as required to ensure that the Project Operations comply with the Output Specifications and Project Co may be required, at the Contracting Authority Representative’s discretion, to resubmit relevant Service Submittals. In such circumstances the Contracting Authority Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 3.5** The comment “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” will be assigned to those Service Submittals that, in the opinion of the Contracting Authority Representative, contain significant deficiencies or do not generally conform with the requirements of the Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these Service Submittals within 10 Business Days after the comment has been provided to Project Co, or such longer time period, as determined by the Contracting Authority Representative, acting reasonably and as set out in writing. The Contracting Authority Representative will then review such re-submitted Service Submittals and assign a comment to the corrected Service Submittal. The Service Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal. In addition to the above, a Service Submittal with a “CRITICAL NON-CONFORMANCE” comment shall be escalated to the System Management Committee.
- 3.6** Where the Contracting Authority Representative issues the comment “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE”, the Contracting Authority Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of the Project Agreement that the Service

Submittal fails to satisfy, and, if requested by the Project Co Representative, the Contracting Authority Representative shall meet with the Project Co Representative to discuss the reasons for the comment.

- 3.7** If, at any time after assigning any comment to a Service Submittal, the Contracting Authority Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of the Project Agreement, the Contracting Authority Representative may revise the comment assigned to any Service Submittal. If the Parties agree or it is determined in accordance with Section 4 that the revised comment is correct, Project Co shall make all such corrections to the Service Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 3.8** For the purpose of facilitating and expediting the review and correction of Service Submittals, the Contracting Authority Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Service Submittals and any comments thereon.
- 3.9** Where a Service Submittal is voluminous, the Contracting Authority Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Service Submittal with the appropriate comment, if any, and provide Project Co with 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 Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by Contracting Authority.
- 3.10** In lieu of returning a Service Submittal, the Contracting Authority Representative may, by letter, notify Project Co of the comment assigned to the Service Submittal and if such comment is “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

4. DISPUTES

- 4.1** If Project Co disputes any act of Contracting Authority or the Contracting Authority Representative in respect of a Service Submittal under this Part B, Project Co shall promptly notify the Contracting Authority Representative of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Contracting Authority Representative shall review the Service Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment.
- 4.2** If after such review by the Contracting Authority Representative Project Co disputes the comment on a Service Submittal, subject to Section 9.1 Project Co may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

5. EFFECT OF REVIEW

- 5.1** Any review and comment by Contracting Authority or the Contracting Authority Representative of any Service Submittals are for general conformity to the obligations and requirements of the Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of the Project Agreement, and shall not create any new or additional obligations or liabilities for Contracting Authority. Without limiting the generality of the foregoing any and all errors or omissions in Service Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities under the Project Agreement in respect of matters related to the Service Submittal or exclude or limit Contracting Authority's rights under the Project Agreement in respect of matters related to the Service Submittal.

6. SERVICE SUBMITTAL EXPLANATION

- 6.1** At any time, the Contracting Authority Representative may, acting reasonably, require Project Co or any Project Co Parties at no additional cost to Contracting Authority, to explain to the Contracting Authority Representative and Contracting Authority's advisors the intent of Project Co's Service Submittals, including as to its satisfaction of the Output Specifications and its impact on the Project Operations.

7. REVISIONS

- 7.1** Project Co shall ensure that Service Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Service Submittal are identified by a sequential revision number. Correspondence related to such Service Submittal shall reference the reference number and revision number.
- 7.2** Re-submittals shall clearly show all revisions from the previous Service Submittal. Printed copies and 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. Project Co shall use a consistent format for mark-ups of documents (e.g. deletions struck out and additions underscored). Project Co shall clearly mark revised portions of drawings (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and shall include the revision number and description of the revision on the drawing.
- 7.3** Re-submittals shall include all required revised documents, all documents submitted in the previous Service Submittal that do not require revisions and all responses to comments provided by Contracting Authority associated with such Service Submittal.
- 7.4** Project Co shall ensure that all revisions on print media 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 Service Submittal. Electronic versions of the Service

Submittal shall identify the persons who initialled the revisions to the printed version of the Service Submittal.

8. AUDIT BY THE CONTRACTING AUTHORITY REPRESENTATIVE

- 8.1** Without limiting any other right under the Project Agreement, the Contracting Authority Representative shall have the right to audit all Service Submittals, including comparing all Service Submittals to previous Service Submittals.
- 8.2** If during an audit or at any other time it is discovered by Contracting Authority or Project Co that any Service Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Service Submittals and the Project Operations to which they relate and shall advise the Contracting Authority Representative of all such corrections and modifications.

9. VARIATIONS

- 9.1** If, having received comments from the Contracting Authority Representative on any Service Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written Notice to Contracting Authority of the same and, if it is agreed by the Parties, or is determined pursuant to Schedule 27 - Dispute Resolution Procedure, that a Variation would arise if the comments were complied with, Contracting Authority may at its election, either issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or amend their comment on the Service Submittal. Any failure by Project Co to notify Contracting Authority in accordance with this Section 9.1 that Project Co considers compliance with any comments of the Contracting Authority Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the Contracting Authority Representative's comments shall be without cost to Contracting Authority and without any extension of time.

10. GENERAL

- 10.1** Any capitalized terms used in the appendices to this Schedule 10 – Review Procedure, that are not defined in this Schedule 10 – Review Procedure or in Schedule 1 – Definitions and Interpretation, shall have the meanings given to them in Schedule 15-1 – Technical Terms and Reference Documents.

APPENDIX A**MINIMUM WORKS SUBMITTAL REQUIREMENTS****1. FORMAT FOR WORKS SUBMITTALS**

1.1 The following is a breakdown of the contents of each Works Submittal as well as the format for each.

- (a) All Works Submittals shall be submitted to Contracting Authority in hard copy and electronic formats in accordance with the following requirements:
 - (i) Hard copy requirements:
 - (A) All Work Submittals in reduced format (11” x 17”, fold-outs, folded to 8.5” x 11”) and Design Briefs in a 3-hole ring binder;
 - (B) All Works Submittals in large format drawings (A0 or A1 size) shall be bound for the Issued for Construction documents or Record Drawings and shall be provided separately; and
 - (C) Works Submittals, which are not drawings, shall be submitted in 8.5” x 11” black and white format, unless otherwise noted in this Schedule 10, or as requested by Contracting Authority, acting reasonably.
 - (ii) Electronic copy requirements:
 - (A) All Works Submittals shall be provided in electronic format as portable document format (PDF) and in their native format;
 - (B) All Works Submittals provided in CAD format shall be in accordance with Metrolinx CADD/BIM Standards Manual;
 - (C) All Record Drawings provided in CAD format for all New Third Party Infrastructure shall be in adherence to the applicable third party’s CAD standards; and

- (D) All Works Submittals shall be uploaded to Contracting Authority’s web based project management system in portable document format (PDF) and in their native format at the same time the Submittals are forwarded to Contracting Authority.

1.2 All Works Submittals shall also be provided in the format and Works Submittals breakdown set forth in this Appendix A.

1.3 Project Co shall provide one hard copy in large format (A0 or A1 size) and one hard copy in reduced format (11” x 17”, fold-outs, folded to 8.5” x 11) of all Works Submittals that are drawings.

2. SUBMITTALS

2.1 The following is a detailed, non-exhaustive list of Works Submittals that Project Co is required to provide to Contracting Authority for review and comment in accordance with this Schedule 10. Each Works Submittal shall be delivered with appropriate covering documentation in the format set forth in Section 3.7 of this Schedule 10.

2.2 Additional Works Submittals may be requested by the Contracting Authority Representative at any time in order to understand the Works, and Project Co shall be required to provide same to Contracting Authority for review in accordance with this Schedule 10. A description of the minimum content of each Works Submittal provided is set out in Section 2 of this Appendix A.

2.3 Works Submittal deliverables which are applicable to satisfying the requirements of multiple Works Submittal sections are permitted to be reused, granted they meet all the requirements of each Works Submittal section to which they are applied.

2.4 Project Co shall provide a Design Brief for the Preliminary New Municipal Infrastructure Design Development Submittals, the Design Development Submittals and the Construction Document Submittals. The Design Briefs shall be in the form of individual report submissions.

3. ISSUED FOR CONSTRUCTION DOCUMENTS

3.1 Construction Document Submittals submitted in accordance with this Schedule 10 – Review Procedure and assigned comments “NO COMMENT” or “MINOR NON-CONFORMANCE” with all of the comments addressed shall become “Issued For Construction” and shall be stamped “ISSUED FOR CONSTRUCTION” (“**Issued For Construction**”). Works Submittals used for the construction of any part or parts of the Project prior to being entitled to proceed, as noted above, shall not be Issued For Construction.

- 3.2** Project Co shall submit copies of all drawings that are Issued For Construction, together with manuals, instructions to the Construction Contractor along with any other relevant information as requested by the Contracting Authority Representative, to the Contracting Authority Representative and to the Independent Certifier.
- 3.3** Revisions to Issued For Construction documents shall be submitted for review as Construction Document Submittals, being stamped “Issued For Construction” upon being entitled to proceed in accordance with this Schedule 10 – Review Procedure. Issued For Construction documents are required for the certification of construction detailed in Appendix A of this Schedule 10.

| Item # | Title/ Description |
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| S-100 | Quality Management |
| | <p>Project Co shall provide submittals as set out in Schedule 11 – Quality Management, including:</p> <ul style="list-style-type: none"> (a) the Quality Manual; (b) the Design Quality Management Plan; (c) the Construction Quality Management Plan; (d) the Project Co Services Quality Management Plan; (e) the Traffic Quality Management Plan; (f) the Environmental Quality Management Plan; (g) the Project Schedules Quality Management Plan; (h) the Quality Audit Plan; (i) the Monthly Quality Management System reports; (j) the Project Co Quality Audit Reports; and (k) the Corrective and Preventive Actions Plans. |
| S-101 | Design Brief |
| | <p>Project Co shall submit a Design Brief for the Preliminary New Municipal Infrastructure Design Development Submittals, the Design Development Submittals and the Construction Document Submittals:</p> <ul style="list-style-type: none"> (a) Each Design Brief shall include a detailed table of contents with tabs provided for major sections (i.e. Systems, architectural, landscape, civil, utilities, interiors, structural, trackwork, geotechnical, geo-environmental, Drainage, streetscape, mechanical, electrical, sustainability, etc.). (b) Each Design Brief shall include a written narrative and analysis that coincides with the completion requirements defined further in Appendix A of this Schedule 10. (c) Each Design Brief shall include a narrative on interface issues presenting the following: <ul style="list-style-type: none"> (i) list of interface issue and classifications (e.g. Facility, system, etc.); and |

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| | (ii) analysis of critical issues. |
| S-102 | Preliminary New Municipal Infrastructure Design Development Submittals |
| | <p>Project Co shall provide the following Preliminary New Municipal Infrastructure Design Development Submittals to Contracting Authority for review and comment in accordance with this Schedule 10:</p> <p>(a) Preliminary New Municipal Infrastructure Design Development Submittals documents in accordance with the requirements set forth in Part 1 of Schedule 15-2 – Design and Construction Requirements - General, including the following documentation (where appropriate, the following information may be provided in the Design Brief):</p> <ul style="list-style-type: none"> (i) Utilities reports and drawings, including: <ul style="list-style-type: none"> (A) the written Utility Infrastructure Relocation Plan, showing approaches to achieve the requirements of Article 6 of Part 1 to Schedule 15-2 – Design and Construction Requirements; (B) Utility drawings for Public Utility Infrastructure, including plan drawings, profile drawings and key sections for each Public Utility and each location, including permanent Public Utility Work that addresses the recommendations in the Utilities Infrastructure Relocation Plan; and (b) Preliminary New Municipal Infrastructure Design Development Submittals documents in accordance with the requirements set forth in Part 2 of Schedule 15-2 – Design and Construction Requirements - Civil and Guideway, including the following documentation (where appropriate, the following information may be provided in the Design Brief): <ul style="list-style-type: none"> (i) Plan and profile drawings of all modifications to existing roadways within the Municipal ROW, demonstrating conformance with the requirements of Article 3 of Part 2 of Schedule 15-2 and Table A-1 of Appendix A of Part 2 of Schedule 15-2 including: <ul style="list-style-type: none"> (A) intersection layouts and horizontal alignment; (B) vertical alignment, highlighting any deviations from vertical alignment of the existing roadway; (C) location of all Shadow Lanes and Medians; (D) location of Guideway and Stops; and (E) location of pedestrian and cycling infrastructure; (ii) Traffic signal drawings, demonstrating conformance with the requirements of Section 9.1 of Part 2 of Schedule 15-2, including: |

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| | <ul style="list-style-type: none"> (A) Approximate location of all traffic, pedestrian and bike signals, and cabinets; and (B) Typical details of all traffic signal equipment; <p>(iii) geo-engineering report for New Municipal Infrastructure demonstrating conformance with Article 4 and Section 3.4 of Part 2 of Schedule 15-2, including:</p> <ul style="list-style-type: none"> (A) requirements for the following for new or existing Civil Structures: <ul style="list-style-type: none"> (I) foundation types; (B) requirements for the following with respect to pavements: <ul style="list-style-type: none"> (I) pavement types; (II) pavement design report; (iv) structural reports and drawings for all Civil Structures which are New Municipal Infrastructure, demonstrating conformance with Article 8 of Part 2 of Schedule 15-2, including: <ul style="list-style-type: none"> (A) all design drawings, including: <ul style="list-style-type: none"> (I) structure or bridge general arrangement; (II) bore log and data drawing; (III) foundation layout; (IV) substructure layout; and (V) girder and/or superstructure layout; (B) identify any proprietary structures such as precast culverts or pedestrian bridges; (C) descriptions of aesthetic treatment for all walls; and (D) structural design basis; <p>(c) Preliminary New Municipal Infrastructure Design Development Submittals documents in accordance with the requirements set forth in Part 8 of Schedule 15-2 – Design and Construction Requirements – Streetscape, Urban Design and Landscape Architecture, including the following documentation (where appropriate, the following information may be provided in the Design Brief):</p> <ul style="list-style-type: none"> (i) Public Boulevard drawings, demonstrating conformance with the requirements of Articles 1 and 3 of Part 8 of Schedule 15-2, including: |
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| | <ul style="list-style-type: none"> (A) Location, dimensions and materials (including hardscaping, landscaping, and enhanced paving) of all: <ul style="list-style-type: none"> (I) cycle infrastructure; (II) pedestrian infrastructure; (III) Pole Zones; (IV) Buffer Zones; (V) roadway medians; and (VI) bus bays. (B) Location and typical details of all street furniture, including <ul style="list-style-type: none"> (I) waste containers; (II) bike rings, benches; and (III) bus shelters and markers; (C) Location and type of all street trees; and <p>(ii) Streetlighting drawings, demonstrating conformance with the requirements of Section 3.7 of Part 8 of Schedule 15-2, including:</p> <ul style="list-style-type: none"> (A) Location of all streetlights; and (B) Typical details of streetlight pole and arm; and |
| S-103 | Pre-final Design Development Submittals |
| | <p>Project Co shall provide the following Pre-final Design Development Submittals to Contracting Authority for review and comment in accordance with this Schedule 10:</p> <ul style="list-style-type: none"> (a) Pre-final Design Development Submittals in accordance with the requirements set forth in Part 1 of Schedule 15-2 – Design and Construction Requirements - General, including the following documentation (where appropriate, the following information may be provided in the Design Brief): <ul style="list-style-type: none"> (i) Updates to all utilities reports and drawings submitted as part of the Preliminary New Municipal Infrastructure Design Development Submittals in accordance with the requirements set forth in Part 1 of Schedule 15-2 – Design and Construction Requirements – General, including: |

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| | <ul style="list-style-type: none"> (A) written workplan and schedule that addresses the Utility Infrastructure Relocation Plan, including: <ul style="list-style-type: none"> (I) durations and timelines for each Utility relocation and/or other strategies, by location; and (II) identifying dependencies and conflicts with the applicable Project Works Schedules; (B) Utility drawings for Public Utility Infrastructure, including plan drawings, profile drawings and key sections for each Public Utility and each location, including permanent and temporary Public Utility Work that addresses the recommendations in the Utilities Infrastructure Relocation Plan; and <p>(b) Pre-final Design Development Submittals in accordance with the requirements set forth in Part 2 of Schedule 15-2 – Design and Construction Requirements - Civil and Guideway, including the following documentation (where appropriate, the following information may be provided in the Design Brief):</p> <ul style="list-style-type: none"> (i) track alignment reports and drawings, including: <ul style="list-style-type: none"> (A) plan and profile drawings at no less than 1:500 horizontal scale, showing: <ul style="list-style-type: none"> (I) detailed HLRT horizontal alignment design and vertical alignment design, shown at top of low rail, for each track based on continuous chainage system shown at no less than 20m intervals; (II) chainage shown at: <ul style="list-style-type: none"> 1) beginning and end of all geometric elements; 2) key features such as points of switch for all Special Trackwork, beginning and end of Stations, Stops, portals, structures, and any other important infrastructure element along or affected by the Guideway clearance envelope indicating offset to centre line of track; (III) grading design along the Guideway; (IV) approximate location and clearances to of traffic and transit signals and other system elements, including bungalows and any other relevant element; (V) geometric design curve data, including all horizontal and vertical design alignments elements; (VI) track centers at every transition; (VII) horizontal and vertical control surveys; and (VIII) clearances height at each structure crossing; (B) schematic representations of the Guideway types in plan and profile; |
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| | <ul style="list-style-type: none"> (C) typical Guideway sections for each Guideway type, including Drainage provisions, catenary elements, cable troughs, conduits, walkways and clearance envelopes; (D) Guideway sections at major change intervals; (E) a narrative, including a description of the features, rationale and limitation of the alignment design, including design speed, transitions between the various track bedding types, clearance envelope, line of sight, approaching stations, structural crossings and Special Trackwork; (F) a geometric design brief that outlines horizontal and vertical alignment criteria and lists the features of all alignment segments to confirm that the geometric criteria of the Output Specifications have been met; (G) a horizontal and vertical geometric design data report, including chainages, design speed, horizontal and vertical curve data such as actual superelevation, unbalanced superelevation, radius, length of curve , length of spiral, grades, length of tangents, and K values; and (H) alignment development for the Mainline Track from Port Credit Station through the Rathburn Stop to the Gateway Terminal Stop, and for the Connecting Track from the mainline to the Hurontario OMSF; <p>(ii) Trackwork submittals including:</p> <ul style="list-style-type: none"> (A) narrative, drawings, calculations, standards, criteria, methodology and life-cycle cost analysis; (B) details of track structure types and track transitions for tangent, curved and Special Trackwork locations; (C) track Drainage provisions; (D) details of the track fastening system including interaction with the Guideway and accommodation of track loading forces and expansion of track and structure; (E) details of special Trackwork; (F) methodology for the application of superelevation and minimum spiral curve length criteria; (G) noise and vibration simulation and analysis report(s); (H) measures to minimize and monitor stray current and resist corrosion for each track and Guideway type; (I) measures to prevent or minimize rail corrugation; (J) design to support integration with the Revenue Vehicles, including wheel to rail interface strategies and outputs; |
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| | <ul style="list-style-type: none"> (K) derailment containment system on elevated structures; (L) details and integration of Systems elements installed along the Guideway; (M) track construction methodology, including approach to rail weld certification and numbering system, rail and casting certification, and Trackwork pre-assembly; (N) track construction tolerances; and (O) track measurement and assessment methodology. <p>(iii) update to drawings for the modifications to existing roadways within the Municipal ROW submitted as part of the Preliminary New Municipal Infrastructure Design Development Submittals, including:</p> <ul style="list-style-type: none"> (A) plan and profile drawings of all modifications to existing roadways within the Municipal ROW, demonstrating conformance with the requirements of Article 3 of Part 2 of Schedule 15-2 and Table A-1 of Appendix A of Part 2 of Schedule 15-2 including: <ul style="list-style-type: none"> (I) grading; and (II) drainage; (B) a geo-engineering report for New Municipal Infrastructure demonstrating conformance with Article 4 and Section 3.4 of Part 2 of Schedule 15-2, including: <ul style="list-style-type: none"> (I) requirements for the following with respect to new or existing Civil Structures: <ol style="list-style-type: none"> 1) foundations piles, permanent anchors - settlements, bearing pressures, influence on other structures; 2) up-lift and buoyancy design; 3) frost protection; 4) subgrade treatment - seepage blankets, u-fill, mud slabs; 5) underpinning; and 6) protection requirements for buildings and utilities; and (II) requirements for the following with respect to pavements: <ol style="list-style-type: none"> 1) subgrade Drainage; and 2) backfill handling/disposal; |
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| | <ul style="list-style-type: none"> (C) Drainage and stormwater management report and drawings, demonstrating conformance with Article 6 of Part 2 of Schedule 15-2, including: <ul style="list-style-type: none"> (I) draft Stormwater Management Plan; (II) preliminary drawings locating Stormwater Management practices, discharge points, and erosion protection measures; and (III) draft Erosion and Sediment Control Plans describing and identifying all associated staging and phasing of the Works; and (D) structural reports and drawings for all Civil Structures which are New Municipal Infrastructure, demonstrating conformance with Article 8 of Part 2 of Schedule 15-2, including: <ul style="list-style-type: none"> (I) layout drawings for Temporary Works; (iv) structural submittals, including: <ul style="list-style-type: none"> (A) all design drawings, including: <ul style="list-style-type: none"> (I) structure or bridge general arrangement; (II) bore log and data drawing; (III) foundation layout and details; (IV) substructure layout and details; (V) girder and/or superstructure layout and details; (VI) bearing layout and details; (VII) barrier walls, walkways, pole bases, track fixation and other details required for the completion of the work; (VIII) details of precast culverts and pre-engineered structures; (IX) all drawings for Temporary Works; (X) the loading criteria to which the Civil Structures are designed; (XI) the geotechnical information on which the structural design is based; and (XII) the condition survey information on which the structural design is based in connection with the existing Civil Structures and the existing conditions assumed for the structural design; and |
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| | <p>(B) descriptions of aesthetic treatment for all walls.</p> <p>(c) Pre-final Design Development Submittals in accordance with the requirements set forth in Articles 9, 10, 11, 12 and 13 of Part 1 to Schedule 15-2 – Design and Construction Requirements and Part 4 of Schedule 15-2 – Design and Construction Requirements – Systems, including the following documentation (where appropriate, the following information may be provided in the Design Brief):</p> <p>(i) The Systems Pre-final Design Development Submittals shall demonstrate, on a progressive basis, that all equipment and Systems have been selected, designed, procured, manufactured, installed, inspected and tested to function in accordance with the requirements of the Project Agreement. Each submittal shall include the following:</p> <ul style="list-style-type: none"> (A) all applicable standards used, including names, date and reference; (B) concessions and approvals; (C) identified safety risks and close-out analysis of risks; (D) identified threats and vulnerabilities addressed; (E) supporting construction drawings and diagrams, including high level general arrangements and block diagrams of interconnections; (F) configuration management strategy for all systems and subsystems used; (G) identification of key interfaces (internal, external and with third parties) required to provide the required functionality; (H) traceability matrices providing confirmation that Project Agreement (including the Output Specifications) requirements have been incorporated by the design; (I) simulation reports and supporting calculations to support any design assumptions; (J) narrative and architecture diagram providing identification of systems and subsystems; (K) functional design descriptions of all intended functionality; (L) identification of related human factors requirements; (M) assessment of statutory obligations, legal and jurisdictional requirements; (N) compliance assessment to environmental constraints; (O) intended test and integration strategy and pass fail criteria for acceptance; |
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| | <ul style="list-style-type: none"> (P) system testing and acceptance procedures (Q) demonstrate the Systems designs meet the operating specifications and requirements and the Project Co Services Requirements; (R) demonstrate the Systems designs have taken into account the needs of the Service Provider; (S) describe proposed arrangements for operation, inspection and maintenance of Systems throughout the Operational Term; and (T) provision of data to support public information and marketing. <p>(ii) Project Co shall submit updates to all submissions from the Systems design definition and include the following additional submissions:</p> <ul style="list-style-type: none"> (A) Backup Power Plan; (B) System performance simulations that includes the following: <ul style="list-style-type: none"> (I) operational capabilities; (II) signal priority; (III) failure management; and (IV) system start up and shutdown. (C) first draft of technical security report; (D) first draft of safety management report; (E) first draft of security management report; (F) first draft of safety critical item list; (G) first draft of reliability critical item list; (H) subsystem requirements specification; (I) interface control documents for each interface between subsystems and systems; (J) human factors analysis; and (K) rule enforcement procedures and automated forms; <p>(iii) The Pre-final Design Development Submittals shall demonstrate that the design and implementation of all Systems,</p> |
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| | <p>subsystems and Facilities are compatible between disciplines, including the following:</p> <ul style="list-style-type: none"> (A) implementation of a work breakdown structure encompassing all systems components and sub components; (B) System safety analysis in accordance with the safety management plan; (C) ICD as required to demonstrate the appropriate level of Systems functional integration to support the system integration program as per SIMP, including at a minimum the following: <ul style="list-style-type: none"> (I) Systems to Stations; (II) Systems to Stops; (III) Systems to Guideway (all types of rights of way); (IV) Systems to Systems; (V) Systems to Vehicles; and (VI) any additional ICDs to support the integration program as defined in the SIMP. (iv) S&TCS submittals, including: <ul style="list-style-type: none"> (A) signalling principles; (B) S&TCS design overview description; (C) S&TCS system requirements specification; (D) S&TCS signal plan (including all supporting block design, braking calculations, headway); (E) S&TCS network plan, including network redundancy design, equipment location and latency; (F) redundancy and failover schemes for all equipment; (G) yard design, including system layout test track and departure track; (H) S&TCS HMI layout; (I) local control panel layout and hardware; (J) cable and fibre routing; (K) signal equipment room layout, including power and HVAC; (L) safe braking model; (M) S&TCS frequencies and compatibility with the public safety service radio and the high speed data radio; |
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| | <ul style="list-style-type: none"> (N) S&TCS Revenue Vehicle location system design, durability, accuracy and operational description; (O) method for dealing with and compensating for spins and slides; (P) on-board Revenue Vehicle network design; (Q) drivers S&TCS panel layout; (R) automatic station stopping algorithm; (S) zone and interlocking controller interface; (T) ATS and interlocking controller interface; (U) environmental and EMI/EMC test reports; and (V) design description of the transit priority system and architecture required to support at-grade operation and integration; <p>(v) TPS submittals, including:</p> <ul style="list-style-type: none"> (A) TPS design description; (B) Load Flow Analysis modeling report; (C) TPS system requirements specification; (D) electrification single line diagram; (E) TPSS equipment arrangement drawings; (F) results of preliminary TPSS site resistivity surveys; (G) protective relaying and transfer trip concept of operation; (H) auxiliary and emergency trip systems concept of operations and riser diagrams; (I) preliminary TPS SCADA points list; (J) AC and DC circuit breaker control schematic diagrams; (K) fire and smoke detection, security and intrusion detection concept of operations and riser diagrams; (L) DC house power (battery charger, battery bank, load study); (M) AC house power (auxiliary transformer, panelboard, load study); (N) ground grid design calculations; |
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| | <ul style="list-style-type: none"> (O) detailed designs for each traction power substation; (P) TPS SCADA/communications interface drawings and details; (Q) AC/DC and rectifier plans, elevations and details; (R) Guideway plans, elevations and details; (S) cable and conduit schedules; (T) protective relaying schematics; (U) traction feeder schedule; and (V) yard and shop DC distribution plan and details; <p>(vi) OCS submittals, including:</p> <ul style="list-style-type: none"> (A) OCS master overlap chart with tension lengths; (B) OCS sectionalizing approach: manual or motorized remote control type switches; (C) conductor particulars, typical tensions and sags; (D) typical loading tables: wind, ice and radial loads and calculations; (E) hanger lengths: standard spans, overlap and termination spans; (F) along track movement, stagger change and effect for auto tensioned catenary; (G) Revenue Vehicles pantograph security analysis; (H) OCS profiles and calculations for clearances underneath Civil Structures; (I) typical OCS arrangements, overlap, crossover, etc.; (J) typical OCS detail drawings, including: <ul style="list-style-type: none"> (I) feeder and jumper details; (II) typical OCS pull off and push off cantilevers with calculations; (III) headspan assemblies with calculations; (IV) down guy and head guy assemblies; (V) midpoint anchor assemblies; |
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| | <ul style="list-style-type: none"> (VI) balance weight assemblies with calculations; (VII) fixed termination assemblies; (VIII) section insulator hardware and types; (IX) wire splice and contact wire bridge assemblies; (X) catenary hangers and suspension assemblies; (XI) contact wire and messenger knuckles; (XII) surge arresters and connection details; (XIII) switch heater connection details; (XIV) OCS feeder assemblies; (XV) OCS door bridge details and types (if used); (XVI) bypass disconnect switch assembly and type; (K) OCS foundation, anchor bolt, base plate, and pole design calculations; (L) OCS mainline layout plans and schedules; (M) OCS yard wiring plans and schedules; (N) OCS door bridge details and type; and (O) design reports. <p>(vii) the detailed System to Vehicles ICD containing all necessary technical details to demonstrate that on-board systems are compatible with the Revenue Vehicle, including:</p> <ul style="list-style-type: none"> (A) communication system details (voice and data radio), including radio to on-board PA, radio to Revenue Vehicles TCMS, with space requirements; (B) on board S&TCS system, including all peripheral devices space requirements; (C) cabling requirements for all on-board system equipment to support system installation in the Revenue Vehicles, including across the coupler heads; (D) electro-mechanical interface requirements to support system functionality; (E) functional interface description defining key interfaces required for acceleration, braking and other Revenue |
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| | <p>Vehicles systems required;</p> <p>(F) diagnostics and monitoring functional description;</p> <p>(G) operator’s display functional description; and</p> <p>(H) bench test units and portable test unit details.</p> <p>(viii) Communications System submittals for the following systems elements:</p> <p>(A) OCCs and associated equipment;</p> <p>(B) Backbone Communications Network;</p> <p>(C) telephone and intercom system;</p> <p>(D) PA system;</p> <p>(E) voice and data radio system;</p> <p>(F) PVIS;</p> <p>(G) CCTV system;</p> <p>(H) ET system;</p> <p>(I) SCADA system, including:</p> <p style="padding-left: 20px;">(I) traction power distribution;</p> <p style="padding-left: 20px;">(II) emergency ventilation control;</p> <p style="padding-left: 20px;">(III) electrical distribution;</p> <p style="padding-left: 20px;">(IV) mechanical systems;</p> <p style="padding-left: 20px;">(V) elevating devices; and</p> <p style="padding-left: 20px;">(VI) intrusion detection.</p> <p>(J) CAMS;</p> <p>(K) MCS;</p> <p>(L) GIDS;</p> <p>(M) IAC; and</p> |
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| | <p>(N) information and advertisement systems.</p> <p>(ix) Communications System submittals shall include:</p> <p>(A) overview design description;</p> <p>(B) overall approach to design and construction;</p> <p>(C) operation and maintenance plans, including graphical user interface layouts for OCC and YCC consoles;</p> <p>(D) systems requirements specification;</p> <p>(E) design reports;</p> <p>(F) design drawings, including:</p> <p style="padding-left: 20px;">(I) single line diagrams;</p> <p style="padding-left: 20px;">(II) concept of operations and riser diagrams;</p> <p style="padding-left: 20px;">(III) layout plans and schedules;</p> <p style="padding-left: 20px;">(IV) wiring plans and schedules; and</p> <p style="padding-left: 20px;">(V) electro-mechanical interface requirements to support system functionality;</p> <p>(G) redundancy and failover schemes;</p> <p>(H) diagnostics and monitoring functional description;</p> <p>(I) equipment room and Facility layouts;</p> <p>(J) system design, durability, accuracy and operational description;</p> <p>(K) design of the data warehousing in support of operational and maintenance report requirements;</p> <p>(L) details of all system elements installed in the System, including:</p> <p style="padding-left: 20px;">(I) local control panel layouts;</p> <p style="padding-left: 20px;">(II) HMI layouts;</p> <p style="padding-left: 20px;">(III) cable and fibre routing;</p> <p style="padding-left: 20px;">(IV) site locations and site plans;</p> <p style="padding-left: 20px;">(V) equipment layout drawings;</p> |
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| | <ul style="list-style-type: none"> (VI) mounting details; (VII) peripheral devices space requirements; (VIII) CCTV camera coverage layouts; and (IX) duct bank configuration, maintenance holes, access points, termination boxes and duct capacity allocations; (M) functional interface description defining key interfaces; (N) operator’s display functional description; (O) system operation and control, in normal and emergency operation modes; (P) input/output points list; (Q) network equipment interface details, including: <ul style="list-style-type: none"> (I) bandwidth calculations, including optical power budgets and losses (if required) for LAN elements; (II) bandwidth calculations, including optical power budgets and losses (if required) for WAN elements; (III) fibre optic cable allocation tables; (IV) fiber optic backbone routing and termination details; (V) network diagram; and (VI) network security analysis; (R) SCADA system diagram and input/output list, including: <ul style="list-style-type: none"> (I) traction power SCADA; and (II) train control SCADA; (S) OCC room layouts, including: <ul style="list-style-type: none"> (I) overview display layout; (II) wiring diagrams for OCC equipment; and (III) data room equipment layouts and modifications; and (T) Hurontario OMSF communication room equipment layouts, including: <ul style="list-style-type: none"> (I) YCC equipment layouts, including desks and displays; and |
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| | <p>(II) wiring diagrams for interconnection of OMSF communication elements.</p> <p>(d) Pre-final Design Development Submittals in accordance with the requirements set forth in Part 5 of Schedule 15-2 – Design and Construction Requirements - Facilities, including the following documentation for each Station, Stop and TPSS:</p> <p>(i) design excellence submission consisting of:</p> <ul style="list-style-type: none"> (A) a 500-word statement of the design concept; (B) a detailed written, illustrated and annotated statement outlining the design approach and strategies for achieving the Principles and Requirements of Design Excellence; (C) a demonstration of how consistent design language will be applied to all Facilities; (D) exterior perspective renderings of each Facility proposed for the line illustrated in three dimensions, clearly indicating materiality, building massing and shown in context (articulate all integrated finishes, amenities and elements, including furniture, signage and wayfinding, and landscape); (E) interior perspective renderings in the Entrance, vertical circulation spaces, concourse and platform at Port Credit Station, illustrated in three dimensions, clearly indicating materiality and lighting strategy (articulate all integrated finishes, amenities and elements including, furniture, signage and wayfinding, advertising and fare equipment integration); (F) illustration of how colour/pattern is systematically applied across the line; (G) an eye-level video walk-through of Port Credit Station, Gateway Terminal Stop, Rathburn Stop and Cooksville Stop illustrating a typical customer’s experience both entraining and detraining, from the site approach to getting into a Revenue Vehicle (articulate all integrated finishes, amenities and elements including, furniture, signage and wayfinding, landscape, advertising and fare equipment integration); (H) an eye-level video walk-through of a typical Stop design illustrating a typical customer’s experience both entraining and detraining, from the Stop approach to getting into a Revenue Vehicle (articulate all integrated finishes, amenities and elements including, furniture, signage and wayfinding, landscape, advertising and fare equipment integration); and (I) site plan, plans, sections, elevations as required to demonstrate the design approach at the Station and all Stops. <p>(ii) architectural submission consisting of:</p> |
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| | <ul style="list-style-type: none"> (A) architectural design brief addressing all Facilities and other associated buildings, including the following components: <ul style="list-style-type: none"> (I) description of the overall facility design, addressing both functional and technical requirements; (II) elements of continuity and variability in the design; (III) an Accessibility Compliance Report; (IV) sustainability; (V) material performance; (B) life cycle analysis: a written narrative describing life cycle approach to all building components, systems and major pieces of equipment including: <ul style="list-style-type: none"> (I) building envelope and exterior finishes; (II) interior finishes; and (III) mechanical and electrical equipment; (C) code analysis addressing both building and fire/life safety issues; (D) passenger flow modelling and study for Port Credit Station; (E) room data sheets and room schedules; (F) hardware and finish schedules and details; (G) retail tenant guidelines; (H) general urban design and landscaping description including reference to: <ul style="list-style-type: none"> (I) overall urban design and landscaping approach; (II) functional and technical requirements of the Output Specifications; and (III) description of the approach demonstrating how the design will address the following: <ul style="list-style-type: none"> 1) accessibility; 2) sustainability; and 3) seamless integration with existing streetscape; and (I) tree compensation and restoration plans including arborist reports, tree protection plans, edge management |
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| | <p>plans, restoration plans and mitigation plans.</p> <p>(iii) drawings and materials for the Station, including:</p> <p>(A) architectural:</p> <p>(I) context plan (scale: 1:1000);</p> <p>(II) floor plans (scale 1:200), showing all rooms/areas numbered;</p> <p>(III) reflected ceiling plans (scale 1:200);</p> <p>(IV) roof plans (scale 1:100) and details to-scale;</p> <p>(V) doors, windows, sidelights and interior glazing and details (scale 1:20);</p> <p>(VI) all FF&E, including all room accessories, fare collection equipment lay-outs, Designated Waiting Areas, and all furniture;</p> <p>(VII) integration of structural, mechanical, electrical, and information / communications systems into columns, service shafts, risers, etc. integration of structural, mechanical, electrical, and information and communications technology systems in terms of columns, service shafts, risers, etc. to demonstrate functional and net area requirements are compliant;</p> <p>(VIII) entrance connection(s) to existing buildings and strategies for the protection of connections to future buildings;</p> <p>(IX) exterior building elevations (scale 1:200):</p> <p>1) all building elevations including all hidden or partial elevations with a legend describing the extent of all glazing and cladding materials; and</p> <p>2) elevations to be fully rendered, in colour;</p> <p>(X) building sections (at 1:50 and 1:200 scales);</p> <p>(XI) exterior wall assembly details (scale 1:10), as required to demonstrate components of exterior assemblies;</p> <p>(XII) perspectives – minimum of 6 exterior perspectives in full colour describing the developed exterior with context:</p> <p>1) exterior perspective day and night views at eye level showing each Entrance (as applicable);</p> |
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| | <ul style="list-style-type: none"> 2) exterior perspective day and night views from bird’s eye view showing the total extent of the Facility; and 3) exterior perspective day and night views showing total extent of the Facility from street; (XIII) perspectives – minimum of 5 interior perspectives per Station, in full colour: <ul style="list-style-type: none"> 1) interior perspective view taken at eye level of the platform level; and 2) interior perspective of each Entrance interior (as applicable); (XIV) interior elevations (scale 1:50) of all public areas of all Stations indicating finishes and all amenities and elements; and (XV) details of FF&E, materials and finishes: <ul style="list-style-type: none"> 1) sample boards of all exterior and interior finish materials; and 2) stairs, escalator, and elevators, benches, waste receptacles, bike racks, ornamental features, lighting and all other security, electrical and mechanical items; (B) mechanical: <ul style="list-style-type: none"> (I) drawings indicating scope of work for all mechanical systems, including: <ul style="list-style-type: none"> 1) system schematics; 2) schedules for major equipment selections and power requirement (coordinated with electrical); 3) layout of mechanical rooms to confirm special requirements and incoming and outgoing services; 4) main ductwork (double lined ductwork drawings) and piping routes with required intakes, shafts, wall openings and fire separation penetrations; 5) individual system control logic and schematics; 6) materials to indicate compliance to energy efficient design; and 7) schedule of rooms with applied HVAC design criteria; (II) design calculations for all mechanical systems on as requested basis; and (III) list of required permits for air, noise etc. |
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| | <p>(C) landscaping and restoration:</p> <p>(I) site plan and landscape drawings, including:</p> <ol style="list-style-type: none"> 1) site plan (scale:1:400) including, pedestrian circulation network, streetscape, cycle infrastructure, and complete site details (scale: 1:100 and other scales as appropriate); 2) site servicing plans and details including grading and Drainage plans (scale: 1:100); 3) landscape and planting plans, cross-sections, details including reference to lighting, materials, furniture and fixtures (scale: 1:200 scale and other scales as appropriate); 4) streetscape plans, cross-sections and details including reference to lighting, materials and furniture (scale: 1:200 and other scales as appropriate); and 5) renderings with day and night views, in full colour describing the developed exterior with context: <ol style="list-style-type: none"> i) minimum of 4 renderings per Station and Stop, illustrating exterior space within the site (plazas, etc.); ii) minimum of 4 renderings per Station and Stop, illustrating streetscape elements; and iii) minimum of 16 renderings illustrating landscape elements along the guideway including at all portals and selected medians. <p>(D) structural:</p> <ol style="list-style-type: none"> (I) structure layout; (II) key plans and unit layout; (III) general notes and standard details; (IV) foundation details; (V) framing layout; (VI) vibration control design with member sizes; (VII) connection details; (VIII) Temporary Works; (IX) individual unit measures indicated on drawings with dimensions; |
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| | <ul style="list-style-type: none"> (X) typical reinforcing cross sections; and (XI) longitudinal sections: <ul style="list-style-type: none"> 1) typical reinforcing steel details; and 2) miscellaneous details. (E) electrical: <ul style="list-style-type: none"> (I) power single line diagrams and drawings; (II) schedules for all normal and emergency loads; (III) power requirements for all building systems and equipment; (IV) plans, sections and/or details showing locations, elevations and clearance space requirements for all electrical equipment and panels; (V) lighting design with layout plans, details, and selection of lighting equipment privy to the architectural design at this stage of submittal; (VI) noise and vibration control design criteria and preliminary measures; and (VII) riser diagrams and details of other electrical systems including lighting control, lightning protection, grounding, motor control, corrosion control, snow melting (if any electric), fire detection and alarm; and (F) signage: <ul style="list-style-type: none"> (I) preliminary signage location plans (scale 1:200); and (II) signage graphics and details representing typical and specific signs for each location (Stations, Stops, and all other Facilities). (iv) drawings and materials for each Stop, including: <ul style="list-style-type: none"> (A) architectural: <ul style="list-style-type: none"> (I) context plan (scale: 1:1000); (II) Platform details (1:200); (III) Shelter and Canopy details (scale 1:20); |
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| | <ul style="list-style-type: none"> (IV) all platform amenities; (V) integration of electrical and information / communications systems into Shelters and Canopies; (VI) Platform access details (VII) perspectives – minimum of 6 exterior perspectives per Stop, in full colour describing the developed exterior with context: <ul style="list-style-type: none"> 1) exterior perspective day and night views at eye level showing main entrance to each facility; 2) exterior perspective day and night views from bird’s eye view showing the total extent of the facility; and 3) exterior perspective day and night views showing total extent of the facility from street. (B) structural: <ul style="list-style-type: none"> (I) structure layout; (II) key plans and unit layout; (III) general notes and standard details; (IV) foundation details; (V) framing layout; (VI) vibration control design with member sizes; (VII) connection details; (VIII) Temporary Works; (IX) individual unit measures indicated on drawings with dimensions; (X) typical reinforcing cross sections; and (XI) longitudinal sections: <ul style="list-style-type: none"> 1) typical reinforcing steel details; and 2) miscellaneous details. (C) electrical: <ul style="list-style-type: none"> (I) power single line diagrams and drawings; |
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| | <ul style="list-style-type: none"> (II) schedules for all normal and emergency loads; (III) power requirements for all equipment; (IV) plans, sections and/or details showing locations, elevations and clearance space requirements for all electrical equipment and panels; (V) lighting design with layout plans, details, and selection of lighting equipment privy to the architectural design at this stage of submittal; (VI) noise and vibration control design criteria and preliminary measures; and (VII) riser diagrams and details of other electrical systems including lighting control, lightning protection, grounding, motor control, corrosion control, snow melting (if any electric), fire detection and alarm. <p>(D) signage;</p> <ul style="list-style-type: none"> (I) preliminary signage location plans (scale 1:200); and (II) signage graphics and details representing typical and specific signs for each Station and Stop. <p>(v) drawings and materials for each TPSS, including:</p> <p>(A) architectural,</p> <ul style="list-style-type: none"> (I) context plan (scale: 1:1000); (II) floor plans (scale 1:200), showing all rooms/areas numbered; (III) reflected ceiling plans (scale 1:200); (IV) roof plans (scale 1:100) and details to-scale; (V) doors, windows, sidelights and interior glazing and details (scale 1:20); (VI) all FF&E, including all room accessories; (VII) integration of structural, mechanical, electrical, and information / communications systems (VIII) exterior building elevations (scale 1:200): <ul style="list-style-type: none"> 1) all building elevations including all hidden or partial elevations with a legend describing the extent of all glazing and cladding materials; and 2) elevations to be fully rendered, in colour; |
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| | <ul style="list-style-type: none"> (IX) building sections (at 1:50 and 1:200 scales); and (X) exterior wall assembly details (scale 1:10), as required to demonstrate components of exterior assemblies; (B) mechanical: <ul style="list-style-type: none"> (I) drawings indicating scope of work for all mechanical systems, including: <ul style="list-style-type: none"> 1) system schematics; 2) schedules for major equipment selections and power requirement (coordinated with electrical); 3) layout of mechanical rooms to confirm special requirements and incoming and outgoing services; 4) main ductwork (double lined ductwork drawings) and piping routes with required intakes, shafts, wall openings and fire separation penetrations; 5) individual system control logic and schematics; 6) materials to indicate compliance to energy efficient design; and 7) schedule of rooms with applied HVAC design criteria; (II) design calculations for all mechanical systems on as requested basis; and (III) list of required permits for air, noise etc. (C) structural: <ul style="list-style-type: none"> (I) structure layout; (II) key plans and unit layout; (III) general notes and standard details; (IV) foundation details; (V) framing layout; (VI) vibration control design with member sizes; (VII) connection details; (VIII) Temporary Works; |
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| | <ul style="list-style-type: none"> (IX) individual unit measures indicated on drawings with dimensions; (X) typical reinforcing cross sections; and (XI) longitudinal sections: <ul style="list-style-type: none"> 1) typical reinforcing steel details; and 2) miscellaneous details. (D) electrical: <ul style="list-style-type: none"> (I) power single line diagrams and drawings; (II) schedules for all normal and emergency loads; (III) power requirements for all building systems and equipment; (IV) plans, sections and/or details showing locations, elevations and clearance space requirements for all electrical equipment and panels; (V) lighting design with layout plans, details, and selection of lighting equipment privy to the architectural design at this stage of submittal; (VI) noise and vibration control design criteria and preliminary measures; and (VII) riser diagrams and details of other electrical systems including lighting control, lightning protection, grounding, motor control, corrosion control, snow melting (if any electric), fire detection and alarm. (e) Pre-final Design Development Submittals in accordance with the requirements set forth in Part 6 of Schedule 15-2 – Design and Construction Requirements – Hurontario OMSF, including the following documentation: <ul style="list-style-type: none"> (i) design excellence submission consisting of an illustrated report containing the following elements in accordance with the Design Excellence Principles and Requirements, including: <ul style="list-style-type: none"> (A) a description of the overall site and Facility architectural and urban design strategy; (B) a description and diagrams as required to demonstrate the following: <ul style="list-style-type: none"> (I) overall site concept; (II) building massing; (III) architectural expression and concept; |
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| | <ul style="list-style-type: none"> (IV) sustainability; and (V) potential for future development integration; (C) the overall approach to the design of the Hurontario OMSF from the vantage point of the neighbourhood, from both eye-level and surrounding high-rise buildings, including: <ul style="list-style-type: none"> (I) general arrangement and massing on the site; (II) landscape treatments; (III) building roofscape; and (IV) site perimeter enclosure; and (D) computer-generated 3D images, fully rendered in colour, reflecting at a minimum, the level of detail found in the renderings of the Design Excellence Principles and Requirements document, including surface textures, lighting, materials, to a semi-photo-realistic level of detail, sized for 11”x17” and including at a minimum: <ul style="list-style-type: none"> (I) aerial site views (no fewer than two); (II) building exterior and site features from eye level, taken from within the Hurontario OMSF site (no fewer than four, including one night view); (III) views of site from the surrounding neighbourhood, including views at eye level taken from each of Highway 407, Kennedy Road and Etobicoke Creek (no fewer than four); and (IV) building interior principle spaces (no fewer than two); (ii) site details (scale 1:200) and other scales as appropriate, including: <ul style="list-style-type: none"> (A) site plan layouts; (B) grading and Drainage plans; (C) Utility plans, profiles and details; (D) paving plans, profiles and details; (E) track plans, profiles and details; and (F) OCS layouts and details; (iii) drawings and materials, including: |
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| | <ul style="list-style-type: none"> (A) architectural: <ul style="list-style-type: none"> (I) interior finish schedules; (II) door, frame , room and hardware schedules; (III) windows and glazing schedule; (IV) lighting fixture schedules; (V) exterior wall sections and cladding details; (VI) stair plans, sections and details; (VII) washroom plans and details; (VIII) hardware details; (IX) spaces, including Room Data Sheets for all Contracting Authority Rooms; and (X) signage location plans (scale 1:200), signage graphics details and specifications representing typical and specific signs for each location; (B) mechanical: <ul style="list-style-type: none"> (I) system schematics; (II) ductwork and piping systems routing; (III) schedules for all equipment and accessories selections and power requirement (coordinated with electrical); (IV) confirmed and coordinated layouts of mechanical rooms and incoming and outgoing services; (V) main piping and distribution ductwork (double lined ductwork drawings) and piping routes with required intakes, shafts, wall openings and fire separation penetrations; (VI) BACS control system logic and schematics; (VII) materials to indicate compliance to LEED® Silver certification; (VIII) schedule of rooms with applied mechanical systems design criteria; (IX) design calculations for all mechanical systems on as requested basis; and (X) list of required permits for air, noise etc.; and |
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| | <ul style="list-style-type: none"> (C) structural; <ul style="list-style-type: none"> (I) structure layout; (II) key plans and unit layout; (III) general notes and standard details; (IV) foundation details; (V) framing layout with member sizes; (VI) connection details; (VII) individual unit drawings with dimensions; (VIII) typical reinforcing cross sections; (IX) longitudinal sections; (X) typical reinforcing steel details; (XI) resolution of all issues identified during design reviews; and (XII) any special provisions for the construction of the Structures; and (D) electrical: <ul style="list-style-type: none"> (I) power single line diagrams and drawings; (II) schedules for all normal and emergency loads; (III) power requirements for all building systems and equipment; (IV) plans, sections and/or details showing locations, elevations and clearance space requirements for all electrical equipment and panels; (V) lighting design with layout plans, details, and selection of lighting equipment privy to the architectural design at this stage of submittal; (VI) noise and vibration control design criteria and preliminary measures; and (VII) riser diagrams and details of other electrical systems including lighting control, lightning protection, grounding, motor control, corrosion control, snow melting (if any electric), fire detection and alarm; (iv) durability report; and |
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| | <ul style="list-style-type: none"> (v) code analysis addressing both building and fire/life safety issues; (f) Pre-final Design Development Submittals documents in accordance with the requirements set forth in Part 8 of Schedule 15-2 – Design and Construction Requirements – Streetscape, Urban Design and Landscape Architecture, including the following documentation (where appropriate, the following information may be provided in the Design Brief): <ul style="list-style-type: none"> (i) update to public boulevard drawings submitted as part of the Preliminary New Municipal Infrastructure Design Development Submittals; (ii) update to streetlighting drawings submitted as part of the Preliminary New Municipal Infrastructure Design Development Submittals; and (iii) landscaping drawings and materials for each TPSS, including: <ul style="list-style-type: none"> (A) context plan (scale: 1:1000); (B) perspectives – minimum of 6 exterior perspectives per TPSS in full colour describing the developed exterior with context: <ul style="list-style-type: none"> (I) exterior perspective day and night views at eye level showing main entrance to each facility; (II) exterior perspective day and night views from bird’s eye view showing the total extent of the facility; and (III) exterior perspective day and night views showing total extent of the facility from street. (g) A list of all specifications, in National Master Specifications format, required to comply with the requirements set forth in Schedule 15 – Output Specifications. |
| S-103A | Pre-final Design Development Submittals at Rathburn Road |
| | <p>Project Co shall provide the portion of the Pre-final Design Development Submittals set out in Section (b) of S-103 related to the Works located:</p> <ul style="list-style-type: none"> (a) north of Square One Drive; (b) south of Highway 403; (c) east of Station Gate Road; and (d) west of Hurontario Street; <p>to Contracting Authority for review and comment in accordance with this Schedule 10 by no later than October 15, 2020.</p> |

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| S-104 | <p>Final Design Development Submittals</p> <p>Project Co shall provide the following Final Design Development Submittals to Contracting Authority for review and comment in accordance with this Schedule 10:</p> <ul style="list-style-type: none"> (a) Final Design Development Submittals in accordance with the requirements set forth in Part 1 of Schedule 15-2 – Design and Construction Requirements - General, including the following documentation (where appropriate, the following information may be provided in the Design Brief): <ul style="list-style-type: none"> (i) Utilities reports and drawings, including: <ul style="list-style-type: none"> (A) update to all utility reports and drawings submitted as part of the Pre-final Design Development Submittals; (B) documentation of all communications, coordination and submissions as required to fulfill the approaches described in the Utility Infrastructure Relocation Plan; and (b) Final Design Development Submittals in accordance with the requirements set forth in Part 2 of Schedule 15-2 – Design and Construction Requirements – Civil and Guideway, including the following documentation (where appropriate, the following information may be provided in the Design Brief): <ul style="list-style-type: none"> (i) Update to alignment reports and drawings submitted as part of the Pre-final Design Development Submittals (ii) update to drawings for the modifications to existing roadways within the Municipal ROW submitted as part of the Pre-final Design Development Submittals; (iii) update to Trackwork submittals submitted as part of the Pre-final Design Development Submittals; (iv) structural reports and drawings, including: <ul style="list-style-type: none"> (A) update to design drawings submitted as part of the Pre-final Design Development Submittals; (B) update to drawings for Temporary Works submitted as part of the Pre-final Development Submittals; (C) a neat, bound, indexed set of design calculations for the Civil Structures; and (D) update to all descriptions of aesthetic treatment for all walls, submitted as part of the Pre-final Design Development Submittals including complete construction specifications. (c) Final Design Development Submittals in accordance with the requirements set forth in Articles 9, 10, 11, 12 and 13 of Part 1 to Schedule 15-2 – Design and Construction Requirements and Part 4 of Schedule 15-2 – Design and Construction Requirements – Systems. including the following documentation (where appropriate, the following information may be |
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| | <p>provided in the Design Brief):</p> <ul style="list-style-type: none"> (i) The submittals shall demonstrate, on a progressive basis, that all equipment and Systems have been selected, designed, procured, manufactured, installed, inspected and tested to function in accordance with the requirements of the Project Agreement. (ii) updates to all submissions from the Pre-final Design Development Submittals; (iii) update to the integration of all Systems elements, including inter relationship to all items included in the Pre-final Design Development Submission as well as all interface control documents; (iv) update to all safety and security documents; (v) safety documents required for the certification of HLRT; (vi) update to signalling and train control system design submittals submitted as part of the Pre-final Design Development Submittals; (vii) Update to TPS design submittals submitted as part of the Pre-final Design Development Submittals and inclusion of the following: <ul style="list-style-type: none"> (A) description of system, including normal and abnormal operational modes; (viii) update to OCS submittals submitted as part of the Pre-final Design Development Submittals; (ix) update to Communications Systems submittals submitted as part of the Pre-final Design Development Submittals; <p>(d) Final Design Development Submittals in accordance with the requirements set forth in Part 5 of Schedule 15-2 – Design and Construction Requirements –Facilities, including the following documentation updated from previous submissions:</p> <ul style="list-style-type: none"> (i) update to the design excellence submission submitted as part of the Pre-final Design Development; (ii) update to the architectural submission submitted as part of the Pre-final Design Development Submittals; (iii) update to the drawings and materials for each Station and Stop submitted as part of the Pre-final Design Development Submittals; and (iv) updates to the drawings and materials for each TPSS submitted as part of the Pre-final Design Development Submittals. <p>(e) Final Design Development Submittals in accordance with the requirements set forth in Part 6 of Schedule 15-2 – Design and Construction Requirements – Hurontario OMSF, including updates to all drawings and materials submitted as part of the Pre-</p> |
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| | <p>final Design Development Submittals</p> <p>(f) Final Design Development Submittals documents in accordance with the requirements set forth in Part 8 of Schedule 15-2 – Design and Construction Requirements – Streetscape, Urban Design and Landscape Architecture, including the following documentation:</p> <ul style="list-style-type: none"> (i) update to public boulevard drawings submitted as part of the Pre-Final Design Development Submittals; (ii) update to streetlighting drawings submitted as part of the Pre-final Design Development Submittals; and (iii) update to TPSS site plans submitted as part of the Pre-Final Design Development Submittals. <p>(g) A draft of all specifications, in National Master Specifications format, required to comply with the requirements set forth in Schedule 15 – Output Specifications.</p> |
| S-105 | Construction Document Submittals |
| | <p>Minimum Submissions Required for Review in the Construction Documents Stage:</p> <p>Project Co shall provide the following Construction Document Submittals to Contracting Authority for review and comment in accordance with this Schedule 10:</p> <ul style="list-style-type: none"> (a) Project Co shall submit all design certificates for the Construction Document Submittals, together with the supporting documentation, to the Contracting Authority Representative for review, acting reasonably, in accordance with the Review Procedure. The submitted design certificates shall have original signatures, seals and registration numbers and shall be in such form as to allow the Contracting Authority Representative to perform its review function in respect of such design certificate without delay. (b) Construction Document Submittals in accordance with the requirements set forth in Part 1 of Schedule 15-2 – Design and Construction Requirements – General, and that provides resolution of design concepts developed during the Design Development Stage. (c) Construction Document Submittals in accordance with the requirements set forth in Article 5 of Part 1 to Schedule 15-2 – Design and Construction Requirements – Utility Infrastructure Design Criteria and Article 6 of Part 1 to Schedule 15-2 – Design and Construction Requirements – Electrical Utilities Interface Requirements and provides resolution of design concepts developed in the Design Development Submittals, including: <ul style="list-style-type: none"> (i) final update to all utilities drawings and reports submitted as part of the Final Design Development Submittals. (d) Construction Document Submittals in accordance with the requirements set forth in Part 2 of Schedule 15-2 – Design and |

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| | <p>Construction Requirements – Civil and Guideway and that provides resolution of design concepts developed in the Design Development Submittals, including:</p> <ul style="list-style-type: none"> (i) final update to alignment reports and drawings submitted as part of the Final Design Development Submittals; (ii) final update to drawings for the modifications to existing roadways within the Municipal ROW submitted as part of the Final Design Development Submittals; (iii) final update to Trackwork submittals submitted as part of the Final Design Development Submittals; and (iv) final updates to structural reports and drawings submitted as part of the Final Design Development Submittals. <p>(e) Construction Document Submittals in accordance with the requirements set forth in Articles 9, 10, 11, 12 and 13 of Part 1 to Schedule 15-2 – Design and Construction Requirements and Part 4 of Schedule 15-2 – Design and Construction Requirements – Systems and that provides resolution of design concepts developed in the Design Development Submittals, including:</p> <ul style="list-style-type: none"> (i) The submittals shall demonstrate, on a progressive basis, that all equipment and Systems have been selected, designed, procured, manufactured, installed, inspected and tested to function in accordance with the requirements of the Project Agreement; (ii) final update to all submissions from the Final Design Development Submittals; (iii) final update to all integration of all Systems elements, including inter relationship to all items included in the Final Design Development Submission as well as all interface control documents; (iv) final update to all safety and security documents; (v) final safety documents required for the certification of HLRT; (vi) final update to signalling and train control system design submittals submitted as part of the Final Design Development Submittals; (vii) final update to TPS design submittals submitted as part of the Final Design Development Submittals; (viii) final update to OCS submittals submitted as part of the Final Design Development Submittals; and (ix) final update to communications systems submittals submitted as part of the Final Design Development Submittals. <p>(f) Construction Document Submittals in accordance with the requirements set forth in Part 5 of Schedule 15-2 – Design and Construction Requirements – Facilities and that provides resolution of design concepts developed in the Design Development Submittals, including:</p> |
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| | <ul style="list-style-type: none"> (i) final update to design excellence submission submitted as part of the Final Design Development Submittals; (ii) final architectural submission submitted as part of the Final Design Development Submittals; (iii) final update to drawings and materials for each Station and Stop submitted as part of the Pre-final Design Development Submittals; and (iv) final update to the drawings and materials for each TPSS submitted as part of the Pre-final Design Development Submittals. <p>(g) Construction Document Submittals in accordance with the requirements set forth in Part 6 of Schedule 15-2 – Design and Construction Requirements – Hurontario OMSF and that provides resolution of design concepts developed in the Design Development Submissions, including final updates to all drawings and materials submitted as part of the Final Design Development Submittals.</p> <p>(h) Construction Document Submittals in accordance with the requirements set forth in Part 8 of Schedule 15-2 – Design and Construction Requirements – Streetscape, Urban Design and Landscape Architecture, and that provides resolution of design concepts developed in the Design Development Submittals, including the following documentation:</p> <ul style="list-style-type: none"> (i) final update to public boulevard drawings submitted as part of the Final Design Development Submittals; (ii) final update to streetlighting drawings submitted as part of the Final Design Development Submittals; and (iii) final update to TPSS site plans submitted as part of the Final Design Development Submittals; <p>(i) final specifications, in National Master Specifications format, required to comply with the requirements set forth in Schedule 15 – Output Specifications.</p> <p>(j) any other Works Submittals Contracting Authority reasonably requires to understand the Works</p> |
| S-106 | Design Certificates |
| | <p>Provide separate design certificate, in the form as provided in Attachment 1 to this Appendix A, for the submitted Construction Document Submittals review package. All design certificates prepared and issued by Project Co shall be:</p> <ul style="list-style-type: none"> (a) on the applicable design certificate (general) or design certificate (environmental); (b) signed and sealed by the responsible professional, who shall be a Professional Engineer or a registered Architect or Landscape Architect, and a principal of the Design Team; (c) signed by the Project Co Representative; and |

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| | <p>(d) in the case only of design certificates for environmental works incorporated into the Works, the Environmental Director. Any person who signs a design certificate shall clearly print his or her name and the position held in his or her organization on the design certificate.</p> |
| S-107 | Construction Certificates |
| | <p>Provide Construction Certificates, in the form as provided in Attachment 2 to this Appendix A, for each substantially completed component, all finally completed components, and all finally completed components of any Reinstatement Work to the Contracting Authority Representative for review in accordance with the Review Procedure. All Construction Certificates prepared and issued by Project Co shall be:</p> <ul style="list-style-type: none"> (a) signed by the Construction Contractor representative; (b) signed and sealed by the responsible professional, who shall be a Professional Engineer or a registered Architect or Landscape Architect, and a principal of the Design Team; (c) signed by the Project Co Representative; (d) signed by the Independent Certifier, acknowledging receipt; and (e) submitted to the Contracting Authority no later than: <ul style="list-style-type: none"> (i) in the case of substantial completion of each applicable component, the last Business Day of the month immediately following the month in which the component is completed in the field; and (ii) in the case of final completion of each applicable component, and any final completion of any Reinstatement Work, the last Business Day of the month immediately following the month in which the component is completed in the field. <p>Any person who signs a construction certificate shall clearly print his or her name and the position held in his or her organization on the construction certificate.</p> |
| S-108 | Geo-engineering Reports |
| | <p>Project Co shall submit geo-engineering reports in accordance with the requirements set out in Article 4 of Part 2 to Schedule 15-2 – Design and Construction Requirements – Civil and Guideway, including reports outlining the following:</p> <ul style="list-style-type: none"> (a) general geo-engineering requirements, including: <ul style="list-style-type: none"> (i) permanent and temporary slopes; |

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| | <ul style="list-style-type: none"> (ii) fill types; (iii) compaction requirements; and (iv) consolidation-pre loading. <p>(b) requirements with respect to new or existing Civil Structures:</p> <ul style="list-style-type: none"> (i) foundation types; (ii) foundations piles, permanent anchors - settlements, bearing pressures, influence on other structures; (iii) up-lift and buoyancy design; (iv) frost protection; (v) subgrade treatment - seepage blankets, u-fill, mud slabs; (vi) underpinning; (vii) protection requirements for buildings and utilities; and (viii) geo-engineering design issues related to future adjacent structures. <p>(c) requirements with respect to pavements and track beds, including:</p> <ul style="list-style-type: none"> (i) pavement types; (ii) pavement design report; (iii) subgrade Drainage; and (iv) track fill, backfill handling/disposal. <p>(d) requirements with respect to excavation support systems, including:</p> <ul style="list-style-type: none"> (i) design criteria - pressures, movement, soil parameters, types of systems for structure protection, etc.; (ii) ground water control requirements; (iii) locations of excavation support systems; (iv) cross-sections of critical and typical areas - all details; (v) easement requirements for tie-backs; (vi) sequencing of excavation and support system construction; |
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| | <ul style="list-style-type: none"> (vii) preloading requirements; (viii) base stability - soft soils or ground water uplift; and (ix) temporary slopes; <p>(e) requirements with respect to dewatering systems, including:</p> <ul style="list-style-type: none"> (i) water level requirements during construction defined; (ii) dewatering system selection; (iii) well spacing; (iv) assessment of settlement due to dewatering; (v) Permits, Licences, and Approvals requirements; and (vi) ground water treatment and disposal; <p>(f) requirements with respect to geotechnical instrumentation and monitoring, including:</p> <ul style="list-style-type: none"> (i) GIMP; (ii) typical installation details; (iii) location / number of instruments; (iv) response levels (review and alert levels); (v) noise and vibration control plan; (vi) response action plan; (vii) schedule for instrument installation, taking baseline readings, and monitoring frequencies and durations; (viii) measures and specific instrumentation and monitoring requirements for protecting existing adjacent structures and heritage buildings; (ix) instrument decommissioning schedule; and (x) data acquisition, receiving, transmitting, collecting, and visualization system; and <p>(g) geo-environmental requirements, including:</p> <ul style="list-style-type: none"> (i) review existing geo-environmental information-prepare an environmental baseline and plan; (ii) details for additional geo-environmental investigations; |
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| | <ul style="list-style-type: none"> (iii) soil and groundwater quality; (iv) identify unusual/poor soil or groundwater conditions-prepare risk assessment plan; (v) soil and groundwater disposal management requirements; (vi) soil stratigraphy; and (vii) waste management plan-soil and groundwater. |
| S-109 | Stormwater Management Reports |
| | Project Co shall submit Drainage and stormwater management reports and drawings for the Works in accordance with the requirements set forth in Article 6 of Part 2 to Schedule 15-2 – Design and Construction Requirements – Civil and Guideway. |
| S-110 | Structural Design Reports |
| | <ul style="list-style-type: none"> (a) Project Co shall submit structural reports in accordance with requirements set forth in Article 8 of Part 2 to Schedule 15-2 – Design and Construction Requirements – Civil and Guideway, including: <ul style="list-style-type: none"> (i) a hydrology report for each structure crossing a watercourse or located in a flood plain; (ii) investigations and structural evaluations for existing Civil Structures that are to be used; and (iii) identification and description of any constraints and restrictions, including any special provisions, for the construction of any new Civil Structures or removal, modification, replacement or rehabilitation of existing Civil Structures. (b) Project Co shall submit structural reports in accordance with requirements set forth in Article 4 of Part 5 to Schedule 15-2 – Design and Construction Requirements – Facilities, including: <ul style="list-style-type: none"> (i) investigations and structural evaluations for existing Building Structures that are to be used; and (ii) identification and description of any constraints and restrictions, including any special provisions, for the construction of any new Building Structures or demolition, modification, replacement or rehabilitation of existing Building Structures. |
| S-111 | Traffic and Operations Design Plans |
| | <ul style="list-style-type: none"> (a) Project Co shall provide an Operations Concept Plan demonstrating compliance with the requirements established in Article 2 of Part 1 to Schedule 15-2 – Design and Construction Requirements. (b) Project Co shall provide a Traffic Signal Operations Plan demonstrating compliance with the requirements established in |

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| | Article 9 of Part 2 to Schedule 15-2 – Design and Construction Requirements. |
| S-112 | Systems Design Definition |
| | <p>Project Co shall provide the following submittals prior to the Pre-final Design Development Submittals in respect of the Systems design definition to Contracting Authority for review and comment in accordance with this Schedule 10 and with the requirements set forth in Articles 9, 10, 11, 12 and 13 of Part 1 to Schedule 15-2 – Design and Construction Requirements, and Part 4 of Schedule 15-2 – Design and Construction Requirements, including the following documentation (where appropriate the information may also be provided in the Design Brief):</p> <ul style="list-style-type: none"> (a) The Systems design definition submittals shall demonstrate the methodology and processes followed by Project Co in the design of the system elements. (b) The following submittals shall be submitted covering all subsystems: <ul style="list-style-type: none"> (i) Systems Description Overview; (ii) Systems Engineering Management Plan; (iii) Systems Integration Management Plan; (iv) Systems Assurance Plan; (v) Requirements Management Plan; (vi) Configuration Management Plan; (vii) Systems Documentation Plan; (viii) Grounding and Bonding Plan; (ix) Corrosion Control Plan; (x) Safety Management Plan; (xi) Security Management Plan; and (xii) first draft of the Safety and Security Certification Submittals, including: <ul style="list-style-type: none"> (A) Technical Safety Report; (B) Technical Security Report; (C) Threat and Vulnerability Analysis; |

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| | <ul style="list-style-type: none"> (D) Safety-Critical Items List; (E) RAMS report; (F) Hazard Log; and (G) Security Log. |
| S-113 | Traffic Plans |
| | Project Co shall provide the Traffic and Transit Management Plan and Traffic Control Plans, including updates, if any, during each stage of construction, in accordance with the requirements set forth in Part 7 of Schedule 15-2 – Design and Construction Requirements – Traffic Management and Construction Access. |
| S-114 | Revenue Vehicle Submittals |
| | <ul style="list-style-type: none"> (a) Project Co shall submit Revenue Vehicle submittals as set forth in Appendix A to Part 3 of Schedule 15-2 – Design and Construction Requirements – Revenue Vehicles, including the following: <ul style="list-style-type: none"> (i) PHL, SSL and SHL; (ii) Method to determine the accuracy of the passenger counting system; (iii) Derogations; (iv) Service proven Vehicle test results that demonstrate compliance; (v) Master Test Plan; and (vi) All test procedures authored by the Revenue Vehicle Manufacturer or sub-supplier. (b) Project Co shall submit Revenue Vehicle warranty and Canadian Content Certificate information as set out in Schedule 43 – Revenue Vehicles. |
| S-115 | Project Management Plan |
| | Project Co shall provide the Project Management Plan pursuant to Section 2.4 of Part 1 of Schedule 15-2 – Design and Construction Requirements – General Requirements no later than 90 days following Financial Close. |
| S-116 | Risk Management Plan |
| | Project Co shall provide the Risk Management Plan pursuant to Section 2.5 of Part 1 of Schedule 15-2 – Design and Construction |

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| | Requirements – General Requirements no later than 90 days following Financial Close. |
| S-117 | Commissioning |
| | <p>(a) Project Co shall prepare and submit the Commissioning Submittals in accordance with the requirements outlined in Schedule 14 - Commissioning and in accordance with industry standards, including:</p> <ul style="list-style-type: none"> (i) Commissioning Brief; (ii) Commissioning Plan; (iii) Commissioning Schedule; (iv) Commissioning Manuals; (v) test plans; (vi) forms, procedures and reports; and (vii) related records. <p>(b) Project Co shall prepare and submit monthly commissioning reports in accordance with industry standards. Project Co shall submit commissioning reports with an updated Commissioning Plan no later than 6 months after commencement of the Construction Period.</p> |
| S-118 | Governmental Authorities and Permits, Licences and Approvals |
| | <p>(a) Project Co shall provide a copy of submissions documents, correspondence and Project Co Permits, Licenses and Approvals received from all Governmental Authorities with jurisdiction, including the following:</p> <ul style="list-style-type: none"> (i) City of Mississauga; (ii) City of Brampton; (iii) Region of Peel; (iv) Metrolinx; (v) Railway Companies; (vi) Utility Companies; (vii) TRCA; |

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| | <ul style="list-style-type: none"> (viii) CVC; (ix) MTO; and (x) all others as required to execute the Works. <p>(b) Project Co shall provide all supporting information required for Contracting Authority to obtain Contracting Authority Permits, Licences and Approvals as identified in Schedule 34 - Contracting Authority Permits, Licences and Approvals.</p> |
| S-119 | Works Report |
| | Project Co shall comply with the requirements set forth in Schedule 33 - Works Reports Requirements, and provide any updates to the Project Works Schedules. |
| S-120 | Works Schedule |
| | <p>Project Co shall provide the submittals set forth in Schedule 12 – Works Schedule Requirements, including:</p> <ul style="list-style-type: none"> (a) the Interim Baseline Works Schedule; (b) the Baseline Works Schedule; (c) any Revised Baseline Works Schedules; (d) the Basis of Works Schedule Reports; (e) the Works Schedule Reports; (f) the Progress Works Schedules; (g) subject to Schedule 12 – Works Schedule Requirements, any Corrected Works Schedules; (h) the Works Micro-Schedules; (i) any Recovery Works Schedules; and (j) any Recovery Works Schedule Reports. |
| S-121 | Review Procedure Activities Register |
| | Project Co shall submit a Review Procedure Activities Register pursuant to Schedule 12 – Works Schedule Requirements and this Schedule 10 – Review Procedure. |

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| S-122 | Substantial Completion and Final Completion |
| | <p>Project Co shall provide detailed submissions prepared and submitted in accordance with industry standards and contractual requirements for the following:</p> <ul style="list-style-type: none"> (a) Substantial Completion; (b) Final Completion; and (c) Substantial Completion Certificate. |
| S-123 | Record Drawings and Operations Manuals |
| | <p>Project Co shall provide a detailed log (spreadsheet format) identifying all Record Drawings and operations manuals. The detailed log shall include, as a minimum, the following:</p> <ul style="list-style-type: none"> (a) drawing number for all Record Drawings with a summary of the changes made during the Construction Period; (b) list of all systems and components included in the operations manuals; and (c) any other information Contracting Authority reasonably requires to understand the Works. |
| S-124 | 1 Year and 3 Year Warranty Review |
| | <p>Prior to the one year post-occupancy date and prior to the expiry of the warranty, as determined by Contracting Authority and Project Co, Project Co shall provide a detailed report identifying any deficiency issues with the Work experienced since occupancy.</p> |
| S-125 | LEED Requirements |
| | <p>Project Co shall provide a completed registration, LEED checklist, application form and certification for the Hurontario OMSF.</p> |
| S-126 | Communications |
| | <p>Project Co shall provide submittals, including updates, if any, during each stage of construction, in accordance with the requirements set forth in Schedule 18 – Communication and Public Engagement Protocol, including:</p> <ul style="list-style-type: none"> (a) Communications and Public Engagement Protocol; (b) Community Engagement and Stakeholder Relations Plan; (c) Construction Period Complaints Protocol; |

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| | <ul style="list-style-type: none"> (d) Crisis Communication Plan; (e) Operational Term Complaints Protocol; (f) Project Co Communications Protocol; (g) Project Co Construction Communications Plan; and (h) Project Co Operational Term Communications Plan. |
| S-127 | Community Benefits and Liaison Plan |
| | Project Co shall submit the Community Benefits and Liaison Plan in accordance with the requirements set forth in the Project Agreement. |
| S-128 | Environmental |
| | Project Co shall provide submittals, including updates, if any, in accordance with the requirements set forth in Schedule 17 – Environmental Obligations. |
| S-129 | Mobility Matters |
| | <p>Project Co shall provide submittals, including updates, if any, in accordance with the requirements set forth in Schedule 7 – Mobility Matters, including:</p> <ul style="list-style-type: none"> (a) Lane Closure Analysis Report; and (b) Lane Closure Measurement and Verification Plan. |
| S-130 | Property Access Matters |
| | <p>Project Co shall provide the submittals, including updates, if any, in accordance with the requirements set forth in Schedule 40 – Property Access Matters, including:</p> <ul style="list-style-type: none"> (a) Property Access Closure Analysis Report; and (b) Property Access Closure Measurement and Verification Plan. |
| S-131 | Energy Matters |
| | Project Co shall provide submittals, including updates, if any, in accordance with the requirements set forth in Schedule 8 – Energy |

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| | <p>Matters, including:</p> <ul style="list-style-type: none"> (a) Methodology to calibrate the Revenue Vehicle Parameters (b) Calibrated Energy Model (c) Updated Energy Target Letter and Energy Model (d) Measurement and Verification of Energy Use Plan (e) Measurement and Verification of Water Use Plan |
| S-132 | Shop Drawings |
| | <ul style="list-style-type: none"> (a) Project Co shall provide all shop drawings for all systems and components of the Works in accordance with industry standards. (b) At any time during the course of the Project Term, Project Co shall provide additional shop drawings that may be requested by Contracting Authority for review by Contracting Authority pursuant to this Schedule 10. (c) Project Co shall provide such additional shop drawings only after they have been reviewed by the Project Co Representative. Shop drawings noted as Rejected by Project Co Representative are not to be submitted for review until they have been resubmitted and accepted by the Project Co Representative. (d) Project Co shall provide a preliminary list of all shop drawings with the applicable Pre-final Design Development Submittals. (e) Project Co shall provide a complete list of all shop drawings with the applicable Final Design Development Submittals. |
| S-133 | Site Instructions |
| | Project Co shall provide copies of all site instructions issued by the Design Team as amendments to “Issued For Construction” documents. |
| S-134 | Samples and Mock-ups, Materials, Fixtures, Furnishings and Equipment |
| | <ul style="list-style-type: none"> (a) Project Co shall provide samples for all systems, components, fixtures, furnishings and equipment required for the Project. <ul style="list-style-type: none"> (i) At any time during the Construction Period, Project Co shall provide additional samples that may be requested by Contracting Authority for review by Contracting Authority pursuant to this Schedule 10. (ii) Project Co shall provide a preliminary list of all samples with the applicable Pre-final Design Development Submittals. (iii) Project Co shall provide a complete list of all samples with the applicable Final Design Development Submittals. |

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| | <p>(b) Project Co shall provide catalogue cuts of all fixtures, furnishings and equipment required for the Project.</p> <p>(i) At any time during the course of the Project, Project Co shall provide such additional items that may be requested by Contracting Authority for review by Contracting Authority pursuant to this Schedule 10.</p> <p>(c) Project Co shall provide mock-ups for all systems and components required for the Project. These shall be pre-construction, and shall be full, working mock-ups that include exterior and interior finish materials, ornamental features, lighting, and all other security, electrical and mechanical components as described in the Output Specifications to verify and validate, at a one-to-one scale, key elements and construction assemblies of the Hurontario LRT. At a minimum, Project Co shall provide the following mock-ups, which shall demonstrate the successful integration of fundamental design elements:</p> <p>(i) A Stop with Centre Platform configuration and partial shelter, including:</p> <p>(A) approach/entrance ramp with balustrade;</p> <p>(B) Fare Collection Devices;</p> <p>(C) Stop identifier pole/pylon;</p> <p>(D) Stop platform, including tactile edge strip and tactile guidance tiles; and</p> <p>(E) at least one partial shelter, with all components and systems; and</p> <p>(ii) The primary entrance and partial facade for the Port Credit North Entrance , including the following details and connections:</p> <p>(A) Entry door(s);</p> <p>(B) Cantilever element(s) (such as canopy, overhangs, etc.);</p> <p>(C) At least one building-skin-module wide on either side of the entry doors and above entry doors and any cantilever element(s);</p> <p>(D) All visible entry elements and entry systems around doors;</p> <p>(E) Building cornice/cap along width of mock-up; and</p> <p>(F) Paving/floor finish at the entrance, at least one metre deep either side, along width of mock-up.</p> |
| S-135 | Building Systems |
| | <p>(a) Project Co shall provide a list of all final testing and balancing reports prepared in accordance with industry standards.</p> |

| | |
|--------------|--|
| | <ul style="list-style-type: none"> (b) Project Co shall provide all building system test reports. <ul style="list-style-type: none"> (i) Project Co shall provide a preliminary list of all building system test reports with the applicable Final Design Development Submittals. (ii) Project Co shall provide a complete list of all building system test reports with the applicable Construction Document Development Submittals. (c) Project Co shall provide an acoustics report, including written report with octave band sound level plots and overall A-weighted sound levels for each space measured. |
| S-136 | Legal Surveys |
| | <ul style="list-style-type: none"> (a) In conjunction with the Final Design Development Submittals, Project Co shall submit draft Reference Plans in accordance with the requirements set out in Section 7.2 of Part 1 of Schedule 15-2. (b) Not later than 90 days after the Final Completion Date, Project Co shall submit final Reference Plans in accordance with the requirements set out in Section 7.2 of Part 1 of Schedule 15-2. (c) Not later than 90 days after the Final Completion Date, Project Co shall submit Surveyor’s Real Property Reports in accordance with the requirements set out in Section 7.2 of Part 1 of Schedule 15-2. |

ATTACHMENT 1

Form of Design Certificates

Certificate Ref No. []

DESIGN CERTIFICATE (GENERAL)

In respect of:..... (Provide submittal details e.g. Stations, Stop, Hurontario OMSF, Civil and Guideway, Systems, Traffic, Drainage, Geotechnical, etc.)

Project Agreement between Contracting Authority and Project Co dated XX XX, XXXX (the "Project Agreement") relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Design Team for certifying the design of the Works to the extent that such Works components have been constructed, installed, altered, upgraded, and/or augmented, in accordance with Schedule 15-2 to the Project Agreement – Design and Construction Requirements.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Output Specifications.

2. We certify that we have prepared the Design Data for [.....] listed in the Schedule hereto in accordance with all applicable requirements contained in the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:
 - (a) complies with all applicable Output Specifications, as amended by the following:
 - (i) **[List, if any, the changes made by the issue of Variation(s)];**
 - (b) complies with all applicable design requirements of the Project Agreement;
 - (c) complies with all applicable standards, codes and current Good Industry Practice; and
 - (d) accurately describes and depicts the Works to be undertaken.

SCHEDULE

[Include here drawing numbers and titles, reports, calculations, etc.]

Certified by:

Design Team (Principal)

Name:

Title:

Date:

Professional Registration Number:

Affix Professional Seal

Signed:

Construction Contractor representative

Name:

Date:

This Certificate is assigned as:

- i. No Comment*
- ii. Minor Non-Conformance*
- iii. Major Non-Conformance*
- iv. Critical Non-Conformance*

* delete as appropriate

Signed:

Contracting Authority Representative

Name:

Date:

Certificate Ref No. []

DESIGN CERTIFICATE (ENVIRONMENTAL)

Project Agreement between Contracting Authority and Project Co dated XX XX, XXXX (the "Project Agreement") relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.

Form of certificate shall be used by the Design Team and the Environmental Director for certifying the design of environmental works incorporated in the Works in accordance with the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Output Specifications.
2. We certify that we have prepared the Design Data for [.....] **[Name and list of all elements of the environmental works]** in the Schedule hereto in accordance with all applicable requirements contained in the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:
 - (a) complies with all applicable Output Specifications, including Technical Appraisal Form No. [.....] dated [.....], as amended by the following:
 - (i) **[List, if any, the changes made by the issue of Variation(s), and any Addenda to the foregoing Technical Appraisal Form];**
 - (b) complies with all applicable requirements of Schedule 17 – Environmental Obligations
 - (c) complies with all applicable design requirements of the Project Agreement;
 - (d) complies with all applicable standards, codes and current Good Industry Practice; and
 - (e) accurately describes and depicts the Works to be undertaken.

SCHEDULE

[Include here drawing numbers and titles and reports, calculations, etc.]

Certified by:

Design Team (Principal)

Name:

Title:

Date:

Professional Registration Number:

Affix Professional Seal

Signed:

Environmental Director

Name:

Title:

Date:

Professional Registration Number:

Affix Professional Seal

This Design Certificate is:

- i. No Comment*
- ii. Minor Non-Conformance*
- iii. Major Non-Conformance*
- iv. Critical Non-Conformance*

* delete as appropriate

Signed:

Contracting Authority Representative

Name:

Date:

ATTACHMENT 2

Form of Construction Certificate

Certificate Ref. No. []

CONSTRUCTION CERTIFICATE

Project Agreement between Contracting Authority and Project Co dated XX XX, XXXX (the "Project Agreement") relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Design Team, Construction Contractor and Project Co for certifying in accordance with Construction Certificates submittals outlined in Appendix A of Schedule 10 – Review Procedure to the Project Agreement.

Construction Contractor’s Statement

- 1. We certify that [name and element of the Works in respect of the Substantial Completion Certificate][the Works in respect of the Final Completion Certificate][the Works in respect of the Final Completion Certificate (Reinstatement Work)] has been designed, constructed, [substantially completed], [totally completed], commissioned and tested in all respects in accordance with: [Note: Inapplicable language to be deleted.]
 - (a) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure;
 - (b) Applicable Law and Good Industry Practice; and
 - (c) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):
 - (i) [List, if any, the changes made by the issue of Variation(s), and any Addenda to the foregoing Technical Appraisal Form];

With the exception of:

[List, if any, all Non-Conformance Report(s) in “open’ status]

Signed.....

Construction Contractor representative

Name.....

Date.....

Design Team’s Statement

- 2. We certify that we have examined the [name and element of the Works in respect of the Substantial Completion Certificate][the Works in respect of the Final Completion Certificate][the

Works in respect of the Final Completion Certificate (Reinstatement Work)] in accordance with the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion [the said element of the Works][the Works] has been designed, constructed, [substantially completed][totally completed], commissioned and tested in all respects in accordance with:
[Note: Inapplicable language to be deleted.]

(a) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure; and

(b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):

(i) **[List, if any, the changes made by the issue of Variation(s), and any Addenda to the foregoing Technical Appraisal Form];**

Signed.....

Design Team (Principal)

Name.....

Title.....

Date.....

Professional Registration Number:

Affix Professional Seal

Receipt of this Certificate is acknowledged.

Signed.....

Independent Certifier

Name.....

Date.....

Professional Registration Number:

Affix Professional Seal

This Certificate is:

- i. No Comment*
- ii. Minor Non-Conformance*
- iii. Major Non-Conformance*
- iv. Critical Non-Conformance

* delete as appropriate

Signed:

Contracting Authority Representative

Name:

Date:

APPENDIX B**MINIMUM SERVICE****SUBMITTAL REQUIREMENTS****1. FORMAT FOR SERVICE SUBMITTALS**

The following is a breakdown of the contents of each Service Submittal as well as the format for each.

- 1.1** All Service Submittals are to be submitted to Contracting Authority in hard copy and electronic format in accordance with the following requirements:
- (a) All hard copy Service Submittals in reduced format drawings (11" x 17", foldouts folded to 8.5" x 11") and included in a 3-hole ring binder
 - (b) All hard copy Service Submittals in large format drawings (A0 or A1 size) shall be bound for Record Drawings and shall be provided separately;
 - (c) All hard copy Service Submittals which are not drawings shall be submitted in 8.5" x 11" black and white format, unless otherwise specifically noted in this Appendix B (or as requested by Contracting Authority, acting reasonably).
 - (d) Submit Service Submittals in electronic format as text searchable portable document format (pdf) and in their native format;
 - (e) All Service Submittals provided in CAD format shall be in accordance with Metrolinx CADD/BIM Standards Manual; and
 - (f) All Service Submittals shall be uploaded to Contracting Authority's web based project management system in portable document format (pdf) and in their native format at the same time the Submittals are forwarded to Contracting Authority.

2. SUBMITTALS

- 2.1** The following is a detailed, non-exhaustive list of Service Submittals that Project Co is required to provide to Contracting Authority for review and comment in accordance with this Schedule 10. Additional Service Submittals may be requested by the Contracting Authority Representative at any time in order to understand the Project Co Services, and Project Co shall be required to provide same to Contracting Authority for review in accordance with this Schedule 10. A description of the minimum content of each Service Submittal provided is set forth in Section 2 of this Appendix B.
- 2.2** Service Submittal deliverables which are applicable to satisfying the requirements of multiple Service Submittal sections are permitted to be reused, provided that they meet all the requirements of each Service Submittal section they are applied to.

2.3 Unless otherwise specified in the table below, or an alternate date is mutually agreed with Contracting Authority and confirmed in writing by Contracting Authority in advance, the following definitions apply in the table below:

- (a) “**Annually in advance**” means:
 - (i) submit at least ninety (90) days prior to the commencement of Commissioning;
 - (ii) re-submitted at least sixty (60) days prior to the commencement of each Contract Year;
- (b) “**Annually in retrospect**” means submitted within thirty (30) days of the final day of each Contract Year;
- (d) “**Monthly**” means submitted within seven (7) days of the end of each calendar month; and
- (c) “**Quarterly**” means submitted within thirty (30) days of the final day of each consecutive period of three (3) calendar months, starting from Substantial Completion.

| Item # | Title | Description | Due Date |
|--------|--|--|--|
| S-200 | MCR Review Comments | In accordance with Section 1.2(b)(iii) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | No later than seven Business Days after the receipt of the MCR Review Materials from Contracting Authority |
| S-201 | Operational Term Traffic and Transit Management Plan | In accordance with Section 1.2(c)(iv) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | No later than 60 days before the Scheduled Substantial Completion Date |
| S-202 | Operations And Maintenance Staffing And Training Plan | In accordance with Section 2.2(b) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | No later than 180 days prior to the Scheduled Substantial Completion Date |
| S-203 | Emergency services training programs, including the curricula and training materials | In accordance with Section 2.4(g) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | At least six months prior to commencement of the training |
| S-204 | Proposed uniforms and/or apparel, as well as any conduct operating procedures | In accordance with Section 2.7(d) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | No later than 180 days prior to the Scheduled Substantial Completion Date |
| S-205 | Monthly Performance Monitoring Report | In accordance with Section 3.3(a) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | Monthly |
| S-206 | Monthly Maintenance Report | In accordance with Section 3.3(b) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | No later than five Business Days after the end of each Contract Month |
| S-207 | Quarterly Performance Report | In accordance with Section 3.4(b) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | No later than 14 days after the Quarterly Performance Review Meeting |

| Item # | Title | Description | Due Date |
|--------|---|---|--|
| S-208 | Recovery Action Plan | In accordance with Section 3.4(h) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | No later than 21 days after the written request from Contracting Authority |
| S-209 | Safety accident and security incident information | In accordance with Section 4.5(b) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | |
| S-210 | Monthly Safety and Security Report | In accordance with Section 4.8(c) of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements. | Monthly |
| S-211 | Alternative Transit Service Plan | In accordance with Section 1.2(c) of Part 2 of Schedule 15-3 – Operations and Maintenance Requirements. | At least 160 days prior to the Scheduled Substantial Completion Date. The Alternative Transit Service Plan shall be reviewed, updated and resubmitted to the Contracting Authority at least 60 days prior to the commencement of each Contract Year. |
| S-212 | Operations Plans | In accordance with Section 2.1(c) of Part 2 of Schedule 15-3 – Operations and Maintenance Requirements. | At least 160 days prior to the Scheduled Substantial Completion Date. The Operations Plan shall be reviewed, updated and resubmitted to Contracting Authority at least 60 days prior to the commencement of each Contract Year. |

| Item # | Title | Description | Due Date |
|--------|---|--|--|
| S-214 | Contracting Authority Survey Remedial Plan | In accordance with Section 5.4(b) of Part 2 of Schedule 15-3 – Operations and Maintenance Requirements. | No later than 45 days following receipt of the results of a Contracting Authority Survey |
| S-215 | Maintenance Plan | Includes Maintenance Implementation Plan, Annual Maintenance Work Schedule, Asset Management Plan and Five-Year Asset Preservation Work Schedule, in accordance with Article 1 of Part 3 of Schedule 15-3 – Operations and Maintenance Requirements. | The first Maintenance Plan shall be submitted at least 90 days prior to Substantial Completion. The Maintenance Plan shall be reviewed, updated and resubmitted to Contracting Authority at least 60 days prior to the commencement of each Contract Year. |
| S-216 | Request for approval for proposed Major Maintenance Shutdown Period | In accordance with Section 2.4(d) of Part 3 of Schedule 15-3 – Operations and Maintenance Requirements. | At least 90 calendar days in advance of the proposed Major Maintenance Shutdown Period |
| S-217 | A list of Maintenance Vehicles required for Hurontario LRT | In accordance with Section 5.2(a) of Part 3 of Schedule 15-3 – Operations and Maintenance Requirements. | |
| S-218 | Snow and Ice Clearing Plan | In accordance with Section 6.3(e) of Part 3 of Schedule 15-3 – Operations and Maintenance Requirements. | |
| S-219 | Configuration Management Plan | In accordance with Section 6.6(b) of Part 3 of Schedule 15-3 – Operations and Maintenance Requirements. | |
| S-220 | Pest Control Plan | In accordance with Section 9.13(b) of Part 3 of Schedule 15-3 – Operations and Maintenance Requirements. | |

| Item # | Title | Description | Due Date |
|--------|--|---|---|
| S-221 | Planned Condition Assessment Report | In accordance with Section 2.3(c) of Part 4 of Schedule 15-3 – Operations and Maintenance Requirements. | No later than 56 days after each Planned Condition Assessment |
| S-222 | Emergency Condition Assessment Report | In accordance with Section 2.4(b) of Part 4 of Schedule 15-3 – Operations and Maintenance Requirements. | No later than seven days after each such inspection |
| S-223 | Project Co System Inventory | In accordance with Section 2.5(c) of Part 4 of Schedule 15-3 – Operations and Maintenance Requirements. | Annually in retrospect |
| S-224 | Changed Record Drawings | In accordance with Section 2.6(b) of Part 4 of Schedule 15-3 – Operations and Maintenance Requirements. | Annually in retrospect |
| S-225 | Asset Condition Data and Inventory Information System | In accordance with Section 2.7(d) of Part 4 of Schedule 15-3 – Operations and Maintenance Requirements. | Annually in retrospect |
| S-226 | Annual Asset Preservation Report | In accordance with Section 5.1(b) of Part 4 of Schedule 15-3 – Operations and Maintenance Requirements. | Annually in retrospect |
| S-227 | Expiry Transition Plan | In accordance with Section 2.1(a) of Part 5 of Schedule 15-3 – Operations and Maintenance Requirements. | One hundred (100) months before Expiry Date |
| S-228 | Handback Plan | In accordance with Section 2.2(a) of Part 5 of Schedule 15-3 – Operations and Maintenance Requirements. | Twelve (12) months before Expiry Date |
| S-229 | Expiry Transition Process Asset Preservation Work Schedule | In accordance with Section 2.4(a) of Part 5 of Schedule 15-3 – Operations and Maintenance Requirements. | 96, 84 and 72 months prior to Expiry Date |
| S-230 | Operations and maintenance manual | In accordance with Section 2.7(b) of Part 5 of Schedule 15-3 – Operations and Maintenance Requirements. | No later than nine months prior to the Expiry Date |

| Item # | Title | Description | Due Date |
|--------|------------------------|---|--|
| S-231 | System Inventory | In accordance with Section 2.8(a) of Part 5 of Schedule 15-3 – Operations and Maintenance Requirements. | Termination Date |
| S-232 | Record Drawings | In accordance with Section 2.9(a) of Part 5 of Schedule 15-3 – Operations and Maintenance Requirements. | Termination Date |
| S-233 | Environmental Reports | Provide Environmental Plans, including updates, if any, during each stage of construction, in accordance with the requirements set forth in Schedule 17 – Environmental Obligations, outlining the strategy on how environmental impacts generated by the Project Co Services are to be managed throughout the Operational Term, and/or monitoring activities undertaken including: <ul style="list-style-type: none"> (a) Environmental Management System (Updates); (b) Sustainability Annual Report Card; (c) Annual Compliance Monitoring Report; and (d) Noise and Vibration Survey. | In accordance with Schedule 17 – Environmental Obligations |
| S-234 | Monthly Energy Report | In accordance with the requirements set forth in Schedule 8 – Energy Matters. | Monthly |
| S-235 | Energy Analysis Report | In accordance with the requirements set forth in Schedule 8 – Energy Matters. | In accordance with the requirements set forth in Schedule 8 – Energy Matters |

| Item # | Title | Description | Due Date |
|--------|--|---|--|
| S-236 | Report containing all water consumption measurements | In accordance with the requirements set forth in Schedule 8 – Energy Matters. | In accordance with the requirements set forth in Schedule 8 – Energy Matters |

APPENDIX C**NEW CITY OF MISSISSAUGA INFRASTRUCTURE SUBMITTAL REQUIREMENTS****1. REVIEW PERIOD**

- 1.1** Project Co shall allow for a minimum period of 15 Business Days following receipt thereof for the review of and response to all Works Submittals for New City of Mississauga Infrastructure.

2. SUBMISSION REQUIREMENTS

- 2.1** Each Works Submittal package for New City of Mississauga Infrastructure shall include all elements of New City of Mississauga Infrastructure for the applicable geographical area, including roadways, grading, public boulevards, New Municipal Utility Infrastructure, structures, traffic signals, landscaping and streetlighting, as applicable.
- 2.2** Project Co shall provide one hard copy in large format (A0 or A1 size) and one hard copy in reduced format (11” x 17”, fold-outs, folded to 8.5” x 11) of all Works Submittals that are drawings for New City of Mississauga Infrastructure. For clarity, these are additional copies to the copies required within Appendix A.
- 2.3** Project Co shall include the following, as applicable, for all Preliminary New Municipal Infrastructure Design Development Submittals, Design Development Submittals and Construction Document Submittals for New City of Mississauga Infrastructure:
- (a) Boulevard drawings shall be provided, as follows:
 - (i) For the area between the existing and or proposed curb, to the existing or proposed property line, including the following boulevard components:
 - (A) above ground and below ground utilities,
 - (B) existing and proposed or relocated curbs,
 - (C) fire hydrants,
 - (D) cabinets,
 - (E) manholes,
 - (F) traffic light poles,
 - (G) signage,
 - (H) hydro poles,

- (I) streetlight and pedestrian light poles,
 - (J) sidewalks,
 - (K) Cycle Tracks,
 - (L) MUPs,
 - (M) Enhanced Paving,
 - (N) MiWay infrastructure, including stop marker (stop sign) and proposed shelters,
 - (O) pay and display parking machines,
 - (P) boulevard planters and boulevard furnishings-benches,
 - (Q) bike racks, and
 - (R) waste receptacles.
- (ii) Provide above ground plans, including only existing and proposed above ground items (i.e. tactile warning surfaces, bus shelter, boulevard works, etc.). Proposed works to be on solid heavy linework, existing or to remain items to be greyed out.
- (iii) Provide below ground plans, including only existing and proposed below ground items (i.e. utilities, service connections, etc.). Proposed works to be on solid heavy linework, existing or to remain items to be greyed out. Include utility relocation plan with respect to other utilities and their general arrangement within the boulevard area.
- (iv) Provide grading drawings, as follows:
- (A) Show existing and proposed grades (within and outside the boulevard).
 - (B) Provide additional grades beyond the area in development, to clearly identify drainage pattern.
 - (C) Boulevard Cross sections, showing all above/below ground and grading information, are required at representative intervals and are to extend at right angles from the travelled roadway through the boulevard and beyond the ultimate street line into the existing property. Proposed works

- to be in solid heavy linework while all other information not relevant for grading review purposes to be greyed out.
- (D) Retaining wall or flood wall cross sections showing grading information, elevations, dimensions and material makeup of the walls.
 - (E) Existing survey information shall be provided for a minimum of 10 m beyond boulevard into private property.
 - (F) Provide all details associated with the installation of the above boulevard components.
 - (G) Boulevard landscape plans including all trees to be preserved and protected, proposed trees and other landscape works as described below are to be shown in grey tone.
- (v) Sections shall be submitted at a scale of 1:50.
- (b) Boulevard landscape plans and details shall be provided, as follows:
- (i) Boulevard landscape plan proposed works shall be on solid heavy linework.
 - (ii) Above ground, boulevard and grading plan content and grading plan content shall be provided in grey tone.
 - (iii) Provide the following information for the area between the existing and or proposed curb, to the existing or proposed property lines, including the following boulevard components:
 - (A) tree survey information, existing trees to be preserved, protected or removed, proposed trees, all other plantings;
 - (B) Provide all details associated with the installation of the trees and plantings including trees in soil cells, trees in planters, or trees in landscape areas at grade, all other proposed planting areas;
 - (C) Existing tree survey information shall be provided for the boulevard and for a minimum of 10 m beyond boulevard into private property, as per existing survey information requirements above; and
 - (D) Above ground plan, below ground and grading plans described above are to be shown in grey tone.

- (iv) Sections shall be submitted at a scale of 1:50.
- (c) Utility Infrastructure Relocation Plan shall be provided, as follows:
 - (i) Include storm sewer relocation plan with respect to other utilities and their general arrangement within the boulevard area.
 - (ii) Detailed storm sewer drawings will be required for review and City asset management documentation purposes.
 - (iii) Information provided in support of any capacity or condition upgrades to storm sewer should be accompanied by dual drainage model and pipe assessment respectively.
 - (iv) All offsets must be referenced to the existing property line, and back of curb.
 - (v) Each plan must contain a key plan, which shows the major intersections in close proximity to the proposed work location
 - (vi) North arrow must be included on all drawings.
composite plans.
 - (vii) Hard copy drawings shall be provided in a scale of 1:200 – 1:500.
 - (viii) Electronic PDF copies shall be provided in a scale 1:100 -1:500.
- (d) General Arrangements shall be provided for all Civil Structures
 - (i) Plan and profile drawings shall be provided at a scale of 1:500 hard copy and electronic PDF; and
 - (ii) Cross-sections shall be provided at a scale of 1:100 hard copy and electronic PDF.
- (e) Drainage plans shall be provided showing external drainage entering the corridor.
 - (i) Drawings shall be provided at a scale of 1:500 hard copy and electronic PDF.
- (f) Traffic signal drawings shall be provided, including the following:
 - (i) LRT Signal design/specifications integration with traffic signal operations;
 - (ii) TSP and traffic signal coordination centre interface;

- (iii) Signalized intersections with semi-actuated or fully-actuated operations capacity;
 - (iv) centre-to-centre linkages with traffic signal coordination centre linkage;
 - (v) Traffic signal phasing diagrams (temporary & final) and traffic signal timings;
 - (vi) temporary & permanent signals drawings (including LRT and accessible pedestrian signals);
 - (vii) MTO PHM-125 base plans;
 - (viii) All other information to be shown in light gray, including all engineering and landscape components proposed within the municipal boulevard, existing and proposed utilities, existing trees to be preserved, protected or removed and proposed trees, and other assets including traffic signage, hydro, streetlight, pedestrian light poles, boulevard furnishings (benches, bike racks and waste receptacles), MiWay infrastructure (proposed shelters) and existing and proposed grading information, curb, cycling infrastructure, sidewalks, decorative paving, planters, tree planting and other landscaping and parking infrastructure, where applicable; and
 - (ix) Drawings shall be provided at a scale of 1:200 hard copy and electronic PDF.
- (g) Streetlight and boulevard lighting drawings (illumination drawing) shall be provided, as follows:
- (i) all streetlights and pedestrian lights shall be shown in black;
 - (ii) All other information to be shown in light gray, including all engineering and landscape components proposed within the municipal boulevard, existing and proposed utilities, existing trees to be preserved, protected or removed and proposed trees, and other assets including traffic signage, hydro, streetlight, pedestrian light poles, boulevard furnishings (benches, bike racks and waste receptacles), MiWay infrastructure (proposed shelters) and existing and proposed grading information, curb, cycling infrastructure, sidewalks, decorative paving, planters, tree planting and other landscaping and parking infrastructure, where applicable; and
 - (iii) Drawings shall be provided at a scale of 1:500 hard copy and electronic PDF.
- (h) Pavement marking and traffic signage drawings shall be provided, as follows:
- (i) Pavement marking and traffic signage information shown in black.

- (ii) All other information to be shown in light gray, including all engineering and landscape components proposed within the municipal boulevard, existing and proposed utilities, existing trees to be preserved, protected or removed and proposed trees, and other assets including traffic signage, hydro, streetlight, pedestrian light poles, boulevard furnishings (benches, bike racks and waste receptacles), MiWay infrastructure (proposed shelters) and existing and proposed grading information, curb, cycling infrastructure, sidewalks, decorative paving, planters, tree planting and other landscaping and parking infrastructure, where applicable.
- (iii) Drawings shall be provided at a scale of 1:500 hard copy and electronic PDF.
- (i) Roadway plan and profile drawings, including cross sections, shall be provided as follows:
 - (i) Drawings shall be provided at a scale of 1:500 hard copy and electronic PDF.

2.4 Project Co shall include the following Works Submittals for New City of Mississauga Infrastructure:

- (a) Geotechnical report, including:
 - (i) environmental section for base conditions and for any alterations; and
 - (ii) recommendations for construction based on ground conditions in conformance with Municipal Standards.
- (b) Pavement design report, for all boulevard and road elements.
- (c) Furniture specifications report, for all street furniture, to ensure furniture that is accessible (i.e. with backs and armrests), in conformance with City of Mississauga – 2015 Facility Accessibility Design Standards (FADS).
- (d) Dual drainage model and storm sewer assessment.

APPENDIX D**NEW CITY OF BRAMPTON INFRASTRUCTURE SUBMITTAL REQUIREMENTS****1. REVIEW PERIOD**

- 1.1** Project Co shall allow for a minimum period of 15 Business Days following receipt thereof for the review of and response to all Works Submittals for New City of Brampton Infrastructure.

2. SUBMISSION REQUIREMENTS

- 2.1** Project Co shall provide all Preliminary New Municipal Infrastructure Design Development Submittals, Design Development Submittals and Construction Document Submittals for New City of Brampton Infrastructure in accordance with City of Brampton's Engineering Design Procedures Manual - Capital Works Contract Design Procedures, where the requirements of this document do not conflict with those of this Schedule 10.
- 2.2** Each Works Submittal package for New City of Brampton Infrastructure shall include all elements of New City of Brampton Infrastructure for the applicable geographical area, including roadways, grading, public boulevards, New Municipal Utility Infrastructure, structures, traffic signals, landscaping and streetlighting, as applicable.
- 2.3** Project Co shall provide one hard copy in large format (A0 or A1 size) and one hard copy in reduced format (11" x 17", fold-outs, folded to 8.5" x 11) of all Works Submittals that are drawings for New City of Brampton Infrastructure. For clarity, these are additional copies to the copies required within Appendix A.

APPENDIX E**NEW REGION OF PEEL INFRASTRUCTURE SUBMITTAL REQUIREMENTS****1. REVIEW PERIOD**

- 1.1** Project Co shall allow for a minimum period of 15 Business Days following receipt thereof for the review of and response to all Works Submittals for New Region of Peel Infrastructure.

2. SUBMISSION REQUIREMENTS

- 2.1** Project Co shall provide one hard copy in large format (A0 or A1 size) and one hard copy in reduced format (11" x 17", fold-outs, folded to 8.5" x 11) of all Works Submittals that are drawings for New Region of Peel Infrastructure. For clarity, these are additional copies to the copies required within Appendix A.
- 2.2** Each Works Submittal package for New Region of Peel Infrastructure shall include all elements of New Region of Peel Infrastructure for the applicable geographical area, including roadways, grading, public boulevards, New Municipal Utility Infrastructure, structures, traffic signals, landscaping and streetlighting, as applicable.

APPENDIX F

MINIMUM DESIGN AND CONSTRUCTION

SUBMITTAL AND CERTIFICATION REQUIREMENTS FOR MTO

1. DEFINITIONS

- 1.1** “**Design Criteria**” means the established parameters used during design.
- 1.2** “**Design Manager**” has the meaning given in Schedule 9 – Key Individuals.
- 1.3** “**MTO Independent Structural Design Check Certificate**” means the form provided as Attachment 4 to this Appendix F.
- 1.4** “**MTO Design Management Plan**” has the meaning given in Section 2.1(a) of this Appendix F.
- 1.5** “**MTO-Reviewed Infrastructure**” has the meaning given in Section 2.1(b) of this Appendix F.
- 1.6** “**MTO Technical Appraisal Form**” or “**MTO TAF**” means a form substantially in the format attached as Attachment 1 - Sample Contents for a Structural TAF to Appendix F of Schedule 10 - Review Procedure.

2. MTO DESIGN MANAGEMENT PLAN AND TECHNICAL APPRAISAL FORMS**2.1 Submission of Design Management Plan**

- (a) Within 90 days following Financial Close, Project Co shall submit a design management plan as set out in this Section 2.1 (the “**MTO Design Management Plan**”) to Contracting Authority in accordance with the Review Procedure.
- (b) Project Co acknowledges that the requirements of the MTO Design Management Plan extend to all Design Development Submittals and Construction Document Submittals containing:
- (i) New MTO Infrastructure;
 - (ii) New Elevated Guideway Structure; and
 - (iii) Project Co System Infrastructure located within the MTO Road Allowance (collectively “**MTO-Reviewed Infrastructure**”).
- (c) The MTO Design Management Plan shall include:

- (i) the organization chart, including the Design Manager, for all design activities;
 - (ii) the procedures to be used for designing and checking each of the designs;
 - (iii) the identification of the Checking Team and Independent Checking Team;
 - (iv) the contents and format of Design Development Submittals, as well as the Construction Document Submittals;
 - (v) a design review and audit schedule, indicating dates that Project Co plans to:
 - (A) conduct internal audits of the design verification process;
 - (B) submit Design Development Submittals and Construction Document Submittals; and
 - (C) undertake Design Review Meetings in accordance with Section 20.5 of the Project Agreement;
 - (vi) a work breakdown structure for design indicating the Design Team and associated designers;
 - (vii) a drawing tree indicating the organization and hierarchy of Project Co's drawings;
 - (viii) appropriate metrics to measure the progress of the design for each discipline;
 - (ix) the process for certifying construction including the identification and organization of the personnel responsible for verifying construction compliance with the Design Data and the provisions of the Project Agreement to enable the Design Team principal to sign and seal the Construction Certificates; and
 - (x) the Review Procedure Activities Register (as also referenced in Schedule 12), including plans for weekly or bi-weekly updates of this register and common platform where such register is shared with Contracting Authority.
- (d) Any subsequent amendments or updates to the MTO Design Management Plan shall be submitted by Project Co to Contracting Authority in accordance with the Review Procedure.

2.2 Compliance with MTO Design Management Plan

- (a) Project Co shall implement and comply with the initial MTO Design Management Plan which has been reviewed by Contracting Authority in accordance with the Review

Procedure, and any subsequent amendments or updates to the initial MTO Design Management Plan made following a review by Contracting Authority in accordance with the Review Procedure, in connection with all Design Data prepared or adopted in connection with the Output Specifications, Schedule 17 – Environmental Obligations, and any other design or Construction Activities in the Project Agreement within the MTO Road Allowance.

- (b) For the avoidance of doubt, Project Co shall not submit the first Design Development Submittal for MTO-Reviewed Infrastructure until the MTO Design Management Plan has received the comment “No Comment” or “Minor Non-Conformance” from the Contracting Authority Representative, in accordance with the Review Procedure.

2.3 TAF Submission Requirements

- (a) Each Final Design Development Submittals and Construction Document Submittals package submitted by Project Co for MTO-Reviewed Infrastructure shall be accompanied by a completed MTO Technical Appraisal Form (TAF).
- (b) In any case where submitted Design Data for MTO-Reviewed Infrastructure involves any mechanical or electrical and/or intelligent transportation system functions, or similar specialization, Project Co shall submit to Contracting Authority in accordance with the Review Procedure a MTO TAF in respect of such data and functions in consultation with Contracting Authority.
- (c) In any case where the MTO-Reviewed Infrastructure involves the complete or partial demolition of an existing Civil Structure, Project Co shall submit to Contracting Authority in accordance with the Review Procedure a MTO TAF in respect of such complete or partial demolition.

2.4 TAF Form and Content

- (a) Each MTO TAF submitted by Project Co pursuant to Section 2.3 of this Appendix F shall be in the format shown in Attachment 1 - Sample Contents for a Structural TAF to this Appendix F and shall:
 - (i) for Final Design Development Submittals, include the relevant Design Criteria, environmental and ground considerations, and interface requirements, together with a listing of the design documentation included in the design package; and
 - (ii) be signed by:
 - (A) the Project Co Representative; and
 - (B) the Design Manager or Appropriate Person as necessary.

2.5 TAF Variation

- (a) Any variation to a MTO TAF which has been subject to the Review Procedure during design, assessment or any Construction Activity shall be submitted in accordance with the Review Procedure as an addendum to the MTO TAF.

3. DESIGN AND CONSTRUCTION SUBMISSIONS, REVIEW AND REPORTS

3.1 MTO Design and Construction Certification

- (a) The following terms shall have the following meanings:
- (i) **“MTO Construction Certificate (Interim)”** means the certificate(s) entitled **“MTO Construction Certificate (Interim)”** in the form set out in Attachment 3 to this Appendix F to be issued by Project Co pursuant to Section 3.1(d) of this Appendix F of Schedule 10 – Review Procedure;
 - (ii) **“MTO Construction Certificate (Completion)”** means the certificate(s) entitled **“MTO Construction Certificate (Completion)”** in the form set out in Attachment 3 to this Appendix F to be issued by Project Co pursuant to Section 3.1(d) of this Appendix F of Schedule 10 – Review Procedure;
 - (iii) **“MTO Construction Certificates”** means the MTO Construction Certificate (Interim) and the MTO Construction Certificate (Completion) and **“MTO Construction Certificate”** means any one of them.
 - (iv) **“MTO Design Certificate (Environmental)”** means the certificate(s) entitled **“MTO Design Certificate (Environmental)”** in the form set out in Attachment 2 to this Appendix F to be issued by Project Co pursuant to Section 3.1(c) of this Appendix F of Schedule 10 – Review Procedure;
 - (v) **“MTO Design Certificate (General)”** means the certificate(s) entitled **“MTO Design Certificate (General)”** in the form set out in Attachment 2 to this Appendix F to be issued by Project Co pursuant to Section 3.1(c) of this Appendix F of Schedule 10 – Review Procedure;
 - (vi) **“MTO Design Certificates”** means the MTO Design Certificate (General) and the MTO Design Certificate (Environmental) and **“MTO Design Certificate”** means any one of them.
- (b) MTO Design and Construction Certification Procedure

- (i) Project Co shall implement and ensure compliance with the procedure set out in this Section 3.1 (the “**MTO Design and Construction Certification Procedure**”) until Handover of the New MTO Infrastructure.
 - (ii) The MTO Design and Construction Certification Procedure shall apply to all Design Data prepared or adopted in connection with the New MTO Infrastructure, including any further design development or changes to a design once a MTO TAF has been subjected to the Review Procedure.
 - (iii) Project Co shall ensure that all certification procedures referred to in the MTO Design and Construction Certification Procedure are complied with by the Appropriate Persons, and that all Appropriate Persons are at all relevant times duly authorized and qualified to carry out such procedures and to sign the relevant certificates. Any failure by any Appropriate Person to fulfill the obligations required of them under the MTO Design and Certification Procedure shall be a breach of the Project Co’s obligations under the Project Agreement.
 - (iv) Project Co shall submit all MTO Design Certificates and MTO Construction Certificates, together with the supporting documentation, to Contracting Authority for review, acting reasonably, in accordance with the Review Procedure. The submitted MTO Design Certificates and MTO Construction Certificates shall have original signatures, seals and registration numbers (as required in the form provided in Attachment 2 and 3 to Appendix F of Schedule 10 – Review Procedure).
- (c) MTO Design Certificates
- (i) Project Co shall prepare and issue a separate MTO Design Certificate (in the form as provided in Attachment 2 to Appendix F of Schedule 10 – Review Procedure) for New MTO Infrastructure for each submitted Construction Document Submittals review package at 100% completion stage, to Contracting Authority for review in accordance with the Review Procedure. All MTO Design Certificates prepared and issued by Project Co shall be:
 - (A) either the MTO Design Certificate (General) or MTO Design Certificate (Environmental), as applicable;
 - (B) signed and sealed by a principal of the Design Team, and the responsible professional, who shall be a Professional Engineer or a registered Architect;
 - (C) signed by the Project Co Representative; and

- (D) in the case only of MTO Design Certificates (Environmental), signed by the Environmental Director.
- (ii) Any person who signs a MTO Design Certificate shall clearly print his or her name and the position held in his or her organization on the MTO Design Certificate.
- (d) MTO Construction Certificates
 - (i) Project Co shall prepare and issue MTO Construction Certificates (in the form as provided in Attachment 3 to Appendix F of Schedule 10 – Review Procedure) for New MTO Infrastructure to Contracting Authority for review in accordance with the Review Procedure:
 - (A) in the case of MTO Construction Certificate (Interim), within 15 Business Days following the end of each calendar month (for that calendar month), from the beginning of Construction Activities within the MTO Road Allowance until the date of delivery of written confirmation of completion of Handover of the New MTO Infrastructure pursuant to Article 25.13(f)(v) of the Project Agreement;
 - (B) in the case of MTO Construction Certificate (Completion) at least 10 Business Days prior to the delivery of written confirmation of completion of Handover of the New MTO Infrastructure pursuant to Article 25.13(f)(v) of the Project Agreement.
 - (ii) All MTO Construction Certificates prepared and issued by Project Co shall be:
 - (A) signed by the Construction Contractor representative;
 - (B) signed and sealed by the responsible professional who shall be a Professional Engineer or a registered Architect, and a principal of the Design Team;
 - (C) signed by the Project Co Representative; and
 - (D) for each MTO Construction Certificate (Completion) issued between Financial Close to Handover of the New MTO Infrastructure, signed by the Independent Certifier acknowledging receipt.
 - (iii) Any person who signs a MTO Construction Certificate shall clearly print his or her name and the position held in his or her organization on the MTO Construction Certificate.

3.2 Format of Design and Construction Submissions

- (a) Project Co shall provide one hard copy in large format (A0 or A1 size) and one hard copy in reduced format (11” x 17”, fold-outs, folded to 8.5” x 11) of all Works Submittals that are drawings for New MTO Infrastructure. For clarity, these are additional copies to the copies required within Appendix A. Project Co shall provide one electronic copy of each Design Development Submittals and Construction Document Submittals. Electronic copy shall be in the native file format, such as AutoCAD, if requested by Contracting Authority.
- (b) Drawings for MTO-Reviewed Infrastructure shall be provided in accordance with Section 1.1(a)(ii) of Appendix A to this Schedule 10.
- (c) Record Drawings for New MTO Infrastructure shall be in a format in accordance with the requirements of MTO standards. Project Co shall confirm drawing conventions and standards, including AutoCAD and InRoads standards, title block and stationing convention, with Contracting Authority prior to commencing Record Drawing production.
- (d) For greater clarity, the requirements of Section 3.2(c) do not apply to Record Drawings for Project Co System Infrastructure, New Municipal Infrastructure and New Utility Company Infrastructure to be constructed by Project Co within the MTO Road Allowance.
- (e) All submissions shall adhere to a file naming convention as specified by Contracting Authority.

3.3 Design and Construction Submission Review

The Design Development Submittals and Construction Document Submittals from all design disciplines shall be submitted to Contracting Authority in accordance with the Review Procedure. Construction Document Submittals shall consist of the relevant MTO TAF(s) together with all final design drawings, supporting Design Data and calculations required in accordance with the design requirements outlined in the Project Agreement, in particular and including Schedule 15-2, and this Appendix F.

3.4 Objection to Design Data

If Contracting Authority objects to any Design Data in accordance with the Review Procedure, Contracting Authority shall so notify Project Co and Project Co shall, unless Project Co disputes the objection by Contracting Authority to such Design Data in accordance with the Dispute Resolution Procedure, cause to be made such alterations and additions as may be necessary such that the Design Data accords with the project requirements and all other requirements of this Project Agreement, all in accordance with the Review Procedure.

3.5 Review Period

- (a) Project Co shall allow for a minimum period of 15 Business Days following receipt thereof for the review of and response to all Works Submittals for MTO-Reviewed Infrastructure.

3.6 Temporary Works

- (a) As a minimum, design submissions for Temporary Works shall include those items intended for public use and/or potentially affecting public safety. Final designs for these Temporary Works shall be submitted to Contracting Authority in accordance with the Review Procedure.
- (b) Design Data relating to any Temporary Works shall be checked as follows:
- (i) any such Design Data prepared by or on behalf of the Construction Contractor requires an independent check by the Design Team; and
 - (ii) any such Design Data prepared by the designer requires an independent check by a Checking Team.
- (c) In performing the check referred to in Section 3.6(b), the Checking Team shall satisfy itself that:
- (i) the Design Data meets the project requirements and otherwise complies with the requirements of the Project Agreement;
 - (ii) the Temporary Works (as a whole and the constituent parts) are satisfactory for the safe and proper discharge of Project Co's relevant obligations; and
 - (iii) the Design Data reflects the requirements of the relevant governmental authorities for all affected highways or other roads or areas used by or accessible to the public other than the New MTO Infrastructure.
- (d) Where any Temporary Works may endanger public safety on other road or area used by or accessible to the public other than the New MTO Infrastructure, Project Co shall consult the relevant Governmental Authority and the Design Data shall reflect the requirements of such Governmental Authority.

4. PRE-FINAL DESIGN DEVELOPMENT SUBMITTALS

4.1 General

- (a) In accordance with the MTO Design Management Plan and requirements of the Design and Construction Certification Procedure, Project Co and Contracting Authority shall agree on the 50% design information to be submitted for review in the Design Development Submittals, the schedule of such submissions and the scope of the review.

- (b) The content of such interim design submissions shall be appropriate to the subject and discipline. The information provided shall be adequate to show that the design is proceeding in compliance with the Project Agreement for all disciplines and is taking into consideration the relevant construction activities.
- (c) Pre-Final Design Development Submittals shall be prepared and shall have indices and sectional dividers. The design folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the design criteria, design development calculations and backup information. Design submissions shall include, without limitation, copies of all approvals, design reports, correspondence and calculations.

5. FINAL DESIGN DEVELOPMENT SUBMITTALS

5.1 General

- (a) Final Design Development Submittals shall be prepared and shall have indexes and sectional dividers. The design folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the design criteria, design calculations and backup information. Design submissions shall include, without limitation, copies of all approvals, design reports, correspondence and calculations.
- (b) Final design drawings and reports shall be developed to a stage that is ready to be signed and sealed by the responsible engineer, who shall be a duly experienced Professional Engineer of an appropriate discipline.
- (c) Project Co shall document changes and describe the design work that has been developed since the Pre-Final Design Development Submittals.

5.2 Roadway Design

- (a) The Final Design Development Submittals shall, without limitation:
 - (i) contain all drawings, including complete laning and geometrics, profiles, typical and template cross-sections, and drainage;
 - (ii) address any comments of Contracting Authority from the Design Review Meetings, internal design reviews, quality control, and design reports; and
 - (iii) include revisions, Stakeholder issues, plans for utility relocations, critical constructability and traffic handling considerations, fencing, ramp closure gates, environmental issues and mitigation plans.

5.3 Drainage Design

- (a) The Final Design Development Submittals shall, without limitation:
- (i) contain all the design parameters and requirements in accordance with Article 6 (Drainage and Stormwater Management Design Criteria) of Part 2 of Schedule 15-2;
 - (ii) contain all drainage drawings;
 - (iii) include updated floodplain mapping, detail drawings of water course realignments, stormwater management facilities, and erosion and sediment control plans;
 - (iv) include a stormwater management plan and drainage hydrology, hydraulics, and stormwater management report, including digital modelling files;
 - (v) include scour assessment and control plans per CHBDC Section 1.9;
 - (vi) address any comments of Contracting Authority from the Design Review Meetings, internal design reviews, quality control, and design reports; and
 - (vii) include revisions, Stakeholder issues, environmental issues and mitigation plans.

5.4 Structures, Culvert, Submerged Culverts, and Overhead Sign Support Structure

- (a) The Final Design Development Submittals shall contain, without limitation, the following:
- (i) all design drawings;
 - (ii) a geotechnical report and foundations report for each Civil Structure;
 - (iii) a hydrology report for each Structure crossing a watercourse or located in a flood plain;
 - (iv) environmental mitigation/compensation plans;
 - (v) resolution of all issues identified during Pre-Final Design Development Submittals reviews;
 - (vi) any special provisions for the construction of the Civil Structures;
 - (vii) a neat, bound, indexed set of design calculations for the Civil Structures initialled by the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline;

- (viii) for proprietary precast culverts the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline shall certify the design and construction of the precast culverts; and
- (ix) for proprietary pedestrian bridges, if applicable, the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline shall certify the design and construction of the pedestrian bridges.

5.5 Retaining Wall Design

- (a) The Final Design Development Submittals shall contain, without limitation, the following:
 - (i) final geotechnical foundation report for the walls;
 - (ii) descriptions of aesthetic treatment for all walls;
 - (iii) descriptions of maintenance considerations for walls;
 - (iv) resolution of all issues identified during Pre-Final Design Development Submittals reviews;
 - (v) all final design drawings; and
 - (vi) a neat, bound, indexed set of design calculations for the walls initialled by the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline.
- (b) The requirements of this Section 5.5 are also applicable to any Retained Soil Systems (a.k.a. Mechanically Stabilized Earth Walls).
- (c) For proprietary retaining walls, the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline, shall certify the design and construction of the retaining walls.

5.6 Geotechnical Foundation Design

- (a) For the Final Design Development Submittals Project Co shall prepare a comprehensive foundation investigation and design report for the Project that covers existing geotechnical information and known site conditions, new investigations performed for the Project, geotechnical engineering analysis, geotechnical design assumptions and design parameters (and the basis for these) and geotechnical design recommendations.
- (b) In addition, the Final Design Development Submittals shall, without limitation, contain:

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- (i) resolution of all issues identified during Pre-Final Design Development Submittals reviews;
 - (ii) a summary of any additional work and subsurface investigations that have been completed since the interim progress report, including drafted drill summary logs in a format acceptable to Contracting Authority;
 - (iii) final recommendations for Foundation systems, allowable loads and estimates of total and differential settlements at 2, 5, 10, 20, 40 and 75 years following construction;
 - (iv) geotechnical design recommendations for retaining structures;
 - (v) design of high fill embankments, including fill stages and consolidation period between each fill stage;
 - (vi) design details to time-rate-of-settlement control measures such as prefabricated vertical drains, lightweight fills, and preload/surcharge;
 - (vii) estimates of total and differential settlement of embankments and roadways at 2, 5, 10, 20, 40 and 75 years following construction;
 - (viii) a monitoring and instrumentation plan along with details of instrumentation to be installed, monitoring requirements, and instrumentation reading threshold values at which construction is halted or resumed;
 - (ix) requirements for ground improvement measures necessary to meet the static and seismic performance requirements for foundations, cut and fill slopes, embankments and retaining structures;
 - (x) an assessment of the stability of approach embankments, road embankments, cut slopes and fill slopes under static and seismic loading conditions and the ability of these to meet the seismic performance requirements;
 - (xi) reduced size (11" x 17") drawings showing the road alignment in plan and profile with drill hole locations shown on the plan and simplified summary logs shown on the profile (design notes are to be shown along the bottom of the drawings);
 - (xii) a final geotechnical progress report for the Civil Structures with reduced size (11" x 17") drawings showing the general arrangements for Structures, including bridge, pedestrian bridge, culvert, retaining wall, and overhead sign support structure in plan and profile, with drill locations shown in plan and simplified summary logs shown in profile (with overhead sign support exempt from the simplified summary log requirement); and

- (xiii) geotechnical design recommendations for stormwater management ponds, including identification of subsurface conditions, borehole data, and inclusion of stratigraphical information.

5.7 Pavement Design Report

- (a) The Final Design Development Submittals shall include a Pavement Design Report, with the following minimum requirements:
 - (i) resolution of all issues identified during Pre-Final Design Development Submittals reviews;
 - (ii) results of a comprehensive field investigation, soils sampling and laboratory testing program;
 - (iii) rationale be provided for the design parameters selected in developing the pavement design for the New MTO Infrastructure and any associated ramps and Roads;
 - (iv) the methodology (i.e. AASHTO 93 method or AASHTOW are Pavement ME Design software) used for design pavements, and how the selected layer thicknesses satisfy the minimum thickness based on the layered analysis; and
 - (v) geotechnical design recommendations for pavements.

5.8 Electrical, Signing and Pavement Markings Design

- (a) The Final Design Development Submittals shall include electrical (including signals, lighting and telecommunications), signing and both temporary and permanent pavement marking plans in accordance with requirements of Part 2 of Schedule 15-2.
- (b) Design drawings for all electrical systems shall contain, without limitation, the following:
 - (i) electrical equipment and all associated support structure locations;
 - (ii) lighting calculations where appropriate;
 - (iii) service locations;
 - (iv) layout drawings showing electrical lighting poles, ducts, chambers, power distribution and/or supply cabinets; and
 - (v) writing diagrams showing low voltage power distribution as well as high voltage writing where applicable.

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- (c) Design drawings for the telecommunications conduit network, if applicable, shall contain, without limitation, the following:
 - (i) network diagram showing conduit locations; and
 - (ii) design drawings showing the locations for all interconnection points.
 - (d) The Final Design Development Submittals shall include resolution of all issues identified during Design Review Meetings or Pre-Final Design Development Submittals.
 - (e) Structure details and calculations shall be submitted for overhead sign support structures and extruded ground mounted signs.
 - (f) Sign design sheets shall be submitted for all custom guide signs.
 - (g) All cantilever and sign bridge Civil Structures submissions shall be undertaken in accordance with the MTO Sign Support Manual.
 - (h) PHM-125 signal drawings shall be submitted for all temporary and permanent signals using MTO PHM-125 standard template, and shall contain, without limitation, the following:
 - (i) All regulatory signs that assist in the signal operations (to be included on drawing and in a legend);
 - (ii) Signal hardware excluding underground provisions and electrical wiring;
 - (iii) Vehicle detection and nearby accesses;
 - (iv) Pavement Markings including lanes, crosswalks, stopbars and through/turning arrows; and
 - (v) active transportation accommodations;
 - (i) For each temporary and permanent traffic control signal installation, Project Co shall submit the following to the ministry for review and approval no less than six (6) weeks prior to the “50% Design” MTO Executive Review presentation:
 - (i) Three (3) hard copies of the final draft PHM-125 drawings (1:500 scale);
 - (ii) A digital copy to scale in AutoCAD format; and
 - (iii) Proposed traffic control signal phasing, timing and detector assignments;

- (j) Project Co shall submit the following to the ministry for review and approval no less than six (6) weeks prior to the “Design Complete” MTO Executive Review presentation:
 - (i) Five (5) copies of the Final PHM-125 drawings (1:500 scale);
 - (ii) A digital copy to scale in AutoCAD format; and
 - (iii) Recommended traffic control signal phasing, timing and detector assignments.

5.9 Landscaping and Site Restoration

The Final Design Development Submittals shall contain detailed landscape drawings that reflect any highway design changes and incorporate comments made on the interim submissions. Project Co shall document changes and describe the design work that has been completed since the Pre-Final Design Development Submittals, and document public consultation conducted as part of the development of the landscape drawings. Drawings shall be of a suitable scale for legibility, and provide enlarged detailing where needed.

5.10 Intelligent Transportation Systems

- (a) The Final Design Development Submittals shall contain, all the design parameters and requirements in accordance with Article 12 of Part 2 of Schedule 15-2.
- (b) Design drawings shall contain, without limitation, the following:
 - (i) layout drawings detailing the vehicle detector, CCTV, VMS, VDS, QWS, vehicle/data communication system, and cabinet locations including all conduit and electrical chambers with device labelling;
 - (ii) detector input file connections;
 - (iii) communication schematics and fibre allocation table;
 - (iv) electrical wiring diagrams; and
 - (v) civil infrastructure associated with ITS.
- (c) The submission shall include, without limitation, the following:
 - (i) equipment list with model numbers (to be submitted after testing and prior to Handover of the New MTO Infrastructure);
 - (ii) VMS sign and truss structural design;

- (iii) equipment configuration including IP addresses and set up parameters for opening day operation (to be submitted after testing and prior to Handover of the New MTO Infrastructure);
- (iv) equipment configuration whenever configuration data is adjusted after opening day (to be submitted after testing and prior to Handover);
- (v) fibre optic cable link budget calculations and results of fibre cable testing for fibres allocated for MTO use (to be submitted after testing and prior to Handover of the New MTO Infrastructure);
- (vi) data communication protocol documentation (to be submitted after testing and prior to Handover of the New MTO Infrastructure).

5.11 Traffic Engineering

The Final Design Development Submittals shall contain, without limitation, the following:

- (a) traffic analysis report, which shall include comprehensive traffic analysis along with all supporting documentation and calculations in accordance with Schedule 15-2 –Part 7 Traffic Management and Construction Access; and
- (b) signal timing sheets and phasing diagrams associated with the design of signalized intersections.

5.12 Environmental Design

The Final Design Development Submittals shall contain, without limitation, the following:

- (a) applicable construction drawings that include:
 - (i) ecological restoration areas including Species-at-Risk and any environmentally sensitive areas, and all restoration areas;
 - (ii) all fisheries compensation plan areas to secure Fisheries Act Authorizations from Fisheries and Oceans Canada;
 - (iii) all drainage and stormwater management pond areas; and
 - (iv) erosion and sediment control measures;
- (b) riparian restoration and terrestrial reclamation/revegetation drawings that, as a minimum, describe timing requirements, seed mixes and applications rates of hydroseeding and site specific restoration plans, including species type, size and spacing for riparian areas, areas of higher sensitivity, and areas prone to erosion or shallow slope movement;

- (c) environmental design drawings that show environmental mitigation and compensation features and any environmental features to be constructed;
- (d) environmental design documentation including:
 - (i) regulatory agency review and acceptance documentation for the Environmental Management System specific to the work designed;
 - (ii) all licenses, notifications, permits, authorisations and approvals specific to the work designed; and
 - (iii) all assessments, studies, surveys, monitoring reports, and plans specific to the work designed;
- (e) an environmental design criteria checklist that lists general environmental commitments and assurances, environmental design commitments, site specific environmental features and environmental mitigation/compensation plans including all commitments, assurances and plans relating to archaeological features;
- (f) Resolution of all issues identified during Design Review Meetings and Pre-Final Design Development Submittals reviews; and
- (g) Contract drawings as required and in conformity to Design and Construction Reports (DCR).

6. CONSTRUCTION DOCUMENT SUBMITTALS

6.1 General

- (a) Construction Document Submittals shall be prepared and shall have indices and sectional dividers. The folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the final calculations, reports and backup information. Submissions shall include, without limitation, copies of all final approvals, design reports, correspondence and calculations.
- (b) Construction Document Submittals for all drawings, reports, and other applicable design data shall be signed and sealed by the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline, or as applicable an Architect licensed to practice in Ontario. These disciplines shall include, as a minimum, all that are identified in the Final Design Development Submittals.

7. CHECKING OF STRUCTURAL DESIGN

- 7.1** In accordance with Article 8 of Part 2 of Schedule 15-2 to the Project Agreement, for design submissions for MTO-Reviewed Infrastructure submitted in accordance with the Review

Procedure, Project Co shall submit an MTO Independent Structural Design Check Certificate, in the form provided as Attachment 4 to this Appendix F.

8. DELIVERABLES AND MEETINGS

8.1 Project Co shall prepare for and present at the following meetings on the design progress of the MTO-Reviewed Infrastructure to MTO's executive committee (each is a "**MTO Executive Review Presentation**"):

- (a) a kick-off MTO Executive Review Presentation to be held prior to the 50% Design MTO Executive Review Presentation entitled the "Kick-Off MTO Executive Review Presentation";
- (b) a MTO Executive Review Presentation on the Pre-Final Design Development Submittals entitled the "50% Design MTO Executive Review Presentation"; and
- (c) a MTO Executive Review Presentation on the Final Design Development Submittals entitled the "Design Complete MTO Executive Review Presentation".

8.2 Project Co shall provide a written design synopsis and make a brief presentation about the MTO-Reviewed Infrastructure at each MTO Executive Review Presentation meeting, noting the following issues:

- (i) Brief description of the project;
- (ii) Brief overview of unique design issues;
- (iii) Contentious issues arising during design;
- (iv) Engineering evaluations;
- (v) Various design alternatives; and
- (vi) Any staging/traffic options considered during the design.

8.3 Project Co shall prepare and present a design criteria document at the 50% Design MTO Executive Review Presentation.

8.4 Project Co shall prepare all meeting minutes and submit them to Contracting Authority within five business days of the MTO Executive Review Presentation meeting for review and approval.

8.5 No less than five Business Days prior to the 50% Design MTO Executive Review Presentation meeting and the Design Complete MTO Executive Review Presentation meeting:

- (a) Project Co shall deliver to Contracting Authority the relevant completed and compiled Design Development Submittals package (report, layout plan, related documentation) commensurate with the design stage for such MTO Executive Review Presentation, incorporating (where appropriate) Review Procedure comments provided by Contracting Authority;
- (b) Project Co's Quality Auditor shall confirm in writing to Contracting Authority that the package sent to Contracting Authority as described in Section 8.5(a) has had the changes incorporated from the Review Procedure comments; and
- (c) Project Co shall host a technical team review of the material to be presented with MTO technical staff.

8.6 For the Design Complete MTO Executive Review Presentation, Project Co shall comply with the following:

- (a) The design of the MTO-Reviewed Infrastructure shall be complete and all report, layout plan, related documentation completed in final form. Only very minor changes may be required following the Design Complete MTO Executive Review Presentation;
- (b) A digital copy of the final InRoads cross-sections (AutoCAD, PDF or another viewing ministry approved format) for the MTO-Reviewed Infrastructure shall be provided to the Ministry's TPM Agreement Administrator at the time the Design Complete MTO Executive Review Presentation package is submitted;
- (c) The individual who was directly responsible for and completed the InRoads work shall attend the Design Complete MTO Executive Review Presentation; and
- (d) The key design staff responsible for the bridge engineering, drainage and hydrology engineering, electrical engineering, environmental, foundations engineering, highway engineering, surveying and plan preparation, and traffic engineering shall attend the Design Complete MTO Executive Review Presentation.

ATTACHMENT 1

Sample Contents for a Structural TAF

SAMPLE CONTENTS FOR A STRUCTURAL TAF

Ref. No:

1. PROJECT DESCRIPTION

- 1.1 Name and location of structure
- 1.2 Permitted traffic speed (for a Bridge give over and/or under)

2. PROPOSED STRUCTURE

- 2.1 Description of Civil Structure
- 2.2 Structural type *(Include reasons for choice)*
- 2.3 Foundation type *(Include reasons for choice)*
- 2.4 Span arrangements *(Include reasons for choice)*
- 2.5 Barrier type
- 2.6 Proposed arrangements for inspection and maintenance
- 2.7 Materials and finishes

3. DESIGN/ASSESSMENT CRITERIA

- 3.1 Live Loading, Clearances
 - 3.1.1 Bridge code loading
 - 3.1.2 Design vehicle
 - 3.1.3 Other live loading
 - 3.1.4 Provision for exceptional abnormal loads:
 - 3.1.4.1 Gross weight
 - 3.1.4.2 Axle load and spacing
 - 3.1.4.3 Location of vehicle track on deck cross-section

-
- 3.1.5 Any special loading not covered above
 - 3.1.6 Minimum clearances provided (vertical and horizontal)
 - 3.1.7 Authorities consulted and any special conditions required
 - 3.2 List of relevant design documents
- 4. STRUCTURAL ANALYSIS**
- 4.1 Methods of analysis proposed for Superstructure, Substructure and Foundations
 - 4.2 Description and diagram of structure to be used for analysis
 - 4.3 Assumptions intended for calculation of structural element property and stiffness
 - 4.4 Proposed earth pressure coefficients (ka, ko, or kp) to be used in design of earth retaining elements
- 5. GROUND CONDITIONS**
- 5.1 Acceptance of interpretative recommendations of the soils report to be used in the design and reasons for any proposed departures
 - 5.2 Describe foundations fully including the reasons for adoption of allowable and proposed bearing pressures/pile loads, strata in which Foundations are located, provision for skin friction effects on piles and for lateral pressures due to compression of underlying strata, etc.
 - 5.3 Differential settlement to be allowed for in design of structure
 - 5.4 Anticipated ground movements or settlement due to embankment loading, flowing water, and measures proposed to deal with these defects as far as they affect the structure
 - 5.5 Results of tests of ground water (e.g. pH value, chloride or sulphate content) and any counteracting measures proposed (as applicable)
 - 5.6 Anticipated ground movements or settlement due to seismic loading, measures proposed to deal with these impacts as far as they affect the structure
- 6. CHECKING**
- 6.1 Name of proposed Checking Team

7. DRAWINGS AND DOCUMENTS

7.1 List of drawings (including numbers) and documents accompanying the submission. To include (without limitation):

7.1.1 a location plan;

7.1.2 a preliminary general arrangement drawing; and

7.1.3 relevant parts of the ground investigation report.

8. THE ABOVE DESIGN AND CONSTRUCTION PROPOSALS ARE SUBMITTED FOR REVIEW.

Signed: _____

[Design Manager]

Name: _____

Engineering Qualifications: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Project Co Representative

Name: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

ATTACHMENT 2

Form of MTO Design Certificates

Certificate Ref No. []

MTO DESIGN CERTIFICATE (GENERAL)

In respect of:..... (Provide submittal details e.g. Roadway, Structures, Drainage, Geotechnical, etc.)

Project Agreement between Contracting Authority and Project Co dated [●] (the "Project Agreement") relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.

This form of certificate is to be used by the Design Team and Project Co for certifying the design of the New MTO Infrastructure to the extent that such New MTO Infrastructure components have been constructed, installed, altered, upgraded, and/or augmented, in accordance with Schedule 15-2 – Output Specifications - Design and Construction to the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Design and Construction Specifications.

2. We certify that we have prepared the Design Data for [.....] listed in the schedule hereto in accordance with all applicable requirements contained in the [MTO Design Management Plan] [Design Quality Management Plan] and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data [Note: Inapplicable language to be deleted.]:

i. complies with all applicable [Design and Construction Specifications], including MTO Technical Appraisal Form No. [.....] dated [.....] as amended by the following [Note: Inapplicable language to be deleted.]:

[List, if any, the changes made by the issue of Variation(s) and any addenda to the foregoing MTO Technical Appraisal Form];

ii. complies with all applicable design requirements of the Project Agreement;

iii. complies with Applicable Law and Good Industry Practice; and

iv. accurately describes and depicts the New MTO Infrastructure to be undertaken.

SCHEDULE

[Include here drawing numbers and titles, reports, calculations, etc.]

Certified by: _____

[Design Team (principal)]

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Project Co Representative

Name: _____

Date: _____

Certificate Ref No. []

MTO DESIGN CERTIFICATE (ENVIRONMENTAL)

*Project Agreement between Contracting Authority and Project Co dated [●] (the “**Project Agreement**”) relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.*

This form of certificate is to be used by the Design Team, Environmental Director and Project Co for certifying the design of environmental works incorporated in the New MTO Infrastructure in accordance with the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Design and Construction Specifications.

2. We certify that we have prepared the Design Data for [.....] [Name and list of all elements of the environmental works] in the schedule hereto in accordance with all applicable requirements contained in the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:
 - i. complies with all applicable [Design and Construction Specifications], including MTO Technical Appraisal Form No. [.....] dated [.....], as amended by the following [Note: Inapplicable language to be deleted.]:

[List, if any, the changes made by the issue of Variation(s), and any addenda to the foregoing MTO Technical Appraisal Form];
 - ii. complies with all applicable requirements of Schedule 17 – Environmental Obligations;
 - iii. complies with all applicable design requirements of the Project Agreement;
 - iv. complies with Applicable Law and Good Industry Practice; and
 - iv. accurately describes and depicts the New MTO Infrastructure to be undertaken.

SCHEDULE

[Include here drawing numbers and titles, reports, calculations, etc.]

Certified by: _____

[Design Team (principal)][Designer for the Service Provider (principal)] **[Note: Inapplicable language to be deleted.]**

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Environmental Director

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Project Co Representative

Name: _____

Date: _____

ATTACHMENT 3

Form of MTO Construction Certificates

Certificate Ref. No. []

MTO CONSTRUCTION CERTIFICATE (INTERIM)

Project Agreement between Contracting Authority and Project Co dated [●] (the "Project Agreement") relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.

This form of certificate is to be used by the Design Team, Construction Contractor and Project Co for certifying in accordance with Section 3.1(d) of Appendix F to Schedule 10 – Review Procedure to the Project Agreement, the Construction Activities in accordance with Schedule 15 – Output Specifications to the Project Agreement. This certificate is effective as of [date].

Construction Contractor’s Statement

1. We certify that all the New MTO Infrastructure up to the effective date of this certificate has been designed, constructed, tested, and if applicable commissioned, and is in accordance with:

- i. the relevant Design Data and any Design Certificates issued to date in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the following Variation(s): [.....]].

with the exception of:

- i **[Non-Conformance Report(s) in “open” status]**

Signed: _____

[Construction Contractor representative]

Name: _____

Date: _____

Design Team’s Statement

2. We certify that we have examined the New MTO Infrastructure up to the effective date of this certificate in accordance with the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion the New MTO Infrastructure and exception(s) stated in the Construction Contractor’s Statement above has been designed, constructed, tested and commissioned, as applicable, and is in accordance with:

- i. the relevant Design Data and any Design Certificates issued to date in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the following Variation(s): [.....]].

Signed: _____

[Design Team (principal)]

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Project Co Representative

Name: _____

Date: _____

Receipt of this Certificate is acknowledged.

Signed: _____

Independent Certifier

Name: _____

Title: _____

Date: _____

Certificate Ref. No. []

MTO CONSTRUCTION CERTIFICATE (COMPLETION)

Project Agreement between Contracting Authority and Project Co dated [●] (the "Project Agreement") relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.

This form of certificate is to be used by the Design Team, Construction Contractor and Project Co for certifying in accordance with Section 3.1(d) of Appendix F to Schedule 10 – Review Procedure to the Project Agreement, the Construction Activities in accordance with Schedule 15 – Output Specifications to the Project Agreement.

Construction Contractor’s Statement

1. We certify that **[name(s) and element(s) of the New MTO Infrastructure]** **[the New MTO Infrastructure in respect of Handover]** has been designed, constructed, **[commissioned and tested]** and has met the requirements for **[Handover]** in accordance with: *[Note: Inapplicable language to be deleted.]*

- i. the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the following Variation(s): [.....]].

Signed: _____

[Construction Contractor representative]

Name: _____

Date: _____

Design Team’s Statement

2. We certify that we have examined the **[name(s) and element(s) of the New MTO Infrastructure]** **[the New MTO Infrastructure in respect of Handover]** in accordance with the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion **[the said element of the New MTO Infrastructure]****[the New MTO Infrastructure]** has been designed, constructed, **[commissioned and tested]** and has met the requirements for **[Handover]** in accordance with: *[Note: Inapplicable language to be deleted.]*

- i. the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the Variation(s) listed in paragraph 1.(iii) above].

Signed: _____

[Design Team (principal)]

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Project Co Representative

Name: _____

Date: _____

Receipt of this Certificate is acknowledged.

Signed: _____

Independent Certifier

Name: _____

Title: _____

Date: _____

ATTACHMENT 4

Certificate Form

Certificate Ref. No []

MTO INDEPENDENT STRUCTURAL DESIGN CHECK CERTIFICATE

*Defined terms and expressions used in this certificate have the meanings given in the agreement between Contracting Authority and Project Co dated [●] (the “**Project Agreement**”) relating to the Project.*

This form of certificate is to be used by the Independent Checking Team for certifying the design of structures incorporated in the MTO-Reviewed Infrastructure, in accordance with Article 8 of Part 2 of Schedule 15-2 to the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to perform an independent check of the Design Data referred to herein in accordance with the requirements of the Project Agreement.

2. We certify that we have performed an independent check (as required by the Project Agreement for Significant and Complex Structures) of the Design Data for [.....] **[Name of the Structure and list of all elements of the Structure included in the Design Data]** listed in the Schedule hereto and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such an independent check, and that in our professional opinion:

- i. the said Design Data meets performance expectations outlined in the Project Agreement, **[including MTO Technical Appraisal Form]** No. [.....] dated [.....], as amended by the following:
 - [List, if any, the changes made and any addenda to the foregoing MTO Technical Appraisal Form]; and
- ii. the design, methodologies and assumptions are consistent with Good Industry Practice.

SCHEDULE

[Include here drawing numbers and titles and reports, calculations, etc.]

Signed: _____

Independent Checking Team (principal)

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Project Co Representative

Name: _____

Date: _____

APPENDIX G

MINIMUM DESIGN AND CONSTRUCTION

SUBMITTAL AND CERTIFICATION REQUIREMENTS FOR NEW 407 ETR
INFRASTRUCTURE**1. DEFINITIONS**

- 1.1** “**407 ETR Independent Structural Design Check Certificate**” means the form provided as Attachment 4 to this Appendix G.
- 1.2** “**407 ETR Design Management Plan**” has the meaning given in Section 2.1(a) of this Appendix G.
- 1.3** “**Design Criteria**” means the established parameters used during design.
- 1.4** “**Design Manager**” has the meaning given in Schedule 9 – Key Individuals.
- 1.5** “**407 ETR Technical Appraisal Form**” or “**407 ETR TAF**” means a form substantially in the format attached as Attachment 1 - Sample Contents for a Structural TAF to Appendix G of Schedule 10 - Review Procedure.

2. 407 ETR DESIGN MANAGEMENT PLAN AND TECHNICAL APPRAISAL FORMS**2.1 Submission of Design Management Plan**

- (a) Within 90 days following Financial Close, Project Co shall submit a design management plan in respect of New 407 ETR Infrastructure (the “**407 ETR Design Management Plan**”) to Contracting Authority in accordance with the Review Procedure. The 407 ETR Design Management Plan shall include:
- (i) the organization chart, including the Design Manager, for all design activities;
 - (ii) the procedures to be used for designing and checking each of the designs;
 - (iii) the identification of the Checking Team and Independent Checking Team;
 - (iv) the contents and format of Design Development Submittals, as well as the Construction Document Submittals;
 - (v) a design review and audit schedule, indicating dates that Project Co plans to:
 - (A) conduct internal audits of the design verification process;

MT DOCS 19727241v2

- (B) submit Design Development Submittals and Construction Document Submittals; and
 - (C) undertake Design Review Meetings in accordance with Section 20.5 of the Project Agreement;
 - (vi) a work breakdown structure for design indicating the Design Team and associated designers;
 - (vii) a drawing tree indicating the organization and hierarchy of Project Co's drawings;
 - (viii) appropriate metrics to measure the progress of the design for each discipline;
 - (ix) the process for certifying construction including the identification and organization of the personnel responsible for verifying construction compliance with the Design Data and the provisions of the Project Agreement to enable the Design Team principal to sign and seal the Construction Certificates; and
 - (x) the Review Procedure Activities Register (as also referenced in Schedule 12), including plans for weekly or bi-weekly updates of this register and common platform where such register is shared with Contracting Authority.
- (b) Any subsequent amendments or updates to the 407 ETR Design Management Plan shall be submitted by Project Co to Contracting Authority in accordance with the Review Procedure.

2.2 Compliance with 407 ETR Design Management Plan

- (a) Project Co shall implement and comply with the initial 407 ETR Design Management Plan which has been reviewed by Contracting Authority in accordance with the Review Procedure, and any subsequent amendments or updates to the initial 407 ETR Design Management Plan made following a review by Contracting Authority in accordance with the Review Procedure, in connection with all Design Data prepared or adopted in connection with the Output Specifications, Schedule 17 – Environmental Obligations, and any other design or Construction Activities in the Project Agreement within the 407 ETR Road Allowance.
- (b) For the avoidance of doubt, Project Co shall not submit the first Design Development Submittal for New 407 ETR Infrastructure until the 407 ETR Design Management Plan has received the comment “No Comment” or “Minor Non-Conformance” from the Contracting Authority Representative, in accordance with the Review Procedure.

2.3 TAF Submission Requirements

- (a) Each Final Design Development Submittals and Construction Document Submittals package submitted by Project Co shall be accompanied by a completed 407 ETR Technical Appraisal Form (407 ETR TAF).
- (b) In any case where submitted Design Data involves any mechanical or electrical and/or intelligent transportation system functions, or similar specialization, Project Co shall submit to Contracting Authority in accordance with the Review Procedure a 407 ETR TAF in respect of such data and functions in consultation with Contracting Authority.
- (c) In any case where the New 407 ETR Infrastructure involves the complete or partial demolition of an existing Structure, Project Co shall submit to Contracting Authority in accordance with the Review Procedure a 407 ETR TAF in respect of such complete or partial demolition.

2.4 TAF Form and Content

- (a) Each 407 ETR TAF submitted by Project Co pursuant to Section 2.3 of this Appendix G shall be in the format shown in Attachment 1 - Sample Contents for a Structural TAF to this Schedule and shall:
 - (i) for Final Design Development Submittals, include the relevant Design Criteria, environmental and ground considerations, and interface requirements, together with a listing of the design documentation included in the design package; and
 - (ii) be signed by:
 - (A) the Project Co Representative; and
 - (B) the Design Manager or Appropriate Person as necessary.

2.5 TAF Variation

- (a) Any variation to a 407 ETR TAF which has been subject to the Review Procedure during design, assessment or any Construction Activity shall be submitted in accordance with the Review Procedure as an addendum to the 407 ETR TAF.

3. DESIGN AND CONSTRUCTION SUBMISSIONS, REVIEW AND REPORTS

3.1 407 ETR Design and Construction Certification

- (a) The following terms shall have the following meanings:

MT DOCS 19727241v2

- (i) “**407 ETR Construction Certificate (Interim)**” means the certificate(s) entitled “407 ETR Construction Certificate (Interim)” in the form set out in Attachment 3 to this Appendix G to be issued by Project Co pursuant to Section 3.1(d) of this Appendix G of Schedule 10 – Review Procedure;
 - (ii) “**407 ETR Construction Certificate (Completion)**” means the certificate(s) entitled “407 ETR Construction Certificate (Completion)” in the form set out in Attachment 3 to this Appendix G to be issued by Project Co pursuant to Section 3.1(d) of this Appendix G of Schedule 10 – Review Procedure;
 - (iii) “**407 ETR Construction Certificates**” means the 407 ETR Construction Certificate (Interim) and the 407 ETR Construction Certificate (Completion) and “**407 ETR Construction Certificate**” means any one of them.
 - (iv) “**407 ETR Design Certificate (Environmental)**” means the certificate(s) entitled “407 ETR Design Certificate (Environmental)” in the form set out in Attachment 2 to this Appendix G to be issued by Project Co pursuant to Section 3.1(c) of Appendix G of Schedule 10 – Review Procedure;
 - (v) “**407 ETR Design Certificate (General)**” means the certificate(s) entitled “407 ETR Design Certificate (General)” in the form set out in Attachment 2 to this Appendix G to be issued by Project Co pursuant to Section 3.1(c) of this Appendix G of Schedule 10 – Review Procedure;
 - (vi) “**407 ETR Design Certificates**” means the 407 ETR Design Certificate (General) and the 407 ETR Design Certificate (Environmental) and “**407 ETR Design Certificate**” means any one of them.
- (b) 407 ETR Design and Construction Certification Procedure
- (i) Project Co shall implement and ensure compliance with the procedure set out in this Section 3.1 (the “**407 ETR Design and Construction Certification Procedure**”) until Handover of the New 407 ETR Infrastructure.
 - (ii) The 407 ETR Design and Construction Certification Procedure shall apply to all Design Data prepared or adopted in connection with the New 407 ETR Infrastructure, including any further design development or changes to a design once a 407 ETR TAF has been subjected to the Review Procedure.
 - (iii) Project Co shall ensure that all certification procedures referred to in the 407 ETR Design and Construction Certification Procedure are complied with by the Appropriate Persons, and that all Appropriate Persons are at all relevant times duly authorized and qualified to carry out such procedures and to sign the relevant certificates. Any failure by any Appropriate Person to fulfill the

MT DOCS 19727241v2

obligations required of them under the 407 ETR Design and Certification Procedure shall be a breach of the Project Co's obligations under the Project Agreement.

- (iv) Project Co shall submit all 407 ETR Design Certificates and 407 ETR Construction Certificates, together with the supporting documentation, to Contracting Authority for review, acting reasonably, in accordance with the Review Procedure. The submitted 407 ETR Design Certificates and 407 ETR Construction Certificates shall have original signatures, seals and registration numbers (as required in the form provided in Attachment 2 and 3 to Appendix G of Schedule 10 – Review Procedure).
- (c) 407 ETR Design Certificates
 - (i) Project Co shall prepare and issue a separate 407 ETR Design Certificate (in the form as provided in Attachment 2 to Appendix G of Schedule 10 – Review Procedure) for New 407 ETR Infrastructure for each submitted Construction Document Submittals review package, to Contracting Authority for review in accordance with the Review Procedure. All 407 ETR Design Certificates prepared and issued by Project Co shall be:
 - (A) either the 407 ETR Design Certificate (General) or 407 ETR Design Certificate (Environmental), as applicable;
 - (B) signed and sealed by a principal of the Design Team, and the responsible professional, who shall be a Professional Engineer or a registered Architect;
 - (C) signed by the Project Co Representative; and
 - (D) in the case only of 407 ETR Design Certificates (Environmental), signed by the Environmental Director.
 - (ii) Any person who signs a 407 ETR Design Certificate shall clearly print his or her name and the position held in his or her organization on the 407 ETR Design Certificate.
- (d) 407 ETR Construction Certificates
 - (i) Project Co shall prepare and issue 407 ETR Construction Certificates (in the form as provided in Attachment 3 to Appendix G of Schedule 10 – Review Procedure) for New 407 ETR Infrastructure to Contracting Authority for review in accordance with the Review Procedure:

- (A) in the case of 407 ETR Construction Certificate (Interim), within 15 Business Days following the end of each calendar month (for that calendar month), from the beginning of Construction Activities within the 407 ETR Road Allowance until the date of delivery of written confirmation of completion of Handover of the New 407 ETR Infrastructure pursuant to Article 25.13(f)(v) of the Project Agreement;
 - (B) in the case of 407 ETR Construction Certificate (Completion) at least 10 Business Days prior to the delivery of written confirmation of completion of Handover of the New 407 ETR Infrastructure pursuant to Article 25.13(f)(v) of the Project Agreement.
- (ii) All 407 ETR Construction Certificates prepared and issued by Project Co shall be:
- (A) signed by the Construction Contractor representative;
 - (B) signed and sealed by the responsible professional who shall be a Professional Engineer or a registered Architect, and a principal of the Design Team;
 - (C) signed by the Project Co Representative; and
 - (D) for each 407 ETR Construction Certificate (Completion) issued between Financial Close to Handover of the New 407 ETR Infrastructure, signed by the Independent Certifier acknowledging receipt.
- (iii) Any person who signs a 407 ETR Construction Certificate shall clearly print his or her name and the position held in his or her organization on the 407 ETR Construction Certificate.

3.2 Format of Design and Construction Submissions

- (a) Project Co shall provide one hard copy in large format (A0 or A1 size) and one hard copy in reduced format (11" x 17", fold-outs, folded to 8.5" x 11) of all Works Submittals that are drawings for New 407 ETR Infrastructure. For clarity, these are additional copies to the copies required within Appendix A. Project Co shall provide one electronic copy of each Design Development Submittals and Construction Document Submittals. Electronic copy shall be in the native file format, such as AutoCAD, if requested by Contracting Authority.
- (b) Drawings for New 407 ETR Infrastructure shall be provided in accordance with Section 1.1(a)(ii) of Appendix A to this Schedule 10.

MT DOCS 19727241v2

- (c) Record Drawings for New 407 ETR Infrastructure shall be in a format in accordance with the requirements of 407 ETR standards. Project Co shall confirm drawing conventions and standards, including AutoCAD and InRoads standards, title block and stationing convention, with Contracting Authority prior to commencing Record Drawing production.
- (d) For greater clarity, the requirements of Section 3.2(c) do not apply to Record Drawings for Project Co System Infrastructure, New Municipal Infrastructure and New Utility Company Infrastructure to be constructed by Project Co within the 407 ETR Road Allowance.
- (e) All submissions shall adhere to a file naming convention as specified by Contracting Authority.

3.3 Design and Construction Submission Review

The Design Development Submittals and Construction Document Submittals from all design disciplines shall be submitted to Contracting Authority in accordance with the Review Procedure. Construction Document Submittals shall consist of the relevant 407 ETR TAF(s) together with all final design drawings, supporting Design Data and calculations required in accordance with the design requirements outlined in the Project Agreement, in particular and including Schedule 15-2, and this Appendix G.

3.4 Objection to Design Data

If Contracting Authority objects to any Design Data in accordance with the Review Procedure, Contracting Authority shall so notify Project Co and Project Co shall, unless Project Co disputes the objection by Contracting Authority to such Design Data in accordance with the Dispute Resolution Procedure, cause to be made such alterations and additions as may be necessary such that the Design Data accords with the project requirements and all other requirements of this Project Agreement, all in accordance with the Review Procedure.

3.5 Review Period

- (a) Project Co shall allow for a minimum period of 15 Business Days following receipt thereof for the review of and response to all Works Submittals for New 407 ETR Infrastructure.

3.6 Temporary Works

- (a) As a minimum, design submissions for Temporary Works shall include those items intended for public use and/or potentially affecting public safety. Final designs for these Temporary Works shall be submitted to Contracting Authority in accordance with the Review Procedure.

MT DOCS 19727241v2

- (b) Design Data relating to any Temporary Works shall be checked as follows:
 - (i) any such Design Data prepared by or on behalf of the Construction Contractor requires an independent check by the Design Team; and
 - (ii) any such Design Data prepared by the designer requires an independent check by a Checking Team.
- (c) In performing the check referred to in Section 3.6(b), the Checking Team shall satisfy itself that:
 - (i) the Design Data meets the project requirements and otherwise complies with the requirements of the Project Agreement;
 - (ii) the Temporary Works (as a whole and the constituent parts) are satisfactory for the safe and proper discharge of Project Co's relevant obligations; and
 - (iii) the Design Data reflects the requirements of the relevant governmental authorities for all affected Highways or other Roads or areas used by or accessible to the public other than the New 407 ETR Infrastructure.
- (d) Where any Temporary Works may endanger public safety on other road or area used by or accessible to the public other than the New 407 ETR Infrastructure, Project Co shall consult the relevant Governmental Authority and the Design Data shall reflect the requirements of such Governmental Authority.

4. PRE-FINAL DESIGN DEVELOPMENT SUBMITTALS

4.1 General

- (a) In accordance with the 407 ETR Design Management Plan and requirements of the Design and Construction Certification Procedure, Project Co and Contracting Authority shall agree on the 50% design information to be submitted for review in the Design Development Submittals, the schedule of such submissions and the scope of the review.
- (b) The content of such interim design submissions shall be appropriate to the subject and discipline. The information provided shall be adequate to show that the design is proceeding in compliance with the Project Agreement for all disciplines and is taking into consideration the relevant constructions activities.
- (c) Pre-Final Design Development Submittals shall be prepared and shall have indices and sectional dividers. The design folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the design criteria, design development calculations and backup information. Design submissions shall

MT DOCS 19727241v2

include, without limitation, copies of all approvals, design reports, correspondence and calculations.

5. FINAL DESIGN DEVELOPMENT SUBMITTALS

5.1 General

- (a) Final Design Development Submittals shall be prepared and shall have indexes and sectional dividers. The design folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the design criteria, design calculations and backup information. Design submissions shall include, without limitation, copies of all approvals, design reports, correspondence and calculations.
- (b) Final design drawings and reports shall be developed to a stage that is ready to be signed and sealed by the responsible engineer, who shall be a duly experienced Professional Engineer of an appropriate discipline.
- (c) Project Co shall document changes and describe the design work that has been developed since the Pre-Final Design Development Submittals.

5.2 Roadway Design

- (a) The Final Design Development Submittals shall, without limitation:
 - (i) contain all drawings, including complete laning and geometrics, profiles, typical and template cross-sections, and drainage;
 - (ii) address any comments of Contracting Authority from the Design Review Meetings, internal design reviews, quality control, and design reports; and
 - (iii) include revisions, Stakeholder issues, plans for utility relocations, critical constructability and traffic handling considerations, fencing, ramp closure gates, environmental issues and mitigation plans.

5.3 Drainage Design

- (a) The Final Design Development Submittals shall, without limitation:
 - (i) contain all the design parameters and requirements in accordance with Article 6 (Drainage and Stormwater Management Design Criteria) of Part 2 of Schedule 15-2;
 - (ii) contain all drainage drawings;

MT DOCS 19727241v2

- (iii) include updated floodplain mapping, detail drawings of water course realignments, stormwater management facilities, and erosion and sediment control plans;
- (iv) include a stormwater management plan and drainage hydrology, hydraulics, and stormwater management report, including digital modelling files;
- (v) address any comments of Contracting Authority from the Design Review Meetings, internal design reviews, quality control, and design reports; and
- (vi) include revisions, Stakeholder issues, environmental issues and mitigation plans.

5.4 Structures, Culvert, Submerged Culverts, and Overhead Sign Support Structure

- (a) The Final Design Development Submittals shall contain, without limitation, the following:
 - (i) all design drawings;
 - (ii) a geotechnical report for the Civil Structures;
 - (iii) a hydrology report for each Structure crossing a watercourse or located in a flood plain;
 - (iv) environmental mitigation/compensation plans;
 - (v) resolution of all issues identified during Pre-Final Design Development Submittals reviews;
 - (vi) any special provisions for the construction of the Civil Structures
 - (vii) a neat, bound, indexed set of design calculations for the Civil Structures initialled by the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline;
 - (viii) for proprietary precast culverts the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline shall certify the design and construction of the precast culverts; and
 - (ix) for proprietary pedestrian bridges, if applicable, the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline shall certify the design and construction of the pedestrian bridges.

5.5 Retaining Wall Design

MT DOCS 19727241v2

- (a) The Final Design Development Submittals shall contain, without limitation, the following:
 - (i) final geotechnical foundation report for the walls;
 - (ii) descriptions of aesthetic treatment for all walls;
 - (iii) descriptions of maintenance considerations for walls;
 - (iv) resolution of all issues identified during Pre-Final Design Development Submittals reviews;
 - (v) all final design drawings; and
 - (vi) a neat, bound, indexed set of design calculations for the walls initialled by the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline.
- (b) For proprietary retaining walls, the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline, shall certify the design and construction of the retaining walls.

5.6 Geotechnical Foundation Design

- (a) For the Final Design Development Submittals Project Co shall prepare a comprehensive geotechnical report for the Project that covers existing geotechnical information and known site conditions, new investigations performed for the Project, geotechnical engineering analysis, geotechnical design assumptions and design parameters (and the basis for these) and geotechnical design recommendations. .
- (b) In addition, the Final Design Development Submittals shall, without limitation, contain:
 - (i) resolution of all issues identified during Pre-Final Design Development Submittals reviews;
 - (ii) a summary of any additional work and subsurface investigations that have been completed since the interim progress report, including drafted drill summary logs in a format acceptable to Contracting Authority;
 - (iii) final recommendations for Foundation systems, allowable loads and estimates of total and differential settlements at 2, 5, 10, 20, 40 and 75 years following construction;
 - (iv) geotechnical design recommendations for retaining structures;

MT DOCS 19727241v2

- (v) design of high fill embankments, including fill stages and consolidation period between each fill stage;
- (vi) design details to time-rate-of-settlement control measures such as prefabricated vertical drains, lightweight fills, and preload/surcharge;
- (vii) estimates of total and differential settlement of embankments and roadways at 2, 5, 10, 20, 40 and 75 years following construction;
- (viii) a monitoring and instrumentation plan along with details of instrumentation to be installed, monitoring requirements, and instrumentation reading threshold values at which construction is halted or resumed;
- (ix) requirements for ground improvement measures necessary to meet the static and seismic performance requirements for foundations, cut and fill slopes, embankments and retaining structures;
- (x) an assessment of the stability of approach embankments, road embankments, cut slopes and fill slopes under static and seismic loading conditions and the ability of these to meet the seismic performance requirements;
- (xi) reduced size (11" x 17") drawings showing the road alignment in plan and profile with drill hole locations shown on the plan and simplified summary logs shown on the profile (design notes are to be shown along the bottom of the drawings);
- (xii) a final geotechnical progress report for the Civil Structures with reduced size (11" x 17") drawings showing the general arrangements for Structures, including bridge, pedestrian bridge, culvert, retaining wall, and overhead sign support structure in plan and profile, with drill locations shown in plan and simplified summary logs shown in profile (with overhead sign support exempt from the simplified summary log requirement); and
- (xiii) geotechnical design recommendations for stormwater management ponds, including identification of subsurface conditions, borehole data, and inclusion of stratigraphical information.

5.7 Pavement Design Report

- (a) The Final Design Development Submittals shall include a Pavement Design Report, with the following minimum requirements:
 - (i) resolution of all issues identified during Pre-Final Design Development Submittals reviews;

MT DOCS 19727241v2

- (ii) results of a comprehensive field investigation, soils sampling and laboratory testing program;
- (iii) rationale be provided for the design parameters selected in developing the pavement design for the New 407 ETR Infrastructure and any associated ramps and Roads;
- (iv) the methodology (i.e. AASHTO 93 method or AASHTOW are Pavement ME Design software) used for design pavements, and how the selected layer thicknesses satisfy the minimum thickness based on the layered analysis; and
- (v) geotechnical design recommendations for pavements.

5.8 Electrical, Signing and Pavement Markings Design

- (a) The Final Design Development Submittals shall include electrical (including signals, lighting and telecommunications), signing and both temporary and permanent pavement marking plans in accordance with requirements of Part 2 of Schedule 15-2.
- (b) Design drawings for all electrical systems shall contain, without limitation, the following:
 - (i) electrical equipment and all associated support structure locations;
 - (ii) lighting calculations where appropriate;
 - (iii) service locations;
 - (iv) layout drawings showing electrical lighting poles, ducts, chambers, power distribution and/or supply cabinets; and
 - (v) writing diagrams showing low voltage power distribution as well as high voltage writing where applicable.
- (c) Design drawings for the telecommunications conduit network, if applicable, shall contain, without limitation, the following:
 - (i) network diagram showing conduit locations; and
 - (ii) design drawings showing the locations for all interconnection points.
- (d) The Final Design Development Submittals shall include resolution of all issues identified during Design Review Meetings or Pre-Final Design Development Submittals.

- (e) Structure details and calculations shall be submitted for overhead sign support structures and extruded ground mounted signs.
- (f) Sign design sheets shall be submitted for all custom guide signs.
- (g) All cantilever and sign bridge Civil Structures submissions shall be undertaken in accordance with the MTO Sign Support Manual.
- (h) PHM-125 signal drawings shall be submitted for all temporary and permanent signals and shall contain, without limitation, the following:
 - (i) All regulatory signs that assist in the signal operations (to be included on drawing and in a legend);
 - (ii) Signal hardware excluding underground provisions and electrical wiring;
 - (iii) Vehicle detection and nearby accesses;
 - (iv) Pavement markings including lanes, crosswalks, stopbars and through/turning arrows;
 - (v) active transportation accommodations;
 - (vi) MTO PHM-125 standard template;
 - (vii) Hard copies in 1:500 scale; and
 - (viii) Electronic copies in AutoCAD format.

5.9 Landscaping and Site Restoration

The Final Design Development Submittals shall contain detailed landscape drawings that reflect any highway design changes and incorporate comments made on the interim submissions. Project Co shall document changes and describe the design work that has been completed since the Pre-Final Design Development Submittals, and document public consultation conducted as part of the development of the landscape drawings. Drawings shall be of a suitable scale for legibility, and provide enlarged detailing where needed.

5.10 [Intentionally Deleted]

5.11 Traffic Engineering

The Final Design Development Submittals shall contain, without limitation, the following:

MT DOCS 19727241v2

- (a) resolution of all issues identified during Pre-Final Design Development Submittals reviews;
- (b) traffic analysis report, which shall include comprehensive traffic analysis along with all supporting documentation and calculations in accordance with Schedule 15-2 –Part 7 Traffic Management and Construction Access; and
- (c) signal timing sheets and phasing diagrams associated with the design of signalized intersections.

5.12 Environmental Design

The Final Design Development Submittals shall contain, without limitation, the following:

- (a) applicable construction drawings that include:
 - (i) ecological restoration areas including Species-at-Risk and any environmentally sensitive areas, and all restoration areas;
 - (ii) all fisheries compensation plan areas to secure Fisheries Act Authorizations from Fisheries and Oceans Canada;
 - (iii) all drainage and stormwater management pond areas; and
 - (iv) erosion and sediment control measures;
- (b) riparian restoration and terrestrial reclamation/revegetation drawings that, as a minimum, describe timing requirements, seed mixes and applications rates of hydroseeding and site specific restoration plans, including species type, size and spacing for riparian areas, areas of higher sensitivity, and areas prone to erosion or shallow slope movement;
- (c) environmental design drawings that show environmental mitigation and compensation features and any environmental features to be constructed;
- (d) environmental design documentation including:
 - (i) regulatory agency review and acceptance documentation for the Environmental Management System specific to the work designed;
 - (ii) all licenses, notifications, permits, authorisations and approvals specific to the work designed; and
 - (iii) all assessments, studies, surveys, monitoring reports, and plans specific to the work designed;

MT DOCS 19727241v2

- (e) an environmental design criteria checklist that lists general environmental commitments and assurances, environmental design commitments, site specific environmental features and environmental mitigation/compensation plans including all commitments, assurances and plans relating to archaeological features;
- (f) Resolution of all issues identified during Design Review Meetings and Pre-Final Design Development Submittals reviews; and
- (g) Contract drawings as required and in conformity to Design and Construction Reports (DCR).

6. CONSTRUCTION DOCUMENT SUBMITTALS

6.1 General

- (a) Construction Document Submittals shall be prepared and shall have indices and sectional dividers. The folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the final calculations, reports and backup information. Submissions shall include, without limitation, copies of all final approvals, design reports, correspondence and calculations.
- (b) Construction Document Submittals for all drawings, reports, and other applicable design data shall be signed and sealed by the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline, or as applicable an Architect licensed to practice in Ontario. These disciplines shall include, as a minimum, all that are identified in the Final Design Development Submittals.

7. CHECKING OF STRUCTURAL DESIGN

- 7.1** In accordance with Article 8 of Part 2 of Schedule 15-2 to the Project Agreement, for relevant design submissions submitted in accordance with the Review Procedure, Project Co shall submit an 407 ETR Independent Structural Design Check Certificate, in the form provided as Attachment 4 to this Appendix G.

ATTACHMENT 1

Sample Contents for a Structural TAF

MT DOCS 19727241v2

SAMPLE CONTENTS FOR A STRUCTURAL TAF

Ref. No:

1. PROJECT DESCRIPTION

- 1.1 Name and location of structure
- 1.2 Permitted traffic speed (for a Bridge give over and/or under)

2. PROPOSED STRUCTURE

- 2.1 Description of Civil Structure
- 2.2 Structural type *(Include reasons for choice)*
- 2.3 Foundation type *(Include reasons for choice)*
- 2.4 Span arrangements *(Include reasons for choice)*
- 2.5 Barrier type
- 2.6 Proposed arrangements for inspection and maintenance
- 2.7 Materials and finishes

3. DESIGN/ASSESSMENT CRITERIA

- 3.1 Live Loading, Clearances
 - 3.1.1 Bridge code loading
 - 3.1.2 Design vehicle
 - 3.1.3 Other live loading
 - 3.1.4 Provision for exceptional abnormal loads:
 - 3.1.4.1 Gross weight
 - 3.1.4.2 Axle load and spacing
 - 3.1.4.3 Location of vehicle track on deck cross-section

MT DOCS 19727241v2

- 3.1.5 Any special loading not covered above
- 3.1.6 Minimum clearances provided (vertical and horizontal)
- 3.1.7 Authorities consulted and any special conditions required
- 3.2 List of relevant design documents

4. STRUCTURAL ANALYSIS

- 4.1 Methods of analysis proposed for Superstructure, Substructure and Foundations
- 4.2 Description and diagram of structure to be used for analysis
- 4.3 Assumptions intended for calculation of structural element property and stiffness
- 4.4 Proposed earth pressure coefficients (k_a , k_o , or k_p) to be used in design of earth retaining elements

5. GROUND CONDITIONS

- 5.1 Acceptance of interpretative recommendations of the soils report to be used in the design and reasons for any proposed departures
- 5.2 Describe foundations fully including the reasons for adoption of allowable and proposed bearing pressures/pile loads, strata in which Foundations are located, provision for skin friction effects on piles and for lateral pressures due to compression of underlying strata, etc.
- 5.3 Differential settlement to be allowed for in design of structure
- 5.4 Anticipated ground movements or settlement due to embankment loading, flowing water, and measures proposed to deal with these defects as far as they affect the structure
- 5.5 Results of tests of ground water (e.g. pH value, chloride or sulphate content) and any counteracting measures proposed (as applicable)
- 5.6 Anticipated ground movements or settlement due to seismic loading, measures proposed to deal with these impacts as far as they affect the structure

6. CHECKING

- 6.1 Name of proposed Checking Team

MT DOCS 19727241v2

7. DRAWINGS AND DOCUMENTS

7.1 List of drawings (including numbers) and documents accompanying the submission. To include (without limitation):

7.1.1 a location plan;

7.1.2 a preliminary general arrangement drawing; and

7.1.3 relevant parts of the ground investigation report.

8. THE ABOVE DESIGN AND CONSTRUCTION PROPOSALS ARE SUBMITTED FOR REVIEW.

Signed: _____

[Design Manager]

Name: _____

Engineering Qualifications: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Project Co Representative

Name: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

ATTACHMENT 2

Form of 407 ETR Design Certificates

MT DOCS 19727241v2

Certificate Ref No. []

407 ETR DESIGN CERTIFICATE (GENERAL)

In respect of:..... (Provide submittal details e.g. Roadway, Structures, Drainage, Geotechnical, etc.)

Project Agreement between Contracting Authority and Project Co dated [●] (the “Project Agreement”) relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.

This form of certificate is to be used by the Design Team and Project Co for certifying the design of the New 407 ETR Infrastructure to the extent that such New 407 ETR Infrastructure components have been constructed, installed, altered, upgraded, and/or augmented, in accordance with Schedule 15-2 – Output Specifications - Design and Construction to the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Design and Construction Specifications.

2. We certify that we have prepared the Design Data for [.....] listed in the schedule hereto in accordance with all applicable requirements contained in the [407 ETR Design Management Plan] [Design Quality Management Plan] and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data [Note: Inapplicable language to be deleted.]:

i. complies with all applicable [Design and Construction Specifications], including 407 ETR Technical Appraisal Form No. [.....] dated [.....] as amended by the following [Note: Inapplicable language to be deleted.]:

[List, if any, the changes made by the issue of Variation(s) and any addenda to the foregoing 407 ETR Technical Appraisal Form];

- ii. complies with all applicable design requirements of the Project Agreement;
- iii. complies with Applicable Law and Good Industry Practice; and
- iv. accurately describes and depicts the New 407 ETR Infrastructure to be undertaken.

SCHEDULE

[Include here drawing numbers and titles, reports, calculations, etc.]

Certified by: _____

[Design Team (principal)]

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Project Co Representative

Name: _____

Date: _____

Certificate Ref No. []

407 ETR DESIGN CERTIFICATE (ENVIRONMENTAL)

*Project Agreement between Contracting Authority and Project Co dated [●] (the “**Project Agreement**”) relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.*

This form of certificate is to be used by the Design Team, Environmental Director and Project Co for certifying the design of environmental works incorporated in the New 407 ETR Infrastructure in accordance with the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Design and Construction Specifications.

2. We certify that we have prepared the Design Data for [.....] [Name and list of all elements of the environmental works] in the schedule hereto in accordance with all applicable requirements contained in the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:
 - i. complies with all applicable [Design and Construction Specifications], including 407 ETR Technical Appraisal Form No. [.....] dated [.....], as amended by the following [Note: Inapplicable language to be deleted.]:

[List, if any, the changes made by the issue of Variation(s), and any addenda to the foregoing 407 ETR Technical Appraisal Form];

 - ii. complies with all applicable requirements of Schedule 17 – Environmental Obligations;

 - iii. complies with all applicable design requirements of the Project Agreement;

 - iv. complies with Applicable Law and Good Industry Practice; and

 - iv. accurately describes and depicts the New 407 ETR Infrastructure to be undertaken.

MT DOCS 19727241v2

SCHEDULE

[Include here drawing numbers and titles, reports, calculations, etc.]

Certified by: _____

[Design Team (principal)][Designer for the Service Provider (principal)] **[Note: Inapplicable language to be deleted.]**

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Environmental Director

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Project Co Representative

Name: _____

Date: _____

ATTACHMENT 3

Form of 407 ETR Construction Certificates

MT DOCS 19727241v2

Certificate Ref. No. []

407 ETR CONSTRUCTION CERTIFICATE (INTERIM)

Project Agreement between Contracting Authority and Project Co dated [●] (the “Project Agreement”) relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.

This form of certificate is to be used by the Design Team, Construction Contractor and Project Co for certifying in accordance with Section 3.1(d) of Appendix F to Schedule 10 – Review Procedure to the Project Agreement, the Construction Activities in accordance with Schedule 15 – Output Specifications to the Project Agreement. This certificate is effective as of [date].

Construction Contractor’s Statement

1. We certify that all the New 407 ETR Infrastructure up to the effective date of this certificate has been designed, constructed, tested, and if applicable commissioned, and is in accordance with:

- i. the relevant Design Data and any Design Certificates issued to date in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the following Variation(s): [.....]].

with the exception of:

- i **[Non-Conformance Report(s) in “open” status]**

Signed: _____

[Construction Contractor representative]

Name: _____

Date: _____

Design Team’s Statement

2. We certify that we have examined the New 407 ETR Infrastructure up to the effective date of this certificate in accordance with the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion the New 407 ETR Infrastructure and exception(s) stated in the Construction Contractor’s Statement above has been designed, constructed, tested and commissioned, as applicable, and is in accordance with:

- i. the relevant Design Data and any Design Certificates issued to date in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the following Variation(s): [.....]].

Signed: _____

[Design Team (principal)]

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Project Co Representative

Name: _____

Date: _____

Receipt of this Certificate is acknowledged.

Signed: _____

MT DOCS 19727241v2

Independent Certifier

Name: _____

Title: _____

Date: _____

Certificate Ref. No. []

407 ETR CONSTRUCTION CERTIFICATE (COMPLETION)

Project Agreement between Contracting Authority and Project Co dated [●] (the “Project Agreement”) relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.

This form of certificate is to be used by the Design Team, Construction Contractor and Project Co for certifying in accordance with Section 3.1(d) of Appendix G to Schedule 10 – Review Procedure to the Project Agreement, the Construction Activities in accordance with Schedule 15 – Output Specifications to the Project Agreement.

Construction Contractor’s Statement

1. We certify that [name(s) and element(s) of the New 407 ETR Infrastructure] [the New 407 ETR Infrastructure in respect of Handover] has been designed, constructed, [commissioned and tested] and has met the requirements for [Handover] in accordance with: [*Note: Inapplicable language to be deleted.*]

- i. the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the following Variation(s): [.....]].

Signed: _____

[Construction Contractor representative]

Name: _____

Date: _____

Design Team’s Statement

2. We certify that we have examined the **[name(s) and element(s) of the New 407 ETR Infrastructure]** **[the New 407 ETR Infrastructure in respect of Handover]** in accordance with the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion **[the said element of the New 407 ETR Infrastructure][the New 407 ETR Infrastructure]** has been designed, constructed, **[commissioned and tested]** and has met the requirements for **[Handover]** in accordance with: *[Note: Inapplicable language to be deleted.]*

- i. the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the Variation(s) listed in paragraph 1.(iii) above].

Signed: _____

[Design Team (principal)]

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Project Co Representative

Name: _____

Date: _____

MT DOCS 19727241v2

Receipt of this Certificate is acknowledged.

Signed: _____

Independent Certifier

Name: _____

Title: _____

Date: _____

ATTACHMENT 4

Certificate Form

Certificate Ref. No []

407 ETR INDEPENDENT STRUCTURAL DESIGN CHECK CERTIFICATE

*Defined terms and expressions used in this certificate have the meanings given in the agreement between Contracting Authority and Project Co dated [●] (the “**Project Agreement**”) relating to the Project.*

This form of certificate is to be used by the Independent Checking Team for certifying the design of structures incorporated in the New 407 ETR Infrastructure, in accordance with Article 8 of Part 2 of Schedule 15-2 to the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to perform an independent check of the Design Data referred to herein in accordance with the requirements of the Project Agreement.

2. We certify that we have performed an independent check (as required by the Project Agreement for Significant and Complex Structures) of the Design Data for [.....] **[Name of the Structure and list of all elements of the Structure included in the Design Data]** listed in the Schedule hereto and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such an independent check, and that in our professional opinion:

- i. the said Design Data meets performance expectations outlined in the Project Agreement, **[including 407 ETR Technical Appraisal Form]** No. [.....] dated [.....], as amended by the following:
 - [List, if any, the changes made and any addenda to the foregoing 407 ETR Technical Appraisal Form]; and
- ii. the design, methodologies and assumptions are consistent with Good Industry Practice.

SCHEDULE

[Include here drawing numbers and titles and reports, calculations, etc.]

MT DOCS 19727241v2

Signed: _____

Independent Checking Team (principal)

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Project Co Representative

Name: _____

Date: _____

APPENDIX H

NEW METROLINX INFRASTRUCTURE SUBMITTAL REQUIREMENTS

| Item # | Title | Description | Format |
|--------|-------------------------------|--|---|
| M-100 | Design Brief | <p>Project Co shall submit an updated Design Brief at with the Pre-Final Design development Submittals:</p> <ul style="list-style-type: none"> (a) the Design Brief shall include a detailed table of contents with tabs provided for major sections (i.e. architectural, interiors, structural, mechanical, electrical, industrial, safety and security, etc.) arranged in accordance with the structure of Schedule 15 – Output Specifications; (b) the Design Brief shall include a written narrative and analysis that coincides with the completion requirements defined in this Appendix H; (c) the Design Brief shall include a narrative on Metrolinx interface issues presenting the following: <ul style="list-style-type: none"> (i) a list of interface issues; and (ii) an analysis of critical issues, including the following: <ul style="list-style-type: none"> (A) customer experience; (B) construction issues; and (C) GO Transit and CP Rail service impacts; and (D) integration with the Port Credit GO station. | 8.5” x 11” with 11” x 17” fold-outs, black and white. |
| M-101 | Design Development Submittals | <p>Minimum Submissions Required for Review in Design Development Submittals stage:</p> <p>Project Co shall prepare and submit the following Pre-Final Design Development Submittals and Final Design Development Submittals to Contracting Authority for review and comment in accordance with this Schedule 10:</p> <ul style="list-style-type: none"> (a) With respect to Works within the Lakeshore West Rail Corridor: <ul style="list-style-type: none"> (i) Site plan, Site services and details of the Rail Corridor; (ii) plan and profile drawings illustrating the existing mainline and future bypass track | Half size reduction. 8.5” x 11” with 11” x 17” fold-outs, black and white or colour. |

| | | | |
|--|--|--|--|
| | | <p>alignments,</p> <ul style="list-style-type: none"> (iii) plans illustrating Rail Corridor drainage, and rail platform drainage features; (iv) cross sections cut at a maximum of 20m spacing illustrating the grading, track sub-ballast, retaining walls, utilities, drainage features, and platform elements; (v) detailed drawings of rail platform access features, including the access stairs from the tunnels, pedestrian bridge, and elevator infrastructure; (vi) construction phasing and staging plans of Rail Corridor Works illustrating how construction will be executed, including description or illustration or proposed temporary track crossings; and (vii) architectural, civil, structural, mechanical, electrical, security, and communications drawings including Site plans, sections, elevations, details as necessary to satisfy GO Transit that all construction requirements for clearance, shoring, drainage, temporary track crossings, utility crossings, and trackbed construction are met; (viii) applicable Project Works Schedules, work plan, flagging forecast, and risk register showing complete sequence of construction by activity, identifying Rail Corridor Works of separate stages and other logically grouped activities and indicating the early and late start, early and late finish, float dates and duration of all activities; (ix) Submittals for Civil Structures, including: <ul style="list-style-type: none"> (A) structure or bridge general arrangement; (B) bore log and data drawing; (C) foundation layout and details; (D) substructure layout and details; (E) girder and/or superstructure layout and details; (F) bearing layout and details; (G) barrier walls, walkways, pole bases, track fixation and other details required for the completion of the | |
|--|--|--|--|

| | | | |
|-------|----------------------------------|--|---|
| | | <p>work;</p> <p>(H) details of precast culverts and pre-engineered structures;</p> <p>(I) all drawings for Temporary Works;</p> <p>(J) the loading criteria to which the Civil Structures are designed;</p> <p>(K) the geotechnical information on which the structural design is based; and</p> <p>(L) the condition survey information on which the structural design is based in connection with the existing Civil Structures and the existing conditions assumed for the structural design; and</p> <p>(b) any other Works Submittals Contracting Authority or GO Transit reasonably requires to understand the Works;</p> | |
| M-102 | Construction Document Submittals | <p>Project Co shall prepare and submit the following Construction Document Submittals to Contracting Authority for review and comment in accordance with this Schedule 10:</p> <p>(a) With respect to Works within the Lakeshore West Rail Corridor:</p> <p>(i) updates to the Design Development Submittals; and</p> <p>(b) any other Works Submittals Contracting Authority or GO Transit reasonably requires to understand the Works.</p> | <p>Half size reduction. 8.5” x 11” with 11” x 17” fold-outs, black and white or colour.</p> |
| M-103 | Design Certificates | <p>Project Co shall prepare and submit separate Design Certificates (in the forms as provided in Attachment 1 to this Appendix H) for each submitted Construction Document Submittals review package. All Design Certificates prepared and issued by Project Co shall be:</p> <p>(a) on the applicable Design Certificate (general) or Design Certificate (environmental);</p> <p>(b) signed and sealed by the responsible professional, who shall be a professional engineer or a registered architect, and a principal of the Design Team;</p> <p>(c) signed by the Project Co Representative; and</p> <p>(d) only in the case of Design Certificates for environmental works incorporated into the Works, signed by the Environmental Director.</p> <p>(e) Any person who signs a Design Certificate shall clearly print his or her name and the position held in</p> | <p>8.5” x 11” with 11” x 17” fold-outs, black and white, or colour.</p> |

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| | | his or her organization on the Design Certificate. | |
| M-104 | Construction Certificates | <p>Project Co shall prepare and submit Construction Certificates (in the form as provided in Attachment 2 to this Appendix H) for each substantially completed component, all final completed components, and all final completed components of any reinstatement work to the Contracting Authority Representative for review in accordance with this Schedule 10. All Construction Certificates prepared and issued by Project Co shall be:</p> <ul style="list-style-type: none"> (a) signed by the Construction Contractor representative; (b) signed and sealed by the responsible professional, who shall be a professional engineer or a registered architect, and a principal of the Design Team; (c) signed by the Project Co Representative; and (d) signed by the Independent Certifier, acknowledging receipt. (e) Any person who signs a Construction Certificate shall clearly print his or her name and the position held in his or her organization on the Construction Certificate. | <p>Half size reduction. 8.5” x 11”,” with 11” x 17” fold-outs, black and white or colour.</p> |
| M-105 | Specifications | <p>Project Co shall prepare and submit detailed specification sections at the Final Design Development and Construction Document Submission stage (masterformat system) for all components of the New Metrolinx Infrastructure.</p> | <p>8.5” x 11” with 11” x 17” fold-outs, black and white or colour.</p> |
| M-106 | Shop Drawings | <p>Project Co shall prepare and submit shop drawings for all systems and components of the New Metrolinx Infrastructure in accordance with industry standards. The following is a specific list of shop drawings that are required to be submitted by Project Co for review:</p> <ul style="list-style-type: none"> (a) complete list of shop drawings within one month after Commercial Close. At any time during the course of the Project additional shop drawings may be requested by Contracting Authority and shall be provided by Project Co for review by Contracting Authority pursuant to this Schedule 10. | <p>To suit format provided by the manufacturer and or supplier of the system and or component.</p> |
| M-107 | Samples and Mock-ups | <p>Project Co shall prepare and submit samples for all systems and components of the Works in accordance with industry standards. The following is a specific list of samples that are required to be submitted by Project Co for review:</p> <ul style="list-style-type: none"> (a) complete list of samples to be provided to Contracting Authority within one month after Commercial Close; | <p>To suit format provided by the manufacturer and or supplier of the</p> |

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| | | <p>and</p> <p>(b) installations that require review by Contracting Authority for operational or aesthetic issues.</p> <p>At any time during the course of the Project, additional samples may be requested by Contracting Authority and shall be provided by Project Co for review by Contracting Authority pursuant to this Schedule 10.</p> | <p>system and or component.</p> |
| M-108 | Retaining Wall Product Information | <p>Project Co shall prepare and submit retaining wall product information for all retaining walls proposed. This information shall include,</p> <p>(a) architectural features and elevations;</p> <p>(b) design features including, supporting calculations, tieback details, backfill and drainage features;</p> <p>(c) cross sections at critical points; and</p> <p>(d) guard details.</p> | <p>8.5” x 11” with 11” x 17” fold-outs, black and white or colour.</p> |
| M-109 | Approvals | <p>Project Co shall prepare and submit proof of the following by copy of certification or approval letter, as applicable:</p> <p>(a) Electrical Safety Authority (ESA) Certificate of Inspection.</p> | <p>8.5” x 11” with 11” x 17” fold-outs, black and white or colour.</p> |
| M-110 | Record Drawings and Operations Manuals | <p>Project Co shall prepare and submit a detailed log (spreadsheet format) identifying all Record Drawings and operations manuals. The detailed log shall include as a minimum the following:</p> <p>(a) drawing number for all Record Drawings documents with a summary of the changes made during construction;</p> <p>(b) list of all systems and components included in the operations manuals; and</p> <p>(c) any other information Contracting Authority reasonably requires to understand the Works.</p> | <p>8.5” x 11”, black and white.</p> |
| M-111 | 1 Year Warranty Review | <p>Prior to the one year post-occupancy date and prior to the expiry of the warranty, as determined by Contracting Authority and Project Co, Project Co shall prepare and submit a detailed report identifying any deficiency issues with the Works experienced since occupancy.</p> | <p>8.5” x 11”, black and white.</p> |
| M-112 | [Intentionally Deleted] | | |

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| M-113 | [Intentionally Deleted] | | |
| M-114 | [Intentionally Deleted] | | |
| M-115 | [Intentionally Deleted] | | |
| M-116 | Detailed Construction Activity Report | <p>Project Co shall prepare and submit a detailed Construction Activity Report by the first working day after the fifth day of every month. The Detailed Construction Activity Report shall progressively record activities on the Site.</p> <p>The Detailed Construction Activity Report shall include:</p> <p>(a) Resources:</p> <ul style="list-style-type: none"> (i) Workers; (ii) Types of crews present and carrying out work; (iii) Length of each shift, number of shifts per crew and crew leaders; <p>(b) Work Cycle:</p> <ul style="list-style-type: none"> (i) The number of workers in each crew + number of crews; and (ii) The name of the leader of each crew and his experience in related work; <p>(c) Equipment:</p> <ul style="list-style-type: none"> (i) List of all equipment on site during each track closure; (ii) Detailed description of methods and equipment to be used in handling materials; and (iii) Standby equipment; <p>(d) Equipment:</p> <ul style="list-style-type: none"> (i) All other information that will assist in assessing the comprehension of the Contractor of the scope of the work and expertise in planning and executing the work. | 8.5” x 11” with 11” x 17” fold-outs, black and white, or colour. |
| M-117 | Ground Instrument Monitoring Plan | (a) Project Co shall prepare and submit a Ground Instrument Monitoring Plan at Final Design Development stage for any Works that potentially affect existing trackbed, on the Lakeshore West corridor. Project Co shall submit a weekly Ground | 8.5” x 11”,” with 11” x 17” fold-outs, black and white or |

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| | | <p>Instrument Monitoring Plan with ongoing monitoring results during the Construction Activities. Project Co’s Ground Instrument Monitoring Plan shall be sealed by a professional engineer licensed in the Province of Ontario, and shall include the following:</p> <ul style="list-style-type: none"> (i) a reference drawing showing location and general arrangement of the movement monitoring points for review by Contracting Authority and CP Rail (the “Movement Monitoring Points”); and (ii) an established baseline of each of the Movement Monitoring Points by taking a minimum of three readings prior to construction, each taken on separate days. <p>(b) Contracting Authority and GO Transit shall have the right to request additional Movement Monitoring Points. Frequency and precision of monitoring shall be to the satisfaction of Contracting Authority and GO Transit.</p> | colour. |
| M-118 | Rail Corridor Access Plan | <p>(a) Project Co shall prepare and submit the Rail Corridor Access Plan in accordance with the requirements outlined in Schedule 42 – Rail Corridor Access and Flagging, and in accordance with industry standards.</p> | 8.5” x 11”,” with 11” x 17” fold-outs, black and white or colour. |

ATTACHMENT 1

Form of Design Certificates

Certificate Ref No. []

DESIGN CERTIFICATE (GENERAL)

In respect of :..... (Provide submittal details)

Project Agreement between Contracting Authority and Project Co dated XX XX, XXXX (the “Project Agreement”) relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Design Team for certifying the design of the New Metrolinx Infrastructure to the extent that such New Metrolinx Infrastructures components have been constructed, installed, altered, upgraded, and/or augmented, in accordance with Schedule 15-2 – Design and Construction Requirements to the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Output Specifications.

2. We certify that we have prepared the Design Data for [.....] listed in the Schedule hereto in accordance with all applicable requirements contained in the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:
 - (a) complies with all applicable Output Specifications, as amended by the following:
 - (i) **[List, if any, the changes made by the issue of Variation(s)];**
 - (b) complies with all applicable design requirements of the Project Agreement;
 - (c) complies with all applicable standards, codes and current Good Industry Practice; and
 - (d) accurately describes and depicts the New Metrolinx Infrastructure to be undertaken.

SCHEDULE

[Include here drawing numbers and titles, reports, calculations, etc.]

Certified by:

Design Team (Principal)

Name:

Title:

Date:

Professional Registration Number:

Affix Professional Seal

Signed:

Construction Contractor representative

Name:

Date:

This Certificate is assigned as:

- i. No Comment*
- ii. Minor Non-Conformance*
- iii. Major Non-Conformance*
- iv. Critical Non-Conformance*

* delete as appropriate

Signed:

Contracting Authority Representative

Name:

Date:

Certificate Ref No. []

DESIGN CERTIFICATE (ENVIRONMENTAL)

Project Agreement between Contracting Authority and Project Co dated XX XX, XXXX (the “Project Agreement”) relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.

Form of certificate shall be used by the Design Team and the Environmental Director for certifying the design of environmental works incorporated in the New Metrolinx Infrastructure in accordance with the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Output Specifications.
2. We certify that we have prepared the Design Data for [.....] **[Name and list of all elements of the environmental works]** in the Schedule hereto in accordance with all applicable requirements contained in the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:
 - (a) complies with all applicable Output Specifications, including Technical Appraisal Form No. [.....] dated [.....], as amended by the following:
 - (i) **[List, if any, the changes made by the issue of Variation(s), and any Addenda to the foregoing Technical Appraisal Form];**
 - (b) complies with all applicable requirements of Schedule 17 – Environmental Obligations
 - (c) complies with all applicable design requirements of the Project Agreement;
 - (d) complies with all applicable standards, codes and current Good Industry Practice; and
 - (e) accurately describes and depicts the New Metrolinx Infrastructure to be undertaken.

SCHEDULE

[Include here drawing numbers and titles and reports, calculations, etc.]

Certified by:

Design Team (Principal)

Name:

Title:

Date:

Professional Registration Number:

Affix Professional Seal

Signed:

Environmental Director

Name:

Title:

Date:

Professional Registration Number:

Affix Professional Seal

This Design Certificate is:

- i. No Comment*
- ii. Minor Non-Conformance*
- iii. Major Non-Conformance*
- iv. Critical Non-Conformance*

* delete as appropriate

Signed:

Contracting Authority Representative

Name:

Date:

ATTACHMENT 2

Form of Construction Certificate

Certificate Ref. No. []

CONSTRUCTION CERTIFICATE

Project Agreement between Contracting Authority and Project Co dated XX XX, XXXX (the “Project Agreement”) relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Design Team, Construction Contractor and Project Co for certifying in accordance with Construction Certificates submittals outlined in Appendix H of Schedule 10 – Review Procedure to the Project Agreement.

Construction Contractor’s Statement

- 1. We certify that **[name and element of the New Metrolinx Infrastructure][New Metrolinx Infrastructure in respect of Handover]** has been designed, constructed, commissioned and tested and has met the requirements for **[Handover]** in all respects in accordance with: **[Note: Inapplicable language to be deleted.]**
 - (a) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure;
 - (b) Applicable Law and Good Industry Practice; and
 - (c) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):
 - (i) **[List, if any, the changes made by the issue of Variation(s), and any Addenda to the foregoing Technical Appraisal Form];**

With the exception of:

[List, if any, all Non-Conformance Report(s) in “open’ status]

Signed.....

Construction Contractor representative

Name.....

Date.....

Design Team’s Statement

- 2. We certify that we have examined the **[name and element of the New Metrolinx Infrastructure][New Metrolinx Infrastructure in respect of Handover]** in accordance with the

requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion **[the said element of the New Metrolinx Infrastructure][the New Metrolinx Infrastructure]** has been designed, constructed, commissioned and tested and has met the requirements for **[Handover]** in all respects in accordance with: **[Note: Inapplicable language to be deleted.]**

- (a) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure; and
- (b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):
 - (i) **[List, if any, the changes made by the issue of Variation(s), and any Addenda to the foregoing Technical Appraisal Form];**

Signed.....

Design Team (Principal)

Name.....

Title.....

Date.....

Professional Registration Number:

Affix Professional Seal

Receipt of this Certificate is acknowledged.

Signed.....

Independent Certifier

Name.....

Date.....

Professional Registration Number:

Affix Professional Seal

This Certificate is:

- i. No Comment*
- ii. Minor Non-Conformance*
- iii. Major Non-Conformance*
- iv. Critical Non-Conformance

* delete as appropriate

Signed:

Contracting Authority Representative

Name:

Date:

SCHEDULE 11

QUALITY MANAGEMENT

PART 1 DEFINITIONS 2
PART 2 QUALITY MANAGEMENT SYSTEM 6
PART 3 QUALITY PERSONNEL..... 11
PART 4 TESTING..... 15
PART 5 QUALITY AUDITS AND MONITORING..... 17
PART 6 QUALITY DOCUMENTATION 24
PART 7 NON-CONFORMANCES..... 27
PART 8 PERFORMANCE REPORTING 33
PART 9 PERFORMANCE MEASURES 35

APPENDICES

Appendix A Quality Manual
Appendix B Design Quality Management Plan
Appendix C Construction Quality Management Plan
Appendix D Project Co Services Quality Management Plan
Appendix E Traffic Quality Management Plan
Appendix F Environmental Quality Management Plan
Appendix G New MTO Infrastructure Requirements
Appendix H Audit of Temporary Traffic Management – Sample Site Report

**PART 1
DEFINITIONS****1.1 Definitions**

In this Schedule 11, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 11) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Appropriate Persons”** has the meaning given in Section 2.3(c).
- (b) **“Closing Meeting”** has the meaning given in Section 5.9(a).
- (c) **“Construction Quality Management Plan”** or **“CQMP”** means the plan for the quality management of the Works prepared by Project Co in accordance with Appendix C.
- (d) **“Construction Quality Manager”** has the meaning given in Section 3.3(d).
- (e) **“Corrective Action”** means an action to eliminate the cause of an existing Non-Conformance, defect or other undesirable situation to prevent its recurrence.
- (f) **“Corrective Action Date”** means the date by which Project Co shall complete the implementation of a Corrective Action in accordance with this Schedule 11.
- (g) **“Corrective and Preventive Actions Plan”** has the meaning given in Section 5.3(a)(iv).
- (h) **“Design and Construction Certification Procedure”** has the meaning given in Section 2.3(a).
- (i) **“Design Quality Management Plan”** or **“DQMP”** means the plan for the quality management of the design of the project prepared by Project Co in accordance with Appendix B.
- (j) **“Design Quality Manager”** has the meaning given in Section 3.3(c).
- (k) **“Disposition”** means the applicable “Disposition” in response to a Non-Conformance Report described in Table 7.1 of Section 7.1 provided by the Quality Director pursuant to Section 7.1(a)(iv) or Section 7.1(a)(v), as applicable.
- (l) **“Environmental Quality Management Plan”** or **“EQMP”** means the plan for environmental management prepared by Project Co in accordance with Appendix F.
- (m) **“Environmental Quality Manager”** has the meaning given in Section 3.3(f).
- (n) **“External Quality Audit”** means either or both:
 - (i) a second party Quality Audit conducted by parties having an interest in Project Co or the relevant Project Co Party, such as parties with commercial contracts with Project Co or a relevant Project Co Party or customers/clients of Project Co or a relevant Project Co Party; and

- (ii) a third party Quality Audit conducted by an external independent organization such as a certification or registration body.
- (o) **“Independent Quality Audit”** means a third party audit of the Quality Management System conducted by an independent quality auditor certified by an accredited auditors’ registration body such as International Register for Certified Auditors, Registrar Accreditation Board, National Quality Institute, or other equivalent body.
- (p) **“Inspection and Test Plan”** or **“ITP”** means the plan prepared in accordance with Section C.1(e)(i) of Appendix C.
- (q) **“Inspection and Test Sub-Plans”** means the sub-plans prepared in accordance with Section C.1(e)(i) of Appendix C.
- (r) **“Internal Quality Audit”** means a first party Quality Audit of Project Co’s or a Project Co Party’s own processes conducted by or on behalf of the relevant organization.
- (s) **“ISO 9001 Lead Auditor Course”** means an accredited ISO 9001 course for lead auditors who meet the training portion of the requirements for current certification of individual quality system auditors with the International Register of Certified Auditors.
- (t) **“ISO/IEC”** International Organization for Standardization / International Electrotechnical Commission.
- (u) **“ITP Two-Week Look-Ahead”** has the meaning given in Section C.1(e)(vi) of Appendix C.
- (v) **“Monthly Performance Monitoring Report”** has the meaning given in Part 8.
- (w) **“NC Remedy Date”** has the meaning given in Table 7.1 of Section 7.1.
- (x) **“Non-Conformance Report”** means a document issued by either Contracting Authority or Project Co pursuant to Section 7.1 detailing the description of an identified Non-Conformance, the remedial action taken or proposed to be taken to eliminate the Non-Conformance, and the date by which the remedial action was completed or proposed to be completed.
- (y) **“Non-Conformance Tracking System”** means a system to track Non-Conformance Reports issued by Contracting Authority or Project Co as set out in Section 7.2(a).
- (z) **“Preventive Action”** means an action to eliminate the cause of a potential Non-Conformance or other undesirable situation in order to prevent its occurrence.
- (aa) **“Preventive Action Date”** means the date by which Project Co shall complete the implementation of a Preventive Action in accordance with this Schedule 11.
- (bb) **“Project Co Quality Audit Report”** has the meaning given in Section 5.2(a)(v).
- (cc) **“Project Co Services Quality Management Plan”** or **“PSQMP”** means the plan for the quality management of the Project Co Services prepared by Project Co in accordance with Appendix D.

- (dd) **“Project Schedules Quality Management Plan”** has the meaning given in Schedule 12 – Project Schedule Requirements.
- (ee) **“QMS 2015 Auditor”** means a quality auditor certified by the International Register of Certified Auditors in the **“QMS 2015 Auditor”** grade of certification.
- (ff) **“Quality Audit”** means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.
- (gg) **“Quality Audit Plan”** means Project Co’s audit plan defining the Internal Quality Audits, External Quality Audits and Independent Quality Audits that Project Co shall perform or cause to be performed on its own processes and the processes of Project Co Parties.
- (hh) **“Quality Control Manager”** means an individual quality control manager responsible for each of the quality control requirements as set out in the CQMP as described in Section 3.4.
- (ii) **“Quality Director”** has the meaning given in Section 3.2(a).
- (jj) **“Quality Documentation”** has the meaning given in Section 6.3.
- (kk) **“Quality Failure Category”** means the failure category described in Section 9.2.
- (ll) **“Quality Management Plans”** or **“QMPs”** includes the DQMP, EQMP, Project Schedules Quality Management Plan, CQMP, TQMP, PSQMP and any other quality management plan required for the purposes of undertaking any material and substantial aspect of the Works and the Project Co Services.
- (mm) **“Quality Management System”** has the meaning given in Section 2.1(a).
- (nn) **“Quality Managers”** means individual quality managers responsible for each of the Quality Management Plans.
- (oo) **“Quality Manual”** means Project Co’s quality manual meeting the requirements set out in Appendix A.
- (pp) **“Quality Objectives”** means the objectives related to quality that are measurable and consistent with the Quality Policy and which are to be formally expressed and recorded in the Quality Manual in accordance with this Schedule 11, provided that, alternatively, each Quality Management Plan may have its own Quality Objectives which are directly related to the applicable Quality Policy expressed or recorded in the Quality Manual.
- (qq) **“Quality Policy”** means the overall intentions and direction of Project Co related to quality applicable to Project Co and all Project Co Parties involved in performing the Works which are to be formally expressed and recorded in the Quality Manual in accordance with this Schedule 11, provided that, alternatively, each Quality Manual may have its own Quality Policy which is directly related to applicable Quality Objectives expressed or recorded in the Quality Manual.
- (rr) **“Quality Records”** has the meaning given in Section 6.8(a).

- (ss) **“Site Condition Rating Checklist”** has the meaning given in Section 5.7(a).
- (tt) **“Surveillance Quality Audits”** means Quality Audits conducted by or on behalf of Contracting Authority as contemplated in Section 5.3.
- (uu) **“Traffic Control Plan”** means the plan prepared by Project Co in accordance with Article 2 of Part 7 of Schedule 15-2 – Design and Construction.
- (vv) **“Traffic Quality Management Plan”** or **“TQMP”** means the plan for the traffic management during construction of the project prepared by Project Co in accordance with Appendix E.
- (ww) **“Traffic Quality Manager”** has the meaning given in Section 3.3(e).
- (xx) **“Witness and Hold Point”** means a point of time in the construction process when it would be unreasonably onerous or impossible, to confirm conformance to or compliance with the Output Specifications with respect to either materials or workmanship once work proceeds past this point.

PART 2
QUALITY MANAGEMENT SYSTEM

2.1 Quality Management System

- (a) Project Co shall develop and implement a quality management system in accordance with the requirements of this Schedule 11 (the “**Quality Management System**”) for the Works and the Project Co Services. Project Co acknowledges and agrees that Project Co is solely responsible for the quality of the Works and the Project Co Services and that a comprehensive Quality Management System is critical for the proper and timely completion of the Works and the Project Co Services.

2.2 Project Co Responsibilities

- (a) Project Co is responsible for all quality assurance and quality control activities set out in this Schedule 11 that are required to manage its own processes as well as those of the Project Co Parties throughout the Project Term. Project Co shall ensure that all aspects of the Project are the subject of a Quality Management System that complies with the provisions of this Schedule 11, and shall comply with and cause all Project Co Parties to comply with the requirements of such Quality Management System. For greater certainty and without limiting Project Co’s ability to contractually assign responsibilities and obligations to Project Co Parties in accordance with the Project Agreement, Project Co shall not be relieved of any of Project Co’s responsibilities or obligations set out in this Schedule 11 by the assignment of such responsibilities or obligations to Project Co Parties.

2.3 Design and Construction Certification Procedure

- (a) Project Co shall implement and enforce the procedure set out in this Section 2.3 (the “**Design and Construction Certification Procedure**”), throughout the Project Term.
- (b) The Design and Construction Certification Procedure shall apply to all Design Data prepared or adopted in connection with the Works.
- (c) Project Co shall ensure that all certification procedures referred to in the Design and Construction Certification Procedure are complied with by the appropriate persons referred to therein, including the Design Team, and any independent team or engineer within the Design Team, as the case may be (together, the “**Appropriate Persons**”), and that all Appropriate Persons are at all relevant times duly authorized and qualified to carry out such procedures and to sign the relevant certificates. Any failure by any Appropriate Person to fulfil the obligations required of them under the Design and Construction Certification Procedure shall be a breach of the Project Co’s obligations under the Project Agreement.
- (d) Project Co shall submit all Design Certificates and Construction Certificates, together with the supporting documentation, to the Contracting Authority Representative for review, acting reasonably, in accordance with Schedule 10 – Review Procedure. The submitted Design Certificates and Construction Certificates shall have original signatures, seals and registration numbers, and shall be in such form as to allow the Contracting Authority Representative to perform its review function in respect of such Design Certificate or Construction Certificate without delay.

- (e) Project Co shall submit Construction Certificates to the Contracting Authority Representative for review, acting reasonably, in accordance with Schedule 10 – Review Procedure, for each of:
 - (i) substantially completed components; and
 - (ii) entirely completed components.

2.4 Quality Management System Requirements

- (a) The Quality Management System shall, at a minimum, include the Quality Documentation described in Part 6, including:
 - (i) Inspection and Test Plan for all components of the Works;
 - (ii) processes for:
 - (A) assessing training requirements;
 - (B) providing all staff with Quality Management System requirements of the Project Agreement;
 - (C) updating training; and
 - (D) maintaining all training records,applicable to all Project Co Parties, including each Subcontractor;
 - (iii) methods to ensure compliance with the Quality Management System by each Project Co Party;
 - (iv) techniques for integration between all of the Works and the Project Co Services;
 - (v) documentation and verification procedures; and
 - (vi) defined roles and responsibilities for all members of the Quality Management System team.
- (b) The Quality Management System shall comply with:
 - (i) the requirements and principles of the ISO 9001:2015 Standard and any other applicable standards specified in this Schedule 11;
 - (ii) Good Industry Practice; and
 - (iii) all other requirements set out in this Schedule 11 and the Project Agreement.

2.5 Compliance of Quality Management System

(a) Specific Requirements

- (i) The Quality Management System must be compliant with ISO 9001:2015 within 90 days from Financial Close.
- (ii) Compliance shall be subject to review and must be approved by Contracting Authority, which compliance shall be maintained by Project Co throughout the Project Term.
- (iii) The scope of compliance for the Quality Management System should be clearly defined to address the Works, including traffic management and environmental considerations in respect of the Project.
- (iv) Project Co shall update its Quality Management System and all Quality Documentation as required to ensure that the Quality Management System and all Quality Documentation are and at all times remain in full compliance with the ISO 9001:2015 Standard and the requirements of this Schedule 11. All Quality Documentation shall be made available to Contracting Authority upon request.

2.6 Documentation Deliverables

(a) Deliverables

- (i) Without limiting the generality of Section 2.4, Project Co shall provide to Contracting Authority, by the dates shown in Table 2.6.1, each of the following:

Table 2.6.1 – Schedule of Plans and Reports

| Deliverable Name | Schedule 11 Specification Reference | Due Date | Submitted under the Review Procedure |
|---|--|--|---|
| Quality Manual | Appendix A | Submitted within 30 days following Financial Close | Yes |
| Design Quality Management Plan | Appendix B | Submitted within 45 days following Financial Close | Yes |
| Construction Quality Management Plan | Appendix C | Submitted within 60 days following Financial Close | Yes |
| Project Co Services Quality Management Plan | Appendix D | Submitted within 90 days following Financial Close | Yes |
| Traffic Quality Management Plan | Appendix E | Submitted within 45 days following Financial Close | Yes |
| Environmental Quality Management Plan | Appendix F | Submitted within 30 days following Financial Close | Yes |

| Deliverable Name | Schedule 11 Specification Reference | Due Date | Submitted under the Review Procedure |
|--|--|--|---|
| Other Quality Management Plans required by Section 2.6(b)(i) | Section 2.6 | Submitted within 60 days following Financial Close | Yes |
| Project Schedules Quality Management Plan required by Section 2.6(b)(ii) | Section 2.6 | Submitted 30 days following Financial Close | Yes |
| Quality Audit Plan | Section 5.1 | Submitted within 30 days following Financial Close | Yes |
| Quality Audit Plan updates | Section 5.1 | At twelve monthly intervals following Quality Audit Plan submittal | Yes |
| Monthly Quality Management System reports | Section 6.9 | By 15 th of each month (in respect of previous month) | Yes |
| Project Co Quality Audit Reports | Section 5.2 | Each submitted within 5 Business Days following the applicable Closing Meeting | Yes |
| Corrective and Preventive Actions Plans | Section 5.3 | Each submitted within 5 Business Days following the applicable Closing Meeting | Yes |

- (ii) Where specified in Table 2.5.1, Project Co shall submit all deliverables of the Quality Management System to Contracting Authority for review in accordance with Schedule 10 – Review Procedure.

(b) Specific Requirements

- (i) Project Co shall prepare and submit a Quality Management Plan for the Construction Contractor and the Service Provider, in each case in respect of the activities covered by that party’s contract with Project Co and meeting the requirements of the Quality Manual, and Project Co shall cause all other contractors engaged by Project Co for the purposes of undertaking any material or substantial aspect of the Works or the Project Co Services to comply with the Quality Manual.
- (ii) Project Co shall prepare and submit a Project Schedules Quality Management Plan in accordance with Schedule 12 – Project Schedule Requirements.

(c) Timing of Implementation

- (i) The Quality Manual and all Quality Management Plans must be fully implemented within 180 days from Financial Close. Project Co shall not commence or permit the commencement of any aspect of the Works or the Project Co Services before those parts of the Quality Documentation that concern such aspect of the Works or the Project Co Services have been submitted to Contracting Authority in accordance with this Schedule 11.

(d) Compliance with Quality Management System

- (i) Project Co shall ensure that:
 - (A) Project Co complies with the Quality Management System in accordance with the Quality Manual and with the Project Schedules Quality Management Plan in connection with its Works scheduling activities;
 - (B) the Design Team complies with the Design Quality Management Plan in connection with its design activities;
 - (C) the Construction Contractor complies with the Design Quality Management Plan, the Construction Quality Management Plan, the Traffic Quality Management Plan and the Environmental Quality Management Plan in connection with all activities under the Construction Contract;
 - (D) the Service Provider complies with the Project Co Services Quality Management Plan, the Traffic Quality Management Plan and the Environmental Quality Management Plan in connection with all activities under the Service Contract;
 - (E) any other contractor engaged by Project Co either complies with Project Co's relevant Quality Management Plan prepared and implemented pursuant to specific requirements of this Schedule 11 in connection with the activities covered by that party's contract with Project Co or provides evidence of the contractor's own quality system and the required quality assurance interfaces to Project Co; and
 - (F) Project Co shall ensure that any Project Co Party who performs any portion of the Works or the Project Co Services shall comply with the Quality Management System as it relates to that portion of the Works or the Project Co Services.

2.7 Continuous Improvement in Quality Management System

- (a) Project Co shall implement a program and shall have mechanisms in place, such as management reviews and Quality Audit programs, to allow all identified opportunities for improvement of the effectiveness of the Quality Management System to be recorded, tracked and implemented or closed out.
- (b) Project Co shall ensure that all Project Co Parties are aware of the importance of continuous improvement and are actively engaged in the implementation of the Quality Management System in connection with the performance of the Works and the Project Co Services.

PART 3
QUALITY PERSONNEL

3.1 General

- (a) Project Co shall provide separate personnel with the required qualifications in a full time role in support of the Quality Management System as set out in this Part 3.

3.2 Quality Director**(a) Appointment and General Responsibilities**

- (i) At all times during the Project Term, Project Co shall employ, or otherwise engage by sub-contract, a Quality Director who shall,
- (A) irrespective of such person's other responsibilities, have defined authority for ensuring the establishment and maintenance of the Quality Management System and auditing and reporting on the status of, and compliance with the Quality Management System, including the requirements set forth in Section 3.2(a);
 - (B) be a certified QMS 2015 Auditor or have experience in a similar quality management representative role for a transit project of a similar scope to this Project and have successfully completed an ISO 9001 Lead Auditor Course;
 - (C) be independent of the Construction Contractor and the Service Provider; and
 - (D) have full access to all quality documentation described in the Quality Management System held with Project Co Parties.
- (ii) The identity of the Quality Director (and any replacement thereof) and his/her job specification and responsibilities shall be subject to the approval of Contracting Authority (such approval not to be unreasonably withheld or delayed), and the Quality Director shall be a Key Individual.

(b) Specific Responsibilities

- (i) Without limiting the generality of the foregoing, the job specification and responsibilities of the Quality Director shall include the following:
- (A) developing, implementing and maintaining, and ensuring the effective operation of, the Quality Management System;
 - (B) initiating management reviews, not less frequently than annually, and taking other actions necessary to ensure the effective operation and continuous improvement of the Quality Management System;
 - (C) preparing Quality Audit Plans and scheduling and coordinating Internal Quality Audits and External Quality Audits of key processes with the relevant Project Co Parties;

- (D) scheduling and coordinating Independent Quality Audits with the independent quality auditor;
 - (E) ensuring that all Quality Audits required under Section 5.2 and under the Quality Documentation are conducted, and reporting the findings of such audits to Contracting Authority;
 - (F) having the authority to immediately stop any work or activity which is not being performed or carried out in accordance with the Quality Documentation applicable thereto;
 - (G) liaising with Contracting Authority and acting as the primary representative for Project Co on all matters relating to quality management;
 - (H) coordinating all activities that demonstrate to Project Co and Contracting Authority that the Quality Management System meets the requirements of this Schedule 11;
 - (I) preparing and submitting to Contracting Authority monthly Quality Management System reports;
 - (J) ensuring that relevant Quality Records are retained in accordance with the Quality Management System and the requirements of Schedule 26 – Record Provisions;
 - (K) developing and implementing a program for Corrective Actions and Preventive Actions for Non-Conformances;
 - (L) approve and sign off on the action taken in close out of Non-Conformance Reports;
 - (M) retain and cause to be implemented the IQAF services as required in Appendix G to this Schedule 11; and
 - (N) carrying out any other matters which, in accordance with the Project Agreement, are the responsibility of the Quality Director.
- (c) Project Co shall not assign the responsibilities and obligations of the Quality Director to any other Project Co Party.

3.3 Quality Managers

- (a) Project Co shall appoint Quality Managers who shall be responsible for the Quality Management Plans developed by Project Co including the DQMP, CQMP, TQMP, EQMP, Project Schedules Quality Management Plan and PSQMP.
- (b) The Quality Managers shall be certified as quality professionals from certifying bodies, as a minimum successful completion of an ISO 9001 Lead Auditor Course.

- (c) The Quality Manager for the DQMP shall be responsible to ensure that reviews, checking and verification are undertaken for all designs, and be a Professional Engineer with 5 years of experience overseeing the design of transit (the “**Design Quality Manager**”).
- (d) The Quality Manager for the CQMP shall have 10 years’ experience as a quality manager for the construction of transit (the “**Construction Quality Manager**”).
- (e) The Quality Manager for the TQMP shall be a traffic management professional with 10 years of experience in traffic management for roads and transit (the “**Traffic Quality Manager**”).
- (f) The Quality Manager for the EQMP shall be an environmental professional with 10 years’ experience in environmental management and/or planning (the “**Environmental Quality Manager**”).
- (g) All Quality Managers shall be independent of the design and construction, and report directly to the Quality Director.

3.4 Quality Control Manager

- (a) Project Co shall appoint a Quality Control Manager who shall be responsible for quality control requirements as set out in the CQMP for the Works except for with respect to the New MTO Infrastructure.
- (b) The Quality Control Manager shall be certified as a quality professional from a certifying body, as a minimum successful completion of an ISO 9001 Lead Auditor Course.
- (c) The Quality Control Manager shall be responsible for the preparation, review and implementation of the Inspection and Test Plans.
- (d) The responsibilities of the Quality Control Manager shall include supervision of quality inspection staff and ensuring that individuals have the required qualifications and experience to undertake the quality control requirements as set out in the CQMP.
- (e) The Quality Control Manager shall have 10 years of experience as a quality manager or quality control manager for the construction of transit.
- (f) The Quality Control Manager shall be independent of the Construction Contractor’s production and supervision staff and shall report directly to the Construction Contractor.

3.5 Quality Control Staff

- (a) Project Co’s quality control staff shall be responsible for the inspection and testing requirements as set out in the CQMP, and shall be trained to fully understand the CQMP, have access to quality documents, quality records, and Issued For Construction drawings. Failure of quality control staff to show knowledge of the requirements and work shall be considered a Non-Conformance.
- (b) Project Co’s quality control staff responsible for quality control inspection and testing for the Works, except for the New MTO Infrastructure, shall have the qualifications demonstrated by certificates of training and 5 years of experience on transit construction projects.

- (c) The quality control staff shall be independent of the Construction Contractor's production and supervision staff and shall report directly to the Quality Control Manager.

**PART 4
TESTING****4.1 Testing Requirements**

- (a) Where Project Co is required by the Project Agreement or any Quality Documentation to carry out any calibration, sample, test or trial, such calibration, sample, test or trial shall be carried out in accordance with the provisions of this Part 4 and the provisions of the relevant Quality Documentation.

4.2 Accreditation Standards

- (a) All on and off site calibrations, samples, tests and trials shall be carried out by laboratories that are duly accredited for the carrying out of such calibrations, samples, tests and trials.
- (b) Laboratory accreditation for the Project Operations except New MTO Infrastructure shall be in accordance with ISO/IEC 17025, as amended, updated or replaced from time to time, provided that, for specific activities, Contracting Authority may accept other industry-recognized accreditation in lieu of ISO/IEC 17025, including:
- (i) concrete and concrete materials: CSA A283-00, “Qualification Code for Concrete Testing Laboratories”, to the appropriate category for the tests being done;
 - (ii) structural steel and welding: CSA W178.1-02, “Certification of Welding Inspection Organizations”, to the level appropriate for the inspection being carried out;
 - (iii) aggregates, bituminous paving mixtures: “Canadian Council of Independent Laboratories”, as appropriate to the work being carried out;
 - (iv) protective coatings: “National Association of Corrosion Engineers”, as appropriate to the work being carried out; and
 - (v) Systems testing: “Underwriters Laboratories of Canada”.
- (c) Project Co may request the approval of Contracting Authority to use other industry-recognized accreditations, which approval shall not be unreasonably withheld or delayed if such other accreditation is applicable to the Works or the Project Co Services for which it is proposed and meets the intent of ISO/IEC 17025.
- (d) Project Co shall ensure that valid calibration certificates for measuring and testing equipment are available and present during all relevant inspections and tests.
- (e) Project Co shall establish and maintain a log of all measuring and testing equipment, which shall include, at a minimum, equipment identification numbers, equipment descriptions, dates of last calibration, and dates of next scheduled calibration.

4.3 Remedial Work

- (a) Project Co shall be responsible at its own cost for any remedial work required as a result of any failure to pass any calibration, sample, test or trial required in accordance with the Project Agreement or any Quality Documentation or as a result of any laboratory not being duly accredited as required by Section 4.2.

PART 5
QUALITY AUDITS AND MONITORING

5.1 Quality Audit Plans**(a) Specific Requirements**

- (i) Project Co shall provide a Quality Audit Plan to Contracting Authority within 30 days after Financial Close.
 - (ii) The Quality Audit Plan shall detail the Internal Quality Audits and the External Quality Audits that will be conducted by Project Co on its own processes and those of Project Co Parties, and the planned dates of such Quality Audits.
 - (iii) The Quality Audit Plan shall detail the Independent Quality Audits that will be conducted by the independent quality auditor on Project Co and Project Co Parties, and the planned dates of such Independent Quality Audits.
- (b) Project Co shall provide an updated Quality Audit Plan at twelve month intervals following submission of the initial Quality Audit Plan.

5.2 Project Co's Quality Audits**(a) General**

- (i) Project Co shall conduct Internal Quality Audits and External Quality Audits of its own processes and those of Project Co Parties in accordance with the requirements of this Schedule 11, and the Quality Documentation, including the Quality Audit Plan. These audits shall be conducted at least quarterly or as agreed upon with Contracting Authority. The purpose of Project Co's quality auditing process is to confirm that all activities comprising the Works and the Project Co Services are in compliance with the Quality Manual and Quality Management Plans, to identify all Non-Conformances and necessary Corrective Actions and Preventive Actions and to facilitate continuous improvement.
- (ii) Project Co shall notify Contracting Authority of all audits described in Section 5.2(a)(i) and the Independent Quality Audits and Contracting Authority may choose to be present during such audits as a witness.
- (iii) The Quality Director shall schedule Internal Quality Audits, External Quality Audits and Independent Quality Audits at least quarterly or as agreed upon with Contracting Authority.
- (iv) The Quality Director shall schedule a Closing Meeting in respect of each Internal Quality Audit, External Quality Audit and Independent Quality Audit in accordance with Section 5.9(a).
- (v) Within 5 Business Days of the Closing Meeting in respect of each Internal Quality Audit, External Quality Audit and Independent Quality Audit (or such longer period of time agreed to by the Parties), Project Co shall document, or cause to be documented, the results of such Quality Audit in an audit report (each is a "**Project Co Quality Audit Report**"),

and deliver a copy of such Project Co Quality Audit Report to Contracting Authority. With respect to each Independent Quality Audit, Project Co shall cause the independent quality auditor to deliver the Project Co Quality Audit Report to Contracting Authority at the same time such Project Co Quality Audit Report is submitted to Project Co.

- (vi) Each Project Co Quality Audit Report shall, without limitation, set out (A) all of the Non-Conformances identified during the underlying Quality Audit, (B) all of the Corrective Actions and Preventive Actions to be implemented as a result of such Quality Audit, (C) subject to Section 5.2(vii), all of the associated Corrective Action Dates and Preventive Action Dates, and (C) Project Co's plan for implementing and completing all of the Corrective Actions and Preventive Actions by such Corrective Action Dates and Preventive Action Dates.
- (vii) Each Corrective Action Date and Preventive Action Date set out in a Project Co Quality Audit Report shall be a date that is no later than 10 Business Days (or such longer period of time agreed to by the Parties) following the date the Project Co Quality Audit Report is delivered to Contracting Authority in accordance with Section 5.2(a)(v).
- (viii) Project Co shall implement and complete the implementation of each Corrective Action and Preventive Action set out in a Project Co Quality Audit Report by the associated Corrective Action Date and Preventive Action Date set out in such Project Co Quality Audit Report.
- (ix) Without limiting any right of Contracting Authority or obligation of Project Co under the Project Agreement, if a Project Co Quality Audit Report is not delivered to Contracting Authority by the date set out in Section 5.2(a)(v), Project Co shall implement and complete the implementation of each Corrective Action and each Preventive Action identified as a result of, as applicable, an Internal Quality Audit, External Quality Audit or Independent Quality Audit by, as applicable, a Corrective Action Date and a Preventive Action Date that is no later than 25 Business Days (or such longer period of time agreed to by the Parties) following the completion of the Quality Audit.

(b) **Specific Requirements**

- (i) The Quality Director shall schedule Internal Quality Audits, External Quality Audits and Independent Quality Audits to ensure that all key processes are reviewed at least quarterly or as agreed upon with Contracting Authority.
- (ii) Where necessary, follow-up audits shall be scheduled to ensure that identified Corrective Actions and Preventive Actions are carried out by the applicable Corrective Action Dates and Preventive Action Dates.
- (iii) Internal Quality Audits, External Quality Audits and Independent Quality Audits shall be scheduled taking into account the status and importance of the processes being audited as well as the results of previous audits.
- (iv) Contracting Authority reserves the right to conduct follow up reviews, acting reasonably, but with notice of not less than one Business Day to Project Co to determine if the

Corrective Actions and Preventive Actions set out in Project Co's Project Co Quality Audit Report have been implemented and completed.

5.3 Contracting Authority's Quality Audits

(a) General

- (i) Contracting Authority shall, following the submission of the Quality Documentation in accordance with this Schedule 11, review the Quality Documentation to identify the critical activities and processes described in the Quality Manual and Quality Management Plans on which Contracting Authority's auditing efforts and resources should be directed. Contracting Authority shall determine the frequency of auditing through regular and ongoing review of Project Co's performance and management systems. Procedures and activities relating to the Works and the Project Co Services that show good audit performance may have the frequency of auditing decreased, while those that show poor performance or increased risk of Non-Conformances may have the frequency of auditing increased. Without limiting Project Co's obligations under the Project Agreement, Project Co shall provide and shall ensure Project Co Parties provide Contracting Authority's auditors with all documentation, records, access, facilities and assistance requested in connection with Contracting Authority's Quality Audit activities.
- (ii) Project Co shall provide Contracting Authority electronic access to all Inspection and Test Plans, including supporting quality documentation, on a real time basis in order for Contracting Authority to undertake Quality Audits.
- (iii) Contracting Authority shall schedule a Closing Meeting in respect of each Quality Audit carried out by Contracting Authority pursuant to this Part 5 in accordance with Section 5.9(a).
- (iv) Within 5 Business Days of the Closing Meeting in respect of any Quality Audit carried out by Contracting Authority pursuant to this Part 5 (or such longer period of time agreed to by the Parties), Project Co shall (A) document, or cause to be documented, all of the Corrective Actions and Preventive Actions to be implemented as a result of such Quality Audit, all of the associated Corrective Action Dates and Preventive Action Dates, and Project Co's plan for implementing and completing all of the Corrective Actions and Preventive Actions by such Corrective Action Dates and Preventive Action Dates (each is a "**Corrective and Preventive Actions Plan**"), and (B) deliver a copy of such Corrective and Preventive Actions Plan to Contracting Authority.
- (v) Each Corrective Action Date and Preventive Action Date set out in a Corrective and Preventive Actions Plan shall be a date that is no later than 10 Business Days (or such longer period of time agreed to by the Parties) following the date the Corrective and Preventive Actions Plan is delivered to Contracting Authority in accordance with Section 5.3(a)(iv).
- (vi) Project Co shall implement and complete the implementation of each Corrective Action and Preventive Action set out in a Corrective and Preventive Actions Plan by the associated Corrective Action Date and Preventive Action Date set out in such Corrective and Preventive Actions Plan.

- (vii) Without limiting any right of Contracting Authority or obligation of Project Co under the Project Agreement, if a Corrective and Preventive Actions Plan is not delivered to Contracting Authority by the date set out in Section 5.3(a)(iv), Project Co shall implement and complete the implementation of each Corrective Action and each Preventive Action identified as a result of the Quality Audit carried out by Contracting Authority pursuant to this Part 5 by, as applicable, a Corrective Action Date and a Preventive Action Date that is no later than 25 Business Days (or such longer period of time agreed to by the Parties) following the completion of the Quality Audit.

(b) **Specific Requirements**

- (i) Where necessary, follow-up audits shall be scheduled to ensure that identified Corrective Actions and Preventive Actions are implemented and completed by the applicable Corrective Action Dates and Preventive Action Dates.
- (ii) Contracting Authority reserves the right to conduct follow up reviews, acting reasonably, but with notice of not less than one Business Day to Project Co to determine if Project Co's Corrective and Preventive Actions Plan has been implemented and completed.

(c) **Types of Quality Audits**

- (i) The following two types of Quality Audits may be conducted by, or on behalf of, Contracting Authority in its discretion:
- (A) Surveillance Quality Audits – scheduled or unscheduled field audits conducted on a random basis or on specific areas of interest throughout the Project Term. The objective of these surveillance audits is to monitor Project Co's activities involving the Works and the Project Co Services, including but not limited to workmanship, performance measures and general quality of materials. Contracting Authority shall, during the performance of Surveillance Quality Audits, record any observations and inform Project Co of any deficiencies that require further evaluation. Any noted deficiencies shall be resolved to the satisfaction of Contracting Authority through evidence of Project Co's deficiency evaluation findings, the Corrective Actions and Preventive Actions process set forth in Section 5.3, or the Non-Conformance process set forth in Part 7; and
- (B) Quality Management System Audits – scheduled audits conducted at specific times to assess the performance of and compliance with the Quality Management System. Contracting Authority's lead auditor shall contact the Quality Director and confirm the scope and schedule of the audit, and schedule for associated audit meetings. At the audit opening meeting with Project Co, Contracting Authority's lead auditor shall review the audit scope and objectives. Contracting Authority's auditors shall conduct audit interviews, and document any observations on prepared checklists. At the end of the audit interviews, Contracting Authority's lead auditor shall evaluate the observations and observed procedural or performance Non-Conformances that require Corrective Action or Preventive Action.

- (ii) Contracting Authority's Quality Audits may include scheduled and unscheduled External Quality Audits.
- (iii) Additional information relating to Contracting Authority's Quality Audits with respect to particular Quality Management Plans is identified in the appendices to this Schedule 11.

5.4 Contracting Authority's Monitoring

- (a) In addition to carrying out any scheduled and unscheduled External Quality Audits of the Quality Management System (including audits relating to compliance with all Quality Documentation) as provided in Section 5.3, Contracting Authority may, at its discretion, carry out Quality Audits to monitor and verify the operation of the Quality Management System by, *inter alia*, carrying out spot checks and making independent inspections and tests of any Works, Project Co Services, or material including any Works, Project Co Services, or material which fails any test or is suspected by Contracting Authority of not complying with the requirements of the Project Agreement.

5.5 Deficient Quality Audits

- (a) If either:
 - (i) Contracting Authority reasonably believes that Project Co is failing to conduct Quality Audits of its Quality Management System as required by the Project Agreement in any material respect or if such Quality Audits are not conducted in compliance with the ISO 9001:2015 Standard by personnel competent to conduct such Quality Audits; or
 - (ii) any auditing, monitoring or spot-checks of the Quality Management Systems reveals material deficiencies in the Quality Management System or the implementation thereof,

Contracting Authority may carry out increased levels of External Quality Audits (whether in number, duration or detail) of all or any aspect of the Quality Management System until such time as Contracting Authority is reasonably satisfied that none of the circumstances described in this Section 5.5(a) continue to exist.

5.6 Costs of Audits

- (a) If Contracting Authority carries out any audit pursuant to Section 5.3, Section 5.4 or Section 5.5, and the results of such audit shows any Non-Conformance that materially interferes with the delivery of the Works or the Project Co Services in accordance with the Output Specifications, Quality Manual and Quality Management Plans, then without limiting any other rights and remedies of Contracting Authority, Project Co shall compensate Contracting Authority for all costs incurred in carrying out such audit (including the relevant administrative expenses of Contracting Authority, including an appropriate sum in respect of general staff costs and overheads). All other audits carried out by Contracting Authority pursuant to Section 5.3, Section 5.4 or Section 5.5 shall be at Contracting Authority's cost.

5.7 Traffic Management Auditing

- (a) For the purpose of facilitating the conduct of Internal Quality Audits and External Quality Audits relating to traffic management during both the Works and the Project Co Services, Project Co shall

develop and implement a checklist (a “**Site Condition Rating Checklist**”) acceptable to Contracting Authority, for use by each of Project Co and Contracting Authority.

- (b) The Site Condition Rating Checklist shall provide the framework for auditing the safety and overall management of traffic against the requirements contained in the Traffic and Transit Management Plan, the requirements of Part 7 of Schedule 15-2 – Design and Construction.
- (c) The Site Condition Rating Checklist, at a minimum, shall include the following information categories:
 - (i) Traffic and Transit Management Plan– in relation to the overall plan as required by Part 7 of Schedule 15-2 – Design and Construction;
 - (ii) Traffic Control Plan – in relation to the approved site specific plans as required by Part 7 of Schedule 15-2 – Design and Construction; and
 - (iii) General Traffic Management Requirements – in relation to Part 7 of Schedule 15-2 – Design and Construction, including:
 - (A) Storage of materials;
 - (B) Traffic control devices;
 - (C) Roadside barriers;
 - (D) Drop-offs; and
 - (E) Temporary Pavement Markings.
- (d) The requirements of this Section 5.7 are in addition to, and do not limit, Project Co’s other obligations under this Schedule 11, including Project Co’s obligations under Part 7.

5.8 Independent Quality Audits

- (a) In addition to the Internal Audits and External Audits, Project Co shall cause the Independent Quality Audits to be undertaken during the Works and the Project Co Services. These independent audits shall be conducted by a certified auditor who is qualified to audit the full scope of the Quality Management System, as acceptable to Contracting Authority and Project Co. The independent audit shall, at a minimum, ensure that all input requirements, as required by the Project Agreement, are included in the Quality Management System and adhered to in the performance of the Project Operations.
- (b) A full quality audit on each of the individual Quality Plans within the Quality Management System shall be completed within one year after Financial Close and thereafter at least once per year during the Project Term.

5.9 Quality Audit Closing Meetings

- (a) Within five Business Days of the completion of any Quality Audit (or such longer period of time agreed to by the Parties), Project Co and Contracting Authority shall carry out a closing meeting in respect of such Quality Audit (each is a “**Closing Meeting**”) in accordance with Good Industry Practice.
- (b) The purpose of each Closing Meeting shall, without limitation, be for the auditor to present and for the Parties to discuss the Quality Audit and the findings and conclusions of the Quality Audit, including any Non-Conformances identified during the Quality Audit, any required or desired Corrective Actions and Preventive Actions, and their respective Corrective Action Dates and Preventive Action Dates.

PART 6
QUALITY DOCUMENTATION

6.1 Principles

- (a) The minimum requirements and principles which apply to the Quality Documentation are set out in appendices A to F inclusive to this Schedule 11. Project Co's Quality Management System shall also comply with the requirements and principles of the ISO 9001:2015 Standard and this Schedule 11.

6.2 ISO Reference Documents

- (a) Without limiting the requirement of the Quality Management System to comply with the ISO 9001:2015 Standard, Project Co's Quality Management System shall also incorporate the requirements of the following reference documents:
- (i) ISO 9001:2015 Quality Management Systems – Requirements;
 - (ii) ISO 9000:2015 Quality Management Systems – Fundamentals and Vocabulary; and
 - (iii) ISO 19011:2011 Guidelines for Quality and/or Environmental Management Systems Auditing.

6.3 Quality Documentation Requirements

- (a) The minimum documentation requirements for the Quality Management System are:
- (i) the Quality Manual as required pursuant to Section 2.6;
 - (ii) the Quality Management Plans for all aspects of the Works and the Project Co Services as required pursuant to Section 2.6;
 - (iii) that each Quality Management Plan includes quality system procedures and process flow charts documenting who performs the Works, what they do, and what evidence shall be generated that they have performed quality related aspects of the Works correctly;
 - (iv) the Quality Audit Plan required pursuant to Section 5.1; and
 - (v) the Quality Records required pursuant to Section 6.8,

(together, the “**Quality Documentation**”).

6.4 Submission of Quality Documentation

- (a) If any Quality Documentation relies on or incorporates any supporting Quality Documentation then such supporting Quality Documentation or the relevant parts thereof shall (unless Contracting Authority otherwise agrees) be submitted to Contracting Authority at the time that the relevant Quality Documentation or part thereof or change, addition or revision to the Quality Documentation is submitted in accordance with the Schedule 10 – Review Procedure and the contents of such supporting Quality Documentation shall be taken into account in the consideration of the relevant

Quality Documentation or part thereof or change, addition or revision to the Quality Documentation in accordance with Schedule 10 – Review Procedure. Contracting Authority may require the amendment of any such supporting Quality Documentation to the extent necessary to enable the relevant Quality Documentation to satisfy the requirements of this Schedule 11.

6.5 Project Co Obligation to Update

- (a) Project Co shall be responsible for proactively updating its Quality Management System and all Quality Documentation from time to time, in accordance with the procedures set forth in the Project Agreement, to ensure that the Quality Management System and all Quality Documentation are, and at all times remain, in full compliance with the ISO 9001:2015 Standard and the requirements of the Project Agreement.

6.6 Changes to Quality Documentation

- (a) Project Co shall submit to Contracting Authority in accordance with Schedule 10 – Review Procedure any proposed changes or additions to or revisions of any of the Quality Documentation.
- (b) If Project Co does not propose any change, pursuant to Section 6.6(a), which Contracting Authority determines to be required then Contracting Authority may propose such change and it shall be dealt with as though it had been proposed by Project Co pursuant to Section 6.6(a) and shall not be treated as a Variation. Any dispute between the Parties in respect of any such change shall be resolved in accordance with the Dispute Resolution Procedure.

6.7 Amendment of Quality Documentation

- (a) If there is no unresolved objection by Contracting Authority under Schedule 10 – Review Procedure to a part of the Quality Documentation pursuant to Section 6.4 or to a change, addition or revision proposed pursuant to Section 6.6(a), then the Quality Documentation shall be amended to incorporate such part, change, addition or revision.

6.8 Quality Records

- (a) Project Co shall establish and maintain complete and accurate quality management records (the “Quality Records”).
- (b) The Quality Records shall provide objective evidence of conformance with all requirements of the Project Agreement, compliance with the ISO 9001:2015 Standard and the effective operation of the Quality Management System.

6.9 Quality Management System Reports

- (a) For each month of the Project Term, Project Co shall prepare, and submit to Contracting Authority by the 15th day of the following month, a comprehensive Quality Management System report.

(b) Specific Requirements

- (i) Each monthly Quality Management System report shall address all quality management activities under each of the Quality Management Plans for that month and any outstanding quality issues from prior months.
- (ii) Each monthly Quality Management System report shall, at a minimum, include the following information separately identified for the Quality Manual and for each Quality Management Plan:
 - (A) a Non-Conformance Report log summarizing all Non-Conformance Reports opened, closed, or still open from the previous report, in the relevant month and providing the following: “date open”, “date closed”, “status” (open, pending, closed), “classification” (Minor Non-Conformance, Major Non-Conformance, Critical Non-Conformance), “disposition” (repair, rework, reject) and “description of status” which describes the current status of the Non-Conformance Report and if closed, when and how it was closed;
 - (B) Corrective Action and Preventive Action logs providing details of the Corrective Actions and Preventive Actions performed during the month and their close-out status;
 - (C) a summary of any inspection and testing activities conducted during the month;
 - (D) Internal Quality Audits and External Quality Audits performed during the month and a four month look-ahead schedule for planned future Quality Audits;
 - (E) any continual improvement initiatives taken during the month;
 - (F) any other information required to be included in the monthly Quality Management System reports pursuant to any of the appendices to this Schedule 11 or the terms of the relevant Quality Management Plan; and
 - (G) any changes made to the Quality Management System or the Quality Documentation in compliance with the provisions of the Project Agreement.
- (iii) Each monthly Quality Management System report shall include a summary of all environmental quality management activities during the applicable month.

6.10 Additional Information

- (a) Notwithstanding any other provision of this Schedule 11, Project Co shall provide Contracting Authority with such information as Contracting Authority may request from time to time to demonstrate compliance with this Schedule 11.

PART 7
NON-CONFORMANCES**7.1 Non-Conformance Reporting Process**

- (a) The Non-Conformance reporting process, from initial discovery through to closeout of a Non-Conformance, shall follow the process outlined below:
- (i) If Project Co or Contracting Authority discover a Non-Conformance, they shall initiate a Non-Conformance Report in compliance with the ISO 9001:2015 Standard as follows:
- (A) Project Co initiated Non-Conformance Reports – Project Co shall provide a Non-Conformance Report identifying the Non-Conformance to Contracting Authority within 2 Business Days of discovery of the Non-Conformance; or
- (B) Contracting Authority initiated Non-Conformance Reports – If at any time Contracting Authority is notified, or otherwise become aware, that there is any Non-Conformance relating to the Works or the Project Co Services, Contracting Authority may issue a Non-Conformance Report, without prejudice to any other right or remedy available to Contracting Authority, including the assignment of Quality Failures pursuant to Schedule 20 – Payment Mechanism.
- (ii) A Non-Conformance Report initiated by either Party is issued to the Quality Director, thereby activating the Non-Conformance Report. The date of issue shall be recorded denoting the commencement of the time period for which the Non-Conformance Report has an ‘open’ status.
- (iii) The Non-Conformance Report shall indicate a classification for each Non-Conformance, which classification shall be Minor Non-Conformance, Major Non-Conformance or Critical Non-Conformance.
- (iv) For any Non-Conformance Report initiated for Project Co Services, the Quality Director shall in response to the Non-Conformance Report provide a Disposition in respect of the Non-Conformance and a Corrective Action in compliance with the ISO 9001:2015 Standard, and Table 7.1 of this Section 7.1, within 48 hours (or longer as agreed by the Parties) of:
- (A) the discovery of a Non-Conformance, in the case of a Non-Conformance discovered by Project Co; or
- (B) the notification (whether via written notification or a Non-Conformance Report) of a Non-Conformance discovered by Contracting Authority.
- (v) For any Non-Conformance Report initiated that is not for Project Co Services, the Quality Director shall, in response to the Non-Conformance Report, provide a Disposition in respect of the Non-Conformance and a Corrective Action in compliance with the ISO 9001:2015 Standard, and Table 7.1 of this Section 7.1 within five Business Days (or longer as agreed by the Parties) of:

- (A) the discovery of a Non-Conformance in the case of a Non-Conformance discovered by Project Co, or
 - (B) the notification (whether via written notification or a Non-Conformance Report) of a Non-Conformance discovered by Contracting Authority.
- (vi) Project Co shall respond to a Non-Conformance described in a Non-Conformance Report:
- (A) using one of the three responses listed under the heading “Status of Non-Conformance” as set out in Table 7.1; and
 - (B) satisfying all of the requirements listed under the headings “Disposition” and “Corrective Action” as set out in Table 7.1 for the applicable status of Non-Conformance.

Table 7.1

| Status of Non-Conformance | Disposition | Corrective Action |
|----------------------------------|--|---|
| Remedial action completed | Project Co shall provide evidence that the Non-Conformance has been remedied, the date by which it was remedied, and the acceptance by the responsible professional who confirmed the Non-Conformance has been remedied. | Project Co shall describe the root cause of and the planned improvements to the delivery process to prevent the recurrence of the Non-Conformance, which shall include a Corrective Action Date, which, unless otherwise agreed by the Parties, shall not be a date that is later than 15 Business Days following the date of the applicable Disposition. |

| | | |
|---------------------------------|--|---|
| <p>Remedial action proposed</p> | <p>Project Co shall provide a plan to remedy the Non-Conformance, which shall include, at a minimum:</p> <ul style="list-style-type: none"> (a) a description of the remedy to be completed; (b) the actions that will need to be implemented to complete the remedy; (c) the applicable professional that is responsible for verifying and confirming the completion of the remedy; and (d) the date by which the Non-Conformance shall be remedied, which, unless otherwise agreed by the Parties or a different remedy date in respect of the Non-Conformance is expressly to be determined by any other provision of the Project Agreement, shall not be a date that is later than 15 Business Days following the date of the Disposition (the “NC Remedy Date”). | <p>Project Co shall describe the root cause of and the planned improvements to the delivery process to prevent the recurrence of the Non-Conformance, which shall include a Corrective Action Date, which, unless otherwise agreed by the Parties, shall not be a date that is later than 15 Business Days following the date of the Disposition.</p> |
|---------------------------------|--|---|

| Status of Non-Conformance | Disposition | Corrective Action |
|--------------------------------|-------------|-------------------|
| No remedial action is proposed | Objection | - |

- (vii) Project Co shall investigate and respond to all Non-Conformance Reports.
- (viii) Project Co may object to the issuance of any Non-Conformance Report by Contracting Authority. If such objection has not been resolved by mutual agreement between Contracting Authority and Project Co within 5 Business Days of delivery by Project Co to Contracting Authority of a Notice of the objection, then either Party may refer the matter to the Dispute Resolution Procedure for determination.
- (ix) If Project Co fails to object to the issue by Contracting Authority of a Non-Conformance Report within 5 Business Days, Project Co is deemed to have accepted that Non-Conformance Report.
- (x) Contracting Authority may object to the content of any Non-Conformance Report initiated by Project Co. If such objection has not been resolved by mutual agreement between Contracting Authority and Project Co within 5 Business Days of delivery by Contracting Authority to Project Co of a Notice of the objection, then either Party may refer the matter to the Dispute Resolution Procedure for determination.
- (xi) If Contracting Authority fails to object to the issuance by Project Co of a Non-Conformance Report within 5 Business Days, Contracting Authority is deemed to have not objected to that Non-Conformance Report.
- (xii) The Quality Director shall change the status of the Non-Conformance Report to ‘in progress’ once:
 - (A) a Disposition and Corrective Action are documented for the Non-Conformance;
 - (B) 5 Business Days have passed since the issuance of the Non-Conformance Report; and
 - (C) neither Party has issued a Notice of objection.
- (xiii) The Quality Director shall change the status of Non-Conformance Report to ‘closed’ once:
 - (A) the Non-Conformance has been remedied and verified; and
 - (B) the Corrective Action has been implemented, completed and verified.
- (xiv) The Quality Director shall confirm in writing to Contracting Authority the date that a Non-Conformance Report has entered the status of ‘closed’, within 2 Business Days of it entering that status.

7.2 Non-Conformance Report Tracking System

- (a) Project Co shall implement and maintain a “**Non-Conformance Tracking System**” to monitor the status of all Non-Conformance Reports initiated by Contracting Authority and Project Co.
- (b) The Non-Conformance Tracking System shall be fully operating, with the following minimum requirements, within 90 days from Financial Close, so as to:
- (i) comprise a single repository containing both Project Co and Contracting Authority initiated Non-Conformance Reports;
 - (ii) have the ability to attach supporting material such as photos and documents;
 - (iii) provide live access to the current Non-Conformance Report status to both Project Co and Contracting Authority;
 - (iv) record Deductions and Failure Points for Quality Failures pursuant to Part E of Schedule 20 – Payment Mechanism;
 - (v) produce and submit to Contracting Authority a summary report each month (the “**Monthly Non-Conformance Report**”) containing the following:
 - (A) the number of Non-Conformance Reports entering the following status within the last month: ‘open’, ‘in progress’, and ‘closed’. The numbers must be provided for all Non-Conformance Reports collectively, and separately for Non-Conformance Reports classified as Minor Non-Conformances, Major Non-Conformances and Critical non-Conformances;
 - (B) the number of Quality Failure Deductions in each Quality Failure Category accrued within the last month pursuant to Part E of Schedule 20 – Payment Mechanism;
 - (C) the number of Failure Points for Quality Failures in each Quality Failure Category accrued within the last month pursuant to Part E of Schedule 20 – Payment Mechanism;
 - (D) summary statistics and historic trends since Financial Close for:
 - (I) the number of Non-Conformance Reports with the following status each month since Financial Close: ‘open’, ‘in progress’ and ‘closed’;
 - (II) the number of Quality Failure Deductions in each Quality Failure Category each month pursuant to Part E of Schedule 20 – Payment Mechanism; and
 - (III) the number of Failure Points for Quality Failures in each Quality Failure Category each month pursuant to Part E of Schedule 20 – Payment Mechanism.

7.3 Performance Measures

- (a) Project Co shall remedy each Non-Conformance set out in a Non-Conformance Report before the NC Remedy Date for that Non-Conformance.
- (b) Project Co shall implement and complete the implementation of each Corrective Action identified in accordance with Table 7.1 of Section 7.1 before the expiry of the associated Corrective Action Date identified in accordance with such Table.

7.4 Non-Conformance Records

- (a) In addition to the maintenance of the Non-Conformance Tracking System under Section 7.2, Project Co shall maintain and make available to Contracting Authority upon request, records of:
 - (i) each Non-Conformance;
 - (ii) the reference numbers of all Non-Conformance Reports;
 - (iii) a classification for each Non-Conformance, which classification shall be Minor Non-Conformance, Major Non-Conformance, or Critical Non-Conformance;
 - (iv) a description of all Non-Conformance Reports;
 - (v) the proposed actions by Project Co to rectify each Non-Conformance;
 - (vi) the date at which each Non-Conformance was identified; and
 - (vii) the date and time at which a Non-Conformance specified in a Non-Conformance Report was rectified.

PART 8
PERFORMANCE REPORTING

8.1 Obligation to Report

- (a) Project Co shall prepare a report (a “**Monthly Performance Monitoring Report**”) in respect of each Payment Period. The Monthly Performance Monitoring Report shall be submitted to Contracting Authority within 5 Business Days following the end of each Payment Period, and shall describe performance of the Project Co Services for the purposes of Schedule 20 – Payment Mechanism in respect of the relevant Payment Period. The Monthly Performance Monitoring Report shall set out Project Co’s calculation of each of the following (each stated separately), and shall contain all information set out in the applicable Daily Performance Reports for the relevant Payment Period:
- (i) Total of all Scheduled Base Trips for the relevant Payment Period, for both Peak Period and Off-Peak Period;
 - (ii) Total of all Scheduled Special Trips for the relevant Payment Period, for both Peak Period and Off-Peak Period;
 - (iii) Total of all Maximum Available Points for all Scheduled Base Trips for the relevant Payment Period, for both Peak Period and Off-Peak Period;
 - (iv) Total of all Maximum Available Points for all Scheduled Special Trips for the relevant Payment Period, for both Peak Period and Off-Peak Period;
 - (v) Total of all Accumulated Points for all Scheduled Base Trips for the relevant Payment Period, for both Peak Period and Off-Peak Period;
 - (vi) Total of all Accumulated Points for all Scheduled Special Trips for the relevant Payment Period, for both Peak Period and Off-Peak Period;
 - (vii) Total of all Accumulated Points for all Scheduled Base Trips credited to Project Co for the relevant Payment Period due to a Non-Project Co Cause, for both Peak Period and Off-Peak Period;
 - (viii) Total of all Accumulated Points for all Scheduled Special Trips credited to Project Co for the relevant Payment Period due to a Non-Project Co Cause, for both Peak Period and Off-Peak Period;
 - (ix) Total number of System Events (including details of triggering event for each);
 - (x) Total of all Scheduled Passenger Facility Hours for the relevant Payment Period (broken down by Peak Period, Off-Peak Period, Passenger Facility name and group);
 - (xi) Total of all Passenger Facility Availability Failure Hours (broken down by Peak Period, Off-Peak Period, Passenger Facility name and group);

- (xii) Total of all Scheduled Passenger Facility Hours credited to Project Co for the relevant Payment Period due to a Non-Project Co Cause (broken down by Peak Period, Off-Peak Period, and Passenger Facility name and group);
 - (xiii) Total number of Passenger Facility Events (including details of triggering event for each);
 - (xiv) Any Service Failures and associated Failure Points, in respect of that month;
 - (xv) Any Quality Failures and associated Failure Points in respect of that month;
 - (xvi) Any Energy Failures in respect of that month; and
 - (xvii) Total Failure Points assigned due to the occurrence of any and all Trip Availability Failures, Passenger Facility Availability Failures, System Events and Passenger Facility Events.
- (b) The following aspects of Monthly Performance Monitoring Reports are addressed in Schedule 20 – Payment Mechanism:
- (i) the applicability of Monthly Performance Monitoring Reports to the Payment Mechanism;
 - (ii) claims regarding errors or omissions in a Monthly Performance Monitoring Report; and
 - (iii) failure by Project Co to monitor or report.

**PART 9
PERFORMANCE MEASURES**

9.1 Application of Performance Criteria

- (a) The Quality Failures set out below and associated payment penalties shall not be applicable until following Substantial Completion.

9.2 Performance Criteria

- (a) Performance Criteria have been established in accordance with Schedule 20 – Payment Mechanism. Project Co shall achieve the following Performance Criteria during the Operational Term.

| Failure Type | Quality Failure Category | Response, Rectification, Remediation | Record Frequency |
|--|--|---|--|
| SF means Service Failure. QF means Quality Failure. | Major means Major Quality Failure Category. Medium means Medium Quality Failure Category. Minor means a Minor Quality Failure Category. | Resp. Time means Response Time. Rect. Time means Rectification Time. Remed. Period means Remedial Period. I means Immediately. N/A means not applicable. NOD means before the next start of revenue service. | PR = Per Request PE = Per Event D = Daily W = Weekly M = Monthly Q = Quarterly B = Bi-Annually A = Annually R = Randomly |

| Reference | Requirement to be met | Failure Type | Quality Failure Category | Resp. Time | Rect. or Rem. Time | Record Frequency | Application (Maximum Project Co Exposure) |
|-------------|--|--------------|--------------------------|------------|--------------------|------------------|---|
| 5.1(b) | Project Co shall provide an updated Quality Audit Plan at twelve month intervals following submission of the initial Quality Audit Plan. | QF | Medium | NA | 1 Month | M | 1 QF per Contract Month |
| 5.2(a)(iii) | The Quality Director shall schedule Internal Quality Audits and External Quality Audits at least quarterly or as agreed upon with Contracting Authority. | QF | Medium | NA | 1 day | Q | 1 QF per day |

| Reference | Requirement to be met | Failure Type | Quality Failure Category | Resp. Time | Rect. or Rem. Time | Record Frequency | Application (Maximum Project Co Exposure) |
|--------------|--|--------------|--------------------------|------------|--------------------|------------------|---|
| 5.2(a)(iv) | Project Co shall deliver or cause the delivery of the Project Co Quality Audit Report within 5 Business Days of the applicable Closing Meeting. | QF | Medium | NA | 1 day | PE | 1 QF per day |
| 5.2(a)(viii) | Project Co shall implement and complete the implementation of each Corrective Action and each Preventive Action by the applicable Corrective Action Date and Preventive Action Date. | QF | Medium | NA | 1 day | PE | 1 QF per day |
| 5.3(a)(iv) | Project Co shall deliver to Contracting Authority a Corrective and Preventive Actions Plan within 5 Business Days of the applicable Closing Meeting. | QF | Medium | NA | 1 day | PE | 1 QF per day |
| 5.3(a)(vi) | Project Co shall implement and complete the implementation of each Corrective Action and each Preventive Action by the applicable Corrective Action Date and Preventive Action Date. | QF | Medium | NA | 1 day | PE | 1 QF per day |
| 6.9(a) | For each month of the Project Term, Project Co shall prepare, and submit to Contracting Authority within 15 Business Days of the start of the following month, a comprehensive Quality Management System report. | QF | Medium | NA | 1 day | PE | 1 QF per day |
| 7.3(a) | Project Co shall eliminate each Non-Conformance before the date set out in the Non-Conformance Report for that Non-Conformance. | QF | Medium | NA | 1 day | PE | 1 QF per day per Non-Conformance |

| Reference | Requirement to be met | Failure Type | Quality Failure Category | Resp. Time | Rect. or Rem. Time | Record Frequency | Application (Maximum Project Co Exposure) |
|-----------|--|--------------|--------------------------|------------|--------------------|------------------|---|
| 8.1(a) | The Monthly Performance Monitoring Report shall be submitted to Contracting Authority within 5 Business Days following the end of each Payment Period. | QF | Medium | NA | 1 day | PE | 1 QF per day |

APPENDIX A
QUALITY MANUAL**A.1 Quality Manual**

- (a) Project Co shall provide a comprehensive Quality Manual that describes the Quality Management System for all aspects of the Works and the Project Co Services. The Quality Manual shall establish the Quality Policy and Quality Objectives for all aspects of the Works and the Project Co Services and, in compliance with the requirements of the ISO 9001:2015 Standard, shall describe the processes that shall be established, implemented, controlled, and continually improved to achieve the established Quality Objectives.
- (b) The Quality Objectives shall be measurable, consistent with the Quality Policy and linked to meeting the needs and performance expectations of Contracting Authority in respect of the Project. The Quality Management System described in the Quality Manual shall include all the activities required to achieve these Quality Objectives, including project controls such as scope, cost, schedule and general document control management activities. All of these activities shall be subject to Internal Quality Audits and External Quality Audits.
- (c) The Quality Manual shall describe the Project Co Parties involved in performing the Works and the Project Co Services and how key management activities (such as project controls, traffic management, design management, Construction Activities, the Project Co Services and environmental matters) shall interface with each other. The Quality Manual shall also provide the organization chart identifying the authority and responsibilities of all Key Individuals and other key personnel involved with the aforementioned aspects of the Project. The Quality Manual shall also show how the various levels of Quality Management System documentation are linked together.
- (d) The Quality Manual shall clearly define the reporting function and authority of Project Co's Quality Director who shall liaise with Contracting Authority and act as the single point representative of Project Co for all matters relating to quality management.

APPENDIX B
DESIGN QUALITY MANAGEMENT PLAN**B.1 Design Quality Management Plan**

- (a) Project Co shall implement and comply with a comprehensive Design Quality Management Plan (“**DQMP**”) that describes how it intends to manage the design processes for the Project in compliance with the ISO 9001:2015 Standard, its Quality Manual and the provisions of the Project Agreement. The DQMP is to apply throughout the Works and for Project Co Services throughout the Project Term.
- (b) The DQMP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for design management and their relationship with the Quality Director for Project Co’s overall Quality Management System as documented in Project Co’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for design management and other engineering and construction management disciplines.
- (c) The DQMP shall, at a minimum, include or reference detailed Quality Management System procedures and process flow charts for the following processes:
- (i) design input and output review;
 - (ii) design verification to ensure that design input requirements have been met;
 - (iii) design validation to ensure that the completed project is capable of meeting its intended use;
 - (iv) design changes, including the review, acceptance, and documented confirmation by the professional responsible for the applicable Project element or component;
 - (v) quality assessment and procurement of Project Co Parties responsible for design;
 - (vi) External Quality Audits of Project Co Parties responsible for design;
 - (vii) Internal Quality Audits;
 - (viii) Corrective Actions, Preventive Actions and opportunities for improvement;
 - (ix) document management;
 - (x) Works Submittal scheduling and Project Works Schedule audits;
 - (xi) control of revisions to Issued For Construction documentation during construction; and
 - (xii) control of Quality Records.
- (d) The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.

APPENDIX C
CONSTRUCTION QUALITY MANAGEMENT PLAN**C.1 Construction Quality Management Plan**

- (a) Project Co shall provide a comprehensive Construction Quality Management Plan (“**CQMP**”) that describes how it intends to manage the Construction Activities in compliance with the ISO 9001:2015 Standard, its Quality Manual and the provisions of the Project Agreement. The CQMP is to apply throughout the Project Term.
- (b) The CQMP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for construction management and their relationship with the Quality Director for Project Co’s overall Quality Management System as documented in Project Co’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for construction management and other disciplines such as design management, Project Co Services, environmental management and traffic management.
- (c) The CQMP shall, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:
- (i) construction safety audits;
 - (ii) Project Works Schedule management and audits;
 - (iii) inspection, testing and monitoring;
 - (iv) design support during construction, assessment of constructed works, and acceptance by the design professionals responsible for all Project elements and components;
 - (v) materials identification and traceability;
 - (vi) quality assessment and procurement of Project Co Parties responsible for construction;
 - (vii) External Quality Audits of Project Co Parties responsible for construction;
 - (viii) Internal Quality Audits;
 - (ix) control of nonconforming product;
 - (x) Corrective Actions, Preventive Actions and opportunities for improvement;
 - (xi) document management;
 - (xii) control of Issued for Construction drawing mark ups to reflect the as-built condition including capture of the reasons for any changes from the Issued for Construction documents and any necessary authorizations and the preparation of As-Built Drawings and Record Drawings; and

- (xiii) control of Quality Records.
- (d) The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.
- (e) Inspection and Test Plan
 - (i) Project Co shall provide an over-arching inspection and test plan (the “**Inspection and Test Plan**”) and generic and specific inspection and test sub-plans (the “**Inspection and Test Sub-Plans**”) for all on-site and off-site inspection and test activities for Works performed by Project Co and the Project Co Parties.
 - (ii) The CQMP shall include the Inspection and Test Plan and the generic Inspection and Test Sub-Plans.
 - (iii) Project Co shall submit specific Inspection and Test Sub-Plans, each addressing a particular element of the Works and which may require reference to completed design requirements and drawings, separately from the CQMP,
 - (A) nearer to the time that each applicable element of the Work is to be undertaken; and
 - (B) with sufficient time for Contracting Authority to review the Submittal pursuant to Schedule 10 - Review Procedure.
 - (iv) The scope of each Inspection and Test Sub-Plan shall be at the level of the smallest element of the Works that is:
 - (A) discrete;
 - (B) in its final position, or can be placed in its final position without modification; and
 - (C) ready for its intended use.
 - (v) Each Inspection and Test Sub-Plan shall include a progressive and step-wise series of inspection and testing activities for each discrete element of the Work, including a progressive and step-wise series of Witness and Hold Points leading to scheduled close out of Project Co’s inspection and testing activity. For clarity, Contracting Authority may attend these Witness and Hold Points in its oversight function, but the Witness and Hold Points are for the sole purpose of Project Co meeting its obligations under the Project Agreement.
 - (vi) At the commencement of each week, Project Co shall issue a two-week look-ahead schedule (the “**I TP Two-Week Look-Ahead**”) of all planned Witness and Hold Points for the following:
 - (A) scheduled timing of Witness and Hold Points for fabrication or manufacture of elements of the Works at a location that is not on the Lands;

- (B) scheduled timing of Witness and Hold Points for Works activities that will occur at, and between, the hours of 8:00 a.m. and 5:00 p.m., Monday to Friday; and
- (C) scheduled timing of Witness and Hold Points for Works activities that will occur outside of hours 8:00 a.m. and 5:00 p.m. Monday to Friday and any activities occurring on Saturday, Sundays or Statutory Holidays.
- (vii) Project Co shall alert Contracting Authority to any alterations to the scheduled timings in the ITP Two-Week Look-Ahead in a timely manner;
- (viii) No later than close of business two Business Days prior to the scheduled timing of any Witness and Hold Point, Project Co shall provide the Contracting Authority Representative with advance written notice stating the time and date of the Witness and Hold Point. For changes to scheduled timings that occur with less than two Business Days of notice, Project Co shall ensure the local site monitoring staff of Contracting Authority is made aware of the change as soon as possible and are provided an opportunity to be present for the Witness and Hold Points.
- (ix) For clarity, Project Co may proceed with the activity past any Witness and Hold Point if Contracting Authority is not in attendance within two hours of the scheduled time.
- (x) The Inspection and Test Plan shall, at a minimum, include:
 - (A) a description of the inspection, testing and monitoring activity;
 - (B) frequency of inspections, tests and monitoring;
 - (C) reference to standards, codes, specifications, and acceptance criteria;
 - (D) reports and checklists required;
 - (E) personnel responsible for inspection, testing and monitoring activity;
 - (F) Witness and Hold Points for inspection activities where the responsible Design Team member is to be present to assess the conformance of the work with the applicable design, and to identify any Non-Conformances or potential Non-Conformances that must be remedied;
 - (G) description and frequency of geotechnical instrumentation monitoring and adherence to acceptance criteria;
 - (H) a description of the process of how Project Co will conduct and document its quality control and sign off for each Witness and Hold Point and close out of each Inspection and Test Plan; and
 - (I) a description of the process by which Project Co will notify Contracting Authority in advance of any inspection, testing, monitoring, quality assurance review, Witness and Hold Points, and reports that allows Contracting Authority to carry

out the auditing or monitoring contemplated in Section 5.3 and 5.4 of this Schedule 11.

- (f) The personnel identified in the Inspection and Test Plan for implementing the inspection, testing and monitoring activities, as well as the quality assurance review, Witness and Hold Points against any inspection or test activities shall be demonstrated to be qualified in such inspection or review.
- (g) In addition to the Witness and Hold Points specified in the Inspection and Test Plan, Contracting Authority retains the right to specify additional Witness and Hold Points against any inspection or test activity that Contracting Authority requires the opportunity to observe.

APPENDIX D
PROJECT CO SERVICES QUALITY MANAGEMENT PLAN

D.1 Project Co Services Quality Management Plan

- (a) Project Co shall provide a comprehensive Project Co Services Quality Management Plan that describes how it intends to monitor and measure its performance of the Project Co Services in compliance with the ISO 9001:2015 Standard, the Quality Manual and the provisions of the Project Agreement. The PSQMP shall also be aligned with all relevant Project Agreement performance measures. The PSQMP is to apply following Substantial Completion.
- (b) The PSQMP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for management of Project Co Services and their relationship with the Quality Director for Project Co's Quality Management System as documented in Project Co's Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for management of Project Co Services and other disciplines such as design management, construction management, environmental management and traffic management.
- (c) Project Co shall develop documented quality system procedures and process flow charts to ensure that all Project Agreement requirements in respect of the Project Co Services are met or exceeded. These procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.
- (d) The PSQMP shall include a compliance monitoring process to track compliance with all performance measures. The performance measures compliance monitoring process must clearly describe the approach taken in assessing compliance, and define the frequency and method of monitoring and reporting such compliance. Contracting Authority shall review Project Co's performance measures compliance monitoring process and may request changes that Contracting Authority considers appropriate to facilitate the accurate and appropriate monitoring and reporting of compliance with the performance measures and otherwise to meet the requirements of the Project Agreement. Project Co shall promptly implement any such changes requested by Contracting Authority. Project Co's performance measures compliance monitoring process shall be subject to ongoing review by Contracting Authority throughout the Project Term.

APPENDIX E
TRAFFIC QUALITY MANAGEMENT PLAN**E.1 Traffic Quality Management Plan**

- (a) Project Co shall provide a comprehensive Traffic Quality Management Plan (“**TQMP**”) that describes how it intends to administer the traffic management processes in connection with the Project in compliance with the ISO 9001:2015 Standard, its Quality Manual and the provisions of the Project Agreement. The TQMP is to apply throughout the Project Term.
- (b) The TQMP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for traffic management and their relationship with the Quality Director for Project Co’s overall Quality Management System as documented in Project Co’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for traffic management and other disciplines such as design management, construction management, the Project Co Services and environmental management. The TQMP shall address the manner in which traffic management relates to Project design, Construction Activities and Project Co Services.
- (c) The TQMP shall at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:
 - (i) major processes outlined in the Traffic and Transit Management Plan and the associated sub plans listed in Part 7, Article 4 of the Design and Construction Specifications;
 - (ii) audits of temporary traffic management arrangements and reporting, producing a site report addressing as a minimum the content set out in Appendix H;
 - (iii) External Quality Audits of Project Co Parties responsible for traffic management;
 - (iv) Internal Quality Audits;
 - (v) management of Non-Conformances;
 - (vi) Corrective Actions and Preventive Actions;
 - (vii) document management; and
 - (viii) control of Quality Records.
- (d) The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.
- (e) When the above processes are already covered as part of another Quality Management Plan, the process heading still needs to be identified as part of the TQMP; however the details can be minimized to a reference to the other Quality Management Plan and section or paragraph where the details are provided. The referenced Quality Management Plan and section or paragraph must indicate specific requirements with regards to the above processes as it relates to traffic quality management. Notwithstanding the above, processes that fall within the specific requirements of the

Traffic and Transit Management Plan must include detailed quality system procedures and process flow charts under the TQMP.

APPENDIX F
ENVIRONMENTAL QUALITY MANAGEMENT PLAN**F.1 Quality Management Plan – Environmental**

- (a) Project Co shall provide a comprehensive Environmental Quality Management Plan (“EQMP”) that describes how it intends to manage the environmental components of the Project in compliance with Project Co’s Environmental Management Plan the requirements of which are described in Schedule 17 – Environmental Obligations, its Quality Manual and the provisions of the Project Agreement. The EQMP is to apply throughout the Project Term.
- (b) The EQMP shall contain reference to Project Co’s Environmental Management Plan as described in Schedule 17 – Environmental Obligations, an organizational chart identifying Key Individuals and other key personnel responsible for environmental management and their relationship with the Quality Director for Project Co’s overall Quality Management System as documented in Project Co’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for environmental management and other discipline such as management of Project design, construction, operation and maintenance and rehabilitation disciplines.
- (c) The EQMP shall include or reference detailed quality system procedures and process flow charts for the following processes:
- (i) satisfying and ensuring compliance with Project Co’s environmental obligations, including compliance with the Environmental Approvals and in particular, the preparation and implementation of an Environmental Management System and specific plans as detailed elsewhere in the Project Agreement;
 - (ii) obtaining and maintaining applicable Permits, Licences and Approvals;
 - (iii) environmental monitoring and reporting;
 - (iv) environmental incident reporting and tracking;
 - (v) External Quality Audits of Project Co Parties responsible for environmental aspects of the Project;
 - (vi) Internal Quality Audits;
 - (vii) control of Non-Conformances;
 - (viii) Corrective Actions, Preventive Actions and opportunities for improvement;
 - (ix) document management; and
 - (x) control and retention of Quality Records.
- (d) The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.

- (e) Contracting Authority, in the course of its Quality Documentation review, shall pay special attention to Project Co's EQMP to verify that Project Co has taken full responsibility for all of the environmental requirements as specified in Schedule 17 – Environmental Obligations and elsewhere in the Project Agreement, including obtaining approvals from relevant Governmental Authorities.

**APPENDIX G
NEW MTO INFRASTRUCTURE REQUIREMENTS**

G.1 Application

- (a) The requirements of this Appendix G are in addition to those otherwise set out in this Schedule 11 and are applicable only to New MTO Infrastructure.

G.2 Definitions

- (a) “CAITM” has the meaning given in Section G.4(a)(iii) of this Appendix G.
- (b) “**Independent Quality Assurance Firm**” or “**IQAF**” means Project Co’s independent quality assurance firm that is and acts independent (i.e. cannot be the same company) from the Design Team and Construction Contractor providing Quality Assurance related services for New MTO Infrastructure as described within this Appendix G. For greater certainty, the IQAF cannot otherwise provide or receive any other design and construction services to or from Project Co, the Design Team, or the Construction Contractor, whether directly or indirectly, in respect of the Project.
- (i) The IQAF shall:
- (A) work under and report directly to the Quality Director;
 - (B) have no accountability or reporting responsibilities to the Construction Contractor (and, for clarity within the Design Team);
 - (C) hold in good standing MTO RAQS “high complexity” ranking for the delivery of MTO’s Contract Administration Services; and
 - (D) provide the services prescribed to the IQAF in this Schedule 11 and elsewhere in the Project Agreement, including assuming the role of the “Contract Administrator” with respect to Quality Assurance as identified in the CAITM, OPS, or MTO Manuals where these documents are referenced in this Project Agreement.
- (c) “**IQAF Management Plan**” or “**IQAFMP**” means the plan for the Quality Assurance management of the Construction Activities prepared by the IQAF in accordance with Section G.7 of this Appendix G.
- (d) “**IQAF Materials Engineer**” means the engineer described in and that meets the requirements of Section G.4(c) of this Appendix G.
- (e) “**IQAF Quality Assurance (QA)**” means the material sampling, testing and inspection and audit verification activities carried out by the IQAF to ensure that the accepted New MTO Infrastructures satisfies the Output Specifications.
- (f) “**IQAF Quality Assurance Manager**” has the meaning given in Section G.4(a) of this Appendix G.

- (g) “IQAF Quality Assurance Staff” has the meaning given in Section G.4(b) of this Appendix G.

G.3 Documentation Deliverables

- (a) Project Co shall prepare and submit to the Contracting Authority Representative, by the dates shown in Table G.3.1, each of the following:

TABLE G.3.1 Schedule of Plans and Reports for New MTO Infrastructure

| Reference | Deliverable Name | Schedule 11 Specification Reference | Due Date | Submitted under the Review Procedure |
|-----------|--------------------------------|-------------------------------------|--|--------------------------------------|
| 1. | IQAF Management Plan | Section G.7 | Submitted within 60 days following Financial Close | Yes |
| 2. | IQAF Quality Assurance Manager | Section G.4(a) | Submitted within 30 days following Financial Close | Yes |
| 3. | IQAF Quality Assurance Staff | Section G.4(b) | Submitted within 30 days following Financial Close | Yes |
| 4. | IQAF Materials Engineer | Section G.4(c) | Submitted within 30 days following Financial Close | Yes |

- (b) Project Co shall ensure that the IQAF complies with the IQAF Management Plan in connection with its Quality Assurance activities for the Construction Activities for New MTO Infrastructure.

G.4 Personnel

- (a) IQAF Quality Assurance Manager
- (i) Project Co shall ensure the IQAF appoints an IQAF Quality Assurance Manager (the “**IQAF Quality Assurance Manager**”) from the IQAF for the New MTO Infrastructure.
 - (ii) The IQAF Quality Assurance Manager shall be a Professional Engineer or certified by OACETT for the Road Construction Contract Administrator (RCCA) designation from the IQAF, and have demonstrated construction administration experience as a construction administrator or equivalent on five or more similar MTO highways and bridge projects in Ontario.
 - (iii) The IQAF Quality Assurance Manager shall be responsible for:

- (A) Quality Assurance requirements associated with the New MTO Infrastructure in accordance with the MTO Construction Administration and Inspection Task Manual (“CAITM”), including the development of, and compliance with, the IQAF Management Plan; and
 - (B) Identification and reporting of Non-Conformances jointly to Project Co and Contracting Authority in accordance with the IQAF Management Plan and this Schedule 11.
- (iv) The IQAF Quality Assurance Manager shall be independent of the Design Team, Project Co’s Quality Control staff and the Construction Contractor and shall report directly to the Quality Director. For greater certainty, the IQAF Quality Assurance Manager cannot otherwise provide any design and construction services to Project Co, the Design Team or the Construction Contractor, whether directly or indirectly, in respect of the Project.
- (b) IQAF Quality Assurance Staff
- (i) Project Co shall ensure the IQAF utilizes a suitable team of Quality Assurance staff (the “**IQAF Quality Assurance Staff**”) from the IQAF for the Works which shall include as a minimum:
 - (A) Senior inspectors for structural, asphalt, and grade inspection who shall be certified by OACETT for the RCSI designation and have demonstrated experience as an inspector on five or more similar MTO or municipal highways and bridge projects in Ontario;
 - (B) Junior inspectors shall be certified by OACETT for the RCJI designation;
 - (C) Electrical inspector(s) who shall have a valid Electrician Construction and Maintenance 309D license, or an Electrician, Construction and Maintenance 309A license;
 - (D) ATMS inspector(s) who shall have either a valid master electrician license from the Electrical Safety Authority, or an Electrician Construction and Maintenance 309D license, or an Electrician, Construction and Maintenance 309A license and shall be certified by OACETT for either the RCCA, RCSI or RCJI designation, and have five years demonstrated experience and knowledge of broadband fibre optics, co-axial, and wireless communication design, implementation, maintenance, and construction; and
 - (E) Traffic signal inspector(s) who shall have completed either the MTO 170 Basic Training Course and 170 Advance Training Course for work involving 170 Traffic Controller, or the IMSA/MTO 170/332 Training Course, or the Level 1 and Level 2 of the International Municipal Signal Association traffic Signal Technician Certification Program with five years’ demonstrated experience.
 - (ii) The IQAF Quality Assurance Staff shall be responsible for:

- (A) Quality Assurance inspection and testing associated with the New MTO Infrastructure in accordance with the IQAF Management Plan; and
 - (B) Identification and reporting of Non-Conformances to the IQAF Quality Assurance Manager, in accordance with the IQAF Management Plan.
 - (iii) The IQAF Quality Assurance Staff shall maintain a daily report detailing the components and elements inspected using the CAITM - Part B as a guide which report shall be made available to Contracting Authority upon request.
 - (iv) The IQAF Quality Assurance Staff shall be independent of the Design Team, Project Co's Quality Control staff and the Construction Contractor and shall report directly to the IQAF Quality Assurance Manager. For greater certainty, IQAF Quality Assurance Staff cannot otherwise provide any design and construction services to Project Co, the Design Team or the Construction Contractor, whether directly or indirectly, in respect of the Project.
- (c) IQAF Materials Engineer
- (i) Project Co shall ensure the IQAF appoints an IQAF Materials Engineer for the New MTO Infrastructure.
 - (ii) The IQAF Materials Engineer shall be a Professional Engineer and shall have demonstrated experience with the materials testing and evaluation requirements on highway and bridge projects of similar complexity in Ontario.
 - (iii) The IQAF Materials Engineer shall:
 - (A) determine the Quality Assurance materials testing program for the New MTO Infrastructure;
 - (B) monitor and track all Quality Assurance sample testing at laboratories on the project, whether located at the site, at an outside location, or in the field;
 - (C) receive and review all material testing reports, upon completion of testing, including identifying and reporting Non-Conformances in accordance with the IQAF Management Plan; and
 - (D) sign all Quality Assurance material testing reports.
 - (iv) The IQAF Materials Engineer shall be independent of the Design Team, Project Co's Quality Control staff and the Construction Contractor and shall report directly to the IQAF Quality Assurance Manager. For greater certainty, the IQAF Materials Engineer cannot otherwise provide any design and construction services to Project Co, the Design Team or the Construction Contractor, whether directly or indirectly, in respect of the Project.

G.5 Testing and Accreditation

- (a) Sampling for IQAF Quality Assurance testing shall be witnessed by the IQAF Quality Assurance Staff and the samples shall be secured and transported by the party identified in the CAITM to the

- IQAF Quality Assurance laboratory (which such laboratory shall be independent of the Construction Contractor) according to, and within the time frames specified in SP 199F57M and section 2.1.11 of the CAITM.
- (b) Laboratories used for testing of materials used for New MTO Infrastructure shall comply with the requirements of this Section G.5.
 - (c) Laboratories shall be independent firms and shall not have any corporate affiliations, including partnerships, with contractors and/or suppliers who are undertaking MTO construction work.
 - (d) The prime laboratory shall be registered in RAQS for:
 - (i) Aggregates – Low Complexity Testing;
 - (ii) Bituminous – Hot Mix Asphalt QA Testing;
 - (iii) High Performance Concrete Compressive Strength;
 - (iv) Soil and Rock – Low Complexity Testing; and
 - (v) Concrete Strength Testing.
 - (e) Laboratories shall meet the requirements of LS 102 “Minimum Requirements for Laboratories Conducting Engineering Materials Testing and Evaluation Services for the Ministry of Transportation” of the Ministry of Transportation Laboratory Testing Manual as modified under this clause:
 - (i) Section 1. – Terms of Reference is modified by the deletion of the first sentence.
 - (ii) Section 3. – Staff Requirements is modified by the deletion of the last sentence.
 - (iii) Section 4.1.1 Aggregates – Low Complexity Testing is modified by the deletion of the 2nd last sentence.
 - (iv) Section 4.1.2 Aggregates – High Complexity Testing is modified by the deletion of the third last sentence.
 - (v) Section 4.1.4 – Aggregates Resources Prospecting and Evaluation is deleted.
 - (vi) Section 4.1.6 – Soil and Rock – Medium Complexity Testing is deleted.
 - (vii) Section 5.4 – Hot Mix Asphalt Mix Quality Assurance Testing is modified to change the requirement for Type B certification to Type A Certification.
 - (viii) Section 5.5 Hot Mix Asphalt Referee Testing is deleted.
 - (ix) Section 5.6 – Performance Graded Asphalt Cement (PGAC) Testing is modified by the addition of the following: The laboratory shall be AASHTO accredited or CCIL Type E and F certified for PGAC Testing.

- (x) Section 5.9 – Penetration Graded Asphalt Cement Testing is deleted.
 - (xi) Section 6.1 – Field Testing of Plastic Concrete is deleted.
 - (xii) Section 6.4 – Flexural Strength of Concrete is deleted.
 - (xiii) Section 6.5 – Obtaining and testing Drilled Cores for Compressive Strength Testing is modified by the deletion of Category II and insertion of Category 1 in the first sentence.
 - (xiv) Section 6.6 Accelerating the Cure of Concrete Cylinders is deleted.
 - (xv) Section 6.7 Air Void System Testing is modified by the deletion of the reference to ASTM C457 and insertion of LS 432 Method of Test for Microscopical Determination of Air Void System Parameters in Hardened Concrete.
 - (xvi) Section 6.8 Rapid Chloride Permeability Testing is modified by the deletion of the reference to ASTM C1202 and insertion of LS 433 Method of Test for Electrical Indication of Concrete’s Ability to Resist Chloride ion Penetration.
 - (xvii) Section 6.9 Total Chlorides Testing is deleted.
 - (xviii) Section 7 Miscellaneous Testing and Section 8 Submissions are deleted.
 - (xix) Appendix A of LS-102 is deleted.
- (f) Laboratories shall be staffed to achieve, at a minimum:
- (i) A laboratory supervisor with a minimum 10 years of materials testing experience or a minimum 3 years of materials testing experience and a Bachelor of Science in Civil Engineering, Geology, or Earth Sciences or Diploma in Civil Engineering Technology, Construction, or Geology;
 - (ii) 2 technicians designated by CCIL as HMA Certified Laboratory Technician – Superpave;
 - (iii) 2 technicians with CCIL Type C certification; and
 - (iv) 2 technicians certified by CCIL for concrete testing in accordance with CSA A.283.
- (g) Project Co may request the approval of the Contracting Authority Representative to use other industry-recognized accreditations, which approval shall not be unreasonably withheld or delayed if such other accreditation is applicable to the Works for which it is proposed and meets the intent of the accreditations required by this section.
- (h) Laboratories shall participate in any and all correlations programs initiated by MTO between Financial Close and Handover of all New MTO Infrastructure.
- (i) Project Co shall be responsible at its own cost for any remedial work required as a result of any failure to pass any calibration, sample, test or trial required in accordance with this Project Agreement or any Quality Documentation or as a result of any laboratory not being duly accredited as required by this Section G.5.

G.6 Quality Audits

- (a) Project Co shall provide the Contracting Authority Representative electronic access to all Inspection and Test Plans and tests results and reports associated with IQAF Quality Assurance inspection and testing services, including supporting quality documentation, on a real time basis in order for the Contracting Authority Representative to undertake Contracting Authority Quality Audits.

G.7 IQAF Management Plan

- (a) Project Co shall prepare and submit to Contracting Authority in accordance with Schedule 10 - Review Procedure, a Quality Assurance plan with respect to the New MTO Infrastructure (the “**IQAF Management Plan**” or “**IQAFMP**”). The IQAF Management Plan shall describe how the IQAF Quality Assurance Manager and IQAF Quality Assurance Staff will manage and perform the Quality Assurance acceptance inspection and testing requirements of the New MTO Infrastructure in accordance with the principles and provisions of the CAITM and in a manner consistent with the CQMP. The IQAF Management Plan shall include:
- (i) identification of relevant provisions of the CAITM that will be applied in performing Quality Assurance acceptance inspection and testing of the New MTO Infrastructure;
 - (ii) identification of relevant provisions and procedures from the CQMP that will be coordinated with performing Quality Assurance acceptance inspection and testing of the New MTO Infrastructure;
 - (iii) the process for review of Inspection and Test Plan(s) prior to submission to Contracting Authority under the Review Procedure;
 - (iv) the process for witnessing Quality Assurance sampling by the Construction Contractor and holding custody of and transfer of Quality Assurance test samples to the relevant testing laboratory in accordance with Section 2.1.11 of the CAITM;
 - (v) the process for release of inspection and testing Witness and Hold Points defined in the Inspection and Test Plan(s); and
 - (vi) the process for maintaining daily reports of components and elements inspected using the CAITM - Part B as a guide; and
 - (vii) the process for the IQAF identifying Non-Conformances and reporting such Non-Conformances jointly and simultaneously to Project Co and Contracting Authority.
- (b) Project Co shall implement and comply with the IQAF Management Plan.
- (c) The monthly Quality Management System report set out in Section 6.9(b) of this Schedule 11 shall address all quality management activities under the IQAF Management Plan for that month and any outstanding quality issues from prior months.

G.8 Non-Conformance Reporting Process

- (a) If the IQAF discovers a Non-Conformance, Project Co or Contracting Authority shall initiate a Non-Conformance Report in accordance with Part 7 of this Schedule 11.
- (b) The Non-Conformance Tracking System set out in Section 7.2(b) shall provide live access to the current Non-Conformance Report to the IQAF.

G.9 Construction Quality Management Plan

- (a) The description of the responsibilities, qualifications, and authority of the personnel and the organizational interfaces set out in the CQMP in Appendix C of this Schedule 11 shall including the interface between the IQAF and the Construction Contractor.
- (b) The Inspection and Test Plan set out in Section C.1(e) of this Schedule 11 shall include:
 - (i) IQAF Quality Assurance review and Witness and Hold Points for inspection activities where the IQAF and the responsible designer is to be present in accordance with the CAITM and Good Industry Practice; and
 - (ii) Inspection and Test Sub-Plans for New MTO Infrastructure, which, notwithstanding the requirements outlined in the Output Specifications, shall, as a minimum, incorporate the CAITM – Part B requirements.

APPENDIX H
AUDIT OF TEMPORARY TRAFFIC MANAGEMENT – SAMPLE SITE REPORT

Audit Details

Contractor.....

Location.....

Activity.....

Auditor

Date & Time.....

Select as applicable and add comment: Y/N = Yes/ No; A/S/N = All/ Some/ None

Advanced Warning Area

Signage (A/S/N).....

Visibility (A/S/N).....

Placement (A/S/N)

Quality (A/S/N).....

Transition Area, Buffer Space, Work Area

Signage (A/S/N).....

Visibility (A/S/N).....

Placement (A/S/N)

Quality (A/S/N).....

Delineation (A/S/N)

Placement (A/S/N)

Quality (A/S/N).....

Spaced Correctly (Y/N).....

Other issues

Excavations (Y/N).....

- Pedestrians from work (Y/N)
- Pedestrians from traffic (Y/N).....
- Cyclists from work (Y/N)
- Cyclists from traffic (Y/N).....
- Advance Warning area (A/S/N)
- Transition area (A/S/N).....
- Buffer Space (A/S/N).....
- Work Area (A/S/N).....
- Warning lights (A/S/N).....
- Vehicles operating with traffic flow (A/S/N).....
- Vehicles parked with traffic flow (A/S/N).....
- Vehicles outside zone (A/S/N).....
- Entering/leaving with traffic flow (A/S/N).....
- Workers safety (A/S/N).....
- Traffic Control Plan (TCP) or TCP Supervisor on site (Y/N)

Termination Area

- Sign placement (A/S/N)
- Sign quality (A/S/N)

General Observations

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SCHEDULE 12**WORKS SCHEDULE REQUIREMENTS****1. DEFINITIONS**

In this Schedule 12, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 12) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1** “**Baseline Tracking Milestone**” is a schedule milestone required by Contracting Authority and included in the Interim Baseline Works Schedule and the Baseline Works Schedule (and carried through in the Progress Works Schedules) that has a fixed date without any inter-relationship or logic dependency with any other Works Activity or Project Works Schedule, including:
- (a) Financial Close;
 - (b) each of the “Commencement Dates” for the Lands set out in Part B – Metrolinx Lands of Schedule 35 – Lands;
 - (c) the Scheduled Substantial Completion Date; and
 - (d) the Delivery and the Acceptance of each of the Revenue Vehicles.
- 1.2** “**Baseline Works Schedule**” has the meaning given in Section 9.1(a).
- 1.3** “**Basis of Works Schedule Report**” has the meaning given in Section 12.1(a).
- 1.4** “**Close-out Activity**” means any activity of the Works and any associated Milestone Event that immediately precedes Substantial Completion or Final Completion of the Works, including:
- (a) all inspections of the Works by Contracting Authority, third parties, and the Independent Certifier required by the Project Agreement;
 - (b) identification and rectification of Minor Deficiencies;
 - (c) finalization and issuance of Record Drawings;
 - (d) Commissioning Activities; and
 - (e) Handover Activities (New Third Party Infrastructure);
- and “**Close-Out Activities**” means all such activities and associated Milestone Events.

- 1.5** “**Commissioning Activity**” means any commissioning activity and Milestone Event contemplated in the Project Agreement, including each commissioning activity and associated Milestone Event contemplated in Schedule 14 – Commissioning and Schedule 15 – Output Specifications; and “**Commissioning Activities**” means all such activities and Milestone Events.
- 1.6** “**Corrected Works Schedule**” has the meaning given in Section 4(d)(i)(B).
- 1.7** “**Cost Performance Index**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- 1.8** “**Data Date**” means the date of the activity and schedule data on which a Project Works Schedule is based.
- 1.9** “**Design Activity**” means any activity and associated Milestone Event required to complete the design of the Project.
- 1.10** “**Earned Value**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- 1.11** “**Earned Value Metrics**” has the meaning given in Section 13.1(b)(vi)(A).
- 1.12** “**Handover Activity (New Third Party Infrastructure)**” means any activity and associated Milestone Events required to achieve Handover of any New Third Party Infrastructure to the applicable owner of the New Third Party Infrastructure, including:
- (a) all inspections of the New Municipal Infrastructure required by the Project Agreement including inspections by Contracting Authority and the relevant third party;
 - (b) identification and resolution of any construction defects, deficiencies and damage to the New Third Party Infrastructure;
 - (c) finalization and issuance of the applicable Record Drawings; and
 - (d) provision of training to the applicable third party staff,
- and “**Handover Activities (New Third Party Infrastructure)**” means all such activities and associated Milestone Events.
- 1.13** “**Interim Baseline Works Schedule**” has the meaning given in Section 8(a).
- 1.14** “**Level 3**” means the level of detail required for a Project Control Schedule as set out in the AACE International Recommended Practice entitled, “*Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction*”;
- 1.15** “**Milestone Event**” means, for each of the Works Activities,

- (a) the start and completion of each deliverable and the identification of any external constraints which are associated with the applicable activity;
- (b) interfaces with Stakeholders associated with the applicable activity;
- (c) closures on the Rail Corridor (track or signaling) associated with the applicable activity; and
- (d) Witness and Hold Points.

1.16 “NCR” has the meaning given in Part B of Schedule 21 – Construction Period Payments.

1.17 “No Comment or Minor Non-Conformance Designation” means a designation, determined by Contracting Authority after review of a Project Works Schedule in accordance with Schedule 10 – Review Procedure, of either,

- (a) “NO COMMENT” on the applicable Project Works Schedule; or
- (b) “MINOR NON-CONFORMANCE” on the applicable Project Works Schedule, with no “RESUBMIT” requirement, and provided that all non-conformances noted in the review have been corrected.

1.18 “PLAA Activity” means for each Permit, Licence or Approval, any of the activities or Milestone Events associated with that Permit, Licence or Approval, including:

- (a) consultation and/or coordination activities with the applicable Government Authority and, if applicable, property owners;
- (b) preparation of documentation for the Permit, Licence or Approval request, including pre-submission co-ordination and consultation; and
- (c) review and approval of the Permit, Licence or Approval, including all activities and Milestone Events commencing on the date the initial submission for the Permit, Licence or Approval and ending on the anticipated date of decision of the third party with respect to that Permit, Licence or Approval;

and “PLAA Activities” means all such activities and Milestone Events.

1.19 “Planned Value” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.

1.20 “Procurement Activity” means any activity or Milestone Event required for the timely purchase, set-up, manufacture, installation and use of long-lead items (for example, prefabricated or preassembled structures or structural elements, elevator and fibre-optic cabling, and other similar long-lead items) as required by the Project Agreement including:

- (a) issuance of purchase order or contract finalization including,

- (i) coordination of the procurement with the Works;
 - (ii) establishment of procurement processes and bundling strategies; and
 - (iii) validation of technical requirements of the long-lead item;
- (b) setup and certification of plant associated with the long-lead item;
 - (c) manufacturing or assembly of the long-lead item;
 - (d) approval of shop drawing
 - (e) factory acceptance testing;
 - (f) receipt of first and last deliveries;
 - (g) installation the long-lead item(s); and
 - (h) commencement and completion of inspection, integration, testing, commissioning, certification, and training;

and “**Procurement Activities**” means all such activities and Milestone Events.

1.21 “Progress Works Schedule” means Project Co’s working schedule that is

- (a) Traceable to and progressed from the Baseline Works Schedule, or the Revised Baseline Works Schedule, as applicable;
- (b) Traceable to and progressed from the Progress Works Schedule of the immediately previous month; and
- (c) prepared, maintained, updated, and submitted by Project Co, on a monthly basis, in accordance with this Schedule 12.

1.22 “Project Control Schedule” has the meaning given in the AACE International Recommended Practice entitled, “*Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction*”.

1.23 “Project Schedules Quality Management Plan” means the plan to audit the Project Works Schedules prepared by Project Co in accordance with Section 15.

1.24 “Project Works Schedule” means any schedule required pursuant to this Schedule 12, including the Proposed Works Schedule, Interim Baseline Works Schedule, the Baseline Works Schedule, the Revised Baseline Works Schedule, a Progress Works Schedule, a Works Micro Schedule or a Recovery Works Schedule, and “**Project Works Schedules**” means all such Works schedules.

- 1.25** “**Proposed Works Schedule**” means the schedule in respect of the Works submitted by Project Co, as the preferred proponent, in the Request for Proposals process that preceded this Project Agreement, as amended and updated prior to Financial Close.
- 1.26** “**Recovery Works Schedule**” has the meaning given in Section 14.1(a).
- 1.27** “**Recovery Works Schedule Report**” has the meaning given in Section 14.1(a).
- 1.28** “**Review Procedure Activities**” means all activities associated with the implementation of Schedule 10 – Review Procedure, including a separate submission for each Design Development Submittal and Construction Document Submittal.
- 1.29** “**Revised Baseline Works Schedule Proposal**” has the meaning given in Section 9.2(a).
- 1.30** “**S-Curve**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- 1.31** “**Schedule Performance Index**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- 1.32** “**Stakeholder Consultation Activity**” means any of the following activities or Milestone Events:
- (a) Stakeholder partnering sessions;
 - (b) Design Development Submittals and Construction Document Submittals development and finalization;
 - (c) consultation, submission, review and approval process of any municipal, provincial, federal, or any other Governmental Authority;
 - (d) milestones noting decisions that support final design integration between Contracting Authority's systems and Project Co's systems;
 - (e) design review meetings;
 - (f) presentations or workshops on design topics expected to involve multiple Stakeholders, or any other activities required to satisfy and demonstrate design conformance; and
 - (g) any additional activities as required by Project Co to fulfill the requirements of the Project Agreement with respect to Stakeholder consultation,
- and “**Stakeholder Consultation Activities**” means all such activities and Milestone Events.
- 1.33** “**Traceable**” means prepared in such a way that Contracting Authority has the ability to maintain, track and trace all activities and milestones including activity ID’s, descriptions, activity codes, logical sequences, interdependencies and data consistency between and/or within all Project Works Schedules.

- 1.34** “**Tracking Milestone**” is a schedule milestone that corresponds to a Baseline Tracking Milestone and is linked to the applicable Works Activities, Works Milestones, and Milestone Events; and “**Tracking Milestones**” shall be construed accordingly.
- 1.35** “**Utility Relocation or Protection Activity**” means, for each system per phase or section of the Works, any of the following activities:
- (a) approvals by Utility Companies;
 - (b) relocation for each specific occurrence of a Utility Infrastructure; and
 - (c) inspection, acceptance and hand-back of the Utility Infrastructure to the owner of that applicable Utility Infrastructure,
- and “**Utility Relocation or Protection Activities**” means all such activities and associated Milestone Events.
- 1.36** “**Variance Analysis Report**” means a narrative submitted in the Works Schedule Report that details the cumulative and monthly Earned Value Metrics and provides an explanation for all trends and variances in the Earned Value Metrics.
- 1.37** “**Witness and Hold Points**” has the meaning given in Schedule 11 – Quality Management.
- 1.38** “**Working Day**” means, for the purposes of this Schedule 12, a day on which Project Co has scheduled specific Works Activities to be carried out, as set out in the Planned Working Calendar required by Section 12.1(c)(iv).
- 1.39** “**Works Activity**” means any of the
- (a) Close-out Activities;
 - (b) Commissioning Activities;
 - (c) Construction Activities;
 - (d) Design Activities;
 - (e) PLAA Activities;
 - (f) Procurement Activities;
 - (g) Stakeholder Consultation Activities;
 - (h) Utility Relocation or Protection Activities;
 - (i) Review Procedure Activities; or

- (j) activities to be performed:
 - (i) that cannot be started or finished without the involvement of Contracting Authority or one or more Stakeholders; or
 - (ii) that must be started or finished before a Contracting Authority activity or a Stakeholder activity can be started or finished;

and “**Works Activities**” means all such activities.

1.40 “**Works Micro-Schedule**” has the meaning given in Section 11(a).

1.41 “**Works Micro-Schedule Activity**” means any of the following activities:

- (a) any Project Co activity in respect of the Works that Contracting Authority determines, acting reasonably, is required to be included within a Works Micro-Schedule;
- (b) any activity required pursuant to Schedule 11 – Quality Management; or
- (c) any activity required pursuant to Schedule 14 – Commissioning;

and “**Works Micro-Schedule Activities**” means all such activities.

1.42 “**Works Micro-Schedule Milestone**” means any of the following milestone events:

- (a) any milestone signifying a critical handover of work between
 - (i) Project Co and Contracting Authority; or
 - (ii) Project Co and any owner of New Third Party Infrastructure; and
- (b) any additional milestone as requested by Contracting Authority, acting reasonably;

and “**Works Micro-Schedule Milestones**” means all such milestone events.

1.43 “**Works Milestone**” means any of the following milestone events:

- (a) Commercial Close;
- (b) Financial Close;
- (c) submission by Project Co of all Design Development Submittals;
- (d) submission by Project Co of all Construction Document Submittals;
- (e) completion of the Utility Work;

- (f) completion of all Works in the Rail Corridor;
- (g) completion of the New Third Party Infrastructure;
- (h) submission by Project Co of all Commissioning Submittals, pursuant to Schedule 14 - Commissioning;
- (i) Scheduled Substantial Completion Date;
- (j) Scheduled Final Completion Date; and
- (k) the Longstop Date,

and “**Works Milestones**” means all such milestone events.

1.44 “**Works Schedule Report**” has the meaning given in Section 13.1.

2. DOCUMENTS COMPRISING THIS SCHEDULE 12 – WORKS SCHEDULE REQUIREMENTS

- (a) This Schedule 12 is comprised of the following documents:
 - (i) these general provisions of this Schedule 12;
 - (ii) Appendix A – Project Schedule Technical Requirements; and
 - (iii) Appendix B – EVM Reporting Requirements.

3. DEVELOPMENT OF PROJECT WORKS SCHEDULES

3.1 Types and Purposes of Project Works Schedules

- (a) Project Co acknowledges and agrees that it will develop and maintain three types of Project Works Schedules as follows:
 - (i) baseline schedules consisting of the Interim Baseline Works Schedule, the Baseline Works Schedule and, if required, a Revised Baseline Works Schedule(s), each of which is required to demonstrate Project Co’s intended schedule to complete the Works and from which progress will be measured;
 - (ii) monthly Progress Works Schedules and, if applicable, Works Micro-Schedules, each of which are required to demonstrate Project Co’s actual progress of the Works up to and including the applicable Data Date; and
 - (iii) if requested by Contracting Authority, a Recovery Works Schedule(s) which meets the requirements set out in Section 14 and is required to demonstrate Project Co’s schedule to mitigate significant delay and accelerate the Works.

3.2 Sequence of Project Works Schedules

- (a) Subject to the terms and conditions of this Schedule 12, Project Co acknowledges and agrees that the progression and development of the Project Works Schedules shall be as follows:
- (i) Project Co shall develop the Interim Baseline Works Schedule, which shall be Traceable to the Proposed Works Schedule and satisfy the requirements of this Schedule 12. Project Co shall submit the Interim Baseline Works Schedule to Contracting Authority prior to Financial Close for review, and after Financial Close, in accordance Schedule 10 – Review Procedure;
 - (ii) Once the Interim Baseline Works Schedule has been finalized in accordance with Section 4(b) it shall become the Interim Baseline Works Schedule applicable to the Works until replaced by the finalized Baseline Works Schedule;
 - (iii) Project Co shall submit the Baseline Works Schedule in accordance with this Schedule 12 for review in accordance with Schedule 10 – Review Procedure;
 - (iv) Once the Baseline Works Schedule has been finalized in accordance with Section 4(b) it shall become the Baseline Works Schedule that is applicable to the Works until Final Completion, unless it is replaced by a Revised Baseline Works Schedule in accordance with Section 9.2;
 - (v) For every month, from the month after Financial Close until Final Completion, Project Co shall submit an updated Progress Works Schedule in accordance with Section 10 and Schedule 10 – Review Procedure. Project Co shall progress each updated Progress Works Schedule from the previous month's Progress Works Schedule and shall,
 - (A) for the period prior to the finalization of the Baseline Works Schedule, ensure that the Progress Works Schedule is Traceable to and progressed from the Interim Baseline Works Schedule and the immediately previous Progress Works Schedule;
 - (B) for the period after the finalization of the Baseline Works Schedule, ensure that the Progress Works Schedule is Traceable to and progressed from the Baseline Works Schedule and the immediately previous Progress Works Schedule; and
 - (C) label the Progress Works Schedule(s) in sequence as Project Works Schedule Revision 1, Progress Works Schedule Revision 2, and so on; and
 - (vi) Once each Progress Works Schedule (Progress Works Schedule Revision 1, 2, etc.) has been finalized in accordance with Section 4(b), the applicable revision of the Progress Works Schedule shall become the active Progress Works Schedule for the Project and shall replace the immediately previous Progress Works Schedule.

4. SUBMISSION AND REVIEW OF PROJECT WORKS SCHEDULES

- (a) Each Project Works Schedule shall be submitted to Contracting Authority, in draft, and shall be reviewed by Contracting Authority and, if applicable, the Independent Certifier and other relevant third parties, in accordance with Schedule 10 – Review Procedure.
- (b) No Project Works Schedule shall be finalized or considered an acceptable Project Works Schedule to Contracting Authority until it has received a No Comment or Minor Non-Conformance Designation. For clarity, Project Co is still obliged to correct all non-conformances in each Project Works Schedule.
- (c) Contracting Authority may, in its sole discretion and at any time, convene a meeting or meetings with Project Co to review a Project Works Schedule and identify those Project Co Parties that are required to attend the meeting.
- (d) If a Project Works Schedule submitted by Project Co receives a “RESUBMIT”, “MAJOR NON-CONFORMANCE” or a “CRITICAL NON-CONFORMANCE” comment from Contracting Authority the following shall apply:
- (i) Contracting Authority may, in its sole discretion, require Project Co to submit;
 - (A) additional information (including draft versions of an updated Project Works Schedule) to supplement the information originally provided in the Project Works Schedule or the Works Schedule Report and such information shall be provided promptly by Project Co; and
 - (B) one or more corrected versions of the applicable Project Works Schedule (each a “**Corrected Works Schedule**”) and such Corrected Works Schedule shall be provided by Project Co promptly;
 - (ii) For clarity:
 - (A) any information provided pursuant to 4(d)(i)(A) is not a Works Submittal;
 - (B) a Corrected Works Schedule is a Works Submittal, and the requirements of Schedule 10 – Review Procedure apply to each Corrected Works Schedule; and
 - (C) all liquidated damages and NCRs associated with the submission and review of Project Works Schedules do not apply to the submission and review of Corrected Works Schedules.
 - (iii) In addition to complying with the Corrected Schedule requirements set out in Section 4(d)(iv) and notwithstanding the time period for resubmission of Works Submittals set out in Schedule 10 – Review Procedure, Project Co shall correct all non-conformances and deficiencies in a Progress Works Schedule in the next monthly submission of the Progress Works Schedule and shall provide detail in the Works Schedule Report setting out how the non-conformances and deficiencies have been corrected; and

- (iv) For the purpose of ensuring that a Progress Works Schedule is finalized for each month of the Project from Financial Close to Final Completion, Contracting Authority may, in its sole discretion, require Project Co to continue to submit one or more Corrected Works Schedules for a particular month (even after the deadline for the next monthly submission of the Progress Works Schedule) until the Corrected Works Schedule for that particular month receives the equivalent of a No Comment or Minor Non-Conformance Designation.

5. PROJECT WORKS SCHEDULE REQUIREMENTS

5.1 General Requirements for Project Works Schedules and Works Schedule Reports

- (a) Project Co shall ensure that all Project Works Schedules and Works Schedule Reports,
 - (i) are developed in accordance with Good Industry Practice, are compliant with the requirements of the Project Agreement, include appropriate schedule activities, logic, and sequencing;
 - (ii) demonstrate, in a clear and detailed way, Project Co's planned execution of the Works and, in the case of Works Schedule Reports, the actual progress of the Works from Financial Close until Final Completion;
 - (iii) include all Works Activities as they are defined in this Schedule 12;
 - (iv) include all Baseline Tracking Milestones and the corresponding Tracking Milestones;
 - (v) contain sufficient detail to enable Contracting Authority to,
 - (A) monitor the planned schedule for the Works and the progress to complete the Works, and determine whether Project Co is likely to achieve Substantial Completion by the Scheduled Substantial Completion Date; and
 - (B) manage Contracting Authority interfaces and analyze the schedule impacts of any potential delay, Delay Event or Variation;
 - (vi) take into account, and are consistent with, all dates and timelines that are pre-established in the Project Agreement; and
 - (vii) in the case of Progress Works Schedules, are progressed from and are Traceable to the Interim Baseline Works Schedule or the Baseline Works Schedule, as applicable, and that each successive monthly Progress Works Schedule is updated from and Traceable to the immediately previous Progress Works Schedule.
- (b) Project Co shall immediately give Notice to Contracting Authority of a change to a Works Activity if such change may impact the activities of Contracting Authority or Additional Contractors.
- (c) Project Co shall immediately give Notice to Contracting Authority if the amount of float on a Works Activity that is on the critical path changes by five days from the amount of float shown in the previous submission of the Proposed Works Schedule, the Interim Baseline Works Schedule, or the Baseline Works Schedule, as appropriate. Thereafter, Project Co shall also immediately

give an additional Notice to Contracting Authority each time the amount of float on a Works Activity that is on the critical path is reduced by five days from the amount of float previously reported to Contracting Authority via such Notice(s).

- (d) If Project Co is obliged to provide any kind of notification (or Notice) to Contracting Authority or the Contracting Authority Representative pursuant to the Project Agreement, the submission of that notification (or Notice) by way of information included in a Project Works Schedule shall not constitute the provision of such Notice or notification by Project Co.

6. RESTRICTIONS ON PROJECT WORKS SCHEDULES

- (a) Project Co shall only be permitted to show in a Project Works Schedule the commencement of a Construction Activity if Project Co has submitted all Works Submittals (including all Design Development Submittals and all Construction Document Submittals) related to such Construction Activity pursuant to Schedule 10 – Review Procedure, except for Works Activities that occurred prior to the Data Date.
- (b) Notwithstanding Section 6(a), enabling Construction Activities that are subcomponents of larger Construction Activities (e.g. footings of a structure) may be shown to commence in a Project Works Schedule, provided that Project Co obtains the prior agreement of Contracting Authority, acting reasonably, and Project Co has submitted all Design Development Submittals and all Construction Document Submittals pursuant to Schedule 10 – Review Procedure for that enabling subcomponent and, in the reasonable opinion of Contracting Authority, sufficient Design Development Submittals and Construction Document Submittals pursuant to Schedule 10 – Review Procedure for the larger Construction Activity.
- (c) Notwithstanding Section 6(a), Project Co shall not be permitted to show the commencement of any Construction Activity in a Progress Works Schedule, other than
 - (i) Construction Activities related to topographical surveys, subsurface investigations or vegetation removal required to complete the Works; and
 - (ii) Construction Activities other than those identified in Sections 6(b) and 6(c)(i), provided that Project Co has
 - (A) submitted all Works Submittals (including, for clarity, all Design Development Submittals and Construction Document Submittals) related to such Construction Activities pursuant to Schedule 10 – Review Procedure;
 - (B) developed and implemented its Quality Management System in accordance with Schedule 11 – Quality Management; and
 - (C) submitted each Quality Management Plan in accordance with Schedule 11 – Quality Management and Schedule 10 – Review Procedure.

7. FAILURE TO SUBMIT A BASELINE WORKS SCHEDULE BY THE SUBMISSION DEADLINE

- (a) If Project Co successfully claims, in accordance with the Project Agreement, that it has experienced one or more Delay Events and,
- (i) Project Co was late submitting its Baseline Works Schedule measured by the deadline for submission established by Section 9.1(a); or
 - (ii) Project Co failed to achieve a No Comment or Minor Non-Conformance Designation before the expiration of 75 Business Days (plus any longer time period for resubmission that has been determined by the Contracting Authority Representative pursuant to Section 4.5 of Schedule 10 – Review Procedure) after Project Co’s submission of the first draft of the Baseline Works Schedule,

the number of days that Project Co was late submitting its Baseline Works Schedule plus the number of days in excess of the time period referred to in Section 7(a)(ii) that it took Project Co to achieve a No Comment or Minor Non-Conformance Designation, shall be deducted from the number of days of delay that the Parties determine (or is determined through the Dispute Resolution Procedure) that Project Co has experienced due to a Delay Event or Delay Events.

- (b) If Project Co includes a claim, assertion or inference that Project Co has experienced a Delay Event or Delay Events in any Project Works Schedule,
- (i) such claim, assertion or inference shall not constitute the provision of Notice by Project Co of a Delay Event pursuant to Section 40.2(a) or Section 40.2(e) of the Project Agreement; and
 - (ii) no comment, question or other response (or lack of a comment, question or other response) by Contracting Authority with respect to the Project Works Schedule shall constitute any acknowledgment or acceptance by Contracting Authority of the Delay Event or Delay Events.

8. INTERIM BASELINE WORKS SCHEDULE

- (a) Prior to Financial Close, Project Co shall submit an interim baseline Works schedule (the “**Interim Baseline Works Schedule**”) to Contracting Authority for its review, which review shall take place after Financial Close and in accordance with Schedule 10 – Review Procedure.
- (b) The Interim Baseline Works Schedule shall:
- (i) have activities, including all Works Activities, that are Traceable to the activities in the Proposed Works Schedule;
 - (ii) supplement the Proposed Works Schedule by adding cost values to all Works Activities to Level 3 level of detail and to comply with this Schedule 12;
 - (iii) conform to this Schedule 12, including, for clarity, Appendix A to this Schedule 12;

- (iv) commence from the date of Financial Close and show no progress; and
 - (v) address any comments provided by Contracting Authority to Project Co prior to Financial Close.
- (c) The Parties acknowledge and agree that notwithstanding that the Interim Baseline Works Schedule is based upon the Proposed Works Schedule and provided to Contracting Authority prior to Financial Close, the Interim Baseline Works Schedule shall remain subject to review by Contracting Authority in accordance with Schedule 10 – Review Procedure, and the treatment of the Interim Baseline Works Schedule as set out in this Section 8 shall not, in any way,
- (i) diminish, reduce or otherwise modify or amend Contracting Authority's rights under the Project Agreement to review the Interim Baseline Works Schedule in accordance with Schedule 10 – Review Procedure; or
 - (ii) constitute acceptance or comment by Contracting Authority of the Interim Baseline Works Schedule in accordance with Schedule 10 – Review Procedure.
- (d) For the purpose of Contracting Authority deadlines for review of the Interim Baseline Works Schedule provided by Project Co prior to Financial Close, Project Co will be deemed to have submitted the Interim Baseline Works Schedule on the first Business Day after Financial Close.

9. BASELINE WORKS SCHEDULE

9.1 Baseline Works Schedule

- (a) No later than 120 Business Days following Financial Close, Project Co shall submit a baseline schedule in respect of the Works (the “**Baseline Works Schedule**”) to Contracting Authority for its review in accordance with Schedule 10 – Review Procedure.
- (b) The Baseline Works Schedule submitted by Project Co shall
 - (i) have activities, including all Works Activities, which are Traceable to those that appeared in the Interim Baseline Works Schedule;
 - (ii) have cost values for all Works Activities to Level 3 level of detail and to comply with this Schedule 12;
 - (iii) conform to the requirements of this Schedule 12, for clarity, including Appendix A to this Schedule 12;
 - (iv) commence from the date of Financial Close and show no progress;
 - (v) address any comments on the Interim Baseline Works Schedule provided by Contracting Authority;

- (vi) identify all differences between the Interim Baseline Works Schedule and the Baseline Works Schedule; and
 - (vii) not change any activity reference numbers from activity reference numbers set out in the Interim Baseline Works Schedule.
- (c) In its review of the Baseline Works Schedule pursuant to Schedule 10 – Review Procedure, Contracting Authority may, acting reasonably, request that additional milestones or activities be incorporated into the Progress Works Schedule included in the Baseline Works Schedule. Upon such request, Project Co shall promptly revise the Baseline Works Schedule to include the additional milestones and activities.

9.2 Revised Baseline Works Schedule

- (a) If Contracting Authority is of the opinion, acting reasonably, that, as a result of an amendment to the Project Agreement, a Variation Confirmation, or a Variation Directive, the scope, means or methods of the Works has changed significantly since the finalization of the Baseline Works Schedule, Contracting Authority may require Project Co to replace the Baseline Works Schedule with a revised and updated Baseline Works Schedule (a “**Revised Baseline Works Schedule**”). If Contracting Authority gives Notice to Project Co that it requires a revised Baseline Works Schedule, Project Co shall prepare and submit a Revised Baseline Works Schedule (as a Works Submittal), no later than 15 Business Days after Project Co receives such Notice, for review pursuant to Schedule 10 – Review Procedure.
- (b) If Project Co is of the opinion, acting reasonably, that, as a result of an amendment to the Project Agreement, a Variation Confirmation, or a Variation Directive, the scope of the Works has changed significantly since the finalization of the Baseline Works Schedule, Project Co may prepare a Revised Baseline Works Schedule for review in accordance with Schedule 10 – Review Procedure. As part of its review of Project Co’s Revised Baseline Works Schedule, Contracting Authority may, acting reasonably, determine whether a Revised Baseline Works Schedule is necessary or appropriate.
- (c) The Revised Baseline Works Schedule submitted by Project Co shall
- (i) have activities which are Traceable to those that appeared in the Baseline Works Schedule;
 - (ii) identify all differences between the Baseline Works Schedule and the Revised Baseline Works Schedule;
 - (iii) have a Data Date which corresponds to the date the Revised Baseline Works Schedule was requested by Contracting Authority or is otherwise required by Contracting Authority; and
 - (iv) document the progress of the Works for all Works Activities, Works Milestones, Baseline Tracking Milestones, and Tracking Milestones that have occurred, progressed up to the Data Date described in Section 9.2(c)(iii).

- (d) If the Revised Baseline Works Schedule is finalized pursuant to Section 4(b), the Revised Baseline Works Schedule shall replace the Baseline Works Schedule.

10. PROGRESS WORKS SCHEDULE

- (a) Starting on the first month after Financial Close and by no later than five Business Days after the last day of each month until Final Completion, Project Co shall submit to Contracting Authority an updated Progress Works Schedule for review by Contracting Authority in accordance with Schedule 10 – Review Procedure. For clarity, the submission of any Progress Works Schedule shall not amend either the Interim Baseline Works Schedule or the Baseline Works Schedule.
- (b) All Progress Works Schedules submitted by Project Co shall
- (i) have activities that are progressed from and Traceable to those that appeared in the Interim Baseline Works Schedule or the Baseline Works Schedule, as applicable, and the immediately previous Progress Works Schedule;
 - (ii) conform to Schedule 12, including Appendix A to this Schedule 12;
 - (iii) include cost values at a Level 3 level of detail and to comply with this Schedule 12;
 - (iv) have a Data Date which is the first Business Day of the successive month to which the Progress Works Schedule applies;
 - (v) document the progress of the Works for all Works Activities and Works Milestones (via three distinct sets of activity bars) and progressed up to the end of the relevant month, measured relative to the Baseline Works Schedule;
 - (vi) include all Baseline Tracking Milestones and Tracking Milestones clearly indicating the variance between each Baseline Tracking Milestone and the corresponding Tracking Milestone;
 - (vii) include updated forecasted dates required to complete the Works for all previously noted Works Activities and Works Milestones;
 - (viii) include additional milestones or activities that are requested by Contracting Authority, acting reasonably; and
 - (ix) include any additional Works Activities and Works Milestones, and/or updates to sequencing, activity durations, and logic, permitted under Appendix A to this Schedule 12, which are required to complete the Works (such additional Works Activities and/or Works Milestones, and/or updates to sequencing, activity durations, and logic shall be reported within the corresponding monthly Progress Works Schedule Report, in accordance with this Schedule 12).

11. WORKS MICRO-SCHEDULE

- (a) If, in the opinion of Contracting Authority, acting reasonably, a Project Co activity is a Works Micro-Schedule Activity, Contracting Authority may request that Project Co provide a sub-schedule of a Progress Works Schedule that focuses on that Works Micro-Schedule Activity (each, a “**Works Micro-Schedule**”). Each Works Micro-Schedule shall include the elements set out in Sections 11(b)(i) to 11(b)(v).
- (b) No later than 10 Business Days following a request by Contracting Authority, Project Co shall submit to Contracting Authority, for review in accordance with Schedule 10 – Review Procedure, a Works Micro-Schedule that includes:
- (i) a title which includes the name “Works Micro-Schedule”, a descriptor of the portion of the Works for which the Works Micro-Schedule is applicable, and the date range for the Works Micro-Schedule;
 - (ii) all elements required to be included in the Progress Works Schedule;
 - (iii) all Works Micro-Schedule Milestones;
 - (iv) all Works Micro-Schedule Activities; and
 - (v) any other activities to support day-by-day or hour-by-hour coordination with certain activities of Contracting Authority that have been identified by Contracting Authority or any other required high level of involvement by Contracting Authority or any third party or authority as contemplated in the Project Agreement.
- (c) Every two weeks following the initial Works Micro-Schedule, Project Co shall submit an updated Works Micro-Schedule until the Works contemplated in the Works Micro-Schedule are complete. Project Co shall clearly illustrate in each updated Works Micro-Schedule, the actual progress of each Works Micro-Schedule Activity in comparison to the planned progress of such Works Micro-Schedule Activity.
- (d) Project Co shall ensure that Works Micro-Schedule Milestones dates and the Works Micro-Schedule Activities dates and durations indicated on the Works Micro-Schedule correspond to the Works Milestone dates and Works Activity dates and durations of the then current Progress Works Schedule.
- (e) Upon Contracting Authority’s request, Project Co shall provide a drawing of the affected Works, which shall clearly illustrate the sequence and timing of the Construction Activities depicted in any Works Micro-Schedule.
- (f) Project Co may request, for consideration by Contracting Authority, acting reasonably, that Project Co be permitted to provide a Works Micro-Schedule in Excel or MS Project.

12. REPORT ON BASIS OF WORKS SCHEDULE

12.1 Contents of the Report

- (a) With each of the Interim Baseline Works Schedule, the Baseline Works Schedule, the Revised Baseline Works Schedule (if applicable) and each Recovery Works Schedule (if applicable), Project Co shall submit a report on the basic principles underlying the applicable Interim Baseline Works Schedule, the Baseline Works Schedule, the Revised Baseline Works Schedule or the Recovery Works Schedule (each a “**Basis of Works Schedule Report**”).
- (b) Project Co shall ensure that each Basis of Works Schedule Report submitted by Project Co includes a black-lined document comparing the then current version to the immediately previous version of the Basis of Works Schedule Report clearly indicating the changes made by Project Co to the Basis of Works Schedule Report from the immediately previous version.
- (c) Project Co shall ensure that each Basis of Works Schedule Report includes at least the following content and sections:
 - (i) a cover page including the title “Report on the Basis of Works Schedule”, the Project title, date of the report, issuance date, version date, and the version number of the associated Project Works Schedule, and the signature of the Project Co Representative who has approved the report;
 - (ii) “Section 1 – Implementation Strategy”, including a written narrative of no less than 750 words describing the overall approach, proposed sequencing and work plan to complete the Works to achieve Substantial Completion and Final Completion;
 - (iii) “Section 2 – Critical Path Risk”, including a narrative in tabular form describing the risks to completing the critical path activities to achieve Substantial Completion, and Project Co’s strategy to mitigate or avoid these risks;
 - (iv) “Section 3 – Planned Working Calendar” including a table defining each of the schedule calendars. For each calendar include the Working Days (days of the week), normal working hours, number and hours of any shifts, and a list of all assumed non-Working Days for any part of the Works (such as holidays, environment restricted work windows, and other similar concepts);
 - (v) “Section 4 – Means and Methods”, including an executive summary of the intended means and methods for all Works Activities (Level 3) and include for each a short narrative on the type of work, any constructability issues and if the work will be self-performed by the Construction Contractor or sub-contracted;
 - (vi) “Section 5 – Resource Plan”, including for all Works Activities (Level 3):
 - (A) number of teams and team composition (that is, staffing requirements), including subcontractor work;
 - (B) number and type of heavy machinery or equipment;
 - (C) anticipated resource constraints (such as union related constraints and limits to the number of any specific heavy machinery available in the region);

- (D) a written narrative of no less than 250 words describing how Project Co intends to meet the resource requirements; and
 - (E) for all automatic resource leveling functionality used by Project Co, in accordance with Section 1.6(c) of Appendix A, Project Co shall include resource limits that will be allocated for each case;
- (vii) “Section 6 – Planned Production Rates”, including a table listing each Works Activity (Level 3) and indicating for each:
- (A) the assumed production rate for each activity expressed as a quantity per Working Day (units/day, ton/day, m/day, m²/day, or m³/day); and
 - (B) the intended schedule calendar or any variance to the normal working hours, such as “restricted to night work” or “Monday to Saturday, 3 x 8 hour shifts”.
- For clarity, each Works Activity (Level 3) shall only be listed once in the table, even though more than one instance of the activity type is indicated in the applicable Project Works Schedule unless more than one team or calendar configuration is intended;
- (viii) “Section 7 – General Assumptions”, including any other assumptions used by Project Co to generate the schedule including but not limited to any known or foreseeable constraints or restrictions such as weather, traffic, environmental, utilities, and other similar concepts;
- (ix) “Section 8 – Planned Value Curve”, including a graphical and tabular representation of the cost loaded schedule showing the cost per month and the cumulative curve; and
- (x) “Section 9 – Planned Labour Resource Curve”, including a graphical and tabular representation of the resource loaded schedule showing the hours per month per trade and the cumulative curve.

13. WORKS SCHEDULE REPORT

13.1 Content of the Works Schedule Reports

- (a) Project Co shall submit a report with each Progress Works Schedule (except for the Works Micro-Schedule) for review by Contracting Authority in accordance with Schedule 10 – Review Procedure (each a “**Works Schedule Report**”).
- (b) Project Co shall ensure that each Works Schedule Report includes at least the following content and sections:
 - (i) a cover page including the title “Works Schedule Report”, the Project title, date of the report, issuance date, version date, the version number of the relevant Progress Works Schedule, and the signature of the Project Co Representative approving the report;
 - (ii) “Section 1 – Executive Summary”, including an executive summary of progress of the Works, noteworthy milestones achieved, schedule variances, and issues and risks that have or that may impact the schedule;

- (iii) “Section 2 – Schedule Analysis” including a schedule analysis, as it exists for the Progress Works Schedule that the Works Schedule Report is applicable to, that includes:
 - (A) the projected Handover dates;
 - (B) the projected Substantial Completion Date compared to the then current Scheduled Substantial Completion Date;
 - (C) total float, calculated as the difference between the then current Scheduled Substantial Completion Date and the date of Substantial Completion of the last Works Activity on the critical path of the Progress Works Schedule to achieve Substantial Completion, expressed in calendar days;
 - (D) a total float graph showing the historically calculated total float values for each month from Financial Close up to the applicable reporting period, including the total float for the applicable Progress Works Schedule; and
 - (E) a summary schedule indicating the then current critical path calculated using the applicable Progress Works Schedule;
- (iv) “Section 3 – Variances” that includes the following information, as it exists for the Progress Works Schedule that the Works Schedule Report is applicable to:
 - (A) a narrative explaining the basis for any required changes to the sequencing of the Works, interdependencies, original activity durations as set out in the Progress Works Schedule;
 - (B) a table entitled “Milestone and Critical Path Variances” listing all Works Milestones and all critical path activities and, for each Works Milestone and critical path activity where the variance exceeds five Business Days from the immediately previous Progress Works Schedule, the following information:
 - (I) the activity or milestone identification number and name;
 - (II) the baseline start and end date in accordance with the Interim Baseline Works Schedule, the Baseline Works Schedule, the Revised Baseline Works Schedule or each Recovery Works Schedule, as applicable;
 - (III) the planned start and end date set out in the immediately previous Progress Works Schedule;
 - (IV) the forecast start and end date, or, if applicable, the actual start and end date, as set out in the associated Progress Works Schedule and a clear identification of any Works Milestones to be achieved by Project Co in the next 12 week period;
 - (V) the physical percentage completion, or status;
 - (VI) the total variance calculated as the forecast end date minus the end date shown in the immediately previous Progress Works Schedule, expressed in Working Days;

- (VII) the reporting period variance calculated as the forecast end date minus the end date shown in the immediately previous Progress Works Schedule, expressed in Working Days; and
- (VIII) a brief narrative on any actual or forecasted delays or problems that might have an impact on the scheduled completion dates of the Works in the Progress Works Schedule and a discussion of the measures being (or to be) adopted by Project Co to overcome them;
- (C) the total number of near-critical activities, together with a table entitled “New Near-Critical Activities”, listing all Works Activities that have become near critical with a float of less than 10 Working Days during the last reporting period; and
- (D) a table entitled “Schedule Logic Changes” listing any:
 - (I) addition, deletion or changes to activity relationships;
 - (II) addition or deletion of activities;
 - (III) changes to activity durations; and
 - (IV) changes to milestones, and any other changes;
- (v) “Section 4 – Resources”, including
 - (A) a graphical and tabular presentation by resource of the utilization of resources in the Works clearly showing the baseline planned resources hours, actual hours, earned hours based on baseline planned work completed and estimate to complete hours; and
 - (B) a report on the availability of resources for the Works noting the percentage of resources secured versus the peak requirement from the baseline and current forecast to complete of each resource;both reported for Works Activities at Level 3;
- (vi) “Section 5 – Progress Performance Management”, including
 - (A) a report, in the form set out in Appendix B – EVM Reporting Requirements, of each of the following in tabular and graphical form:
 - (I) S-Curve showing Planned Value vs. Earned Value;
 - (II) Schedule Performance Index “SPI” trend over time;
 - (III) Cost Performance Index “CPI” trend over time; and
 - (IV) a Variance Analysis Report,(collectively, the “**Earned Value Metrics**”) in accordance with the Project Management Institute’s *Practice Standard for Earned Value Measurement – Second Edition*; and
 - (B) a report of each of the Earned Value Metrics,

- (I) for the entire Project;
- (II) for each Works location, including the OMSF, Stops, Interchanges, and at-grade locations, by phase or by segment; and
- (III) for each major type of Works Activity, including:
 - (1) design (each design/engineering discipline to be reported separately);
 - (2) Site investigation;
 - (3) Utility Work;
 - (4) drainage;
 - (5) pavement work and streetscaping;
 - (6) concrete work;
 - (7) mechanical and electrical work;
 - (8) steel work;
 - (9) track work;
 - (10) train controls and signalling;
 - (11) traffic signals and crossing protection;
 - (12) traction power supply;
 - (13) traction power distribution;
 - (14) communications;
 - (15) testing and commissioning; and
 - (16) architectural work;
- (vii) “Section 6 – Potential Delay Events”, including a register of all potential Delay Events pursuant to Section 40.2(a) of the Project Agreement and including for each potential Delay Event a description of the circumstance and nature of the claim, the date on which the Notice required pursuant to Section 40.2(a) of the Project Agreement was given by Project Co, and the date on which the details required by Sections 40.2(b) and 40.2(c) of the Project Agreement, the mitigation strategy implemented by Project Co, and the current status of mitigation measures; and
- (viii) “Section 7 – Contracting Authority Submittal Review”, including an updated Review Procedure Activities Register pursuant to Schedule 10- Review Procedure.

14. RECOVERY WORKS SCHEDULES

14.1 Failure to Maintain Schedule for the Works

- (a) Without limiting any other provision of this Project Agreement but subject to Section 40 of the Project Agreement, if, at any time, Contracting Authority is of the opinion that:

- (i) the actual progress of the Works has fallen significantly behind progress of the Works set out in the Baseline Works Schedule;
 - (ii) Project Co will not achieve Substantial Completion by the Scheduled Substantial Completion Date; or
 - (iii) Project Co will not achieve Substantial Completion by the Longstop Date;
- then Contracting Authority may give Notice to Project Co that Contracting Authority requires Project Co to submit a schedule to recover the delay (each a “**Recovery Works Schedule**”) and a report supporting the Recovery Works Schedule (a “**Recovery Works Schedule Report**”) in accordance with Section 14.1(b).
- (b) No later than five Business Days after the last day of the month in which Project Co receives a Notice from Contracting Authority pursuant to Section 14.1(a), Project Co shall, in lieu of submitting a Progress Works Schedule for the applicable month or a Works Schedule Report for that month, prepare and submit to each of the Contracting Authority Representative and the Independent Certifier:
 - (i) a Recovery Works Schedule in accordance with the requirements of Section 14.1(d); and
 - (ii) a Recovery Works Schedule Report, in accordance with the requirements of Section 14.1(e).
 - (c) Project Co shall ensure that the Recovery Works Schedule and the Recovery Works Schedule Report, taken together, explain the causes of the delay in the progress of the Works (irrespective of whether such delays are Delay Events) and set out a strategy that is compliant with the Project Agreement and will be implemented by Project Co to eliminate or reduce the delay and,
 - (i) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
 - (ii) if Substantial Completion cannot be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion before or by the Longstop Date.
 - (d) Project Co’s Recovery Works Schedule shall,
 - (i) be based on the terms and conditions of the Project Agreement, without amendment;
 - (ii) comply with the Progress Works Schedule requirements set out in Section 10(b);
 - (iii) be entitled “Recovery Works Schedule”;
 - (iv) have activities which are Traceable to those that appeared in the Baseline Works Schedule and in the immediately previous Progress Works Schedule; and
 - (v) indicate the variance between the Recovery Works Schedule and,
 - (A) the immediately previous Progress Works Schedule; and
 - (B) the Baseline Works Schedule.
 - (e) Project Co’s Recovery Works Schedule Report shall,
 - (i) comply with the requirements of a Works Schedule Report as set out in Section 13.1;

- (ii) be entitled “Recovery Works Schedule Report”;
- (iii) set out, in detail and in narrative form, the delays experienced by Project Co in carrying out the Works, including both delays which are and are not Delay Events;
- (iv) set out, in detail and in narrative form, the commercially reasonable mitigation measures being taken by Project Co to mitigate the delay and Project Co’s plan to continue the mitigation measures until Substantial Completion;
- (v) provide, in narrative form, an explanation of the variances between the Recovery Works Schedule and,
 - (A) the immediately previous Progress Works Schedule; and
 - (B) the Baseline Works Schedule; and
- (vi) provide a revised Basis of Works Schedule Report detailing the assumptions used to generate the Recovery Works Schedule being submitted.
- (f) For clarity, Contracting Authority may require Project Co to meet the requirements of Sections 14.1(b), 14.1(c), 14.1(d) and 14.1(e) each time Contracting Authority reaches the opinion set out in Section 14.1(a).
- (g) Project Co shall notify the Contracting Authority Representative if, at any time Project Co is aware of any development relating to the Project that may reasonably be expected to affect
 - (i) Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date; or
 - (ii) the functionality or the cost of the Project.
- (h) Contracting Authority may, acting reasonably, give notice to the Lenders’ Agent pursuant to Section 13 of the Lenders’ Direct Agreement that Project Co is failing to maintain the schedule, together with the relevant information supporting Contracting Authority’s opinion that Project Co is failing to maintain the schedule.
- (i) For greater certainty, provided that Project Co has complied with this Section 14 and is not in default under Section 45.1(a)(iii) of the Project Agreement, the failure to achieve Substantial Completion by the Scheduled Substantial Completion Date, on its own, shall not be a Project Co Event of Default for the purposes of Section 45.1(a)(v) of the Project Agreement.
- (j) Once the Recovery Works Schedule has been accepted by Contracting Authority in accordance with this Schedule 12, it shall be considered the Progress Works Schedule for the month for which it replaced the Progress Works Schedule.

15. PROJECT SCHEDULES QUALITY MANAGEMENT PLAN

- (a) Within 30 days following Financial Close, Project Co shall submit the Project Schedules Quality Management Plan for review by Contracting Authority in accordance with Schedule 10 – Review Procedure.

- (b) In the Project Schedules Quality Management Plan, Project Co shall include and implement a process to:
- (i) audit the Baseline Works Schedule and every updated Project Works Schedule thereafter to confirm conformance with the requirements of the Project Agreement. The audit report shall be submitted with the draft of the Baseline Works Schedule, and every updated Project Works Schedule thereafter; and
 - (ii) audit the Project Works Schedules on a quarterly basis to confirm conformance to the requirements of the Project Agreement, and to confirm the accuracy of the progress and as-built information. Project Co shall submit the audit report to Contracting Authority no later than 10 Business Days after any audit,

in each instance the audit report shall be reviewed and signed by the Project Scheduler, Quality Director and the Project Co Representative.

APPENDIX A

PROJECT SCHEDULE TECHNICAL REQUIREMENTS**1.0 PROJECT SCHEDULE TECHNICAL REQUIREMENTS****1.1 Software Requirements**

- (a) Project Co shall identify all Works Activities in,
 - (i) a graphical, time-scaled, horizontal bar chart format; and
 - (ii) a geographic, time-location schedule.
- (b) Project Co shall generate the Project Works Schedules using Primavera P6 Professional Release: 8.3.0 or newer, to the satisfaction of Contracting Authority to support the completion of the Works in accordance with Section 22.1 of the Project Agreement. If Project Co recommends, and Contracting Authority approves, the use of scheduling software other than Primavera or Trimble TILOS, Project Co shall provide four licences and all software updates for the duration of the Project Term for use by Contracting Authority. If software-specific terminology is used in this Schedule 12 to define specific requirements, Project Co shall implement measures to achieve a similar or higher level of scheduling control, quality, content and output regardless of the software used to generate the schedules.
- (c) Project Co shall ensure that each Project Works Schedule submitted to Contracting Authority shall be submitted in the following file formats:
 - (i) the native file format of the software used to generate and manage the Project Works Schedules, which shall be the exported .XER file for Primavera and .HSP files for TILOS, fully compliant with all requirements of this Project Agreement. The native file shall be fully calculated and in a stable state; and
 - (ii) two, word searchable high-resolution colour Portable Document Format (.PDF) version of each Project Works Schedule with one showing all content to demonstrate conformance with the Project Agreement, showing each start date, finish date, and duration, and the other only showing the critical and near critical path activities.
- (d) Project Co shall submit all tabular information including numerical data or calculations in two electronic soft copy file formats. The first format shall be in the native form such as the Microsoft Excel file format that would allow Contracting Authority to review the data and formulas for the purpose of evaluation and the second format shall be a high resolution PDF version.
- (e) Project Co shall create and maintain a register detailing the submission of each of the Project Works Schedule document sets. The register shall include the Project Works

Schedule document title, submission date, publish date, Data Date, revision and version number. The updated register shall be included with each Project Works Schedule submission.

- (f) Upon Contracting Authority's request, Project Co shall provide the details of the software and any additional software plug-ins used by Project Co, a copy of any templates, and the details for any software settings it has used in its scheduling software, such as calendar settings, user and administrative preferences, schedule settings, and any other information required to enable Contracting Authority to replicate the Project Works Schedules submitted by Project Co using the native file formats provided by Project Co.

1.2 Title Block Requirements

- (a) Project Co shall include in the title-block of each of the Project Works Schedules:
 - (i) Project title;
 - (ii) unique project identifier number;
 - (iii) unique document identifier number;
 - (iv) title of the document (i.e. "the type of Project Works Schedule being submitted");
 - (v) Project Works Schedule (baseline) Version number, and the date on which the Project Works Schedule was agreed; If the Project Works Schedule has not been agreed, state "not-agreed";
 - (vi) Data Date;
 - (vii) version and revision number;
 - (viii) author name;
 - (ix) date on which the document was published for distribution (PDF Date); and
 - (x) any other information as required pursuant to the Project Agreement.

1.3 Guides and Standards

- (a) In addition to complying with the provisions of the Project Agreement and this Schedule 12, Project Co shall provide all Project Works Schedules in accordance with the following:
 - (i) A Guide to the Project Management Body of Knowledge (PMBOK® Guide)-Sixth Edition;
 - (ii) Construction Extension to the PMBOK Guide -Third Edition;

- (iii) AACE International Recommended Practice, “Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction”;
- (iv) The Practice Standard for Work Breakdown Structures - Second Edition;
- (v) The Practice Standard for Scheduling - Second Edition; and
- (vi) The Practice Standard for Earned Value Management - Second Edition.

1.4 Dates

- (a) Project Co shall include the following dates in each of the Project Works Schedules:
 - (i) if access to any part of the Lands is projected to be needed for longer/longer than provided in Schedule 35 – Lands, the date that Project Co will cease to need access to such part of the Lands (for clarity, this will not entitle Project Co to such access);
 - (ii) the dates any acceptances are required by Contracting Authority;
 - (iii) the dates Project Co will provide equipment or assets to Contracting Authority; and
 - (iv) the dates that Project Co requires specific information is needed from third parties.

1.5 General Requirements for Project Works Schedules

- (a) For each Works Activity, Works Milestones or any other activity or Milestone Event included in the Project Works Schedules, the Project Works Schedules shall, at a minimum, provide:
 - (i) a unique activity identification number (ID) and name or description using consistent and intuitive terminology that would be understandable to Contracting Authority and only using activity descriptions that begin with a verb or work function followed by an object, where the description shall not include percentages and shall, where applicable, contain a location and physical dimension;
 - (ii) early and late start dates, each with a starting time set as the intended work start time for each Working Day, but in any event before noon of the specific day;
 - (iii) early and late finish dates, each with a finish time set as the intended work finish time for each Working Day, but in any event after noon of the specific day;
 - (iv) original planned duration as defined by the Baseline Works Schedule, indicated as Working Days and not calendar days, which duration shall be the most-likely

duration and used for the critical path calculation and shall be at least one Working Day long. Zero duration activities shall be coded as milestones and not activities;

- (v) for every Works Activity on the critical path or any Works Activity with a float less than 20 Working Days, shortest expected activity duration, to be used for schedule probability and sensitivity analysis;
- (vi) for every Works Activity on the critical path or any Works Activity with a float less than 20 Working Days, longest expected duration, to be used for schedule probability and sensitivity analysis;
- (vii) physical per cent completion with all activities using the same percentage completion type representing the physical completion of the activity (activities shall not use any other completion type such as duration completion or payment percentage);
- (viii) remaining duration, manually entered or calculated when entering the physical per cent completion and the expected finish date;
- (ix) expected finish date, manually entered or calculated when entering the physical per cent completion and the remaining duration;
- (x) actual duration for all completed activities;
- (xi) calendar assigned;
- (xii) total float or slack (i.e. the amount of time that the activity can be delayed without delaying the Substantial Completion Date);
- (xiii) free float (that is, the amount of time that the activity can be delayed without delaying the early start of its successor activity);
- (xiv) relationship with other activities and milestones;
- (xv) activity or milestone lag;
- (xvi) quantity representing the primary physical dimension of the Works element resulting from the activity as agreed with Contracting Authority (for example, linear meter of wall, square meter of tiles or concrete paving, number of doors) in accordance with the following:
 - (A) each activity with a cost value shall have an associated quantity, where no definable dimension exists, the unit type shall be “sum” and the quantity shall be set to “1”; and

- (B) the quantity shall be purely used as an indicator of level of efforts and production rate estimated and is not to be used for Earned Value calculations;
 - (xvii) quantity unit, which shall include: “units”, “m”, “m²”, “m³”, “ton” or “sum”;
 - (xviii) resources employed to achieve the activity;
 - (xix) user-defined field “Responsible” to indicate the related activity code defining the entity responsible to complete the Works Activity or Works Milestone, including Contracting Authority, any third party, Project Co self-performance, or Project Co subcontractor;
 - (xx) user-defined fields, in a format and referencing system agreed to with Contracting Authority, including the required geographic location data for each Construction Activity to allow Project Co and/or Contracting Authority to link the Construction Activity information to a geographic information system (“GIS”) or building information system (“BIS”) as may be applicable, to enable geographic based analysis and/or to present the schedule information in a time-location format;
 - (xxi) any other user-defined fields, as needed to comply with the requirements of the Project Agreement; and
 - (xxii) Earned Value data of the Works Activities to satisfy the Earned Value Metrics by location and work type as per Schedule 12.
- (b) Project Co shall use the activity codes set out in the Program Controls Coding Guidelines’, Metrolinx Rapid Transit Program, RTI-AP-GDE-003, Version 0 (and successor documents), as supplemented by ‘Standard Cost Codes for Capital Projects – Definitions’, US Federal Transportation Administration, rev16 June 2014.

1.6 Sequencing Logic

- (a) Project Co shall use unconstrained sequencing logic and shall not use imposed date constraints to replace or limit sequencing logic for any Works Activity or Works Milestone, except for the first starting milestone defining the Financial Close date and a Baseline Tracking Milestone unless it is impossible to sequence the Works otherwise, Project Co shall sequence the Works in accordance with the following:
 - (i) When a constraint is used it shall only be of the “start-no-earlier than” or “finish-no-later than” constraint types;
 - (ii) For every imposed date constraint used Project Co shall provide a narrative in the Basis of Works Schedule Report detailing the reason for using the imposed date

constraint and the scheduling methodology used to prevent inaccuracy when calculating the critical path and available float; and

- (iii) Project Co shall refrain from the “Expected Finish”, “Start On”, “Finish On”, “Mandatory Start”, “Mandatory Finish”, or any other similar constraint type, nor any other constraint type that would impact on the float calculations to determine the critical path;
- (b) include inter-relationships and logic dependencies between all Works Activities, Works Milestones or any other activities or milestones included in the Project Works Schedules, and Project Co shall:
- (i) use closed-sequence logic, each Works Activity shall have at least one predecessor and at least one successor, and each Works Activity shall have a start and a finish relationship;
 - (ii) use closed-sequence logic for each Works Milestone shall have at least one predecessor except for the first Works Milestone denoting Financial Close, and have at least one successor except for the last Works Milestone denoting the Final Completion Date, and each Works Milestone except for the first and last shall have a start and a finish relationship, and with the exception of a Baseline Tracking Milestone that shall not be linked to any other Works Activity or Works Milestone;
 - (iii) not use the start-to-finish (SF) activity relationship type between activities unless otherwise agreed to by Contracting Authority;
 - (iv) for each start milestone only define a finish-to-start (FS) or start-to-start (SS) relationship with its predecessor, a start-to-start (SS) or start-to-finish (SF) relationship with its successor, a start-to-start (SS) relationship with any other start milestone, or a start-to-finish (SF) relationship to a finish milestone;
 - (v) for each finish milestone only define a finish-to-finish (FF) or start-to-finish (SF) relationship with its predecessor, a finish-to-start (FS) or finish-to-finish (FF) relationship with its successor, a finish-to-start (FS) relationship to any other start milestone, or a finish-to-finish (FF) with any other finish milestone;
 - (vi) not use a negative lag between any Works Activities and/or Works Milestones;
 - (vii) only use positive lag between Works Activities and/or Works Milestones to model a specific waiting duration for a process directly related to the preceding Works Activity (e.g. concrete curing time);
 - (viii) for any two Works Activities or Works Milestones with a start-to-start (SS) relations define a lag no longer than the duration of the predecessor duration;

- (ix) not use reverse logic, a Works Activity shall not have a finish-to-finish relationship with a predecessor, and a Works Activity shall not have a start-to-start (SS) relationship with a successor; and
 - (x) only define one relationship per activity or milestone pair, except for the finish-to-finish (FF) and start-to-start (SS) relationship pair that may be used together for an activity or milestone pair;
- (c) Project Co shall be permitted to use automatic resource leveling functionality in the scheduling software subject to the following conditions:
- (i) Project Co shall allocate resource limits and report them in Section 5 - Resource Plan of the Basis of Works Schedule Report;
 - (ii) Project Co shall amend the software settings to preserve scheduled early dates and late dates;
 - (iii) Project Co shall amend the software settings to allow zero over-allocation of resources;
 - (iv) Project Co shall be limited to levelling resources within the total float of an activity;
 - (v) Project Co shall ensure levelled resources do not impact critical path; and
 - (vi) Project Co shall ensure a minimum total float of 10 days is preserved for any resource levelling used.
- (d) Project Co shall ensure that Project Works Schedule shall reflect the constraints related to allowable hours of work on the Site, inclement weather, environmental work windows, or any other schedule related restrictions in establishing the calendars, logical relationships and durations for the activities.

1.7 Calendars

- (a) Project Co shall define and use appropriate non-global project level activity based calendars, and for each calendar define:
- (i) a descriptive calendar name using intuitive terminology that would be understandable to Contracting Authority;
 - (ii) the intended Working Days and working hours conforming to the requirements of the Project Agreement and any other governing approvals and permits that are used as the basis for critical path calculations, and all non-Working Days;

- (iii) all non-Working Days including, but not limited to, all public holidays, winter shut-down, any environmental restricted time periods for the full project timeframe;
 - (iv) the first day of each work week as a Monday; and
 - (v) the starting time for each Working Day to the intended normal starting time, but in any event no later than noon, and set the finish time for each Working Day to the intended normal finish time, but in any event no earlier than noon of the day;
- (b) Project Co shall not use global calendars and shall minimize the number of calendars used.
 - (c) Project Co shall specify activity durations using only full Working Days and shall not use fractional durations (for example, Project Co shall not use 5.5 days).

1.8 Work Activity Level of Detail

- (a) Project Co shall ensure that the Project Works Schedules define the Works Activities to a level of detail that would limit any Works Activity value to a value no greater than 5% of the total Construction Contract value.
- (b) Subject to the Parties otherwise agreeing, Project Co shall ensure that durations for any Works Activity, except for single process-step activities (such as manufacturing time, and design and delivery periods), and “hammock” activities are as follows:
 - (i) any Works Activity within 180 calendar days of the Data Date, shall be no less than one calendar day and no more than 30 calendar days;
 - (ii) any Works Activity that is not within 180 calendar days of the Data Date, shall be no less than one calendar day and no more than 90 calendar days; and
 - (iii) any Works Micro-Schedule Activities duration shall be no more than five Working Days.
- (c) Project Co shall ensure that the Project Works Schedules provide the crewing or equipment resource levels for the activities and the dependency logic that is governed by or represents crewing or equipment availability.

1.9 Critical Path

- (a) Project Co shall determine and indicate the critical path applicable to achieve Substantial Completion in each Project Works Schedule. The critical path shall:
 - (i) be calculated using the “retained-logic” scheduling methodology and shall not use a progress override option;

- (ii) not include any “level of effort” type activities, all activities on the critical path shall be either task-dependent activities or milestones;
 - (iii) be the result of an unmodified software calculation of the critical path using the critical path method. Project Co shall not employ any additional filters or any other manual manipulation whatsoever to calculate the critical path;
 - (iv) be continuous and logic driven;
 - (v) consist only of activities with a float of zero; and
 - (vi) in situations where the same critical path is not identified as calculated using the software’s various standard critical path filters, provide all critical path alternatives together with Project Co’s narrative on which critical path is most representative of the Works.
- (b) If required to do so by Contracting Authority, Project Co shall indicate all activities with a total float of up to 20 Business Days.

APPENDIX B

EVM REPORTING REQUIREMENTS

The EVM Reporting Requirements are set out in the attached Excel document entitled, “EVM Reporting Requirements”.

SCHEDULE 13

PROJECT CO PROPOSAL EXTRACTS

[REDACTED]

SCHEDULE 14
COMMISSIONING

1. DEFINITIONS

1.1 In this Schedule 14, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 14) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Commissioning”** means the commissioning activities to be carried out by Project Co, in accordance with the Commissioning Program, in order to achieve Handover or Substantial Completion and includes the successful inspection, testing, verification and acceptance of the systems, facilities, infrastructure and equipment as designed, constructed and installed by Project Co in accordance with the Project Agreement.
- (b) **“Commissioning Brief”** has the meaning given in Section 2.2(a)(i).
- (c) **“Commissioning Manuals”** has the meaning give in Section 2.2(a)(v).
- (d) **“Commissioning Plan”** has the meaning given in Section 2.4(a).
- (e) **“Commissioning Program”** means all activities and requirements related to commissioning, including the associated commissioning standards, submittals and commissioning obligations as set out in this Schedule 14 – Commissioning and in Schedule 15 – Output Specifications.
- (f) **“Commissioning Schedule”** has the meaning given in Section 2.2(a)(iv).
- (g) **“Commissioning Submittals”** has the meaning given in Section 2.2.
- (h) **“Commissioning Team”** has the meaning given in Section 2.5(a).
- (i) **“Commissioning Test Plan and Procedures - Systems”** has the meaning given in Section 2.2(a)(iii).
- (j) **“Driver”** has the meaning given in Schedule 15 - Output Specifications.
- (k) **“Maximum Service Level”** has the meaning given in Schedule 15 - Output Specifications.
- (l) **“Non-Conformance”** has the meaning given in Schedule 11 – Quality Management.
- (m) **“Operations Service Plan”** has the meaning given in Schedule 15 - Output Specifications.
- (n) **“Overhead Catenary System”** has the meaning given in Schedule 15 - Output Specifications.

- (o) “**Project Co Commissioning Manager**” has the meaning given in Section 2.3(a).
- (p) “**Reference Documents**” has the meaning given in Schedule 15 – Output Specifications.
- (q) “**Revenue Service Demonstration**” has the meaning given in Section 4.1.
- (r) “**Revenue Vehicle Inspections**” has the meaning given in Section 3.1(a).
- (s) “**Witness and Hold Points**” has the meaning given in Schedule 11 – Quality Management.

2. PROJECT CO’S COMMISSIONING RESPONSIBILITIES

2.1 Project Co’s General Commissioning Responsibilities

- (a) Project Co shall provide Project Co System Infrastructure and New Third Party Infrastructure that has achieved full Commissioning in accordance with the requirements of the Project Agreement.
- (b) Project Co shall plan, schedule, coordinate and execute the Commissioning of all Project Co System Infrastructure and New Third Party Infrastructure in accordance with the Commissioning Program, including, for clarity, the commissioning of all Revenue Vehicles, Guideway, Civil Structures, Systems and Facilities.
- (c) Project Co shall, as part of the Commissioning Program, obtain all Commissioning prerequisites and credits required to achieve LEED certification of the Hurontario OMSF as set out in Schedule 15 – Output Specifications and Section 23 of the Project Agreement.
- (d) Project Co shall, prior to and as a pre-condition of achievement of Handover of New Utility Company Infrastructure, submit to Contracting Authority for review in accordance with Schedule 10 – Review Procedure, final Record Drawings in the following formats and quantities:
 - (i) four CDs/DVDs;
 - (ii) one full size hard copy set; and
 - (iii) one reduced size hard copy set;

unless specified otherwise by Contracting Authority and unless final Record Drawings are not reasonably available at the time of Commissioning of the New Utility Company Infrastructure, in which case, Project Co shall:

- (iv) provide red-lined As-Built Drawings within ten Business Days after final inspection of the New Utility Company Infrastructure; and
- (v) provide final Record Drawings within 30 days of Handover of such New Utility Company Infrastructure.

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- (e) Project Co shall execute the Commissioning of all New Third Party Infrastructure in accordance with the Project Agreement. Without limiting the foregoing or any other provision of the Project Agreement, Project Co shall also comply with all requirements in
- (i) Appendix A of this Schedule 14 – Commissioning in respect of, among other things, testing and Commissioning of New City of Mississauga Infrastructure;
 - (ii) Appendix B of this Schedule 14 – Commissioning in respect of, among other things, testing and Commissioning of New City of Brampton Infrastructure;
 - (iii) Appendix C of this Schedule 14 – Commissioning in respect of, among other things, testing and Commissioning of New Region of Peel Infrastructure;
 - (iv) Appendix D of this Schedule 14 – Commissioning in respect of, among other things, testing and Commissioning of New MTO Infrastructure;
 - (v) Appendix E of this Schedule 14 – Commissioning in respect of, among other things, testing and Commissioning of New 407 ETR Infrastructure; and
 - (vi) Appendix F of this Schedule 14 – Commissioning in respect of, among other things, testing and Commissioning of New Metrolinx Infrastructure.
- (f) Project Co shall obtain the Commissioning prerequisites, Project Co Permits, Licences and Approvals and credits required to achieve the certifications for New Third Party Infrastructure required by the Project Agreement, including
- (i) joint planning, joint review, and working groups with applicable third parties; and
 - (ii) working with the Independent Certifier.
- (g) Project Co shall be solely responsible for all checking and verification activities relating to individual components, sub-systems, equipment and facilities associated with the Project Co System Infrastructure and the New Third Party Infrastructure that are required prior to Commissioning and that are necessary to demonstrate the fully integrated operation and successful Commissioning of the Project Co System Infrastructure and the New Third Party Infrastructure, to the satisfaction of the Independent Certifier.
- (h) Project Co shall ensure that each element of the Project Co System Infrastructure and the New Third Party Infrastructure is, where applicable, thoroughly tested and commissioned as standalone subsystems operating in simulated worst case environments prior to being placed into service.
- (i) Project Co shall supply, install, start-up, test, adjust and clean each item of the Project Co System Infrastructure and the New Third Party Infrastructure. Where applicable, Project Co shall complete Commissioning in accordance with the relevant equipment vendor's guidance.

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- (j) Project Co shall ensure that for each element of Fixed Infrastructure an Inspection and Test Sub-Plan is executed for purposes of establishing readiness for intended use:
 - (i) Prior to Revenue Service Demonstration; and
 - (ii) After Revenue Service Demonstration but prior to Substantial Completion.
 - (k) Project Co, as part of Commissioning, shall provide evidence that Non-Conformances associated with Fixed Infrastructure have been remedied in accordance with Schedule 11 – Quality Management.
 - (l) Project Co, as part of Commissioning, shall provide Record Drawings, Design Certificates, and Construction Certificates for the Fixed Infrastructure.
 - (m) Project Co shall provide all necessary labour, materials, equipment, testing apparatus and incidentals necessary to completely start-up, verify, performance test and provide Commissioning of each item of the Project Co System Infrastructure and the New Third Party Infrastructure.
 - (n) Project Co shall provide training with respect to the Project Co System Infrastructure and the New Third Party Infrastructure where necessary to Emergency Services in accordance with Schedule 15 – Output Specifications.
 - (o) For clarity, Project Co shall comply with Good Industry Practice for all Commissioning.
 - (p) For clarity, Contracting Authority accepts no responsibility for Commissioning and Project Co accepts the sole responsibility for Commissioning in accordance with this Schedule 14.

2.2 Project Co's Commissioning Submittals

- (a) Project Co shall prepare and submit the following Submittals to Contracting Authority for review by Contracting Authority in accordance with Schedule 10 – Review Procedure:
 - (i) a commissioning brief, which Project Co shall submit to Contracting Authority, and which shall describe the Commissioning approach to all design items of the Project Co System Infrastructure and the New Third Party Infrastructure included in the Design Brief (the “**Commissioning Brief**”);
 - (ii) the Commissioning Plan;
 - (iii) the test plan and related procedures to verify all Systems elements and equipment, including the following:
 - (A) test objectives;
 - (B) prerequisite training required;
 - (C) test methods;

- (D) test equipment;
 - (E) test schedule;
 - (F) test location;
 - (G) test scenarios;
 - (H) test pass/fail criteria;
 - (I) reference specifications and standards;
 - (J) qualified and trained staffing, including safety certification and training requirements from Contracting Authority and third parties, as required;
 - (K) identification of professional personnel and resumes of those responsible for sign-off;
 - (L) required safety methods; and
 - (M) test reports, results and recommendations,
- (the “**Commissioning Test Plan and Procedures - Systems**”);
- (iv) a detailed Commissioning schedule for each item of Project Co System Infrastructure and New Third Party Infrastructure, which schedule shall be incorporated into the applicable Project Works Schedules (the “**Commissioning Schedule**”);
 - (v) detailed commissioning manuals for each item of Project Co System Infrastructure and New Third Party Infrastructure (the “**Commissioning Manuals**”), which Commissioning Manuals shall include,
 - (A) name and logo as directed by Contracting Authority;
 - (B) name of the Project;
 - (C) project number;
 - (D) identification of each item of Project Co System Infrastructure and New Third Party Infrastructure commissioned;
 - (E) the date each item of Project Co System Infrastructure and New Third Party Infrastructure was commissioned;
 - (F) the signature of the Project Co Commissioning Manager;
 - (G) issue and date;

- (H) document version control;
 - (I) document amendments table;
 - (J) configuration control records;
 - (K) equipment check sheets (start-up, verification and performance) or inspection check sheets, as appropriate, for each item of the Project Co System Infrastructure and the New Third Party Infrastructure; and
 - (L) interim and final acceptance check sheets for each item of the Project Co System Infrastructure and the New Third Party Infrastructure; and
- (vi) operating and maintenance manuals, re-commissioning manual, and configuration control records,

(collectively, the “**Commissioning Submittals**”).

2.3 Project Co Commissioning Manager

- (a) Project Co shall appoint a commissioning manager (the “**Project Co Commissioning Manager**”) to aid Project Co in the performance of its Commissioning obligations.
- (b) Project Co and the Project Co Commissioning Manager shall plan, prepare documentation for, and shall execute, the Commissioning Plan.
- (c) The Project Co Commissioning Manager shall be an individual, company or agency having a minimum of 15 years of experience in the design, construction, commissioning, operations and maintenance of vehicles, systems, equipment and facilities of similar scope and complexity.
- (d) The Project Co Commissioning Manager shall be a Professional Engineer licensed to practice in the Province of Ontario and shall be familiar with and knowledgeable about each of the Commissioning standards and requirements set out in this Schedule 14 and Schedule 15 – Output Specifications.
- (e) The Project Co Commissioning Manager shall submit bi-weekly reports to Contracting Authority in regards to progress of the Commissioning.

2.4 Commissioning Plan

- (a) Project Co shall prepare and execute a verification, test, acceptance and commissioning plan in order to demonstrate the successful Commissioning of the Project Co System Infrastructure and the New Third Party Infrastructure in accordance with the Project Agreement (the “**Commissioning Plan**”).

- (b) Project Co shall submit a draft of the Commissioning Plan, no later than one year prior to the commencement of the first Commissioning activity, to Contracting Authority for review in accordance with Schedule 10 - Review Procedure.
- (c) The Commissioning Plan shall describe, at a minimum, all Commissioning activities to be carried out during each stage of the Project.
- (d) The Commissioning Plan shall include:
 - (i) a description of the relationship of the Commissioning Plan to the Safety Management Plan and the Security Management Plan and other related safety and security requirements;
 - (ii) resumes of key personnel involved detailing years of experience;
 - (iii) organization chart of the Commissioning Team and their discipline responsibilities;
 - (iv) a description of planned resources;
 - (v) specific requirements for Contracting Authority interfaces;
 - (vi) a description of testing regime and test documentation procedures for the Project Co System Infrastructure and for New Third Party Infrastructure;
 - (vii) resource-loaded integrated schedule including all track-side installations of the Commissioning activities;
 - (viii) a summary of the Design Brief and Commissioning Brief and an explanation of the Inspection and Test-Sub-Plan procedures to be used to verify the design intent;
 - (ix) a summary of the Project Co System Infrastructure and the New Third Party Infrastructure design intent and data to be provided by Subcontractors and an explanation of the performance testing procedures or Inspection and Test Sub-Plan procedures to be used to verify the design intent data;
 - (x) a description of the training requirements that will be required and a training schedule for such training activities;
 - (xi) an explanation of the documentation requirements that shall be included in the operating and maintenance manuals, Commissioning Manuals and Record Drawings;
 - (xii) the Commissioning progress management forms and the summary forms to be used for the Commissioning reports;
 - (xiii) identification of the requirements of Commissioning during the Operational Term and the seasonal performance testing process;

- (xiv) the performance testing and the summary forms to be used for the Commissioning reports;
 - (xv) a description of the planned Revenue Service Demonstration;
 - (xvi) a description of safety and security certification and defect correction activities; and
 - (xvii) a noise and vibration compliance measurement plan.
- (e) The Commissioning Plan shall demonstrate
- (i) how Project Co intends to validate and verify all functional, technical, quality and safety requirements, and performance criteria set out in the Project Agreement have been met or exceeded for the Project Co System Infrastructure and the New Third Party Infrastructure;
 - (ii) how the New Third Party Infrastructure is fit for purpose, as set out in Schedule 15 – Output Specifications; and
 - (iii) how the Project Co System Infrastructure as a whole is fit for purpose.
- (f) Project Co shall develop and modify the Commissioning Plan, as required, to address the evolution of the Project.
- (g) Project Co shall formally issue updates to the Commissioning Plan in accordance with progression of the design development of the Project Co System Infrastructure and the New Third Party Infrastructure, as set out in Schedule 10 – Review Procedure.
- (h) The Commissioning Plan shall permit Contracting Authority’s oversight and monitoring of Commissioning activities, with respect to the Project Co System Infrastructure, and shall permit the oversight and monitoring of applicable third parties, with respect to the New Third Party Infrastructure, for the duration of the Project.
- (i) In implementing the Commissioning Plan, Project Co shall verify that,
- (i) the Project Co System Infrastructure and the New Third Party Infrastructure have been installed and are operating in accordance with the requirements of the Project Agreement;
 - (ii) the Project Co System Infrastructure and the New Third Party Infrastructure performance meets or exceeds the requirements of the Project Agreement;
 - (iii) training with respect to the operation and maintenance of the Project Co System Infrastructure and the New Third Party Infrastructure has been provided to the third parties and necessary Project Co personnel and meets or exceeds the requirements of the Project Agreement;

- (iv) Record Drawings, Design Certificates, Construction Certificates and operating and maintenance manuals have been provided in accordance with the Project Agreement;
 - (v) LEED accreditation process submittals and documentation required for achieving the LEED certification has been prepared and copied to Contracting Authority; and
 - (vi) LEED accreditation process submittals and documentation required for achieving the LEED certification has been submitted per the requirements of LEED.
- (j) The Project Co Commissioning Manager shall convene a meeting of the Commissioning Team and the Contracting Authority Representative to review the Commissioning Plan, set Commissioning parameters, designate the responsibilities of the various parties and establish the documentation requirements for each stage of the Commissioning.
- (k) Project Co shall prepare individual test plans or Inspection and Test Sub-Plans for each test of the Project Co System Infrastructure and the New Third Party Infrastructure or part thereof, and provide advance Notice to Contracting Authority and third parties, as applicable, 30 days prior to such testing or inspection. Individual test plans or Inspection and Test Sub-Plans shall be subject to review and acceptance by Contracting Authority and the applicable third parties in accordance with Schedule 10 - Review Procedure.
- (l) In addition to the tests and inspections specified in the Commissioning Plan, Contracting Authority and their representatives, with respect to Project Co System Infrastructure, and the applicable third parties, with respect to New Third Party Infrastructure, shall have the right, acting reasonably, to identify and require Project Co to successfully perform any other testing or verifications relating to Commissioning.

2.5 Commissioning Team

- (a) The commissioning team shall be comprised of:
- (i) a representative of Project Co including, where applicable, Subcontractors;
 - (ii) the Project Co Commissioning Manager;
 - (iii) the Independent Certifier;
 - (iv) the Independent Safety Assessor; and
 - (v) where applicable, representatives of the relevant equipment manufacturers,
- (collectively, the “**Commissioning Team**”).
- (b) Following the date of Financial Close, the Commissioning Team shall meet monthly to review the progress of the Commissioning.

- (c) The Commissioning Team shall oversee the implementation of the Commissioning of the Project Co System Infrastructure and the New Third Party Infrastructure.
- (d) Project Co and each of its Subcontractors shall assign, where applicable, nominated individuals from each relevant trade to the Commissioning Team and shall ensure that representatives of the relevant equipment manufacturers and testing agencies are present during the relevant meetings of the Commissioning Team.
- (e) Project Co acknowledges and agrees that Contracting Authority may, in its sole discretion, add any other individuals to the Commissioning Team for the purpose of overseeing the Commissioning or any part thereof. For clarity, such individuals shall be considered members of the Commissioning Team and shall have the right to attend and participate in any meetings of the Commissioning Team, as directed by Contracting Authority.

2.6 Commissioning Procedures – General

- (a) Project Co shall ensure full compliance with all regulations and codes referenced in the Reference Documents.
- (b) Project Co shall provide training with respect to the Project Co System Infrastructure and, as applicable, the New Third Party Infrastructure to Contracting Authority and in accordance with the following requirements:
 - (i) Project Co shall provide a training schedule and agenda for each training session to Contracting Authority in accordance with Schedule 10 - Review Procedure. Operational and maintenance training shall be provided for all Project Co System Infrastructure and, as applicable, the New Third Party Infrastructure.
 - (ii) The Project Co Commissioning Manager or designated delegate shall attend a sample of every training session to ensure the training schedule and agenda is maintained and that quality training is provided. One training session for each category shall be video recorded in digital format and transmitted to Contracting Authority.
 - (iii) Project Co's design consultants shall provide an overview of the Project Co System Infrastructure and the New Third Party Infrastructure, including an explanation as to why types of systems equipment were selected, identification of the design intent and discussion of the operating procedures required to maintain the design intent. These sessions shall be video recorded in digital format.
 - (iv) The training sessions for equipment shall be conducted at the location of the equipment unless otherwise agreed by the Parties.
 - (v) The training sessions for the Project Co System Infrastructure and, as applicable, the New Third Party Infrastructure shall be conducted at the applicable training centre or operating stations (workstations).

- (vi) Project Co shall log all training sessions and record the personnel receiving training. Project Co shall schedule further refreshers in line with safety, quality and training requirements.

2.7 Coordination and Cooperation

- (a) Project Co and the Project Co Commissioning Manager shall coordinate and cooperate with Contracting Authority, the Independent Certifier and the Independent Safety Assessor throughout the Commissioning process, which coordination and cooperation shall extend to:
 - (i) review of test, verification and performance test forms;
 - (ii) review of Commissioning forms and performance testing;
 - (iii) review of the Commissioning Plan;
 - (iv) review of the Commissioning Schedule;
 - (v) review of the Commissioning Manuals;
 - (vi) sample witnessing of tests and performance testing;
 - (vii) review of the training agenda and scheduling;
 - (viii) review of the training curriculum and materials;
 - (ix) review of the operating and maintenance manuals;
 - (x) sample witnessing of seasonal performance testing;
 - (xi) review of Commissioning reports;
 - (xii) review of safety and security certificates;
 - (xiii) attendance at Commissioning Team meetings; and
 - (xiv) monthly Commissioning reports to Contracting Authority regarding the progress of the Commissioning effort as set out in this Schedule 14 and Schedule 10 – Review Procedure.
- (b) Project Co and the Project Co Commissioning Manager shall cooperate and coordinate with third parties throughout the Commissioning process for each element of the Works which require interfaces with those parties as set out in Schedule 15-3 – Operations and Maintenance Requirements. This co-ordination may include:
 - (i) review of test, verification and performance test forms;

- (ii) review of Commissioning progress management forms;
- (iii) review of the Commissioning progress performance testing;
- (iv) review of the Commissioning Plan;
- (v) review of the Commissioning Schedule;
- (vi) review of the Commissioning Manuals;
- (vii) review of the training agenda and scheduling;
- (viii) review of the training curriculum and materials;
- (ix) review of the operating and maintenance manuals;
- (x) sample witnessing of seasonal performance testing;
- (xi) sample witnessing of tests, where applicable;
- (xii) review of the Commissioning reports, where applicable;
- (xiii) attend Commissioning meetings, where applicable; and
- (xiv) report to those third parties regarding the progress of Commissioning, where applicable.

2.8 Systems Integration Testing

- (a) Project Co's Commissioning shall include the integrated testing of all items of Project Co System Infrastructure set out in Part 1, Part 3 and Part 4 of Schedule 15-2 – Design and Construction Requirements, including the following:
 - (i) Traction Power System;
 - (ii) Overhead Catenary System;
 - (iii) Revenue Vehicles;
 - (iv) Maintenance Vehicles;
 - (v) Signalling and Train Control System;
 - (vi) Operations Control Centre;
 - (vii) Communications and controls, including,
 - (A) Backbone Communications Network;

- (B) Telephone, Intercom and Data Network;
 - (C) Public Address System;
 - (D) Voice and Data Radio System;
 - (E) Underground Distributed Antenna System;
 - (F) Passenger Visual Information System;
 - (G) Closed Circuit Television System;
 - (H) Emergency Trip System;
 - (I) Supervisory Control and Data Acquisition System;
 - (J) Central Alarm Monitoring System;
 - (K) Master Clock System; and
 - (L) Intrusion Access Control System;
- (viii) Fare Collection system;
- (ix) Electromagnetic Interference / Electromagnetic Compatibility;
- (x) Information and Advertising Display Systems; and
- (xi) Corrosion Control System.

2.9 Guideway and Building Systems Testing

- (a) Project Co's Commissioning shall include all Guideway and building system items of the Project Co System Infrastructure, including the following:
- (i) Supervisory Control and Data Acquisition System;
 - (ii) maintenance equipment systems;
 - (iii) site development;
 - (iv) building envelope;
 - (v) elevators and escalators;
 - (vi) fire detection, protection and alarm systems;
 - (vii) plumbing system;

- (viii) HVAC systems;
- (ix) Building Automation Control System;
- (x) electrical system;
- (xi) security and safety systems;
- (xii) Communication Systems;
- (xiii) Closed Circuit Television System;
- (xiv) interfaces with Stations and Stops;
- (xv) Public Address System;
- (xvi) Passenger Visual Information System;
- (xvii) telephone and intercom systems;
- (xviii) Guideway Intrusion Detection System;
- (xix) Intrusion Access Control;
- (xx) sump pumps;
- (xxi) wheel truing;
- (xxii) car washes;
- (xxiii) Drainage systems;
- (xxiv) emergency power generators; and
- (xxv) maintenance and storage facilities.

2.10 Civil Engineering Elements Inspection and Testing

- (a) Project Co's Commissioning shall include inspection and testing of the civil engineering elements of Fixed Infrastructure for purposes of establishing readiness for intended use, including the following:
 - (i) Civil Structures;
 - (ii) Guideway structures and foundations;
 - (iii) Trackwork;

- (iv) Building Structures, foundations, architectural elements and finishes;
- (v) roadways and roadway related infrastructure;
- (vi) landscaping and urban design elements;
- (vii) Overhead Catenary System support structures and foundations, and related infrastructure components; and
- (viii) wayfinding, signage and visual displays.

2.11 Equipment Commissioning

- (a) Unless the Parties otherwise agree, Project Co shall be responsible for de-commissioning, commissioning and re-commissioning each item of equipment required to successfully complete Commissioning in accordance with the acceptance testing procedures (including, without limitation, the results and guidelines for acceptance) proposed by the responsible equipment vendor.

3. REVENUE VEHICLES

3.1 Revenue Vehicle Inspections

- (a) Contracting Authority shall have the right to participate, as an observer, in inspections of the Revenue Vehicles and/or Revenue Vehicle Equipment being carried out by Project Co prior to, at and after the delivery of the Revenue Vehicles and/or Revenue Vehicle Equipment, as applicable, to the Hurontario OMSF (“**Revenue Vehicle Inspections**”). At the election of Contracting Authority, such participation in Revenue Vehicle Inspections shall include:
 - (i) attendance at and monitoring of all testing and commissioning activities for the Revenue Vehicles; and
 - (ii) participation in regular inspections carried out by Project Co.
- (b) Project Co shall provide no less than seven days prior written notice to Contracting Authority of any inspection of the Revenue Vehicles or the Revenue Vehicle Equipment. Contracting Authority may request participation in any inspection being conducted by Project Co or any Project Co Party, and may request the establishment of regular, periodic participation in inspections by making such a request to the Project Co Representative no later than seven days prior to the anticipated inspection date. Project Co shall make commercially reasonable efforts to grant such requests.
- (c) Project Co shall facilitate and schedule all Revenue Vehicle Inspections on behalf of Contracting Authority and shall have a Project Co Representative accompany Contracting Authority on its Revenue Vehicle Inspections.

3.2 Revenue Vehicle Delivery Notice

- (a) Project Co shall provide Contracting Authority with at least five Business Days advance Notice of each Revenue Vehicle delivery.

3.3 Revenue Vehicle Acceptance Testing

- (a) Project Co shall be responsible for conducting and completing all testing and commissioning activities in respect of the Revenue Vehicles and the Revenue Vehicle Equipment, such testing and activities to be carried out in accordance with the specifications and requirements of Revenue Vehicle Manufacturer as set forth in the Revenue Vehicle Supply Contract, and, for certainty, as expressly set forth elsewhere in the Project Agreement. Without limiting the generality of the foregoing, Project Co acknowledges and agrees that its obligations with respect to such testing and commissioning shall include:
- (i) directing all testing, required for each Revenue Vehicle to achieve the requirements for an Acceptance Certificate;
 - (ii) managing all aspects of the actual testing process in accordance with testing protocols; and
 - (iii) exercising all judgement required to determine whether or not a Revenue Vehicle conforms with the requirements of this Project Agreement.
- (b) Project Co shall permit Contracting Authority to monitor all aspects of the acceptance testing in respect of the Revenue Vehicle Deliverables and provide Contracting Authority with all testing information and documentation.

3.4 Revenue Vehicles and System Integration Testing and Commissioning

- (a) Project Co shall carry out all integration activities of or associated with the integration of the Revenue Vehicles and the Revenue Vehicle Equipment into and with the other elements of the Project Co System Infrastructure in accordance with the specifications and requirements of Revenue Vehicle Manufacturer as set forth in the Revenue Vehicle Supply Contract and, for certainty, as expressly set forth elsewhere in the Project Agreement. Without limiting the generality of the foregoing, Project Co shall:
- (i) carry out all required testing and commissioning to integrate the Revenue Vehicles with the Fixed Infrastructure as set out in Article 12 of Part 1 of Schedule 15-2 – Design and Construction Requirements;
 - (ii) develop and follow procedures and protocols to ensure safe movement and storage of the Revenue Vehicles within the Hurontario OMSF, Mainline Track, Connecting Track, or Tail Track;
 - (iii) develop and follow security protocols to secure and protect the Revenue Vehicles movements and storage on the Hurontario OMSF, Mainline Track, Connecting Track or Tail Track; and

- (iv) demonstrate to the satisfaction of the Independent Certifier that all the integrated elements with Revenue Vehicles can meet the requirements of Schedule 15 – Output Specifications.

3.5 Commissioning of Revenue Vehicle Fleet

- (a) Project Co shall conduct and successfully complete all testing and other Commissioning activities in respect of all of the Revenue Vehicles in the Revenue Vehicle Fleet and all associated Revenue Vehicle Equipment prior to and for Substantial Completion. For greater certainty, such testing and other Commissioning activities shall be carried out in accordance with this Schedule 14 – Commissioning and the Output Specifications.

4. REVENUE SERVICE DEMONSTRATION

4.1 Revenue Service Demonstration Objectives

- (a) Project Co shall conduct a Revenue Service demonstration after the integrated Project Co System Infrastructure and New Third Party Infrastructure has been tested and is ready for the commencement of Revenue Service (the “**Revenue Service Demonstration**”). The Revenue Service Demonstration is required as a condition of achieving Substantial Completion.
- (b) Project Co acknowledges and agrees that a fundamental objective of Revenue Service Demonstration is to exercise the complete, integrated Project Co System Infrastructure, including all subsystems, operating personnel and operating procedures, in order to confirm readiness for the commencement of Revenue Service, with the following requirements:
 - (i) to familiarize the operating and maintenance staff with Standard Operating Procedures;
 - (ii) to exercise and validate the operating schedules and operational performance requirements;
 - (iii) to exercise and confirm the operating reliability of the subsystems simulated under various operating conditions (normal and emergency). The basic design requirements and safety and security requirements will have been verified through the testing and the implementation of the Commissioning Plan prior to this stage;
 - (iv) operate a full regular scheduled service using the peak and off-peak schedules for a period of 30 consecutive days at the Maximum Service Level; and
 - (v) practice failure management scenarios that could reasonably be expected to occur in regular Revenue Service.

4.2 Scope of Revenue Service Demonstration

- (a) In carrying out the Revenue Service Demonstration, Project Co shall,

- (i) conduct the trial running for final acceptance which will be conducted for a period of 30 consecutive days;
 - (ii) verify that there are no deficiencies to prevent safe and secure running of the Project Co System Infrastructure; and
 - (iii) provide an adequate number of trained Drivers to operate the Project Co System Infrastructure.
- (b) Passengers shall not be carried during the Revenue Service Demonstration.
 - (c) The Revenue Service Demonstration shall be reviewed on a daily basis by the Commissioning Team.
 - (d) Contracting Authority shall have the right and opportunity to review and comment on the failure management scenarios that will be tested during the Revenue Service Demonstration.

4.3 Performance Criteria for Revenue Service Demonstration Acceptance

- (a) Project Co shall use the Revenue Service Demonstration period to collect operating data and evaluate system reliability, availability, and maintainability performance and to demonstrate that the process to collect, evaluate, and validate the operating data has been properly established. Using prescribed procedures, Project Co shall collect and assign data on service deviations against the specific subsystems or down to the lowest replacement unit level.
- (b) The operational database shall provide verification of system reliability to the lowest replacement unit level. If the cumulative failure of any lowest replacement unit exceeds the appropriate level of the total lowest replacement unit population, up to and including the completion of the reliability acceptance test; Project Co shall redesign and replace the defective subsystem or respected lowest replacement unit.
- (c) Validation of the Revenue Service Demonstration shall be performed by the Independent Certifier and the Independent Safety Assessor.
- (d) The Revenue Service Demonstration of the Project Co System Infrastructure shall demonstrate to the satisfaction of the Independent Certifier that the specified travel times, headways and operational performance requirements set out in Schedule 15 – Output Specifications and the Commissioning Plan can be achieved.

APPENDIX A**NEW CITY OF MISSISSAUGA INFRASTRUCTURE**

For clarity, the obligations of Project Co in this Appendix A are in addition to and not in substitution of any other requirements for Commissioning of the Works and/or any other requirements in respect of New City of Mississauga Infrastructure contained in the Project Agreement or this Schedule 14, including, for clarity, the process and requirements set out in Section 25.13 of the Project Agreement. The obligations in this Appendix A are in respect of New City of Mississauga Infrastructure only.

1. INSPECTION, COMMISSIONING AND HANDOVER**1.1 Interim Inspection of New City of Mississauga Infrastructure**

- (a) Project Co shall comply with all requirements set out in this Schedule 14- Commissioning (including, for clarity, this Appendix A) as well as all requirements set out in Section 25.13 of the Project Agreement in connection with interim inspections of New City of Mississauga Infrastructure.
- (b) Project Co shall notify Contracting Authority and the City of Mississauga of achievement of all milestones set out in the Inspection and Test Plan in respect of New City of Mississauga Infrastructure, as well as all Witness and Hold Points in respect of New City of Mississauga Infrastructure.

1.2 Final Inspection of New City of Mississauga Infrastructure

- (a) Project Co shall comply with all requirements set out in this Schedule 14 – Commissioning (including, for clarity, this Appendix A) as well as all requirements set out in Section 25.13 of the Project Agreement in connection with final inspections of New City of Mississauga Infrastructure.
- (b) Prior to final inspection of New City of Mississauga Infrastructure, Project Co shall, in addition to all other requirements set out in Section 25.13 of the Project Agreement:
 - (i) remove all temporary work no longer required from the site subject to final inspection, including but not limited to fencing, sign board, samples, and any other items not considered to be part of Project Co System Infrastructure or New City of Mississauga Infrastructure, except for those items required for ongoing Works; and
 - (ii) clean all New City of Mississauga Infrastructure prior to Handover following final inspection of such New City of Mississauga Infrastructure, including:
 - (A) sweeping/spraying of roads, boulevards and sidewalks;
 - (B) flushing of sewers; and
 - (C) cleaning out of catch basins, maintenance holes, and valve chambers,

all taking into account ongoing Works.

2. REQUIREMENTS FOR COMMISSIONING, HANDOVER AND ACCEPTANCE

2.1 Applicable to all New City of Mississauga Infrastructure

- (a) In addition to any other requirements in the Project Agreement, Project Co shall satisfy the requirements of this Appendix A prior to, and as a condition of, Handover of New City of Mississauga Infrastructure.
- (b) Project Co shall, prior to and as a pre-condition of Handover of each component New City of Mississauga Infrastructure:
 - (i) complete and perform all requirements of Schedule 15-2 – Design and Construction Requirements applicable to such New City of Mississauga Infrastructure; and
 - (ii) complete all tasks for Commissioning of New City of Mississauga Infrastructure pursuant to City of Mississauga Standards;
- (c) Project Co shall, prior to and as a pre-condition of achievement of Handover of New City of Mississauga Infrastructure, submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix A for review in accordance with Schedule 10 – Review Procedure:
 - (i) certification of the New City of Mississauga Infrastructure in accordance with Section 4 of this Appendix A; and
 - (ii) Final Record Drawings in accordance with Sections 3.1 and 3.2 of this Appendix A, unless final Record Drawings are not reasonably available at the time of Commissioning of the New City of Mississauga Infrastructure, in which case Project Co shall:
 - (A) provide red-lined As-Built Drawings within ten Business Days after final inspection of the New City of Mississauga Infrastructure; and
 - (B) provide final Record Drawings in accordance with Sections 3.1 and 3.2 of this Appendix A within three months of Handover of such New City of Mississauga Infrastructure.

2.2 Applicable to Storm Sewers

- (a) For each component of New City of Mississauga Infrastructure comprised of storm sewers, (including maintenance holes and catch basins), in addition to the requirements of Section 2.1 of this Appendix A, Project Co shall, prior to and as a pre-condition of Handover of such New City of Mississauga Infrastructure:
 - (i) complete all Commissioning tasks for storm sewers pursuant to City of Mississauga Standards and to the satisfaction of Contracting Authority or the City of Mississauga (if

a Notice of Delegation has been issued under the Project Agreement in respect of such New City of Mississauga Infrastructure); and

- (ii) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix A, for review in accordance with Schedule 10 – Review Procedure:
 - (A) material testing results;
 - (B) performance test results;
 - (C) manufacturer's manuals and instructions;
 - (D) compaction testing results for backfilling and paving;
 - (E) video report and detailed written report and electronic files containing chainage-specific defect codes from a CCTV inspection. Where deficiencies have been identified by the CCTV inspection, Contracting Authority shall arrange for additional examinations as required to demonstrate that all deficiencies have been rectified to the satisfaction of Contracting Authority or the City of Mississauga (if a Notice of Delegation has been issued under the Project Agreement in respect of such New City of Mississauga Infrastructure);
 - (F) design documents, including design sheets, reports, and technical studies; and
 - (G) service connection cards prepared on the standard form supplied by Contracting Authority or the City of Mississauga.

2.3 Applicable to Roadways

- (a) For each component of New City of Mississauga Infrastructure comprised of roadways and Public Boulevards, including sidewalks, hardscaped Pole Zones and Cycle Tracks (each as defined in Schedule 15 – Output Specifications), in addition to the requirements of Section 2.1 of this Appendix A, Project Co shall, prior to and as a pre-condition of Handover of such New City of Mississauga Infrastructure:
 - (i) pave all road and hardscaped surfaces;
 - (ii) complete all structures and drainage systems;
 - (iii) install the marking of all permanent pavement markings at all intersections and on all major roads;
 - (iv) install all regulatory, warning and guide signing;
 - (v) rectify and repair of all damages, settlements and depressions to the above ground road subgrade;

- (vi) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix A, for review in accordance with Schedule 10 – Review Procedure:
 - (A) material testing results;
 - (B) performance test results;
 - (C) compaction testing results for backfilling and paving;
 - (D) manufacturer manuals and instructions for all enhanced paving treatments.
- (b) Project Co shall only Handover portions of roadway which will not require any further modifications as part of the Works. For clarity, Project Co shall not Handover portions of roadway within which underground Utility Work (including streetlighting and traffic signals) has yet to be completed at the time of such Handover.

2.4 Applicable to Bridges, Culverts, Retaining Walls, Noisewalls And Concrete Planters

- (a) For each component of New City of Mississauga Infrastructure comprised of traffic signals and streetlighting, in addition to the requirements of Section 2.1 of this Appendix A, Project Co shall, prior to and as a pre-condition of Handover of such New City of Mississauga Infrastructure:
 - (i) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix A, for review in accordance with Schedule 10 – Review Procedure:
 - (A) material testing results;
 - (B) performance test results;
 - (C) manufacturer's manuals and instructions; and
 - (D) CCTV for all culverts

2.5 Applicable to Traffic Signals and Streetlighting

- (a) For each component of New City of Mississauga Infrastructure comprised of traffic signals, streetlighting and pedestrian lighting, in addition to the requirements of Section 2.1 of this Appendix A, Project Co shall, prior to and as a pre-condition of Handover of such New City of Mississauga Infrastructure:
 - (i) complete all applicable tasks listed under the headings ‘Turn-On Checklist for Permanent Signals’ in Attachment 2 to this Appendix A to the satisfaction of Contracting Authority or the City of Mississauga (if a Notice of Delegation has been issued under the Project Agreement in respect of such New City of Mississauga Infrastructure);

- (ii) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix A, for review in accordance with Schedule 10 – Review Procedure:
 - (A) a copy of the completed forms under the headings ‘Turn-On Checklist for Permanent Signals’ in Attachment 2 to this Appendix A;
 - (B) Electrical Safety Authority (ESA) certificate for any traffic signal plant including red light cameras; and
 - (C) inspection and testing reports for all traffic plant including traffic control signals, red light cameras, and arterial cameras;
 - (D) details of operation and maintenance instructions for equipment and systems, including a complete list of equipment and part lists consisting of make, size, capacity, and serial number;
 - (E) names, addresses, and phone numbers of subcontractors and suppliers;
 - (F) warranty information including, guarantee periods reflecting the start date, a clear indication on parts and parcels that are covered under guarantee, and due authorization of competent signatories; and
 - (G) any additional materials used in the applicable New City of Mississauga Infrastructure showing names of manufacturers and source supplies including manufacturers' literature.
- (b) The City of Mississauga traffic signal maintenance contractor will complete a post energization inspection to determine if the aboveground and underground traffic signal infrastructure complies with City of Mississauga Standards. Any deficiencies will be noted and Project Co will be notified and required to correct them. Project Co shall submit the original approved and stamped traffic signal PHM “as built” design immediately after the Handover of the fully completed traffic signal plant.
- (c) For any special equipment associated with traffic management, Project Co shall provide system demonstration and training to the City of Mississauga for all roadways, which training shall include hands-on instruction of City personnel in the operation, adjustment and maintenance of the roadways.

2.6 Applicable to Streetlighting

- (a) For each component of New City of Mississauga Infrastructure comprised of streetlighting and pedestrian lighting, in addition to the requirements of Section 2.1 of this Appendix A, Project Co shall, prior to and as a pre-condition of Handover of such New City of Mississauga Infrastructure:
 - (i) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix A, for review in accordance with Schedule 10 – Review Procedure:

- (A) details of operation and maintenance instructions for equipment and systems, including a complete list of equipment and part lists consisting of make, size, capacity, and serial number;
- (B) names, addresses, and phone numbers of subcontractors and suppliers;
- (C) warranty information including, guarantee periods reflecting the start date, a clear indication on parts and parcels that are covered under guarantee, and due authorization of competent signatories; and
- (D) any additional materials used in the applicable New City of Mississauga Infrastructure showing names of manufacturers and source supplies including manufacturers' literature.

2.7 Applicable to Street Trees

- (a) For each component of New City of Mississauga Infrastructure comprised of street trees, in addition to the requirements of Section 2.1 of this Appendix A, Project Co shall, prior to and as a pre-condition of Handover of such New City of Mississauga Infrastructure:
 - (i) install all the soil cells as per manufacturer instructions;
 - (ii) provide required slopes drainage pipes to down-slope catch basins; and
 - (iii) provide waybills provided for planting soil.
- (b) In addition to the interim and final inspection requirements of Section 1 of this Appendix A, Project Co shall provide 24 hours' notice prior to
 - (i) the delivery of street trees and other and all plant material for inspection prior to installation; and
 - (ii) removal of existing trees, for which the City of Mississauga will inspect all tree protection hoarding, parkland protection hoarding and inspect public and private trees.

2.8 Applicable to Street Furniture

- (a) For each component of New City of Mississauga Infrastructure comprised of street furniture, in addition to the requirements of Section 2.1 of this Appendix A, Project Co shall, prior to and as a pre-condition of Handover of such New City of Mississauga Infrastructure:
 - (i) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix A, for review in accordance with Schedule 10 – Review Procedure:
 - (A) shop drawings;
 - (B) manufacturer's manuals and instructions; and

- (C) Names, addresses, and phone numbers of subcontractors and suppliers.

3. DOCUMENTATION

3.1 Submittals

- (a) Project Co shall submit to Contracting Authority all documentation (including drawings) required to be delivered under this Appendix A as follows:
- (i) to Contracting Authority for review in accordance with Schedule 10 – Review Procedure; and
 - (ii) in the following formats and quantities in respect of all Record Drawings required to be delivered to Contracting Authority pursuant to this Appendix A:
 - (A) for Record Drawings, four CDs/DVDs, one full size hard copy set (mylars), and one reduced size hard copy set unless specified otherwise by Contracting Authority;
 - (B) for all other documents (other than documents referenced in (A)), four CDs/DVDs and one hard copy set, unless otherwise specified by Contracting Authority; and
 - (C) each of the foregoing shall be in PDF format generated from the source electronic document and not scanned from hard copies.

3.2 Record Drawings

- (a) Project Co shall provide Record Drawings for the New City of Mississauga Infrastructure in compliance with the City of Mississauga Standards, or such other standards as are agreed to by Project Co and Contracting Authority, and in accordance with Section 7.3 of Part 1 of Schedule 15-2 – Design and Construction Requirements.

4. CERTIFICATION

- (a) Prior to achievement of Handover of New City of Mississauga Infrastructure, and as a pre-condition of Handover, Project Co shall submit to Contracting Authority or the City of Mississauga (if a Notice of Delegation has been issued in respect of the New City of Mississauga Infrastructure) written certification of the New City of Mississauga Infrastructure in the form attached as Attachment 1 of this Appendix A. Each certificate shall be stamped, signed and dated by professionals licensed in the Province of Ontario qualified to certify the specific type of work and equipment being certified.

ATTACHMENT 1

FORM OF NEW CITY OF MISSISSAUGA INFRASTRUCTURE CERTIFICATION

Certificate Reference Number [...] *(insert reference number)*

CERTIFICATE OF MUNICIPAL INFRASTRUCTURE

A. General

1. This certificate is in respect of:
 - (a) [...] *(insert details of the New City of Mississauga Infrastructure to be certified)* (the “**Certificate**”); and
 - (b) the Project Agreement between Contracting Authority and Project Co dated [...] *(insert date of Project Agreement)* (the “**Project Agreement**”) relating to the Project.
2. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.
3. This Certificate is used by Project Co for certifying, as applicable:
 - (a) the substantial completion of construction activities in respect of those components of the Works set out in paragraph A1 of this Construction Certificate; or
 - (b) the total completion of construction activities in respect of any Reinstatement Work carried out by the Construction Contractor pursuant to Section 30 of the Project Agreement in accordance with a Reinstatement Plan,in accordance with the Project Agreement, City Standards, the designs and plans submitted by Project Co and accepted by the City of Mississauga, other standards that have been agreed to in writing by the City of Mississauga and Project Co, and good engineering practices.

B. Construction Contractor’s Statement

1. We certify that the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, [**substantially completed as set out in paragraph A2(a)**], [**totally completed as set out in paragraph A2(b)**], commissioned and tested in all respects in accordance with: *(Inapplicable language to be deleted)*
 - (a) the relevant Design Data, Design Certificates, and Construction Certificates pursuant to Schedule 10 of the Project Agreement in each case to which there has been no objection under the Review Procedure;
 - (b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):
 - (i) [...] *(List, if any, the change(s) made by the issue of any Variation(s))*; and

- (c) the requirements of City Standards, the designs and plans submitted by Project Co and accepted by the City of Mississauga, other standards that have been agreed to in writing by the City of Mississauga and Project Co, and good engineering practices.

Signed..... (Construction Contractor’s representative)

Name.....

Date.....

C. Design Team’s Statement

1. We certify that the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A2(a)], [totally completed as set out in paragraph A2(b)]**, commissioned and tested in all respects in accordance with: the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations. *(Inapplicable language to be deleted)*
2. We further certify that in our professional opinion the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A2(a)], [totally completed as set out in paragraph A2(b)]**, commissioned and tested in all respects in accordance with: *(Inapplicable language to be deleted)*
 - (a) the relevant Design Data, Design Certificates, and Construction Certificates pursuant to Schedule 10 of the Project Agreement in each case to which there has been no objection under the Review Procedure;
 - (b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):
 - (i) [...] *(List, if any, the change(s) made by the issue of any Variation(s))*; and
 - (c) the requirements of City Standards, the designs and plans submitted by Project Co and accepted by the City of Mississauga, other standards that have been agreed to in writing by the City of Mississauga and Project Co, and good engineering practices.

Signed..... (Design Team’s Principal)

Name.....

Date.....

Professional Registration Number: (Affix Professional Seal)

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D. Contracting Authority Representative

- 1. This Certificate is:
 - i. reviewed*
 - ii. reviewed as noted as follows*
 - iii. returned marked “rejected” as follows:*

* delete as appropriate

Signed: (Contracting Authority Representative)

Name:

Date:

Confidential – Economic Interests of Ontario

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ATTACHMENT 2

[Please see the attached document]

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MT DOCS 19727140v3

APPENDIX B**NEW CITY OF BRAMPTON INFRASTRUCTURE**

For clarity, the obligations of Project Co in this Appendix B are in addition to and not in substitution of any other requirements for Commissioning of the Works and/or any other requirements in respect of New City of Brampton Infrastructure contained in the Project Agreement or this Schedule 14, including, for clarity, the process and requirements set out in Section 25.13 of the Project Agreement. The obligations in this Appendix B are in respect of New City of Brampton Infrastructure only.

1. INSPECTION, COMMISSIONING AND HANDOVER**1.1 Interim Inspection of New City of Brampton Infrastructure**

- (a) Project Co shall comply with all requirements set out in this Schedule 14- Commissioning (including, for clarity, this Appendix B) as well as all requirements set out in Section 25.13 of the Project Agreement in connection with interim inspections of New City of Brampton Infrastructure.
- (b) Project Co shall notify Contracting Authority and the City of Brampton of achievement of all milestones set out in the Inspection and Test Plan in respect of New City of Brampton Infrastructure, as well as all Witness and Hold Points in respect of New City of Brampton Infrastructure.

1.2 Final Inspection of New City of Brampton Infrastructure

- (a) Project Co shall comply with all requirements set out in this Schedule 14 – Commissioning (including, for clarity, this Appendix B) as well as all requirements set out in Section 25.13 of the Project Agreement in connection with final inspections of New City of Brampton Infrastructure.
- (b) Prior to final inspection of New City of Brampton Infrastructure, Project Co shall, in addition to all other requirements set out in Section 25.13 of the Project Agreement:
 - (i) remove all temporary work no longer required from the site subject to final inspection, including but not limited to fencing, sign board, samples, and any other items not considered to be part of Project Co System Infrastructure or New City of Brampton Infrastructure, except for those items required for ongoing Works; and
 - (ii) clean all New City of Brampton Infrastructure prior to Handover following final inspection of such New City of Brampton Infrastructure, including:
 - (A) sweeping/spraying of roads, boulevards and sidewalks;
 - (B) flushing of sewers; and
 - (C) cleaning out of catch basins, maintenance holes, and valve chambers,

all taking into account ongoing Works.

2. REQUIREMENTS FOR COMMISSIONING, HANDOVER AND ACCEPTANCE

2.1 Applicable to all New City of Brampton Infrastructure

- (a) In addition to any other requirements in the Project Agreement, Project Co shall satisfy the requirements of this Appendix B prior to, and as a condition of, Handover of New City of Brampton Infrastructure.
- (b) Project Co shall, prior to and as a pre-condition of Handover of each component New City of Brampton Infrastructure;
 - (i) complete and perform all requirements of Schedule 15-2 – Design and Construction Requirements applicable to such New City of Brampton Infrastructure; and
 - (ii) complete all tasks for Commissioning of New City of Brampton Infrastructure pursuant to City of Brampton Standards;
- (c) Project Co shall, prior to and as a pre-condition of achievement of Handover of each element of New City of Brampton Infrastructure, submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix B for review in accordance with Schedule 10 – Review Procedure:
 - (i) certification of the New City of Brampton Infrastructure in accordance with Section 4 of this Appendix B; and
 - (ii) Final Record Drawings in accordance with Sections 3.1 and 3.2 of this Appendix B, unless final Record Drawings are not reasonably available at the time of Commissioning of the New City of Brampton Infrastructure, in which case Project Co shall:
 - (A) provide red-lined As-Built Drawings within ten Business Days after final inspection of the New City of Brampton Infrastructure; and
 - (B) provide final Record Drawings in accordance with Sections 3.1 and 3.2 of this Appendix B within three months of Handover of such New City of Brampton Infrastructure.

2.2 Applicable to Storm Sewers

- (a) For each component of New City of Brampton Infrastructure comprised of storm sewers, (including maintenance holes and catch basins), in addition to the requirements of Section 2.1 of this Appendix B, Project Co shall, prior to and as a pre-condition of Handover of such New City of Brampton Infrastructure:

- (i) complete all Commissioning tasks for storm sewers, pursuant to City of Brampton Standards and OPSS.MUNI 410 to the satisfaction of Contracting Authority or the City of Brampton (if a Notice of Delegation has been issued under the Project Agreement in respect of such New City of Brampton Infrastructure); and
- (ii) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix B, for review in accordance with Schedule 10 – Review Procedure:
 - (A) material testing results;
 - (B) performance test results;
 - (C) manufacturer's manuals and instructions;
 - (D) compaction testing results for backfilling;
 - (E) video report and detailed written report and electronic files containing chainage-specific defect codes from a CCTV inspection. Where deficiencies have been identified by the CCTV inspection, Contracting Authority shall arrange for additional examinations as required to demonstrate that all deficiencies have been rectified to the satisfaction of Contracting Authority or the City of Brampton (if a Notice of Delegation has been issued under the Project Agreement in respect of such New City of Brampton Infrastructure);
 - (F) design documents, including design sheets, reports, and technical studies; and
 - (G) service connection cards prepared on the standard form supplied by Contracting Authority or the City of Brampton.

2.3 Applicable to Roadways

- (a) For each component of New City of Brampton Infrastructure comprised of roadways and Public Boulevards, including sidewalks, hardscaped Pole Zones and Cycle Tracks (each as defined in Schedule 15 – Output Specifications), in addition to the requirements of Section 2.1 of this Appendix B, Project Co shall, prior to and as a pre-condition of Handover of such New City of Brampton Infrastructure:
 - (i) pave all road and hardscaped surfaces;
 - (ii) complete all structures and drainage systems;
 - (iii) install the marking of all permanent pavement markings at all intersections and on all major roads;
 - (iv) install all regulatory, warning and guide signing;

- (v) rectify and repair of all damages, settlements and depressions to the above ground road subgrade;
- (vi) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix B, for review in accordance with Schedule 10 – Review Procedure:
 - (A) material testing results;
 - (B) performance test results;
 - (C) compaction testing results for backfilling and paving; and
 - (D) manufacturer manuals and instructions for all enhanced paving treatments.
- (b) Project Co shall only Handover portions of roadway which will not require any further modifications as part of the Works. For clarity, Project Co shall not Handover portions roadway within which underground Utility Work (including streetlighting and traffic signals) has yet to been completed at the time of such Handover.

2.4 Applicable to Traffic Signals

- (a) For each component of New City of Brampton Infrastructure comprised of traffic signals, in addition to the requirements of Section 2.1 of this Appendix B, Project Co shall, prior to and as a pre-condition of Handover of such New City of Brampton Infrastructure:
 - (i) complete all applicable tasks listed under the headings ‘Traffic Signal Turn On Checklist’, ‘Controller Cabinet And Intersection Inspection Report’, and ‘Traffic Signal Request For Final Inspection’ in Attachment 2 to this Appendix B to the satisfaction of Contracting Authority or the City of Brampton (if a Notice of Delegation has been issued under the Project Agreement in respect of such New City of Brampton Infrastructure);
 - (ii) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix B, for review in accordance with Schedule 10 – Review Procedure:
 - (A) a copy of the completed forms under the headings ‘Traffic Signal Turn On Checklist’, ‘Controller Cabinet And Intersection Inspection Report’, and ‘Traffic Signal Request For Final Inspection’ in Attachment 2 to this Appendix B;
 - (B) details of operation and maintenance instructions for equipment and systems, including a complete list of equipment and part lists consisting of make, size, capacity, and serial number;
 - (C) warranty information including, guarantee periods reflecting the start date, a clear indication on parts and parcels that are covered under guarantee, and due authorization of competent signatories; and

- (D) any additional materials used in the applicable New City of Brampton Infrastructure showing names of manufacturers and source supplies, including manufacturers' literature.

2.5 Applicable to Streetlights

- (a) For each component of New City of Brampton Infrastructure comprised of streetlighting, in addition to the requirements of Section 2.1 of this Appendix B, Project Co shall, prior to and as a pre-condition of Handover of such New City of Brampton Infrastructure:
 - (i) complete all tasks listed under the heading, 'Streetlighting Request For Final Inspection' in Attachment 2 to this Appendix B to the satisfaction of Contracting Authority or the City of Brampton (if a Notice of Delegation has been issued under the Project Agreement in respect of such New City of Brampton Infrastructure);
 - (ii) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix B, for review in accordance with Schedule 10 – Review Procedure:
 - (A) a copy of the completed 'Streetlighting Request For Final Inspection' form as provided in Attachment 2 to this Appendix B;
 - (B) details of operation and maintenance instructions for equipment and systems, including a complete list of equipment and part lists consisting of make, size, capacity, and serial number;
 - (C) warranty information including, guarantee periods reflecting the start date, a clear indication on parts and parcels that are covered under guarantee, and due authorization of competent signatories; and
 - (D) any additional materials used in the applicable New City of Brampton Infrastructure showing names of manufacturers and source supplies including manufacturers' literature.
- (b) For any special equipment associated with traffic management, Project Co shall provide system demonstration and training to the City of Brampton for all roadways, which training shall include hands-on instruction of City personnel in the operation, adjustment and maintenance of such special equipment.

2.6 Applicable to Street Trees

- (a) For each component of New City of Brampton Infrastructure comprised of street trees, in addition to the requirements of Section 2.1 of this Appendix B, Project Co shall, prior to and as a pre-condition of Handover of such New City of Brampton Infrastructure:
 - (i) install all the soil cells as per manufacturer instructions;

- (ii) provide required slopes drainage pipes to down-slope catch basins; and
 - (iii) provide waybills provided for planting soil.
- (b) In addition to the interim and final inspection requirements of Section 1 of this Appendix B, Project Co shall provide 24 hours' notice prior to:
- (i) the delivery of street trees and other and all plant material for inspection prior to installation; and
 - (ii) removal of existing trees, for which the City of Brampton will inspect all tree protection hoarding, parkland protection hoarding and inspect public and private trees.

2.7 Applicable to Street Furniture

- (a) For each component of New City of Brampton Infrastructure comprised of street furniture, in addition to the requirements of Section 2.1 of this Appendix B, Project Co shall, prior to and as a pre-condition of Handover of such New City of Mississauga Infrastructure:
- (i) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix B, for review in accordance with Schedule 10 – Review Procedure:
 - (A) shop drawings;
 - (B) manufacturer's manuals and instructions; and
 - (C) names, addresses, and phone numbers of subcontractors and suppliers.

3. DOCUMENTATION

3.1 Submittals

- (a) Project Co shall submit to Contracting Authority all documentation required to be delivered under this Appendix B as follows:
- (i) to Contracting Authority for review in accordance with Schedule 10 – Review Procedure; and
 - (ii) in the following formats and quantities in respect of all Record Drawings required to be delivered to Contracting Authority pursuant to this Appendix B.
 - (A) for Record Drawings, four CDs/DVDs, one full size hard copy set, and one reduced size hard copy set unless specified otherwise by Contracting Authority;

- (B) for all other documents (other than documents referenced in (A)), four CDs/DVDs and one hard copy set, unless otherwise specified by Contracting Authority; and
- (C) each of the foregoing shall be in PDF format generated from the source electronic document and not scanned from hard copies.

3.2 Record Drawings

- (a) Project Co shall provide Record Drawings for the New City of Brampton Infrastructure in compliance with the City of Brampton Standards, or such other standards as are agreed to by Project Co and Contracting Authority, and in accordance with Section 7.3 of Part 1 of Schedule 15-2 – Design and Construction Requirements.

4. CERTIFICATION

- (a) Prior to achievement of Handover of New City of Brampton Infrastructure, and as a pre-condition of Handover, Project Co shall submit to Contracting Authority or the City of Brampton (if a Notice of Delegation has been issued in respect of the New City of Brampton Infrastructure) written certification of the New City of Brampton Infrastructure in the form attached as Attachment 1 of this Appendix B. Each certificate shall be stamped, signed and dated by professionals licensed in the Province of Ontario qualified to certify the specific type of work and equipment being certified.

ATTACHMENT 1

FORM OF NEW CITY OF BRAMPTON INFRASTRUCTURE CERTIFICATION

Certificate Reference Number [...] *(insert reference number)*

CERTIFICATE OF MUNICIPAL INFRASTRUCTURE

A. General

1. This certificate is in respect of:
 - (a) [...] *(insert details of the New City of Brampton Infrastructure to be certified)* (the “**Certificate**”); and
 - (b) the Project Agreement between Contracting Authority and Project Co dated [...] *(insert date of Project Agreement)* (the “**Project Agreement**”) relating to the Project.
2. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.
3. This Certificate is used by Project Co for certifying, as applicable:
 - (a) the substantial completion of construction activities in respect of those components of the Works set out in paragraph A1 of this Construction Certificate; or
 - (b) the total completion of construction activities in respect of any Reinstatement Work carried out by the Construction Contractor pursuant to Section 30 of the Project Agreement in accordance with a Reinstatement Plan,in accordance with the Project Agreement, City Standards, the designs and plans submitted by Project Co and accepted by the City of Brampton, other standards that have been agreed to in writing by the City of Brampton and Project Co, and good engineering practices.

B. Construction Contractor’s Statement

1. We certify that the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A2(a)], [totally completed as set out in paragraph A2(b)]**, commissioned and tested in all respects in accordance with: *(Inapplicable language to be deleted)*
 - (a) the relevant Design Data, Design Certificates, and Construction Certificates pursuant to Schedule 10 of the Project Agreement in each case to which there has been no objection under the Review Procedure;
 - (b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):
 - (i) [...] *(List, if any, the change(s) made by the issue of any Variation(s))*; and
 - (c) the requirements of City Standards, the designs and plans submitted by Project Co and accepted by the City of Brampton, other standards that have been agreed to in writing by the City of Brampton and Project Co, and good engineering practices.

Signed..... (Construction Contractor’s representative)

Name.....

Date.....

C. Design Team’s Statement

1. We certify that the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A2(a)], [totally completed as set out in paragraph A2(b)]**, commissioned and tested in all respects in accordance with: the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations. *(Inapplicable language to be deleted)*
2. We further certify that in our professional opinion the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A2(a)], [totally completed as set out in paragraph A2(b)]**, commissioned and tested in all respects in accordance with: *(Inapplicable language to be deleted)*
 - (a) the relevant Design Data, Design Certificates, and Construction Certificates pursuant to Schedule 10 of the Project Agreement in each case to which there has been no objection under the Review Procedure;
 - (b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):
 - (i) [...] *(List, if any, the change(s) made by the issue of any Variation(s))*; and
 - (c) the requirements of City Standards, the designs and plans submitted by Project Co and accepted by the City of Brampton, other standards that have been agreed to in writing by the City of Brampton and Project Co, and good engineering practices.

Signed..... (Design Team’s Principal)

Name.....

Date.....

Professional Registration Number: (Affix Professional Seal)

D. Contracting Authority Representative

1. This Certificate is:
 - i. reviewed*
 - ii. reviewed as noted as follows*

iii. returned marked “rejected” as follows:*

* delete as appropriate

Signed: (Contracting Authority Representative)

Name:

Date:

ATTACHMENT 2

[Please see the attached document]

APPENDIX C**NEW REGION OF PEEL INFRASTRUCTURE**

For clarity, the obligations of Project Co in this Appendix C are in addition to and not in substitution of any other requirements for Commissioning of the Works and/or any other requirements in respect of New Region of Peel Infrastructure contained in the Project Agreement or this Schedule 14, including, for clarity, the process and requirements set out in Section 25.13 of the Project Agreement. The obligations in this Appendix C are in respect of New Region of Peel Infrastructure only.

1. INSPECTION, COMMISSIONING AND HANDOVER**1.1 Interim Inspection of New Region of Peel Infrastructure**

- (a) Project Co shall comply with all requirements set out in this Schedule 14- Commissioning (including, for clarity, this Appendix C) as well as all requirements set out in Section 25.13 of the Project Agreement in connection with interim inspections of New Region of Peel Infrastructure.
- (b) Project Co shall notify Contracting Authority and the Region of Peel of achievement of all milestones set out in the Inspection and Test Plan in respect of New Region of Peel Infrastructure, as well as all Witness and Hold Points in respect of New Region of Peel Infrastructure.

1.2 Final Inspection of New Region of Peel Infrastructure

- (a) Project Co shall comply with all requirements set out in this Schedule 14 – Commissioning (including, for clarity, this Appendix C) as well as all requirements set out in Section 25.13 of the Project Agreement in connection with final inspections of New Region of Peel Infrastructure.
- (b) Prior to final inspection of New Region of Peel Infrastructure, Project Co shall, in addition to all other requirements set out in Section 25.13 of the Project Agreement:
 - (i) remove all temporary work no longer required from the site subject to final inspection, including but not limited to fencing, sign board, samples, and any other items not considered to be part of Project Co System Infrastructure or New Region of Peel Infrastructure, except for those items required for ongoing Works; and
 - (ii) clean all New Region of Peel Infrastructure prior to Handover following final inspection of such New Region of Peel Infrastructure, taking into account ongoing Works.

2. REQUIREMENTS FOR COMMISSIONING, HANDOVER AND ACCEPTANCE**2.1 Applicable to all New Region of Peel Infrastructure**

- (a) In addition to any other requirements in the Project Agreement, Project Co shall satisfy the requirements of this Appendix C prior to, and as a condition of, Handover of New Region of Peel Infrastructure.

- (b) Project Co shall, prior to and as a pre-condition of Handover of each component New Region of Peel Infrastructure, complete and perform all requirements of Schedule 15-2 – Design and Construction Requirements applicable to such New Region of Peel Infrastructure.
- (c) Project Co shall, prior to and as a pre-condition of achievement of Handover of New Region of Peel Infrastructure, submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix C for review in accordance with Schedule 10 – Review Procedure:
 - (i) certification of the New Region of Peel Infrastructure in accordance with Section 4 of this Appendix C; and
 - (ii) Final Record Drawings in accordance with Sections 3.1 and 3.2 of this Appendix C, unless final Record Drawings are not reasonably available at the time of Commissioning of the New Region of Peel Infrastructure, in which case Project Co shall:
 - (A) provide red-lined As-Built Drawings within ten Business Days after final inspection of the New Region of Peel Infrastructure; and
 - (B) provide final Record Drawings in accordance with Sections 3.1 and 3.2 of this Appendix C within three months of Handover of such New Region of Peel Infrastructure.

2.2 Applicable to Sanitary Sewers

- (a) For each component of New Region of Peel Infrastructure comprised of sanitary sewers (including maintenance holes), in addition to the requirements of Section 2.1 of this Appendix C, Project Co shall, prior to and as a pre-condition of Handover of such New Region of Peel Infrastructure:
 - (i) complete all Commissioning tasks for sanitary sewers pursuant to:
 - (A) Appendix B of Part 1 of Schedule 15-2 – Design and Construction Requirements; and
 - (B) Region of Peel Standards,

to the satisfaction of Contracting Authority or the Region of Peel (if a Notice of Delegation has been issued under the Project Agreement in respect of such New Region of Peel Infrastructure); and
 - (ii) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix C, for review in accordance with Schedule 10 – Review Procedure:
 - (A) material testing results;
 - (B) performance test results;
 - (C) manufacturer's manuals and instructions;

- (D) compaction testing results for backfilling and paving;
- (E) video report and detailed written report and electronic files containing chainage-specific defect codes from a CCTV inspection. Where deficiencies have been identified by the CCTV inspection, Contracting Authority shall arrange for additional examinations as required to demonstrate that all deficiencies have been rectified to the satisfaction of Contracting Authority or the Region of Peel (if a Notice of Delegation has been issued under the Project Agreement in respect of such New Region of Peel Infrastructure);
- (F) design documents, including design sheets, reports, and technical studies; and
- (G) service connection cards prepared on the standard form supplied by Contracting Authority or the Region of Peel.

2.3 Applicable to Watermains

- (a) For each component of New Region of Peel Infrastructure comprised of watermains, in addition to the requirements of Section 2.1 of this Appendix C, Project Co shall, prior to and as a pre-condition of Handover of such New Region of Peel Infrastructure:
 - (i) complete all tasks for Commission of watermains, fire hydrants, tracer wires, and water service connections pursuant to:
 - (A) Appendix B of Part 1 of Schedule 15-2 – Design and Construction Requirements; and
 - (B) Region of Peel Standards, including QP 1111 – Capital Watermain Replacement, to the satisfaction of Contracting Authority or the Region of Peel (if a Notice of Delegation has been issued under the Project Agreement in respect of such New Region of Peel Infrastructure); and
 - (ii) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix C, for review in accordance with Schedule 10 – Review Procedure:
 - (A) all submittals set out in Appendix B of Part 1 of Schedule 15-2 - Design and Construction Requirements;
 - (B) material testing results;
 - (C) performance test results;
 - (D) manufacturer's manuals and instructions;
 - (E) compaction testing results for backfilling and paving;

- (F) documentation related to the applicable hydrostatic pressure testing, disinfection/chlorination and bacteriological test results, and tracer-wire reports;
- (G) design documents, including design reports, and technical studies; and
- (H) completed Region of Peel QP FORM 0764 Continuous Feed Method-Watermain Disinfection.

2.4 Applicable to Roadways

- (a) For each component of New Region of Peel Infrastructure comprised of roadways, in addition to the requirements of Section 2.1 of this Appendix C, Project Co shall, prior to and as a pre-condition of Handover of such New Region of Peel Infrastructure:
 - (i) pave all road surfaces;
 - (ii) complete all structures and drainage systems;
 - (iii) install the marking of all permanent pavement markings at all intersections and on all major roads;
 - (iv) install all regulatory, warning and guide signing;
 - (v) rectify and repair of all damages, settlements and depressions to the above ground road subgrade;
 - (vi) complete all tasks for Commission of roadways pursuant to Region of Peel Standards; and
 - (vii) submit inspection and testing reports for all pavement to Contracting Authority in accordance with Section 3.1 of this Appendix C, for review in accordance with Schedule 10 – Review Procedure.
- (b) Project Co shall only Handover portions of roadway which will not require any further modifications as part of the Works. For clarity, Project Co shall not Handover portions roadway within which underground Utility Work has yet to be completed at the time of such Handover.

2.5 Applicable to Traffic Signals

- (a) For each component of New Region of Peel Infrastructure comprised of traffic signals, in addition to the requirements of Section 2.1 of this Appendix C, Project Co shall, prior to and as a pre-condition of Handover of such New Region of Peel Infrastructure:
 - (i) follow the requirements of Appendix A for all traffic signals at Queensway, Derry Road, Britannia Road; and
 - (ii) follow the requirements of Appendix B for all traffic signals at Steeles Avenue.

3. DOCUMENTATION

3.1 Submittals

- (a) Project Co shall submit to Contracting Authority all documentation (including drawings) required to be delivered under this Appendix C as follows:
- (i) to Contracting Authority for review in accordance with Schedule 10 – Review Procedure; and
 - (ii) in the following formats and quantities in respect of all Record Drawings required to be delivered to Contracting Authority pursuant to this Appendix C.
 - (A) for Record Drawings, four CDs/DVDs, one full size hard copy set, and one reduced size hard copy set unless specified otherwise by Contracting Authority;
 - (B) for all other documents (other than documents referenced in (A)), four CDs/DVDs and one hard copy set, unless otherwise specified by Contracting Authority; and
 - (C) each of the foregoing shall be in PDF format generated from the source electronic document and not scanned from hard copies.

3.2 Record Drawings

- (a) Project Co shall provide Record Drawings for the New Region of Peel Infrastructure in compliance with the Region of Peel Standards, or such other standards as are agreed to by Project Co and Contracting Authority, and in accordance with Section 7.3 of Part 1 of Schedule 15-2 – Design and Construction Requirements.

4. CERTIFICATION

- (a) Prior to achievement of Handover of New Region of Peel Infrastructure, and as a pre-condition of Handover, Project Co shall submit to Contracting Authority or the Region of Peel (if a Notice of Delegation has been issued in respect of the New Region of Peel Infrastructure) written certification of the New Region of Peel Infrastructure in the form attached as Attachment 1 of this Appendix C. Each certificate shall be stamped, signed and dated by professionals licensed in the Province of Ontario qualified to certify the specific type of work and equipment being certified.

ATTACHMENT 1

FORM OF NEW REGION OF PEEL INFRASTRUCTURE CERTIFICATION

Certificate Reference Number [...] *(insert reference number)*

CERTIFICATE OF MUNICIPAL INFRASTRUCTURE

A. General

1. This certificate is in respect of:
 - (a) [...] *(insert details of the New Region of Peel Infrastructure to be certified)* (the “**Certificate**”); and
 - (b) the Project Agreement between Contracting Authority and Project Co dated [...] *(insert date of Project Agreement)* (the “**Project Agreement**”) relating to the Project.
2. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.
3. This Certificate is used by Project Co for certifying, as applicable:
 - (a) the substantial completion of construction activities in respect of those components of the Works set out in paragraph A1 of this Construction Certificate; or
 - (b) the total completion of construction activities in respect of any Reinstatement Work carried out by the Construction Contractor pursuant to Section 30 of the Project Agreement in accordance with a Reinstatement Plan,in accordance with the Project Agreement, City Standards, the designs and plans submitted by Project Co and accepted by the Region of Peel, other standards that have been agreed to in writing by the Region of Peel and Project Co, and good engineering practices.

B. Construction Contractor’s Statement

1. We certify that the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A2(a)], [totally completed as set out in paragraph A2(b)]**, commissioned and tested in all respects in accordance with: *(Inapplicable language to be deleted)*
 - (a) the relevant Design Data, Design Certificates, and Construction Certificates pursuant to Schedule 10 of the Project Agreement in each case to which there has been no objection under the Review Procedure;
 - (b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):
 - (i) [...] *(List, if any, the change(s) made by the issue of any Variation(s))*; and
 - (c) the requirements of City Standards, the designs and plans submitted by Project Co and accepted by the Region of Peel, other standards that have been agreed to in writing by the Region of Peel and Project Co, and good engineering practices.

Signed..... (Construction Contractor’s representative)

Name.....

Date.....

C. Design Team’s Statement

1. We certify that the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A2(a)], [totally completed as set out in paragraph A2(b)]**, commissioned and tested in all respects in accordance with: the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations. *(Inapplicable language to be deleted)*
2. We further certify that in our professional opinion the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A2(a)], [totally completed as set out in paragraph A2(b)]**, commissioned and tested in all respects in accordance with: *(Inapplicable language to be deleted)*
 - (a) the relevant Design Data, Design Certificates, and Construction Certificates pursuant to Schedule 10 of the Project Agreement in each case to which there has been no objection under the Review Procedure;
 - (b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):
 - (i) [...] *(List, if any, the change(s) made by the issue of any Variation(s));* and
 - (c) the requirements of City Standards, the designs and plans submitted by Project Co and accepted by the Region of Peel, other standards that have been agreed to in writing by the Region of Peel and Project Co, and good engineering practices.

Signed..... (Design Team’s Principal)

Name.....

Date.....

Professional Registration Number: (Affix Professional Seal)

D. Contracting Authority Representative

1. This Certificate is:
 - i. reviewed*
 - ii. reviewed as noted as follows*
 - iii. returned marked “rejected” as follows:*

* delete as appropriate

Signed: (Contracting Authority Representative)

Name:

Date:

APPENDIX D**NEW MTO INFRASTRUCTURE**

For clarity, the obligations of Project Co in this Appendix D are in addition to and not in substitution of any other requirements for Commissioning of the Works and/or any other requirements in respect of New MTO Infrastructure contained in the Project Agreement or this Schedule 14, including, for clarity, the process and requirements set out in Section 25.13 of the Project Agreement. The obligations in this Appendix D are in respect of New MTO Infrastructure only.

1. INSPECTION, COMMISSIONING AND HANDOVER**1.1 Interim Inspection of New MTO Infrastructure**

- (a) Project Co shall comply with all requirements set out in this Schedule 14- Commissioning (including, for clarity, this Appendix D) as well as all requirements set out in Section 25.13 of the Project Agreement in connection with interim inspections of New MTO Infrastructure.
- (b) Project Co shall notify Contracting Authority and MTO of achievement of all milestones set out in the Inspection and Test Plan in respect of New MTO Infrastructure as well as all Witness and Hold Points in respect of New MTO Infrastructure.

1.2 Final Inspection of New MTO Infrastructure

- (a) Project Co shall comply with all requirements set out in this Schedule 14 – Commissioning (including, for clarity, this Appendix D) as well as all requirements set out in Section 25.13 of the Project Agreement in connection with final inspections of New MTO Infrastructure.
- (b) Prior to final inspection of New MTO Infrastructure, Project Co shall, in addition to all other requirements set out in Section 25.13 of the Project Agreement:
 - (i) remove all temporary work no longer required from the site subject to final inspection, including but not limited to fencing, sign board, samples, and any other items not considered to be part of Project Co System Infrastructure or New MTO Infrastructure, except for those items required for ongoing Works; and
 - (ii) clean all New MTO Infrastructure prior to Handover following final inspection of such New MTO Infrastructure, including:
 - (A) sweeping/spraying of roads, boulevards and sidewalks;
 - (B) flushing of sewers; and
 - (C) cleaning out of catch basins, maintenance holes, and valve chambers,

all taking into account ongoing Works.

1.3 Pre-Conditions to Handover of New MTO Infrastructure

- (a) In addition to any other requirements in the Project Agreement, Project Co shall complete the following activities prior to, and as a condition of, Handover of New MTO Infrastructure:
- (i) the paving of all road surfaces;
 - (ii) the completion of all structures and drainage systems; the full operation of all traffic lighting and signalization;
 - (iii) the marking of all permanent pavement markings at all intersections and on all major roads;
 - (iv) the installation of all regulatory, warning and guide signing;
 - (v) the installation of all median and roadside barrier and other safety devices;
 - (vi) the installation of all illumination;
 - (vii) the installation of all ITS/ATMS equipment and civil infrastructure;
 - (viii) the installation of any safety devices;
 - (ix) the signing of the New MTO Infrastructure in accordance with PHM-125;
 - (x) the return of all construction staging areas located on the MTO Road Allowance to their original condition or a condition otherwise acceptable to Contracting Authority;
 - (xi) the clearing and removal of all debris, superfluous materials and equipment from MTO Road Allowance;
 - (xii) submission to the Contracting Authority Representative of all Construction Certificates in respect of Handover, in accordance with Schedule 10 – Review Procedure – Appendix F – New MTO Infrastructure; and
 - (xiii) submission to the Contracting Authority Representative of a complete set of As-Built Drawings, and Record Drawings in accordance with the requirements of Schedule 15-2 – Design and Construction Requirements.

APPENDIX E**NEW 407 ETR INFRASTRUCTURE**

For clarity, the obligations of Project Co in this Appendix E are in addition to and not in substitution of any other requirements for Commissioning of the Works and/or any other requirements in respect of New 407 ETR Infrastructure contained in the Project Agreement or this Schedule 14, including, for clarity, the process and requirements set out in Section 25.13 of the Project Agreement. The obligations in this Appendix E are in respect of New 407 ETR Infrastructure only.

1. INSPECTION, COMMISSIONING AND HANDOVER**1.1 Interim Inspection of New 407 ETR Infrastructure**

- (a) Project Co shall comply with all requirements set out in this Schedule 14- Commissioning (including, for clarity, this Appendix E) as well as all requirements set out in Section 25.13 of the Project Agreement in connection with interim inspections of New 407 ETR Infrastructure.
- (b) Project Co shall notify Contracting Authority and 407 ETR of achievement of all milestones set out in the Inspection and Test Plan in respect of New 407 ETR Infrastructure as well as all Witness and Hold Points in respect of New 407 ETR Infrastructure.

1.2 Final Inspection of New 407 ETR Infrastructure

- (a) Project Co shall comply with all requirements set out in this Schedule 14 – Commissioning (including, for clarity, this Appendix E) as well as all requirements set out in Section 25.13 of the Project Agreement in connection with final inspections of New 407 ETR Infrastructure.
- (b) Prior to final inspection of New 407 ETR Infrastructure, Project Co shall, in addition to all other requirements set out in Section 25.13 of the Project Agreement:
 - (i) remove all temporary work no longer required from the site subject to final inspection, including but not limited to fencing, sign board, samples, and any other items not considered to be part of Project Co System Infrastructure or New 407 ETR Infrastructure, except for those items required for ongoing Works; and
 - (ii) clean all New 407 ETR Infrastructure prior to Handover following final inspection of such New 407 ETR Infrastructure, including:
 - (A) sweeping/spraying of roads, boulevards and sidewalks;
 - (B) flushing of sewers; and
 - (C) cleaning out of catch basins, maintenance holes, and valve chambers,

all taking into account ongoing Works.

1.3 Pre-Conditions to Handover of New 407 ETR Infrastructure

- (a) In addition to any other requirements in the Project Agreement, Project Co shall complete the following activities prior to, and as a condition of, Handover of New 407 ETR Infrastructure:
- (i) the paving of all road surfaces;
 - (ii) the completion of all structures and drainage systems;
 - (iii) the full operation of all traffic lighting and signalization;
 - (iv) the marking of all permanent pavement markings at all intersections and on all major roads;
 - (v) the installation of all regulatory, warning and guide signing;
 - (vi) the installation of all median and roadside barrier and other safety devices;
 - (vii) the installation of all illumination;
 - (viii) the installation of all ITS/ATMS equipment and civil infrastructure;
 - (ix) the installation of any safety devices;
 - (x) the signing of the New 407 ETR Infrastructure in accordance with PHM-125;
 - (xi) the return of all construction staging areas located on the 407 ETR Road Allowance to their original condition or a condition otherwise acceptable to Contracting Authority;
 - (xii) the clearing and removal of all debris, superfluous materials and equipment from 407 ETR Road Allowance;
 - (xiii) submission to the Contracting Authority Representative of all Construction Certificates in respect of Handover, in accordance with Schedule 10 – Review Procedure – Appendix F – New 407 ETR Infrastructure; and
 - (xiv) submission to the Contracting Authority Representative of a complete set of As-Built Drawings, and Record Drawings in accordance with the requirements of Schedule 15-2 – Design and Construction Requirements.

APPENDIX F**NEW METROLINX INFRASTRUCTURE**

For clarity, the obligations of Project Co in this Appendix F are in addition to and not in substitution of any other requirements for Commissioning of the Works and/or any other requirements in respect of New Metrolinx Infrastructure contained in the Project Agreement or this Schedule 14, including, for clarity, the process and requirements set out in Section 25.13 of the Project Agreement. The obligations in this Appendix F are in respect of New Metrolinx Infrastructure only.

1. INSPECTION, COMMISSIONING AND HANDOVER**1.1 Interim Inspection of New Metrolinx Infrastructure**

- (a) Project Co shall comply with all requirements set out in this Schedule 14- Commissioning (including, for clarity, this Appendix F) as well as all requirements set out in Section 25.13 of the Project Agreement in connection with interim inspections of New Metrolinx Infrastructure.
- (b) Project Co shall notify Contracting Authority and Metrolinx of achievement of all milestones set out in the Inspection and Test Plan in respect of New Metrolinx Infrastructure as well as all Witness and Hold Points in respect of New Metrolinx Infrastructure.

1.2 Final Inspection of New Metrolinx Infrastructure

- (a) Project Co shall comply with all requirements set out in this Schedule 14 – Commissioning (including, for clarity, this Appendix F) as well as all requirements set out in Section 25.13 of the Project Agreement in connection with final inspections of New Metrolinx Infrastructure.
- (b) Prior to final inspection of New Metrolinx Infrastructure, Project Co shall, in addition to all other requirements set out in Section 25.13 of the Project Agreement:
 - (i) remove all temporary work no longer required from the site subject to final inspection, including but not limited to fencing, sign board, samples, and any other items not considered to be part of Project Co System Infrastructure or New Metrolinx Infrastructure, except for those items required for ongoing Works; and
 - (ii) clean all New Metrolinx Infrastructure prior to Handover following final inspection of such New Metrolinx Infrastructure,

all taking into account ongoing Works.

2. REQUIREMENTS FOR COMMISSIONING, HANDOVER, AND ACCEPTANCE**2.1 Applicable to all New Metrolinx Infrastructure**

- (a) In addition to any other requirements in the Project Agreement, Project Co shall satisfy the requirements of this Appendix F prior to, and as a condition of, Handover of New Metrolinx Infrastructure.

- (b) Project Co shall, prior to and as a pre-condition of Handover of each component New Metrolinx Infrastructure, complete and perform all requirements of Schedule 15-2 – Design and Construction Requirements applicable to such New Metrolinx Infrastructure.
- (c) Project Co shall, prior to and as a pre-condition of achievement of Handover of New Metrolinx Infrastructure, submit the following to Contracting Authority for review in accordance with Schedule 10 – Review Procedure:
 - (i) certification of the New Metrolinx Infrastructure in accordance with Section 3 of this Appendix C; and
 - (ii) Record Drawings for the New Metrolinx Infrastructure in accordance with Section 7.3 of Part 1 of Schedule 15-2 – Design and Construction Requirements.

2.2 Applicable to Railway Trackbed And Grading

- (a) For each component of New Metrolinx Infrastructure comprised of railway trackbed and grading, in addition to the requirements of Section 2.1 of this Appendix F, Project Co shall, prior to and as a pre-condition of Handover of such New Metrolinx Infrastructure, complete the following activities:
 - (i) roadbed (sub-ballast);
 - (ii) track clearances;
 - (iii) roadbed drainage system;
 - (iv) retaining walls;
 - (v) permanent fences;
 - (vi) communications systems;
 - (vii) return all construction staging areas located on the Railway Corridor to their original condition or a condition otherwise acceptable to Contracting Authority; and
 - (viii) clear and remove all debris, superfluous materials and equipment from Railway Corridor.

2.3 Applicable to Civil Structures

- (a) For each component of New Metrolinx Infrastructure comprised of Civil Structures, in addition to the requirements of Section 2.1 of this Appendix F, Project Co shall, prior to and as a pre-condition of Handover of such New Metrolinx Infrastructure:
 - (i) complete all structures and drainage systems;

- (ii) return all construction staging areas located on the Railway Corridor to their original condition or a condition otherwise acceptable to Contracting Authority; and
- (iii) clear and remove all debris, superfluous materials and equipment from Railway Corridor.

2.4 Applicable to Facilities

- (a) For each component of New Metrolinx Infrastructure comprised of Facilities, in addition to the requirements of Section 2.1 of this Appendix F, Project Co shall, prior to and as a pre-condition of Handover of such New Metrolinx Infrastructure, complete all:
 - (i) architectural elements and finishes;
 - (ii) foundations, substructure, superstructure, deck, railings and maintenance systems;
 - (iii) building envelope, including,
 - (A) air or vapour barrier;
 - (B) window systems;
 - (C) doors; and
 - (D) roofing;
 - (iv) elevators;
 - (v) fire protection systems;
 - (vi) HVAC systems;
 - (vii) building automation systems;
 - (viii) electrical systems;
 - (ix) communication, security and safety systems, including,
 - (A) CCTV surveillance system;
 - (B) public address; and
 - (C) intercom.

3. CERTIFICATION

- (a) Prior to achievement of Handover of New Metrolinx Infrastructure, and as a pre-condition of Handover, Project Co shall submit to Contracting Authority or to Metrolinx (if a Notice of Delegation has been issued in respect of the New Metrolinx Infrastructure) written certification to Metrolinx. Each certificate

shall be stamped, signed and dated by professionals licensed in the Province of Ontario qualified to certify the specific type of work and equipment being certified.

Peel v. JBH

Supervening Event Relief

Delay Events

- Peel and JBH are equivalent (largely identical): Project Co is entitled to an extension of time equal to the delay.

[Schedule relief only]

Compensation Events (which are a subset/selection of Delay Events)

- Peel/JBH are equivalent (largely identical): Project Co is entitled to receive compensation from the authority which places it in a no-better-no-worse position than if the Compensation Event had not occurred.

[Compensation to no-better-no-worse status]

Relief Events (definitions equivalent/near identical)

- Peel: for a Relief Event that occurs prior to the Substantial Completion Date, the only compensation is Compensation on Termination for a Relief Event, which does not include compensation in respect of debt service or equity.
- JBH: in respect of certain Relief Events that are also Delay Events (blockade/embargo, strike/lockout, civil disobedience), on the earlier of the Substantial Completion Date or date of payment of Compensation on Termination, JBH covers Project Co's debt service obligations for the period of delay. Note, no compensation for equity return is paid.

[Peel – Comp. on term only.]

[JBH – Debt Service]

Force Majeure (definitions equivalent/near identical)

- Peel: for an event of Force Majeure that occurs prior to the Substantial Completion Date, the only compensation is Compensation on Termination for Force Majeure, which does not include compensation in respect of debt service or equity.
- JBH: in respect of events of Force Majeure that are also Delay Events, on the earlier of the Substantial Completion Date or date of payment of Compensation on Termination, JBH covers Project Co's debt service obligations for the period of delay. Note, no compensation for equity return is paid.

[Peel – Comp. on term only.]

[JBH – Debt Service]

Compensation on Termination

Authority Default/Convenience

- Senior/Junior Debt Amount + Debt Service (JBH only)
- Amounts payable in respect of debt service due to Force Majeure/Relief Event (JBH only)
- Employee Payments and Subcontractor Losses (Both)
- Project Co wind-up costs (Both)
- Project Co Amount (equity return) (Both)

LESS

- Amounts standing to the credit of Project Co's bank accounts and the value of Project Co's assets (JBH only)
- Construction Period Payments/Substantial Completion Payment paid (both)
- Set-off (both)

Project Co Default

Guaranteed Price, LESS:

- Construction Period Payments/Substantial Completion Payment paid (Both)
- Cost to complete (Both)
- Holdback (Both)
- Set-off (Both)
- Direct Losses of Authority (Both)

Relief Event/Force Majeure/No Fault

- Senior/Junior Debt Amount + Debt Service (JBH only)
- Amounts payable in respect of debt service due to Force Majeure/Relief Event (JBH only)
- Employee Payments and Subcontractor Losses (Both)

LESS

- Amounts standing to the credit of Project Co's bank accounts and the value of Project Co's assets (JBH only)
- Construction Period Payments/Substantial Completion Payment paid (both)
- Set-off (both)

SCHEDULE 16

ENCUMBRANCES

- (a) For purposes of this Schedule 16, the defined term “Metrolinx Lands” shall include any portion of the Metrolinx Lands.
- (b) Each of the following, to the extent affecting the interest (whether real property interest or contractual interest) of Metrolinx in the Metrolinx Lands, is considered to be an encumbrance for the purposes of the Project Agreement (each, an “**Encumbrance**”):
- (i) All encumbrances, pledges, liens, charges, security agreements, security interests, leases, subleases, title retention agreements, mortgages, easements, encroachments, right-of-ways, restrictive covenants, work orders, options or adverse claims of any kind or character whatsoever relating to the title to the Metrolinx Lands disclosed or noted on the land registry office parcel registers or abstract indices for the Metrolinx Lands from time to time, including (but not limited to) those that may have been included in the Background Information as of the date of the Project Agreement and including those referred to in the legal descriptions for the Metrolinx Lands available in the applicable land registry office, in each case as assigned, amended, extended, supplemented, substituted and replaced from time to time.
 - (ii) Liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by Contracting Authority.
 - (iii) Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Metrolinx Lands or of which notice in writing shall not at the time have been given to Contracting Authority pursuant to the *Construction Act* (Ontario) or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, Contracting Authority has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts.
 - (iv) The rights reserved to or vested in the public or any municipality or governmental or other public authority by any statutory provision.
 - (v) Any subsisting reservations, limitations, provisions and conditions contained in any grants from the Crown of any land or interests therein, including reservations of under-surface rights to mines and minerals of any kind including rights to enter, prospect and remove the same.
 - (vi) Any encroachments, easements, rights of way, rights to use or similar interests revealed by any survey of the Metrolinx Lands or which would be revealed by an up-to-date survey of the Metrolinx Lands.

- (vii) Any rights in favour of or accruing to holders of under-surface rights which could be ascertained by a review of registered title or other public records, or, if unregistered, which do not materially interfere with the use of the Metrolinx Lands for the purposes of the Project Operations.
- (viii) Unregistered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, provided such unregistered agreements have been disclosed to Project Co, or which could be ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained, which do not materially interfere with the use of the Metrolinx Lands for the purposes of the Project Operations, and further provided such agreements have been complied with, or, if not complied with, that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Project Operations.
- (ix) Unregistered agreements, authorizations, consents, postponements, subordinations, licences or instruments entered into provided that they have been disclosed to Project Co, or which could be ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained, which do not materially interfere with the use of the Metrolinx Lands for the purposes of the Project Operations, and further provided such agreements have been complied with, or, if not complied with, that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Project Operations.
- (x) Unregistered easements, rights of way, rights to use, restrictions, restrictive covenants and similar rights in real property or any interest therein provided that they have been disclosed to Project Co, or which could be ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained, which do not materially interfere with the use of the Metrolinx Lands for the purposes of the Project Operations, and further provided such agreements have been complied with, or, if not complied with, that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Project Operations.
- (xi) Minor imperfections of title.
- (xii) Statutory exceptions to title and any rights reserved to or vested in any person by any statutory provision.
- (xiii) The right of any prior owner, occupant or tenant of any portion of the Lands to occupy any portion of the Lands or to remove buildings, fixed machinery, equipment, fittings or other fixtures located on such portion of the Lands.
- (xiv) The rights of any person entitled to any portion of the Lands through length of adverse possession or prescription.

SCHEDULE 17

ENVIRONMENTAL OBLIGATIONS

ARTICLE 1. DEFINITIONS 1

1.1 Definitions..... 1

ARTICLE 2. GENERAL ENVIRONMENTAL PROVISIONS..... 6

2.1 Compliance with Environmental Reference Documents 6

2.2 Project Co Additional Environmental Obligations 7

2.3 Contracting Authority’s Environmental Obligations 8

2.4 Environmental Impacts and Changes to Environmental Assessments..... 9

2.5 Permits, Licences and Approvals..... 10

2.6 Notification to Contracting Authority..... 10

2.7 Inquiries to Governmental Authorities..... 10

2.8 Environmental Records..... 11

2.9 Environmental Positions 11

ARTICLE 3. ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY 11

3.1 Environmental Director..... 11

3.2 Environmental Manager(s) 13

3.3 Environmental Permits and Approvals Coordinator(s)..... 15

3.4 Environmental Compliance Officer(s)..... 16

3.5 Environmental Specialists..... 16

3.6 Environmental Inspector(s)..... 23

3.7 Environmental Working Group 24

3.8 Environmental Plans and Reports 24

3.9 Environmental Management System 25

3.10 Sustainability Plans and Sustainability Annual Report(s) 26

3.11 Other Required Environmental Plans and Reports 30

ARTICLE 4. MANAGEMENT OF CONTAMINATION, SOIL AND GROUNDWATER 31

4.1 Notification Requirements 31

4.2 Notification to Contracting Authority..... 31

4.3 Notification to Governmental Authorities 32

4.4 Soil and Excavated Materials Management Plan..... 32

4.5 Groundwater Management and Dewatering Plan 36

4.6 Management, Removal and Remediation 39

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| | | |
|--|--|-----------|
| 4.7 | Hazardous Substances Brought onto the Lands | 40 |
| 4.8 | Spill Prevention and Response Plan..... | 40 |
| 4.9 | Designated Substances and Hazardous Materials Management Plan | 41 |
| ARTICLE 5. ELECTROMAGNETIC COMPATIBILITY AND INTERFERENCE (EMC/EMI) | | 43 |
| 5.1 | EMC/EMI | 43 |
| ARTICLE 6. ARCHAEOLOGY AND CULTURAL HERITAGE..... | | 43 |
| 6.1 | Archaeology Risk Management..... | 43 |
| 6.2 | Built Heritage and Cultural Heritage Landscapes..... | 44 |
| ARTICLE 7. AIR QUALITY..... | | 45 |
| 7.1 | Air Quality | 45 |
| ARTICLE 8. NOISE AND VIBRATION | | 46 |
| 8.1 | Noise and Vibration General..... | 46 |
| 8.2 | Noise and Vibration Reference Documents and Performance Limits | 48 |
| 8.3 | Noise and Vibration Control Plan..... | 52 |
| 8.4 | Sensitive Receivers and Representative Sensitive Receivers – Identification and Requirements 54 | |
| 8.5 | Prediction and Assessment..... | 55 |
| 8.6 | Assessment and Monitoring During the Construction Period..... | 56 |
| 8.7 | Noise and Vibration Commissioning..... | 57 |
| 8.8 | Monitoring During the Operational Term - Representative Sensitive Receivers | 58 |
| 8.9 | Complaints During Operational Term | 58 |
| 8.10 | Non-Conformance During Operational Term..... | 60 |
| 8.11 | Inquiries to Governmental Authorities – Noise and Vibration | 60 |
| ARTICLE 9. OTHER ENVIRONMENTAL MATTERS | | 61 |
| 9.1 | Endangered Species, Species-at-Risk Permits and Documentation..... | 61 |
| 9.2 | Wetland, Tree and Vegetation Compensation | 61 |
| 9.3 | Organic Materials..... | 61 |
| 9.4 | Protection/Decommissioning of Existing Monitoring Wells..... | 61 |
| 9.5 | Tree Protection and Preservation Plans | 62 |
| 9.6 | OMSF Site Maintenance..... | 62 |
| 9.7 | Phase 2 Environmental Site Assessment – Highway 403..... | 62 |
| ARTICLE 10. PERFORMANCE CRITERIA | | 63 |
| 10.1 | Application of Performance Criteria..... | 63 |

10.2 Performance Criteria..... 63

APPENDICES

- Appendix A-1 – Contracting Authority Environmental Commitments (EPR)
- Appendix A-2 – Shared Environmental Commitments (EPR)
- Appendix A-3 – Shared Environmental Commitments (Addendum Process)
- Appendix B – Plans and Reports
- Appendix C – Draft Table of Contents: Environmental Management System

SCHEDULE 17

ENVIRONMENTAL OBLIGATIONS

ARTICLE 1. DEFINITIONS

1.1 Definitions

In this Schedule 17, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 17) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Additional Environmental Report**” has the meaning given in Section 3.8(a).
- (b) “**Additional Sensitive Receiver Performance Requirements**” has the meaning given in Section 8.4(d).
- (c) “**Air Quality Management Plan**” has the meaning given in Section 7.1(b).
- (d) “**Air Quality Specialist**” means an individual possessing the minimum requirements set out in Section 3.5(b)(i).
- (e) “**Annual Environmental Compliance Monitoring Report**” has the meaning given in Section 3.11(a).
- (f) “**Applicable Noise and Vibration Requirements**” has the meaning given in Section 8.1(a)(iv).
- (g) “**Arborist**” means an individual possessing the minimum requirements set out in Section 3.5(b)(iii).
- (h) “**Archaeological Risk Management Plan**” has the meaning given in Section 6.1(a).
- (i) “**Biologist**” means an individual possessing the minimum requirements set out in Section 3.5(a)(xiii).
- (j) “**Change**” for the purposes of this Schedule 17, means a change to the Project that is inconsistent with the Environmental Assessments.
- (k) “**Climate Resilience Specialist**” means an individual possessing the minimum requirements set out in Section 3.5(b)(xii).
- (l) “**Contracting Authority Environmental Commitments**” has the meaning given in Section 2.3(b).
- (m) “**Cultural Heritage Risk Management Plan**” has the meaning given in Section 6.2(b).

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- (n) “**Cultural Heritage Specialist**” means an individual possessing the minimum requirements set out in Section 3.5(b)(ii).
- (o) “**Designated Substances and Hazardous Materials**” includes,
- (i) those substances identified by Ontario Regulation 490/09, as amended, under the *Occupational Health and Safety Act* (Ontario);
 - (ii) polychlorinated biphenyls as identified in Ontario Regulation 362, as amended under the *Environmental Protection Act* (Ontario); and
 - (iii) mould, acrylonitrile, arsenic, asbestos, benzene, coke oven emissions, ethylene oxide, isocyanates, lead, mercury, silica, vinyl chloride, stored chemicals, animal feces, and polychlorinated biphenyls.
- (p) “**Designated Substances and Hazardous Materials Implementation Report**” has the meaning given in Section 4.9(b).
- (q) “**Designated Substances and Hazardous Materials Management Plan**” has the meaning given in Section 4.9(a).
- (r) “**EMC/EMI Specialist**” means an individual possessing the minimum requirements set out in Section 3.5(b)(iv).
- (s) “**Endangered Species Act (Ontario)**” means the *Endangered Species Act, 2007*, S.O. 2007, c.6, as amended from time to time.
- (t) “**Environmental Activity and Sector Registration**” or “**EASR**” means a registration requirement in respect of construction-related water taking activities prescribed under Ontario Regulation 63/16 of the *Environmental Protection Act* (Ontario).
- (u) “**Environmental Completion Report**” has the meaning given in Section 3.11(d).
- (v) “**Environmental Compliance Officer**” has the meaning given in Section 3.4(a).
- (w) “**Environmental Consultant**” means a reputable, qualified and experienced environmental consulting or engineering firm employing individuals who have the designation of Qualified Person pursuant to part II section 5 of Ontario Regulation 153/04 under the *Environmental Protection Act* (Ontario) that has been retained by Project Co to provide technical expertise and guidance to Project Co on all Project Co Environmental Commitments, the Environmental Approvals and all other environmental obligations and matters, including monitoring, managing and addressing soil and groundwater impacts and occupational and public health and safety issues, for the duration of the Works.
- (x) “**Environmental Director**” has the meaning given in Section 3.1(a).
- (y) “**Environmental Inspector**” has the meaning given in Section 3.6(a).

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- (z) “**Environmental Management Plans**” means the plans and reports described in Appendix B to this Schedule 17 and any relevant Additional Environmental Reports.
- (aa) “**Environmental Management System**” or “**EMS**” has the meaning given in Section 3.9(a).
- (bb) “**Environmental Management System Update**” has the meaning given in Section 3.9(c).
- (cc) “**Environmental Manager**” has the meaning given in Section 3.2(a).
- (dd) “**Environmental Permits and Approvals Coordinator**” has the meaning given in Section 3.3(a).
- (ee) “**Environmental Planning Specialist**” means an individual possessing the minimum requirements set out in Section 3.5(b)(v).
- (ff) “*Environmental Protection Act (Ontario)*” means the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended from time to time.
- (gg) “**Environmental Reference Documents**” has the meaning given in Section 2.1(a).
- (hh) “**Environmental Specialist**” has the meaning given in Section 3.5(a).
- (ii) “**Environmental Working Group**” or “**EWG**” has the meaning given in Section 3.7(a).
- (jj) “**GRI Sustainability Reporting Standards**” means the internationally recognized sustainability reporting standard, representing the global best practice for reporting on a range of economic, environmental and social impacts.
- (kk) “**Groundwater Management and Dewatering Implementation Report**” has the meaning given in Section 4.5(d).
- (ll) “**Groundwater Management and Dewatering Monthly Monitoring Report**” has the meaning given in Section 4.5(c).
- (mm) “**Groundwater Management and Dewatering Plan**” has the meaning given in Section 4.5(a).
- (nn) “**Heritage Impact Assessment(s)**” or “**HIA**” has the meaning given in Section 6.2(c).
- (oo) “**Hydrogeologist**” means an individual possessing the minimum requirements set out in Section 3.5(b)(vi).
- (pp) “**Independent Environmental Audit**” has the meaning given in Section 3.11(c).
- (qq) “**ISO 14001 Environmental Management System Standard**” means the internationally recognized environmental management standard which was first published in 1996, and which is a systematic framework to manage the immediate and long-term environmental impacts of an organization’s products, services and processes.

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- (rr) **“Licenced Archaeologist”** means an individual possessing the minimum requirements set out in Section 3.5(b)(viii).
- (ss) **“MNR”** means the Ontario Ministry of Natural Resources and Forestry and any successor ministry thereto.
- (tt) **“MOECP”** means the Ontario Ministry of the Environment, Conservation and Parks, and any successor ministry thereto.
- (uu) **“Monthly Environmental Report”** has the meaning given in Section 3.11(b).
- (vv) **“MTCS”** means the Ontario Ministry of Tourism, Culture and Sport, and any successor ministry thereto.
- (ww) **“Noise and Vibration Assessments”** has the meaning given in Section 8.5(e).
- (xx) **“Noise and Vibration Control Plan”** has the meaning given in Section 8.3(a).
- (yy) **“Noise and Vibration Performance Limits”** has the meaning given in Section 8.2(b).
- (zz) **“Noise and Vibration Reference Documents”** has the meaning given in Section 8.2(a).
- (aaa) **“Noise and Vibration Survey”** has the meaning given in Section 8.8(a).
- (bbb) **“Noise Specialist”** means an individual possessing the minimum requirements set out in Section 3.5(b)(vii).
- (ccc) **“Ontario Water Resources Act (Ontario)”** means the *Ontario Water Resources Act*, R.S.O. c. O.40, as amended from time to time.
- (ddd) **“Overall Benefit Permit”** means a permit that:
- (i) is required to perform an activity that is not otherwise allowed under the *Endangered Species Act* (Ontario); and
 - (ii) authorizes a person, company or organization to perform the activity, as long as such person, company or organization provides an overall benefit to a species in the Province of Ontario.
- (eee) **“Permit To Take Water”** or **“PTTW”** means a permit issued by the MOECP for the taking of water in accordance with Ontario Regulation 387/04 under the *Ontario Water Resources Act* (Ontario) or an Environmental Activity and Sector Registration made under Ontario Regulation 63/16 under the *Environmental Protection Act* (Ontario).
- (fff) **“Project Co Environmental Commitments”** has the meaning given in Section 2.1(a)(ii).

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- (ggg) “**Qualified Person**” when used in this Schedule 17 has the meanings given in section 5 of Ontario Regulation 153/04 under the *Environmental Protection Act* (Ontario).
- (hhh) “**Receiver**” is a stationary position at which noise or vibration levels are specified.
- (iii) “**Representative Sensitive Receiver**” means a reasonable selection of Sensitive Receivers near the Construction Activities at individual sites, Project Co System Infrastructure or New Third Party Infrastructure intended to adequately represent the worst case effects of ground borne vibration, air borne noise and ground borne noise on Sensitive Receivers likely to be affected by ground borne vibration and air and ground borne noise from the particular Construction Activities, Project Co System Infrastructure, New Third Party Infrastructure or operation of the Revenue Vehicles on the Hurontario LRT. The Hurontario LRT corridor between Gateway Terminal and Port Credit GO station is estimated to require approximately 38 monitoring locations, and is subject to change based upon the public consultation as referenced in Section 8.4(a)(ii).
- (jjj) “**Sensitive Receiver**” means a specific property or location susceptible to impact from noise or vibration at which noise and vibration limits are set out in the Applicable Noise and Vibration Requirements and Additional Sensitive Receiver Performance Requirements.
- (kkk) “**Soil and Excavated Material Management Implementation Report**” has the meaning given in Section 4.4(f).
- (lll) “**Soil and Excavated Material Management Monthly Monitoring Report**” has the meaning given in Section 4.4(d).
- (mmm) “**Soil and Excavated Material Management Plan**” has the meaning given in Section 4.4(a).
- (nnn) “**Soil and Groundwater Contamination and Management Specialist**” means an individual possessing the minimum requirements set out in Section 3.5(b)(xi).
- (ooo) “**Species at Risk Act (Canada)**”, means the *Species at Risk Act*, S.C. 2002, c. 29, as amended from time to time.
- (ppp) “**Species-at-Risk Specialist**” means an individual possessing the minimum requirements set out in Section 3.5(b)(ix).
- (qqq) “**Spill**” means a discharge of a contaminant (other than heat, sound, vibration, or radiation) into the natural environment, from or out of a structure, vehicle, or other container, that is abnormal in quality or quantity in light of all circumstances of the discharge.
- (rrr) “**Spill Prevention and Response Implementation Report**” has the meaning given in Section 4.8(d).
- (sss) “**Spill Prevention and Response Occurrence Report**” has the meaning given in Section 4.8(c).
- (ttt) “**Spill Prevention and Response Plan**” has the meaning given in Section 4.8(a).

- (uuu) “**Stationary Sources**” has the meaning given and is as defined in MOECP publication NPC-300.
- (vvv) “**Sustainability Annual Report**” has the meaning given in Section 3.10(c).
- (www) “**Sustainability Plans**” has the meaning given in Section 3.10(a).
- (xxx) “**Tree Inventory Report**” means Hurontario LRT Tree Inventory Report prepared by AECOM and dated December 29, 2017.
- (yyy) “**Tree Preservation and Protection Plans and Arborist Report**” has the meaning given in Section 9.5(b).
- (zzz) “**Vibration Specialist**” means an individual possessing the minimum requirements set out in Section 3.5(b)(x).
- (aaaa) “**Weekly Noise and Vibration Monitoring Report**” has the meaning given in Section 8.6(d).

ARTICLE 2. GENERAL ENVIRONMENTAL PROVISIONS

2.1 Compliance with Environmental Reference Documents

- (a) Without limitation to any of Project Co’s rights, remedies or obligations under the Project Agreement, including Section 16.2 of the Project Agreement and any other obligations with respect to Project Co conducting its own due diligence investigations:
 - (i) Project Co shall, at all times, perform the Project Operations in accordance with Environmental Law and in a manner that ensures that Contracting Authority and the Project Operations are in compliance with all obligations under the following (to the extent that each document is applicable to the Project Operations):
 - (A) the Environmental Assessments;
 - (B) the Cultural Heritage Reports;
 - (C) the Archaeological Reports;
 - (D) the Phase 1 and Phase 2 Environmental Site Assessment Reports;
 - (E) the Designated Substances Survey Reports;
 - (F) the ELC/SAR Memo;
 - (G) the Tree Inventory Report;
 - (H) any of the Environmental Approvals; and
 - (I) the Metrolinx Interim Heritage Management Protocol

(collectively the “**Environmental Reference Documents**”); and

- (ii) Project Co shall, at no additional cost to Contracting Authority, comply with all recommendations and requirements, and perform all commitments and obligations in the Environmental Reference Documents, including those set out as the responsibility of the proponent or co-proponents in the Environmental Reference Documents, including, for clarity, the Project Co commitments and obligations that are set out in Appendix A-2 and A-3 (Shared Environmental Commitments), except that Project Co,
 - (A) shall not be responsible for the performance of and compliance with those commitments and obligations that are explicitly set out as Contracting Authority commitments or obligations in Appendix A-1 (Contracting Authority Environmental Commitments) or Appendix A-2 and A-3 (Shared Environmental Commitments); and
 - (B) shall be responsible for complying with the provisions of Schedule 15 – Output Specifications, pertaining to the Environmental Reference Documents in the manner set out in Schedule 15,

(collectively, the “**Project Co Environmental Commitments**”). For clarity, Project Co acknowledges and agrees that, notwithstanding that a recommendation or consideration is not expressed in an Environmental Reference Document as a requirement, commitment or obligation, and is instead expressed as a recommendation or consideration (for example, using the phrase, “may”, “will”, “should”, “it is recommended”, or “to be considered”), such recommendation or consideration is deemed to be a “Project Co Environmental Commitment” for the purposes of the Project Agreement, and a specific reference to the manner in which an obligation in Schedule 15 should be performed or complied with takes precedence over any discretion accorded to, performance of or compliance with such obligation in the Environmental Reference Documents.

- (b) The Parties acknowledge and agree that if there is any conflict between any criterion, commitment or requirement contained in one or more of the Environmental Reference Documents or under Environmental Law, the more stringent criterion, commitment or requirement shall apply.
- (c) Promptly following a request by Contracting Authority, Project Co shall submit to the Contracting Authority Representative all documentation necessary and sufficient to demonstrate that the Project Operations are in compliance with the Project Co Environmental Commitments.

2.2 Project Co Additional Environmental Obligations

- (a) Throughout the Project Term, Project Co shall manage all environmental matters and perform all environmental obligations associated with the Project in accordance with the Project Agreement, including this Schedule 17, and in coordination with Contracting Authority.
- (b) Project Co shall submit all information of an environmental nature that is associated with the Project and that is,

- (i) required by an Environmental Reference Document or an Additional Environmental Report, other than any information that is explicitly Contracting Authority’s obligation to provide pursuant to a Contracting Authority Environmental Commitment;
- (ii) required at any time pursuant to this Schedule 17, including all plans, reports, Submittals and other documents described herein; or
- (iii) otherwise required by the Contracting Authority Representative, in its sole discretion, upon reasonable advance Notice to Project Co,
 - (A) that is in the possession and control of Project Co or otherwise contemplated in the Project Agreement, at no cost to Contracting Authority; or
 - (B) that is not in the possession and control of Project Co and which would require additional work or investigation of Project Co that is not otherwise contemplated in the Project Agreement, at the cost and expense of Contracting Authority,

for review by Contracting Authority in accordance with Schedule 10 – Review Procedure.

- (c) Where any plan or document set out in this Schedule 17 is required to be submitted by Project Co in accordance with Schedule 10 – Review Procedure, Project Co shall implement such plan or document upon receipt of a “NO COMMENT” notification for the plan or document by Contracting Authority, in accordance with Schedule 10 – Review Procedure.

2.3 Contracting Authority’s Environmental Obligations

- (a) Contracting Authority shall review all documentation submitted by Project Co under Section 2.2(b) or otherwise in accordance with this Schedule 17 in accordance with Schedule 10 – Review Procedure.
- (b) Contracting Authority shall deliver, comply with and perform all commitments and obligations set out as “Contracting Authority Commitments” in Appendix A to this Schedule 17 (the “**Contracting Authority Environmental Commitments**”). For clarity, the Contracting Authority Environmental Commitments are limited to Contracting Authority’s obligations in Appendix A-1 to this Schedule 17 and Contracting Authority’s portions of the shared obligations set out in Appendix A-2 and Appendix A-3 to this Schedule 17.
- (c) Contracting Authority may liaise with the MOECP and other applicable Governmental Authorities regarding the Contracting Authority Environmental Commitments.
- (d) No later than 30 days following Financial Close, or such longer period as agreed upon by the Parties, Contracting Authority shall:
 - (i) provide Project Co with a summary report of any activities that have been completed, in whole or in part, and the status of works performed, by Contracting Authority and other Governmental Authorities relevant to Project Co’s obligations under Sections 2.1 and 2.2;

- (ii) provide Project Co with all applicable documentation related to any obligation or commitment contained in the Environmental Assessments that was performed by Contracting Authority or a Governmental Authority prior to Financial Close;
- (iii) schedule a meeting between Project Co and Contracting Authority to review the summary report and documentation referred to in Sections 2.3(d)(i) and 2.3(d)(ii); and
- (iv) schedule an appropriate number of site visits with Project Co to review field activities performed by Contracting Authority prior to Financial Close.

2.4 Environmental Impacts and Changes to Environmental Assessments

- (a) Project Co shall carry out the Project Operations in such a manner so that the environmental impacts of the Project Operations are at all times within the magnitude and extent permitted by the Environmental Reference Documents, Additional Environmental Reports and Environmental Law. If it is not possible to contain the environmental impact of any aspect of the Project Operations to what is permitted in the Environmental Reference Documents, Additional Environmental Reports and Environmental Law, Project Co shall comply with any amendment procedures required to amend the applicable Environmental Reference Document or Additional Environmental Report in accordance with Environmental Law, at Project Co's sole cost and expense. Prior to contacting any Governmental Authority in respect of an amendment to any Environmental Reference Document or Additional Environmental Report, Project Co shall prepare and submit a proposal setting out the reason for and details regarding the amendment to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and Project Co shall obtain the written consent of Contracting Authority.
- (b) If Project Co's design of any aspect of the Works deviates from the design concept described in the Environmental Assessments, Project Co shall prepare and submit a report to the Contracting Authority Representative describing the deviation and the reasons for the deviation. If, in the sole discretion of Contracting Authority, the deviation described by Project Co amounts to a Change, Project Co shall carry out all studies and evaluations necessary to assess the environmental effects associated with the Change in a manner consistent with the original assessment of environmental effects of the Works as documented in the Environmental Assessments, at Project Co's sole cost and expense.
- (c) Any amendment to the Environmental Reference Documents or Additional Environmental Reports required as a result of the Project Operations, including Project Co's design of the Project or any other action or inaction of Project Co, shall be at the sole cost and risk of Project Co whether or not the application for such change to the Environmental Reference Document or Additional Environmental Report is made by Contracting Authority or Project Co.
- (d) For greater clarity, with respect to any Environmental Assessments or amendments thereto that may be required as a result of Section 2.4(a), Section 2.4(b), or Section 2.4(c), Metrolinx shall be the "proponent" under the legislation and Project Co shall be Metrolinx's agent in preparing any such amendment, which shall be submitted to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure.

2.5 Permits, Licences and Approvals

- (a) Project Co acknowledges that Section 9.4 of the Project Agreement applies to all Permits, Licences and Approvals necessary to fulfill Project Co's environmental obligations under the Project Agreement, including those relating to the amendment of any Environmental Reference Document or Additional Environmental Report.

2.6 Notification to Contracting Authority

- (a) Project Co shall immediately notify the Contracting Authority Representative of Project Co's knowledge of:
- (i) any breach by Project Co or any Project Co Party of any Environmental Law relating to the performance of the Project Operations or the Lands;
 - (ii) any charge, order, investigation or notice of violation or non-compliance issued under any Environmental Law,
 - (A) against Project Co or any Project Co Party;
 - (B) relating to the performance of the Project Operations; or
 - (C) relating to the Lands; or
 - (iii) any actual or potential notice, claim, action or other proceeding brought by any person under any Environmental Law,
 - (A) against Project Co or any Project Co Party;
 - (B) relating to the performance of the Project Operations; or
 - (C) relating to the Lands.

2.7 Inquiries to Governmental Authorities

- (a) Unless otherwise specified in the Project Agreement, Project Co shall liaise directly with the MOECP and other applicable Governmental Authorities regarding Project Co's environmental obligations hereunder, except that Contracting Authority together with Project Co shall establish the first point of contact with MOECP and other applicable Governmental Authorities following Commercial Close.
- (b) Where requested by Contracting Authority, Project Co shall cooperate with and promptly provide the Contracting Authority Representative with any written documentation or authorizations required by Contracting Authority for any inquiry of any Governmental Authority relating to Project Co's compliance with this Schedule 17, any Environmental Law or any Permits, Licences and Approvals relating to environmental matters on the Project.

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- (c) Project Co shall forward to the Contracting Authority Representative a copy of any report, submission, application or other document relating to environmental matters on, at, affecting or otherwise relating to the Project Operations or the Lands, concurrent with the filing or submission of the report, submission, application or other document to any Governmental Authority.
 - (d) Project Co shall provide Contracting Authority with reasonable advance Notice of all planned meetings with any Governmental Authority and Project Co acknowledges that Contracting Authority may, in the sole discretion of Contracting Authority, attend such meetings. Project Co shall minute all such meetings held and distribute all meeting minutes to Contracting Authority.

2.8 Environmental Records

- (a) Project Co shall maintain all documents and records relating to environmental matters for the Project (including the Environmental Reference Documents, Additional Environmental Reports, and any environmental Project Co Permits, Licences and Approvals) in accordance with Schedule 26 – Record Provisions.

2.9 Environmental Positions

- (a) Project Co shall fill, or shall cause a Project Co Party to fill, each of the environmental positions identified in this Schedule 17 with separate qualified individuals. The combining of positions is not permitted without the prior written approval of the Contracting Authority Representative.

ARTICLE 3. ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY

3.1 Environmental Director

- (a) Project Co shall appoint an environmental director who shall, throughout the Construction Period and irrespective of such person's other responsibilities, have defined authority for ensuring compliance with all of Project Co's environmental obligations for the Project (the "**Environmental Director**").
- (b) The Environmental Director shall be a Key Individual.
- (c) The Environmental Director shall have:
 - (i) a minimum 15 years of work-related experience on projects of similar size, scope, and complexity to the Project;
 - (ii) graduated from a recognized post-secondary institution with specialization in planning, environmental planning, geography or another related discipline;
 - (iii) experience in successfully managing and completing transit projects in Ontario;
 - (iv) knowledge of Ontario's Transit Project Assessment Process, the GO Transit Class EA Document, and the *Environmental Assessment Act* (Ontario);

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- (v) knowledge of relevant federal and Ontario environmental policies, procedures and legislation;
 - (vi) the ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
 - (vii) experience with similar projects in Ontario.
- (d) Without limiting the generality of Section 3.1(a), the job specification and responsibilities of the Environmental Director shall include the following:
- (i) directing all aspects of Project Co's environmental and sustainability programs for the Project, including the annual environmental and sustainability reporting activities;
 - (ii) ensuring environmental and sustainability issues are addressed and requirements are met in accordance with the Project Agreement and all Environmental Reference Documents and Additional Environmental Reports;
 - (iii) ensuring that all sustainability initiatives are coordinated with Contracting Authority and that the initiatives fit within Contracting Authority's corporate sustainability priorities and strategies;
 - (iv) establishing and maintaining working relationships with relevant Governmental Authorities and Stakeholders through the Contracting Authority Representative;
 - (v) taking a lead role in internal environmental and sustainability design reviews including development of mitigation and compensation proposals acceptable to the Contracting Authority Representative and Governmental Authorities;
 - (vi) liaising with the Contracting Authority Representative and with Governmental Authorities (through the Contracting Authority Representative) as required and acting as the single point of contact for Project Co on all matters relating to environmental management and sustainability;
 - (vii) directing the preparation and submission to the Contracting Authority Representative of all plans, reports, documents and other information required by this Schedule 17;
 - (viii) acting as lead authorizing signatory for Project Co before the release of any new or amended plan, report or document set out in Schedule 10 – Review Procedure and any other plan, report or document identified under Section 2.2(b), which authority shall be executed in accordance with the requirements of Schedule 11 – Quality Management; and
 - (ix) acting as lead authorizing signatory for Project Co before the release of any new or amended plan, report or document pursuant to environmental components of the Design Development Submittals, Construction Document Submittals, Project Works Schedules, and Service Submittals, which authority shall be executed in accordance with the requirements of Schedule 11 – Quality Management.

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- (e) The Environmental Director shall have the authority up to and including stopping work where the Environmental Management System is not being followed, or where there is a risk of environmental impact.
 - (f) The Environmental Director shall be independent of the Construction Contractor.
 - (g) Project Co shall not assign the responsibilities and obligations of the Environmental Director to any other Project Co Party during the Construction Period.
 - (h) Project Co shall submit sufficient documentation to the Contracting Authority Representative in accordance with Schedule 10 - Review Procedure and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17, to demonstrate that the qualifications of the Environmental Director are sufficient to carry out the responsibilities described in this Section 3.1.

3.2 Environmental Manager(s)

- (a) Project Co shall appoint one or more environmental manager(s) who shall, throughout the Project Term and under the direction of the Environmental Director during the Construction Period, have defined authority for ensuring the day-to-day implementation of Project Co's environmental and sustainability obligations set out in the Project Agreement (each an "**Environmental Manager**").
- (b) The Environmental Manager(s) shall have:
 - (i) 10 years of work-related experience on projects of similar size, scope, and complexity to the Project;
 - (ii) graduated from a recognized post-secondary institution with specialization in planning, environmental planning, geography or another related discipline;
 - (iii) experience in successfully managing all environmental aspects of transit projects in Ontario;
 - (iv) knowledge of Ontario Transit Project Assessment Process, the GO Transit Class EA Document, and the *Environmental Assessment Act* (Ontario);
 - (v) knowledge of relevant federal and Ontario environmental policies, procedures and legislation;
 - (vi) the ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
 - (vii) experience with similar projects in Ontario.
- (c) Each Environmental Manager shall be a Key Individual during the Construction Period. The Environmental Manager who is assigned the responsibilities and obligations of the Environmental

- Director in accordance with Section 3.2(f) shall be a Key Individual for the duration of the Operational Term.
- (d) Without limiting the generality of Section 3.2(a), the job specification and responsibilities of each Environmental Manager shall include the following:
- (i) managing all environmental and sustainability issues associated with the Project on a day-to-day basis, including overseeing the environmental monitoring and follow-up program in accordance with the Environmental Reference Documents, Additional Environmental Reports, Environmental Law and any applicable Permits, Licences and Approvals;
 - (ii) establishing and maintaining working relationships with relevant Governmental Authorities and Stakeholders in cooperation with the Contracting Authority Representative;
 - (iii) ensuring effective operation of the Environmental Management System on a day-to-day basis;
 - (iv) ensuring effective delivery of the Sustainability Annual Report and operation of the Sustainability Plans on an ongoing basis;
 - (v) ensuring environmental and sustainability issues are addressed and requirements are met in accordance with the Environmental Reference Documents, Additional Environmental Reports and the Project Agreement;
 - (vi) supporting the Environmental Director in the development of the Sustainability Plans;
 - (vii) managing the implementation of the Sustainability Plans and all sustainability issues associated with the Project on a day-to-day basis; and
 - (viii) ensuring effective development, tracking and monitoring of environmental and sustainability metrics in-line with best practice standards.
- (e) Project Co shall submit sufficient documentation to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17, to demonstrate that the qualifications of each Environmental Manager are sufficient to carry out the responsibilities described in Sections 3.2(a) and 3.2(d).
- (f) On the Substantial Completion Date, Project Co shall assign the responsibilities and obligations of the Environmental Director, Environmental Permits and Approvals Coordinator(s), Environmental Inspector(s) and Environmental Compliance Officer(s) to an Environmental Manager for the Operational Term, except for the authority to stop work as per Section 3.1(e) which shall be assigned to the Quality Director, as defined in Schedule 11 – Quality Management. Such Environmental Manager shall:

- (i) have the job specifications and responsibilities set out in Sections 3.1(d), 3.3(a), 3.4(a), 3.6(a) and 3.6(c) provided that the responsibilities related to the Works during the Construction Period described in any such Section shall be deemed to be responsibilities related to the Project Co Services applicable during the Operational Term;
- (ii) have the authority set out in Section 3.1(a) and Section 3.1(d); and
- (iii) be independent of the Service Provider.

3.3 Environmental Permits and Approvals Coordinator(s)

- (a) Project Co shall appoint one or more environmental permits and approvals coordinator(s) (each an “**Environmental Permits and Approvals Coordinator**”) who shall, throughout the Construction Period and under direction of an Environmental Manager, be responsible for obtaining and ensuring the compliance with environmental Permits, Licences and Approvals relating to the performance of the Works.
- (b) Environmental Permits and Approvals Coordinator(s) shall have:
 - (i) seven years of work-related experience;
 - (ii) graduated from a recognized post-secondary institution with specialization in planning, environmental planning, geography or another related discipline;
 - (iii) experience in successfully managing the process of procuring all environmental permits and approvals on transit projects in Ontario;
 - (iv) knowledge of Ontario’s Transit Project Assessment Process, the GO Transit Class EA Document, and the *Environmental Assessment Act* (Ontario);
 - (v) knowledge of relevant federal and Ontario environmental policies, procedures and legislation;
 - (vi) the ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
 - (vii) experience with similar projects in Ontario.
- (c) Project Co shall submit sufficient documentation to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17, to demonstrate that the qualifications of each Environmental Permits and Approvals Coordinator are sufficient to carry out the responsibilities described in Section 3.3(a).

3.4 Environmental Compliance Officer(s)

- (a) Project Co shall appoint one or more environmental compliance officer(s) (each an “**Environmental Compliance Officer**”) who shall, throughout the Construction Period, under the direction of the Environmental Manager(s), be responsible for monitoring the implementation of the environmental aspects of the Works to confirm compliance with the requirements of:
- (i) the commitments of the Environmental Assessments;
 - (ii) environmental Permits, Licences and Approvals; and.
 - (iii) all plans, documents and Additional Environmental Reports implemented pursuant to Section 2.2(c).
- (b) Project Co shall submit sufficient documentation to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17, to demonstrate that the qualifications of the Environmental Compliance Officer are sufficient to carry out the responsibilities described in Section 3.4(a).

3.5 Environmental Specialists

- (a) Project Co shall have available as appropriate during the Project Term, under direction of an Environmental Manager, a multi-disciplinary team of specialists experienced in the disciplines required to meet Project Co’s obligations under this Schedule 17, including,
- (i) an Air Quality Specialist(s);
 - (ii) an Arborist(s);
 - (iii) a Cultural Heritage Specialist(s);
 - (iv) an EMC/EMI Specialist(s);
 - (v) an Environmental Planning Specialist(s);
 - (vi) a Hydrogeologist(s);
 - (vii) a Noise Specialist(s);
 - (viii) a Licenced Archaeologist(s);
 - (ix) a Species-at-Risk Specialist(s);
 - (x) a Vibration Specialist(s);
 - (xi) a Soil and Groundwater Contamination and Management Specialist(s);

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- (xii) a Climate Resilience Specialist(s); and
 - (xiii) a Biologist(s),

(each an “**Environmental Specialist**”).
- (b) each Environmental Specialist used by Project Co to meet its obligations under the Project Agreement shall meet the following minimum qualifications:
- (i) each Air Quality Specialist shall have:
 - (A) five years of work-related experience;
 - (B) a degree from a recognized university with specialization in chemical or civil or environmental engineering;
 - (C) experience in predicting the greenhouse gas emission implications of transportation alternatives;
 - (D) experience in designing and evaluating appropriate air quality impact mitigation for transportation projects;
 - (E) experience utilizing scientifically approved dispersion models, such as CAL3HQC and CAL3HQCR, and vehicle emission model, such as MOVES;
 - (F) experience in the determination of existing ambient air quality, exceedances in ambient air quality criteria prescribed by municipal, provincial and/or national standards and identification of sensitive receptors;
 - (G) experience in sensitive receptor identification, assessment of impacts, and the identification of mitigation;
 - (H) understanding of federal, Ontario and municipal laws and regulations as they pertain to air quality; and
 - (I) ability to liaise with other specialty consultants, contractors and Governmental Authorities;
 - (ii) each Cultural Heritage Specialist shall have:
 - (A) five years of work-related experience;
 - (B) a degree from a recognized university in a field of study related to historical and architectural aspects of built heritage resources and cultural heritage landscapes;
 - (C) membership in the Canadian Association of Heritage Professionals;

- (D) experience in the identification and evaluation of cultural heritage resources;
 - (E) experience in the development of heritage resource mitigation measures, including relocation, salvage and conservation plans for architecture and landscape;
 - (F) knowledge of federal, Ontario and Metrolinx cultural heritage policies, procedures and legislation;
 - (G) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
 - (H) experience with similar projects in Ontario;
- (iii) each Arborist shall have:
- (A) five years of work-related experience;
 - (B) a degree from a recognized university in a field of study related to trees, landscaping and arboriculture;
 - (C) knowledge of federal, Ontario, municipal and Metrolinx policies, procedures and legislation;
 - (D) International Society of Arboriculture (ISA) Certification;
 - (E) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
 - (F) experience with similar projects in Ontario;
- (iv) each EMC/EMI Specialist shall have:
- (A) five years of work-related experience;
 - (B) a degree from a recognized university with specialization in environmental engineering, or related discipline;
 - (C) experience in EMC/EMI in the transit environment;
 - (D) knowledge of relevant federal and Ontario environmental policies, procedures, legislation and EMC/EMI reference documents specified in Part 4 of Schedule 15-2 – Design and Construction Requirements - Systems; and
 - (E) ability to liaise with other specialty consultants, contractors and Governmental Authorities.

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- (v) each Environmental Planning Specialist shall have:
- (A) 10 years of work-related experience;
 - (B) a degree from a recognized university with specialization in urban and land use planning, environmental, geography or another related discipline;
 - (C) experience in successfully managing transit projects in Ontario;
 - (D) experience in obtaining environmental Permits, Licences and Approvals in Ontario;
 - (E) knowledge of Ontario’s Transit Project Assessment Process;
 - (F) knowledge of relevant federal, provincial, municipal and Metrolinx environmental policies, procedures and legislation;
 - (G) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
 - (H) experience with similar projects in Ontario;
- (vi) each Hydrogeologist shall have:
- (A) 10 years of work-related experience;
 - (B) a bachelor or advanced degree from a recognized university in hydrogeology or geoscience or engineering;
 - (C) a designation as a “Professional Geoscientist” in the Province of Ontario and be a practicing member of the Association of Professional Geoscientists of Ontario and/or an appropriately trained Professional Engineer licensed in the Province of Ontario, or have other relevant credentials approved by Contracting Authority;
 - (D) experience designing, implementing and overseeing dewatering systems, including obtaining all necessary Permits To Take Water, Environmental Activity and Sector Registrations, municipal sewer use permits or other discharge permits;
 - (E) knowledge of Ontario Regulation 387/04 and the *Ontario Water Resources Act* (Ontario); and
 - (F) experience with similar projects in Ontario;
- (vii) each Noise Specialist shall have:
- (A) 10 years of work-related experience;

- (B) a designation as an accredited Professional Engineer in Ontario, or have other relevant credentials approved by Contracting Authority;
 - (C) experience in successfully managing noise assessments for transit projects in North America;
 - (D) knowledge of relevant federal, Ontario and municipal policies, procedures and legislation and where none exists experience of other appropriate legislation, guidance or standards;
 - (E) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
 - (F) experience with similar projects in Ontario;
- (viii) each Licenced Archaeologist shall have:
- (A) five years of work-related experience;
 - (B) a licence to practice archaeology in the Province of Ontario in accordance with the *Ontario Heritage Act* (Ontario);
 - (C) knowledge of federal, Ontario and Metrolinx heritage policies, procedures and legislation;
 - (D) experience in archaeological monitoring adjacent to cemeteries;
 - (E) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
 - (F) experience with similar projects in Ontario;
- (ix) each Species-at-Risk Specialist shall have:
- (A) five years of work related experience;
 - (B) a degree from a recognized university with specialization in ecology, conservation biology, environmental science or another related discipline;
 - (C) knowledge of the ecological concepts, function of ecosystems and how human land uses are impacting them;
 - (D) general familiarity with flora and fauna, and knowledge of the Species-at-Risk and their ecological requirements, that occur in the part of Ontario in which the Project is located;

- (E) knowledge of the *Species at Risk Act* (Canada), the *Fisheries Act* (Canada), the *Endangered Species Act* (Ontario) and related policies;
 - (F) experience in applying for MNRF permits especially in preparing Overall Benefit Permits for Species-at-Risk; and
 - (G) experience with similar projects in Ontario;
- (x) each Vibration Specialist shall have:
- (A) 10 years of work-related experience;
 - (B) a designation as an accredited professional engineer in Ontario, or have other relevant credentials approved by Contracting Authority;
 - (C) experience in successfully managing vibration assessments for transit projects in North America;
 - (D) knowledge of relevant federal and Ontario environmental policies, procedures and legislation where none exists and knowledge and experience of other appropriate legislation, guidance or standards; and
 - (E) ability to liaise with other specialty consultants, contractors and Governmental Authorities;
- (xi) each Soil and Groundwater Contamination and Management Specialist shall have:
- (A) 10 years of work-related experience;
 - (B) designation as a “Qualified Person”;
 - (C) experience with and understanding of the application and interpretation of Canadian Standards Association (CAN/CSA Z768 and CAN/CSA Z769) investigation criteria and criteria relating to the assessment of contaminated lands;
 - (D) experience with and understanding of the application and interpretation of Ontario Regulation 153/04, under the *Environmental Protection Act* (Ontario), as amended from time to time, investigation criteria relating to the assessment of contaminated lands;
 - (E) experience in designing, implementing and overseeing:
 - (I) soil management plans;
 - (II) phase one and two environmental site assessments;

- (III) soil and groundwater characterization programs;
- (IV) remedial action plans for soil and/or groundwater and/or surface water;
- (V) site inspection and monitoring programs for construction activities;
- (VI) excess soil beneficial reuse strategies; and
- (VII) dewatering effluent treatment and discharge strategies;
- (F) knowledge of relevant federal and Ontario policies, procedures and legislation, including waste management and related legislation, regulations, guidelines, and policies for water protection and materials management and MTO contaminated property process;
- (G) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
- (H) experience with similar projects in North America;
- (xii) each Climate Resilience Specialist shall have:
 - (A) five years of work-related experience;
 - (B) advanced education in one, or several, of the following fields: geology, geochemistry, physics, geophysics, climatology, meteorology, or related field;
 - (C) knowledge of methods, tools, and approaches to evaluating and mitigating the risks and vulnerability of infrastructure to climate change;
 - (D) knowledge of methods and tools with respect to climate modelling; and
 - (E) experience with similar projects in North America; and
- (xiii) each Biologist shall have:
 - (A) five years of work-related experience;
 - (B) advanced education in one, or several, of the following fields: conservation biology, wildlife biology (including avian and fish), zoology, terrestrial biology, aquatic biology, ecology, or related field;
 - (C) knowledge of ecological concepts, the function of ecosystems, and how human land uses are impacting them;
 - (D) general familiarity with fauna, including bird species (especially Species-at-Risk such as bobolink, eastern meadowlark, chimney swift and barn swallows) and

their ecological requirements, which occur in the part of Ontario in which the Project is located; and

(E) experience with similar projects in Ontario, including watercourse realignments.

(c) For each Environmental Specialist, Project Co shall submit sufficient documentation to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17, to demonstrate that the qualifications of the individual meet or exceed the applicable requirements described in Section 3.5(b).

3.6 Environmental Inspector(s)

(a) Project Co shall appoint one or more environmental inspector(s) who shall, throughout the Construction Period, under direction of the Environmental Compliance Officer, ensure compliance of the Works with the Environmental Management System and the Project Agreement (each an “**Environmental Inspector**”).

(b) Each Environmental Inspector shall have a minimum of three years of demonstrated work experience in all aspects of environmental monitoring / mitigation during roadway construction, specifically with respect to work in and around watercourses and in the application and correction of erosion and sedimentation control measures, reporting Spills and the containment of effluent and dust during construction, and with projects in Ontario of a similar scope and complexity to this Project;

(c) Without limiting the generality of Section 3.6(a), the job specification and responsibilities of each Environmental Inspector shall include the following:

- (i) as a minimum, conduct monitoring and inspections on all aspects of the Works in accordance with the Environmental Management System;
- (ii) maintain a log of monitoring and inspection events, which shall include photographic evidence to support the observations recorded during such monitoring and inspection events;
- (iii) complete monitoring and inspection reports and provide to the Environmental Compliance Officer; and
- (iv) provide advice and recommendations for improving environmental protection and correcting any inefficient practices and/or issues of non-compliance within 24 hours of noticing a potential issue.

(d) Project Co shall submit sufficient documentation to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17, to demonstrate that the qualifications of each Environmental Inspector are sufficient to carry out the responsibilities described in Sections 3.6(a) and 3.6(b).

3.7 Environmental Working Group

- (a) Project Co shall have qualified representatives who shall form an environmental working group for the Project (the “**Environmental Working Group**” or the “**EWG**”). The EWG shall meet on a bi-weekly basis, or more frequently if required by Contracting Authority, immediately following Financial Close until Substantial Completion. Project Co shall provide qualified staff, including the Environmental Director, Environmental Manager(s), Environmental Permits and Approvals Coordinator(s) and the Environmental Compliance Officer, and shall facilitate the EWG meetings. The EWG shall identify their working relationship, roles and responsibilities matrix, and approvals processes, to comply with the environmental requirements of this Project Agreement.
- (b) At the Contracting Authority Representative’s request, applicable Environmental Specialists shall attend EWG meetings to discuss environmental submissions, content, established submission dates and other relevant requirements in compliance with the this Project Agreement and any Applicable Law.
- (c) At EWG meetings, Project Co shall be prepared to report on:
- (i) key environmental issues and field activities associated with environmental obligations contemplated in this Schedule 17;
 - (ii) environmental process, design activities and Construction Activities undertaken as part of the Works;
 - (iii) environmentally-related communications with Governmental Authorities;
 - (iv) all sensitive lands and construction activities of concern identified for Contracting Authority’s approval;
 - (v) the monitoring and inspection frequency described in Section 3.9; and
 - (vi) the status of environmental protection measures, issues of non-compliance and associated corrective actions and resolution of issues, including presentation of descriptions and photos as required to facilitate such.
- (d) Project Co shall prepare and distribute an agenda to the Contracting Authority Representative at least 48 hours in advance of each EWG meeting.
- (e) Project Co shall prepare EWG meeting minutes and distribute to the Contracting Authority Representative within five days following EWG meetings.

3.8 Environmental Plans and Reports

- (a) In addition to those plans and reports explicitly set out in this Schedule 17, Project Co shall prepare and submit to the Contracting Authority Representative (and to the applicable Governmental Authority, if required) any additional reports, plans and documentation relating to

the Project that are required by any Environmental Law or any Environmental Reference Document (each an “**Additional Environmental Report**”). All plans and reports explicitly set out in this Schedule 17 and all Additional Environmental Reports shall be submitted to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure prior to submission to any Governmental Authority.

- (b) Without limiting Section 3.8(a), Project Co shall promptly provide the Contracting Authority Representative with copies of all evaluations and investigations, audits, reports, drawings, documents, and test results relating to the Lands and the Project Operations, including all evaluations and investigations, audits, reports, drawings, documents and test results related to the Project conducted by or on behalf of or coming into the possession of Project Co at any time whether before or after Financial Close.

3.9 Environmental Management System

- (a) Project Co shall develop, implement and update an environmental management system for the Project to a standard that follows the ISO 14001 Environmental Management System Standard (an “**Environmental Management System**” or “**EMS**”).
- (b) Project Co shall submit the Environmental Management System to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17. The initial version and all subsequent versions of the Environmental Management System shall:
- (i) align with Metrolinx’s Environmental Management System Manual;
 - (ii) be developed based on the draft table of contents provided in Appendix C to this Schedule 17. All content outlined in the table of contents must be present in the Environmental Management System, not addressed through references to other reports or documents;
 - (iii) describe all of Project Co’s environmental obligations in respect of the Project, including those set out in the Environmental Reference Documents, the Additional Environmental Reports, the Environmental Management Plans, this Schedule 17, and any other obligations under Environmental Law;
 - (iv) describe credentials of Project Co’s environmental team referenced in Sections 3.1 to 3.7; for performing specialized environmental tasks;
 - (v) identify roles and responsibilities and reporting structure of Project Co’s environmental team as identified within Sections 3.1 to 3.7;
 - (vi) describe processes and techniques that will be implemented by Project Co to eliminate or reduce the effects of the Works on the environment, including to address the potential effects identified and commitments made in the Environmental Assessments and environmental requirements of any Permit, Licence and Approval, including the identified mitigation measures and all applicable good management practices;

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- (vii) identify and describe monitoring and reporting requirements on all aspects of the performance of the Project Operations, which shall include, at a minimum:
 - (A) daily monitoring to be conducted until the environmental controls have been achieved, and, after such environmental controls have been achieved, weekly monitoring until Substantial Completion;
 - (B) daily monitoring on lands on or adjacent to sensitive lands and for construction activities of concern, regardless of the timing of environmental controls conduct;
 - (C) increased monitoring frequency during environmental incidents, including weather dependent contingency measures, as well as during and immediately after storm events; and
 - (D) a process for the identification and monitoring of sensitive lands and construction activities of concern; and
 - (viii) describe integration with the Environmental Quality Management Plan defined in Schedule 11 - Quality Management.
 - (c) Throughout the Project Term, Project Co shall expand and update the Environmental Management System, in compliance with ISO 14001 Environmental Management System Standard, to reflect,
 - (i) the scheduling of the Project Operations;
 - (ii) conditions at the Lands;
 - (iii) weather-dependent contingency measures;
 - (iv) requirements of the Environmental Approvals, Environmental Reference Documents, Additional Environmental Reports, and Permits, Licences and Approvals; and
 - (v) any other environmental plans and reports required to be developed pursuant to this Schedule 17,

(each an “**Environmental Management System Update**”). Each Environmental Management System Update shall be submitted to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the timeframe set out in Appendix B to this Schedule 17.

3.10 Sustainability Plans and Sustainability Annual Report(s)

- (a) Project Co shall, in consultation with Contracting Authority, develop and implement sustainability plans for the Construction Period and Operational Term (the “**Sustainability Plans**”), which shall:

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- (i) align with Metrolinx’s Sustainability Strategy and mandatory sustainability requirements within capital works infrastructure projects document, as described in the *Metrolinx Sustainability Strategy 2015 – 2020 (September 2016)*, as amended from time to time. This shall include alignment with the vision and goals of the strategy:
- (A) Metrolinx’s sustainability vision is to work together to transform the way the region moves, while enhancing our quality of life, protecting our environment and promoting a prosperous and competitive economy in the region; and
- (B) Metrolinx has committed to five sustainability goals in its *Sustainability Strategy (2015-2020)*. The Sustainability Plans shall align with all goals, and shall address specifically how Project Co shall ensure that the Works align with the objectives of the following five sustainability goals:
- (I) become climate resilient;
- (II) reduce energy use and emissions;
- (III) integrate sustainability in our supply chain;
- (IV) minimize impacts on ecosystems; and
- (V) enhance community responsibility;
- (ii) be consistent with related requirements prescribed elsewhere in the Project Agreement including Schedule 15 – Output Specifications; and
- (iii) achieve the mandatory LEED credits and LEED Silver Rating for the Huronario Operations, Maintenance and Storage Facility required by the Project Agreement.
- (b) Project Co shall submit the Sustainability Plans to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17. Each Sustainability Plan for the Project shall be incorporated into the Environmental Management System described in Section 3.9. Each Sustainability Plan shall include, at a minimum, a description of:
- (i) targets which shall, at a minimum, support achievement of the sustainability goals identified in Section 3.10(a)(i)(B) and shall take into consideration differences between the Construction Period and Operational Term;
- (ii) the measurement and monitoring methods, parameters and metrics for evaluating achievement of sustainability targets throughout the Project Term, with consideration for the differences between the Construction Period and Operational Term;
- (iii) Project Co’s plan and commitment to integrate sustainability criteria into the procurement of goods and services. Sustainability criteria include consideration of environmental,

- financial and social performance criteria, using a product life-cycle assessment and life-cycle costing approach where practicable;
- (iv) Project Co's plan and commitment to provide programs that support employment and training;
 - (v) Project Co's plan and commitment to minimize its impact on ecosystems and biodiversity and support pollinator health, and metrics used to track pollinator habitats installed and maintained throughout Project Term;
 - (vi) Project Co's plan and commitment to identify climate change risks and vulnerabilities, which include implementation of climate adaptation and resilience measures where practicable;
 - (vii) Project Co's plan and commitment to reduce energy consumption and use, and to reduce greenhouse gas (GHG) emissions. This shall include improvement of energy efficiency, mechanisms for tracking, monitoring and reporting on metered energy data, establishment of a greenhouse gas emissions target, tracking and reducing greenhouse gas emissions, a recommissioning plan of facilities and behavior-change efforts to reduce consumption of energy during the Construction Period and Operational Term;
 - (viii) how sustainable designs and practices will be incorporated into the Project Operations, with specific regard for the environmental performance measures required by the LEED Silver Rating for the Hurontario Operations, Maintenance and Storage Facility;
 - (ix) the framework for decision-making, including risk management, relating to sustainable design and practices;
 - (x) Project Co's plan and commitment for equipment and facility handover at the Expiry Date to facilitate the adoption of systems to track and minimize environmental impacts of operations. Equipment includes all heating, ventilation and air conditioning units; standby generators; air compressors; boilers; sumps; tank monitoring equipment; pressure gauges; and interceptors, separators, pits and below-grade structures. Plan shall include process for providing information during hand-over on: the frequency of equipment calibration, recommended maintenance, and inspection schedules, as recommended by the manufacturer; specifications for all on-site storage tanks and fueling systems; and an inventory of all refrigerant-containing equipment;
 - (xi) Project Co's plan and commitment to implement water conservation and cost management practices where practicable, set targets for water conservation, and track performance against such targets for water conservation in accordance with this Schedule 17 and in coordination with the water consumption requirements of Schedule 8 – Energy Matters;
 - (xii) Project Co's plan and commitment to reduce waste and increase waste diversion, including diversion of waste from operations at the OMSF. This shall include the establishment of a waste diversion target, and commitment to the following waste

- management hierarchy: reduce generation of waste; reuse, return, or donate waste; recycle or compost waste; and dispose of waste. This shall also include ways to minimize negative impacts on ecosystems and consideration of ways to enhance the health of ecosystems;
- (xiii) Project Co's plan and commitment to safely collect, store and dispose of batteries and electronic waste;
 - (xiv) the methods, tools and documentation format for reporting to Contracting Authority on sustainability achievements and compliance with the Sustainability Plans (i.e. Sustainability Annual Report); and
 - (xv) training, education and communication of sustainability objectives and activities for the Project Co Parties and other appropriate parties involved in the Project.
- (c) Project Co shall prepare a sustainability report (the "**Sustainability Annual Report**") on an annual basis throughout the Project Term, which shall be for internal Contracting Authority use only. Each Sustainability Annual Report shall be prepared in accordance with a standard conforming to Good Industry Practice for sustainability reporting, such as the GRI Sustainability Reporting Standards.
- (d) During the Construction Period, Project Co shall submit each Sustainability Annual Report annually to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17. Project Co shall include the following in each Construction Period Sustainability Annual Report during such period:
- (i) a re-affirmation or update if appropriate, of the Sustainability Plans as originally prepared, with focus on the Works and, specifically, how sustainability objectives relative to design and construction will be met;
 - (ii) a description of the utilization and application of the measurement parameters and metrics; and methods and documentation format described in Section 3.10(b);
 - (iii) a description and measurement of the progress towards identified targets, and documentation of achievements and short-comings concerning sustainability targets and Sustainability Plan compliance; and
 - (iv) a description of a recovery plan where achievements did not meet targets or objectives.
- (e) During the Operational Term, Project Co shall submit each Sustainability Annual Report annually to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17. Project Co shall include the following in each Operational Term Sustainability Annual Report:
- (i) re-affirmation or update if appropriate, of the Sustainability Plans as originally prepared, with focus on the Project Co Services and, specifically, the manner in which the

sustainability achievements will be maintained and reinforced during the Operational Term;

- (ii) utilization and application of the measurement parameters and metrics; and methods and documentation format described in Section 3.10(b);
- (iii) description and measurement of progress towards identified targets, and documentation of achievements and short-comings concerning sustainability targets and Sustainability Plan compliance; and
- (iv) description of a recovery plan where achievements did not meet requirements or objectives.

3.11 Other Required Environmental Plans and Reports

- (a) Project Co shall prepare annual environmental compliance monitoring reports (each an “**Annual Environmental Compliance Monitoring Report**”) in accordance with a format agreed upon by Contracting Authority. Project Co shall submit each Annual Environmental Compliance Monitoring Report to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17. In each Annual Environmental Compliance Monitoring Report, Project Co shall document the status of all Project Co Environmental Commitments and include a roll-up summary of activities, issues, outcomes, and ongoing matters from the Monthly Environmental Reports of the previous calendar year.
- (b) Project Co shall prepare and submit to the Contracting Authority Representative monthly environmental reports (each a “**Monthly Environmental Report**”). Project Co shall submit each Monthly Environmental Report to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17. In each Monthly Environmental Report, Project Co shall document: (A) descriptions of issues encountered; (B) non-conformance, incidents, preventative and corrective actions; (C) outcomes; (D) follow-up actions; (E) expected timelines; (F) responsibilities; and (G) a look-ahead for the next month, for the following:
 - (i) status of field activities associated with environmental obligations contemplated in this Schedule 17;
 - (ii) environmental process and design activities and Construction Activities undertaken as part of the Works during the period relevant to Project Co’s obligations under this Schedule 17, including surveys, inspections, repairs, and construction work undertaken for environmental protection and mitigation measures;
 - (iii) key environmental issues, concerns and risks associated with this Section 3.11;
 - (iv) studies and permitting activities;

- (v) consultation activities and environmentally related communications with Governmental Authorities;
 - (vi) design and implementation of mitigation measures (successes and failures) associated with Section 3.11(b)(iv), monitoring activities, resolutions to environmental impacts, and a status update on complying with Project Co Environmental Commitments; and
 - (vii) administrative activities, including training meetings, presentations and health and safety, progress of other environmental plans and reports and submission requirements.
- (c) Project Co shall obtain, from an independent Environmental Consultant acceptable to Contracting Authority, acting reasonably, an annual independent environmental audit (the “**Independent Environmental Audit**”) of Project Co’s compliance with its environmental and sustainability obligations under the Project Agreement, and shall submit such documentation to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and the submission timeframe set out in Appendix B to this Schedule 17. All costs and expenses associated with the Independent Environmental Audit, including costs and expenses related to undertaking any additional investigations or remedial measures recommended by the Environmental Consultant, shall be borne by Project Co. Project Co shall submit the Independent Environmental Audit to the Contracting Authority Representative in accordance with the submission timeframe set out in Appendix B to this Schedule 17.
- (d) Project Co shall prepare an environmental completion report (the “**Environmental Completion Report**”) and shall submit the Environmental Completion Report to the Contracting Authority Representative prior to Substantial Completion in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The report shall, at a minimum, document compliance with all Project Co Environmental Commitments and all other environmental obligations under this Project Agreement.

ARTICLE 4. MANAGEMENT OF CONTAMINATION, SOIL AND GROUNDWATER

4.1 Notification Requirements

- (a) Without limiting the notification obligations of Project Co in Section 16.2 of the Project Agreement in respect of Contamination, Project Co shall comply with any notification requirements detailed in Sections 4.2 and 4.3.

4.2 Notification to Contracting Authority

- (a) Project Co shall immediately notify the Contracting Authority Representative of:
- (i) the discovery of Contamination;
 - (ii) any discharge of any Hazardous Substance on, under, at, from or to the Lands, together with full particulars of such discharge, including the time and location of the discharge, Governmental Authorities notified, estimated damages suffered or caused and remedial action taken; and

- (iii) any notice, claim, action or other proceeding by any person against Project Co or any Project Co Party or otherwise relating to the performance of the Project Operations concerning any actual or alleged discharge of a Hazardous Substance.

4.3 Notification to Governmental Authorities

- (a) In addition to notifying the Contracting Authority Representative in accordance with Section 4.2(a), where required by Applicable Law, Project Co shall notify the relevant Governmental Authority of any discharge of a Hazardous Substance on, under, at, from or to the Lands.

4.4 Soil and Excavated Materials Management Plan

- (a) Project Co shall prepare and implement a soil and excavated material management plan (a “**Soil and Excavated Material Management Plan**”) that describes how Project Co will address management of all excavated material (i.e. soil, rock and solid waste, including Contamination), including handling, transportation, testing, disposal and/or ultimate disposition of all excavated material generated as part of the Works. The Soil and Excavated Material Management Plan shall comply with the MOECP’s *Management of Excess Soil – A Guide for Best Management Practices*, dated January 2014 and all Applicable Law, and shall describe and include, at a minimum, the following:
 - (i) the general principles that Project Co will apply for managing soil and excavated materials;
 - (ii) the over-arching soil and excavated materials management strategy for the Project in terms of sustainable principles and compliance with regulatory requirements and best practices;
 - (iii) estimated quantities, by site location of soil and excavated materials to be managed during the Works and proposed methods for minimizing these quantities;
 - (iv) protocols for characterizing soil and excavated material quality and determining management, including disposal requirements;
 - (v) how soil and excavated materials will be temporarily staged or stored at the Site or other worksites for re-use or subsequent transfer to disposal with regard for potential environmental effects and impacts to human health and safety;
 - (vi) methods for minimizing the quantity of material requiring excavation and management;
 - (vii) methods to maximize the re-use of excavated material within the Works;
 - (viii) estimated quantities by volume and mass, by site location of: total soil and excavated material resulting from the Works, soil and excavated material that will be re-used in the Works, and soil and excavated material to be transported from the Works for re-use or disposal;

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- (ix) procedures for testing and characterizing the soil and excavated material in compliance with applicable regulations;
 - (x) how excess soil and excavated material generated by the Works will be managed using best management practices;
 - (xi) how areas of known Contamination will be managed and estimated quantities of contaminated material to be disposed outside of the Lands;
 - (xii) how the discovery of Contamination in areas not previously identified will be managed including a general plan of action for the remediation or removal of Contamination as detailed in Section 4.6(a);
 - (xiii) procedures for determining suitable source sites for importing soil to the Lands and what quality of soil is suitable for importation to the Lands;
 - (xiv) what analytical testing will be completed on soil imported to the Lands; and
 - (xv) reporting procedures to document how all management activities and best practices have been implemented.
- (b) Project Co shall submit the Soil and Excavated Material Management Plan to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17.
- (c) Where Project Co intends to dispose of excess soil and excavated material outside the Lands, Project Co shall demonstrate, to the satisfaction of Contracting Authority, that testing and sampling protocols have been followed to establish concentrations for chemical parameters of concern and that Project Co has complied with all Environmental Laws.
- (d) Project Co shall prepare and submit a soil and excavated material management monthly monitoring report (a “**Soil and Excavated Material Management Monthly Monitoring Report**”) to Contracting Authority in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Soil and Excavated Material Management Monthly Monitoring Report shall be prepared on a monthly basis during the Works and describe how all of Project Co’s soil and excavated material management activities have been implemented during the preceding calendar month. Project Co shall include the following in its Soil and Excavated Material Management Monthly Monitoring Report:
- (i) a summary from the preceding month that contains:
 - (A) the total quantities of soil and of excavated material resulting from the Works;
 - (B) the total quantities of soil and of excavated material that was re-used in the Works;

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- (C) the total quantities of soil and of excavated material that was transported from the Site for re-use or disposal, including a detailing of quantities by mass shipped to each receiver; and
 - (D) the total quantity of soil and aggregate imported for the Works, the provenance of the imported soil and aggregate, the location of imported soil and aggregate placement and the analytical results of testing conducted on the imported soil;
- (ii) an up-to-date and complete inventory of all receiver sites of soil and of excavated material generated by the Works that cannot be reused on the Lands. This includes MOECP licensed facilities, temporary storage areas, commercial fill operations, beneficial re-use sites, processing and recycling facilities, landfills and any other receiving site. This inventory shall include the following details and shall be updated on a monthly basis until such time as the Works have been completed:
- (A) the municipal address of receiver site;
 - (B) the name of receiver site owner and operator;
 - (C) the name of Qualified Person overseeing receiver site activities;
 - (D) the Governmental Authority having jurisdiction over the receiver site;
 - (E) the type of approval under which the site is operating;
 - (F) the total volume of soil and/or excavated material shipped to the site;
 - (G) the description of the source of the soil and/or excavated material shipped to the site; and
 - (H) a description of the number of samples collected and analyzed and a list of parameters included in the analyses;
- (iii) in-month evidence and certification by a Qualified Person that the quality of soil shipped to each receiver site is compliant with the receiver site license, approval, operational requirements, and fill management plan; and
- (iv) a fill management plan for each receiver site. For all receiver sites that do not have an owner-supplied fill management plan in place, Project Co shall prepare at no additional cost to Contracting Authority its own fill management plan for that receiver site that is in accordance with the MOECP's *Management of Excess Soil - A Guide for Best Management Practices*, dated January 2014, the type of approval under which the receiver site is operating and all Applicable Law.
- (e) Project Co shall make the information set out in Section 4.4(d) available to any Governmental Authority when requested by that Governmental Authority. Should a registration or tracking system for soil movement be implemented by any Governmental Authority, Project Co shall be

responsible for providing all necessary information to the Governmental Authority as prescribed by the Governmental Authority.

- (f) Project Co shall prepare and submit a soil and excavated material management implementation report (a “**Soil and Excavated Material Management Implementation Report**”) to the Contracting Authority Representative in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Soil and Excavated Material Management Implementation Report shall,
- (i) describe and summarize how all of Project Co’s excavated material management activities have been implemented during the Works;
 - (ii) provide a summary of the total quantities of: soil and excavated material resulting from the Works, soil and excavated material that was re-used in the Works, and soil and excavated material that was transported from the Site for re-use or disposal, including a detailing of quantities shipped to each receiver site;
 - (iii) include an accurate and final inventory at each receiver site of soil and/or excavated material generated by the Works that cannot be reused on the Lands. This includes MOECP licensed facilities, temporary soil storage areas, commercial fill operations, beneficial re-use sites, processing and recycling facilities, landfills and any other receiving site. This inventory shall include the following details and shall cover the period of the Works:
 - (A) the municipal address of receiver site;
 - (B) the name of receiver site owner and operator;
 - (C) the name of the Qualified Person overseeing receiver site activities;
 - (D) the Governmental Authority having jurisdiction over the receiver site;
 - (E) the type of approval under which the site is operating;
 - (F) the total volume of soil and/or excavated material shipped to the site;
 - (G) the description of the source of the soil and/or excavated material shipped to the site; and
 - (H) a description of the number of samples collected and analyzed and a list of parameters included in the analyses;
 - (iv) include evidence and certification by a Qualified Person that the quality of soil and/or excavated material shipped to each receiver site is compliant with the receiver site license, approval, operational requirements, and fill management plan;

- (v) include a final fill management plan for each receiver site, and for those receiver sites that did not have a fill management plan, Project Co shall re-submit its own fill management plan for that site as required pursuant to Section 4.4(d)(iv);
- (vi) provide a summary of all sources of imported soil and aggregate, including the location of soil and aggregate placed from those sources and analytical results confirming the quality of the imported soil meets that proposed in the Soil and Excavated Materials Management Plan; and
- (vii) summarize the information provided to Governmental Authorities included in the Soil and Excavated Material Management Monthly Monitoring Reports.

4.5 Groundwater Management and Dewatering Plan

- (a) Project Co shall prepare and implement a dewatering management plan (a “**Groundwater Management and Dewatering Plan**”) that describes how Project Co will address the management of excess water, groundwater and dewatering effluent generated by the Project during the performance of the Works. The Groundwater Management and Dewatering Plan shall include any dewatering requirements detailed in Schedule 15 – Output Specifications and shall describe and include, at a minimum, the following:
 - (i) the general principles that Project Co will apply for managing groundwater and dewatering activities;
 - (ii) the over-arching groundwater and dewatering management strategy for the Project in terms of sustainable principles and compliance with regulatory requirements and best practices;
 - (iii) locations of anticipated groundwater management and dewatering activities and estimated timeframes of management activities at each location;
 - (iv) estimated quantities by site location of dewatering effluent to be managed during the Works and proposed methods for minimizing these quantities;
 - (v) the proposed approval (EASR or PTTW) for the water taking at each dewatering location and the municipal approval required for the water discharge location;
 - (vi) protocols for characterizing groundwater and dewatering effluent quality and determining management, including disposal requirements;
 - (vii) a well monitoring program to monitor the construction impacts and provide compensation, if required, and confirm which wells are used domestically prior to construction, and ensure that well owners will continue to have water supplies of appropriate quality and adequate quantities, and any work done on affected wells or any replacement wells is done pursuant to O. Reg. 903 (Wells);

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- (viii) how groundwater and dewatering effluent will be treated and disposed of with regard to potential environmental effects and impacts to human health and safety;
 - (ix) procedures for water testing, containment, classification, treatment, and disposal/discharge of extracted groundwater;
 - (x) how Project Co will ensure that no impacts will result to adjacent trees, vegetation and ecosystems that may be dependent upon existing, near-surface groundwater conditions;
 - (xi) the development of a temporary or localized groundwater management plan, as required, in consultation with a hydrologist, where groundwater may impact surface water;
 - (xii) how Project Co will conduct its groundwater management activities in compliance with Environmental Laws, MOECP and municipal and Conservation Authority approval;
 - (xiii) a monitoring program to monitor for potential effects of dewatering on the environment and on the structural integrity of adjacent structures;
 - (xiv) contingency plans to mitigate impacts due to dewatering; and
 - (xv) reporting procedures to document how all management activities, best practices and mitigation measures have been implemented.
- (b) Project Co shall submit the Groundwater Management and Dewatering Plan to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17.
- (c) Project Co shall prepare and submit a groundwater management and dewatering monthly monitoring report (a “**Groundwater Management and Dewatering Monthly Monitoring Report**”) to Contracting Authority in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Groundwater Management and Dewatering Monthly Monitoring Report shall be prepared on a monthly basis during the Project Term and describe how all of Project Co’s groundwater and dewatering management activities have been implemented during the preceding calendar month. Project Co shall include the following in its Groundwater Management and Dewatering Monthly Monitoring Report:
- (i) a summary from the preceding month that contains,
 - (A) the total quantities of dewatering effluent derived from the Works;
 - (B) the total quantities of dewatering effluent derived from each dewatering location;
 - (C) the total volume of dewatering effluent discharged to each receiver by dewatering location and a description of the approval (EASR or PTTW) for water taking under which the taking occurred;

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- (D) the analytical results supporting the discharge and/or disposal of dewatering effluent; and
 - (E) the treatment technologies used at each discharge location, as applicable;
- (ii) an up to date and complete inventory of all dewatering effluent discharge points generated by the Works. This includes MOECP licensed facilities, storm and sanitary sewer connections and any other receiving site. This inventory shall include the following details and shall be updated on a monthly basis until such time as the Works have been completed:
- (A) the municipal address of receiver;
 - (B) the name of receiver site owner and operator;
 - (C) the Governmental Authority having jurisdiction over the receiver;
 - (D) the type of approval under which the site is operating;
 - (E) the total volume of groundwater or dewatering effluent discharged to the receiver;
 - (F) the description of the source of the groundwater or dewatering effluent discharged to the receiver; and
 - (G) a description of the number of samples collected and analyzed and a list of parameters included in the analyses; and
- (iii) in-month evidence and certification by the Hydrogeologist or Qualified Person that the quality of dewatering effluent discharged to each receiver is compliant with receiver requirements.
- (d) Project Co shall prepare and submit a groundwater management and dewatering implementation report (a “**Groundwater Management and Dewatering Implementation Report**”) to the Contracting Authority Representative in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Groundwater Management and Dewatering Implementation Report shall,
- (i) describe and summarize how all of Project Co’s groundwater management and dewatering activities have been implemented during the Works;
 - (ii) provide a summary of the total quantities of groundwater and dewatering effluent managed from the Works, including a detailing of quantities shipped to each receiver site and a description of the volumes of water taken from each location and under each approval (EASR or PTTW) for water taking;

- (iii) include an accurate and final inventory at each receiver dewatering effluent generated by the Works. This includes MOECP licensed facilities, storm and sanitary sewer connections and any other receiving site. This inventory shall include the following details and shall cover the period of the Works:
 - (A) the municipal address of receiver;
 - (B) the name of receiver site owner and operator;
 - (C) the Governmental Authority having jurisdiction over the receiver;
 - (D) the type of approval under which the site is operating;
 - (E) the total volume of groundwater or dewatering effluent discharged to the receiver;
 - (F) the description of the source of the groundwater or dewatering effluent discharged to the receiver; and
 - (G) a description of the number of samples collected and analyzed and a list of parameters included in the analyses; and
- (iv) evidence and certification by the Hydrogeologist or Qualified Person that the quality of dewatering effluent discharged to each receiver is compliant with receiver requirements.

4.6 Management, Removal and Remediation

- (a) Upon the discovery of any Contamination that is not addressed in the Soil and Excavated Material Management Plan, and,
 - (i) that Project Co is responsible for pursuant to Section 16.2(a) of the Project Agreement; or
 - (ii) that Contracting Authority is responsible for in accordance with Section 16.2(a) of the Project Agreement and, only if instructed to do so by the Contracting Authority Representative in accordance with Section 16.2(h) of the Project Agreement,unless otherwise instructed by Contracting Authority, Project Co shall, within the timeframe specified by Contracting Authority,
 - (iii) prepare and submit to the Contracting Authority Representative, in accordance with Schedule 10 – Review Procedure, a plan for the management of the Contamination in accordance with Applicable Law or as otherwise required under the Project Agreement, or
 - (iv) confirm, in writing to the Contracting Authority Representative, that no such remediation or removal of the Contamination is required by Applicable Law.

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- (b) Project Co shall implement the plan submitted in accordance with Section 4.6(a)(iii) upon receipt of a “NO COMMENT” notification from Contracting Authority, in accordance with Schedule 10 – Review Procedure.
- (c) The Parties acknowledge that Project Co’s reasonable costs and expenses associated with the preparation of the plan set out in Section 4.6(a)(iii), shall be borne by,
- (i) Project Co, if Project Co is responsible for the Contamination in accordance with Section 16.2(a) of the Project Agreement; and
 - (ii) Contracting Authority, if Contracting Authority is responsible for the Contamination in accordance with Section 16.2(a) of the Project Agreement.
- (d) Project Co shall be responsible for the characterization, testing, and analysis of soil and groundwater that requires off-Site disposal, off-Site re-use or on-Site re-use to the satisfaction of the receiver or disposal site.
- (e) Project Co is encouraged to re-use (rather than remove or replace) as much soil on the Lands as possible in a manner that is consistent with the MOECP’s *Management of Excess Soil – A Guide for Best Management Practices*, dated January 2014, provided that Project Co complies with its obligations under the Project Agreement.

4.7 Hazardous Substances Brought onto the Lands

- (a) Notwithstanding any Applicable Law or any other provision in the Project Agreement to the contrary, all products and materials, goods or other items which in their natural, original state, or through environmental transformation or degradation contain Hazardous Substances, that are brought onto the Lands by Project Co or any Project Co Party or any person for whom Project Co is at law responsible shall be and remain the sole and exclusive property and responsibility of Project Co and shall not become the property or responsibility of Contracting Authority, notwithstanding their incorporation into or affixation to the Lands, the Project Co System Infrastructure or New Third Party Infrastructure and notwithstanding any termination or expiration of the Project Agreement. Any resulting Contamination at the Lands in respect of any Hazardous Substances so brought onto the Lands and the remediation and/or removal thereof and the cost of such remediation and/or removal shall be the sole responsibility of Project Co.

4.8 Spill Prevention and Response Plan

- (a) Project Co shall prepare and implement a Spill prevention and response plan (a “**Spill Prevention and Response Plan**”). The Spill Prevention and Response Plan shall describe the measures Project Co will take to prevent Spill events or other releases of liquid chemicals, fuels and lubricants, and manage or otherwise mitigate the effects of any such Spills during the Project Term. The Spill Prevention and Response Plan shall describe and include, at a minimum, the following:
- (i) the types and nature of liquid chemicals, fuels and lubricants to be used during the performance of the Project Operations;

- (ii) facilities and procedures for storing and handling such materials, including Spill response, containment and clean-up materials;
 - (iii) monitoring and inspection procedures, including monthly inspections of Spill response and safety equipment, to ensure management requirements are maintained (inspection must be documented);
 - (iv) employee training on the storage and use of such materials and the prevention of Spills;
 - (v) Spill response procedures for each type of material that may be Spilled, and the various environmental media that may be affected (for example, atmosphere, water bodies, ground surface);
 - (vi) quantitative and qualitative criteria to be used to determine the level of reporting necessary for Spills;
 - (vii) procedures for clean-up and restoration of surfaces and environmental media affected by the Spill or release; and
 - (viii) procedures for notification and reporting of Spill or release events to Project Co Parties and to Governmental Authorities, as applicable.
- (b) Project Co shall submit the Spill Prevention and Response Plan to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17.
- (c) After each and any occurrence of a Spill, Project Co shall prepare and submit a Spill prevention and response occurrence report (a “**Spill Prevention and Response Occurrence Report**”) to the Contracting Authority Representative in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Spill Prevention and Response Occurrence Report shall summarize how all Spill Prevention and Response Plan activities were implemented during the remediation and management of the occurrence of the Spill and the associated outcomes.
- (d) Project Co shall prepare and submit a Spill prevention and response implementation report (a “**Spill Prevention and Response Implementation Report**”) to the Contracting Authority Representative in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Spill Prevention and Response Implementation Report shall summarize how all Spill Prevention and Response Plan activities were implemented during the Works and the associated outcomes.

4.9 Designated Substances and Hazardous Materials Management Plan

- (a) Project Co shall prepare and implement a designated substances and hazardous materials management plan (a “**Designated Substances and Hazardous Materials Management Plan**”). Project Co shall submit the Designated Substances and Hazardous Materials Management Plan to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The

Designated Substances and Hazardous Materials Management Plan shall describe and include, at a minimum, the following:

- (i) how Project Co will manage all Designated Substances and Hazardous Materials, including abatement, handling, transportation, testing, disposal and/or ultimate disposition of all Designated Substances and Hazardous Materials generated as part of the Works;
 - (ii) the general principles that Project Co will apply for managing the removal of Designated Substances and Hazardous Materials;
 - (iii) Project Co's over-arching Designated Substances and Hazardous Materials management strategy for the Project in terms of sustainable principles and compliance with regulatory requirements and best practices;
 - (iv) locations of Designated Substances and Hazardous Materials to be abated, managed, removed during the Works;
 - (v) Project Co's protocols for safe handling, abatement, management and removals, including disposal requirements;
 - (vi) how Project Co will ensure that no impacts will result to adjacent properties during the abatement, handling, management or removal of Designated Substances and Hazardous Materials;
 - (vii) how Project Co will conduct its activities in compliance with the *Occupational Health and Safety Act* (Ontario) and all Applicable Law;
 - (viii) Project Co's contingency plans to mitigate impacts; and
 - (ix) Project Co's reporting procedures to document and report to Contracting Authority how all management activities, best practices and mitigation measures have been implemented.
- (b) Project Co shall prepare and submit a designated substances and hazardous materials implementation report (a "**Designated Substances and Hazardous Materials Implementation Report**") to the Contracting Authority Representative in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Designated Substances and Hazardous Materials Implementation Report shall summarize how all Designated Substances and Hazardous Materials Management Plan activities were implemented during the Works and the associated outcomes.

**ARTICLE 5. ELECTROMAGNETIC COMPATIBILITY AND INTERFERENCE
(EMC/EMI)****5.1 EMC/EMI**

- (a) Project Co shall be responsible for coordinating with relevant Governmental Authorities for the testing of and mitigation measures related to human exposure to static and time-varying electric and magnetic fields in accordance with Part 4 of Schedule 15-2 – Design and Construction Requirements - Systems.

ARTICLE 6. ARCHAEOLOGY AND CULTURAL HERITAGE**6.1 Archaeology Risk Management**

- (a) Project Co shall prepare and implement an archaeological risk management plan (the "**Archaeological Risk Management Plan**"). The Archaeological Risk Management Plan shall be consistent with Project Co's obligations set out in Section 16.3 of the Project Agreement and shall address any recommendations resulting from Archaeological Reports prepared for the Project and protocols for the discovery of human remains or undocumented archaeological resources. Project Co shall submit the Archaeological Risk Management Plan to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Archaeological Risk Management Plan shall include, at a minimum the following requirements:
- (i) the actions required resulting from the recommendations of the Archaeological Reports including any archaeological monitoring requirements by a Licenced Archaeologist during the Construction Activities;
 - (ii) a process for amending the Archaeological Risk Management Plan to incorporate any additional actions required resulting from subsequent archaeological assessment reports completed;
 - (iii) a protocol to be followed if human remains are discovered which includes how Project Co will ensure that human remains are managed in compliance with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremations Services Act, 2002* (Ontario) and the Standards and Guidelines for the Conservation of Provincial Heritage Properties issued by the MTCS pursuant to the *Ontario Heritage Act* (Ontario);
 - (iv) a protocol to be followed if previously undocumented archaeological resources are discovered which describes how Project Co will comply with Applicable Law regarding management of previously undocumented archaeological resources; and
 - (v) a process to ensure that Project Co complies with Applicable Law for the management of archaeological sites.

- (b) Prior to construction, Project Co shall complete mechanical topsoil removal of lands that fall within 10 metres of the known cemetery limits of the Britannia Church and Cemetery, Derry West Cemetery and the Cheyne Cemetery, if the land will be subject to ground disturbing activities. Project Co shall ensure this activity shall be supervised by a Licenced Archaeologist. Upon completion of topsoil removal, Project Co shall ensure the area is inspected and assessed by a Licenced Archaeologist for evidence of potential grave shafts. Mechanical topsoil removal shall be extended a minimum of 10 metres beyond any exposed cultural features/potential grave shafts. If human remains are encountered during mechanical topsoil removal, work by Project Co must cease immediately, and Project Co shall contact the following: the police or Regional Coroner, the Registrar of the Cemeteries Regulation Unit of the Ministry of Consumer Services and the Bereavement Authority of Ontario.

6.2 Built Heritage and Cultural Heritage Landscapes

- (a) Project Co shall comply with the requirements of the Metrolinx Interim Heritage Management Protocol, the Standards and Guidelines for the Conservation of Provincial Heritage Properties issued by the MTCS, pursuant to the *Ontario Heritage Act* (Ontario) and the requirements of Schedule 15-2 - Design and Construction Requirements and Schedule 35 - Lands.
- (b) Project Co shall prepare and implement a cultural heritage risk management plan (the “**Cultural Heritage Risk Management Plan**”) and shall submit it to the Contracting Authority Representative for review in accordance with Schedule 10 – Review Procedure by the deadline set out in Appendix B to this Schedule 17 and in conjunction with the detailed design for all directly and indirectly impacted properties of heritage significance (e.g. Provincial Heritage Properties and Provincial Heritage Properties of Provincial Significance). The Cultural Heritage Risk Management Plan shall include, at a minimum, the following requirements:
- (i) the actions required as a result of the recommendations of the Cultural Heritage Reports;
 - (ii) a process for amending the Cultural Heritage Risk Management Plan to incorporate any additional actions required as a result of any subsequently completed Cultural Heritage Reports; and,
 - (iii) a process to ensure that Project Co complies with Applicable Law for the management of heritage resources and with the Metrolinx Interim Heritage Management Protocol.
- (c) Heritage impact assessments (the “**Heritage Impact Assessment(s)**” or “**HIA**”) shall be completed by Project Co in conjunction with the detailed design for all directly and indirectly impacted properties of heritage significance (e.g. provincial heritage properties and provincial heritage properties of provincial significance, as such terms are described in the Standards and Guidelines for the Conservation of Provincial Heritage Properties issued by the MTCS pursuant to the *Ontario Heritage Act* (Ontario)). Project Co shall ensure that the Cultural Heritage Specialist is consulted throughout the design process to ensure that sound heritage conservation principles inform the final design, including the confirmation and refinement of built heritage conservation strategies. Final design and the accommodation of heritage elements within the design shall undergo consultation with relevant Stakeholders. Each HIA shall be provided by Project Co to the Contracting Authority Representative in accordance with Schedule 10 – Review

Procedure in advance of the submission to the MTCS and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17.

- (d) Project Co shall be responsible for obtaining heritage permits that will be required for alterations to properties designated under the *Ontario Heritage Act* (Ontario), and for alterations to adjacent property that may impact the designated heritage property.

ARTICLE 7. AIR QUALITY

7.1 Air Quality

- (a) During the Project Operations, Project Co shall:
- (i) comply with all Environmental Approvals, Applicable Law, Permits, Licences and Approvals and Good Industry Practice for air quality management when designing, purchasing and operating equipment;
 - (ii) implement measures for managing Project-related air emissions including fugitive dust and odour; and
 - (iii) meet all applicable regulatory requirements and standards regarding air emissions including fugitive dust and odour.
- (b) Project Co shall prepare, during detailed design, and implement an air quality management plan (an “**Air Quality Management Plan**”) for the Construction Period. The Air Quality Management Plan shall describe the controls and methods that Project Co will implement during the Construction Period to limit the generation and dispersion of, and mitigate potential effects of, airborne particulate matter associated with the Works. The Air Quality Management Plan shall address airborne particulate matter issues in the context of the potential environmental impacts, nuisance impacts and impacts on human health and safety, as applicable, and shall describe how Project Co will apply the air quality and dust control measures required by any and all of the Environmental Reference Documents and Additional Environmental Reports. Project Co shall submit the Air Quality Management Plan to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and the submission timeframe set out in Appendix B to this Schedule 17. The Air Quality Management Plan shall describe and include, at a minimum, the following:
- (i) a description of the activities and conditions associated with the Works with potential to result in generation or dispersion of airborne particulate matter, including the inhalable fraction (PM₁₀), the respirable fraction (PM_{2.5}) and diesel particulate matter (DPM); and a description of the Works-related activities with potential to result in generation of airborne contaminants, including crystalline silica associated with saw cutting of concrete;
 - (ii) control methods and management practices to prevent the release of airborne particulate matter and other airborne contaminants to offsite areas; and

- (iii) where Works-related activities are likely to result in generation of particulate matter, an air sampling and monitoring program to:
 - (A) establish a baseline level of particulate matter that includes the inhalable fraction (PM₁₀) and the respirable fraction (PM_{2.5}) in air in the vicinity of the Works; and
 - (B) determine the level of particulate matter in air during construction and demolition activities in the vicinity of the Works.

ARTICLE 8. NOISE AND VIBRATION

8.1 Noise and Vibration General

- (a) Without limiting any other provision in the Project Agreement or this Article 8, Project Co shall carry out the Project Operations in compliance with the noise and vibration obligations set out in this Article 8, and shall:
 - (i) conduct a detailed noise and vibration assessment during detailed design, when Revenue Vehicle and infrastructure design parameters have been refined and site-specific information is available (i.e., Revenue Vehicle and suspension type; track structure; soil conditions and receptor structure setback, type, condition and use);
 - (ii) implement measures to manage the adverse effects of ground-borne and air-borne noise and vibration by minimizing and mitigating noise and vibration generated as a result of the Project Operations;
 - (iii) develop conservation plans (building and façade stabilization measures and development of appropriate setbacks) based upon the results of vibration studies associated with construction and operations activities;
 - (iv) comply with:
 - (A) Applicable Law relating to ground-borne and air-borne noise or vibration;
 - (B) Sections 8.1(c) and 8.1(d);
 - (C) the Noise and Vibration Performance Limits;
 - (D) the Noise and Vibration Reference Documents; and
 - (E) Good Industry Practice for ground-borne and air-borne noise and vibration in respect of all Project Operations, where a noise and vibration limit is not otherwise identified in Sections 8.1(a)(iv)(A), 8.1(a)(iv)(B), 8.1(a)(iv)(C), or 8.1(a)(iv)(D).
- (collectively, the “**Applicable Noise and Vibration Requirements**”);

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- (v) design, construct, procure, and operate equipment in accordance with this Article 8;
 - (vi) utilize construction equipment that minimizes ground-borne and air-borne noise and vibration;
 - (vii) carry out the Project Operations so that the operation of the Project Co System Infrastructure and New Third Party Infrastructure complies with Applicable Noise and Vibration Requirements;
 - (viii) carry out the Project Operations so that the operation of the Project Co System Infrastructure and New Third Party Infrastructure complies with the Additional Sensitive Receiver Performance Requirements for individual Sensitive Receivers, as applicable; and
 - (ix) carry out the Project Operations to ensure that the noise and vibration generated by the operation of the Revenue Vehicles along the Hurontario LRT is in compliance with Applicable Noise and Vibration Requirements, provided that such operation of the Revenue Vehicles is conducted in accordance with LRT Rules and Standard Operating Procedures.
- (b) The Parties acknowledge and agree that if there is any conflict between any ground-borne or air-borne noise or vibration limit, requirement, standard or criterion contained in one or more item of Applicable Noise and Vibration Requirements, the more stringent ground-borne or air-borne noise or vibration limit, requirement, standard or criterion shall apply.
 - (c) Project Co shall comply with City of Mississauga Noise Control By-Law 360-79.
 - (d) Project Co shall comply with City of Brampton Noise By-law 93-84, as amended by By-laws 225-84, 41-95, 253-98, 202-2006, and 188-2014.
 - (e) During the Construction Period, if Project Co elects to perform activities in contravention to the by-laws set out in Section 8.1(c) and Section 8.1(d), Project Co shall be permitted to do so if,
 - (i) an exemption to the City of Mississauga and/or City of Brampton noise by-law is approved by the City of Mississauga and/or City of Brampton;
 - (ii) Project Co complies with the requirements of Section 6(b) of Schedule 18 - Communication and Public Engagement Protocol;
 - (iii) Project Co, acting reasonably, and in accordance with its obligations under the Project Agreement, including, for clarity, Section 8.6, does not anticipate that such activities will generate complaints from the public; and
 - (iv) Contracting Authority shall, in its sole discretion, determine whether complaints from the public with respect to such activities are or are not significant enough to warrant discontinuation of the activities.

8.2 Noise and Vibration Reference Documents and Performance Limits

- (a) In carrying out the Project Operations, Project Co shall comply with applicable noise and vibration reference documents, including, at a minimum, the following documents (the “**Noise and Vibration Reference Documents**”), as each document is amended or replaced during the Project Term subject to Section 18 of the Project Agreement,
- (i) applicable Environmental Reference Documents and Additional Environmental Reports;
 - (ii) MOEE/TTC Draft Protocol for Noise and Vibration Assessment for the proposed Scarborough Rapid Transit Extension;
 - (iii) MOECP Publication NPC-115;
 - (iv) MOECP Publication NPC-118;
 - (v) MOECP Publication NPC-206;
 - (vi) MOECP Publication NPC-233;
 - (vii) MOECP Publication NPC-300;
 - (viii) MOECP/MTO Protocol “A Protocol for Dealing with Noise Concerns During the Preparation, Review and Evaluation of Provincial Highways Environmental Assessments”;
 - (ix) NFPA-130 Standard for Fixed Guideway Transit and Passenger Rail Systems;
 - (x) FHWA Highway Construction Noise Handbook; and
 - (xi) United States Federal Transit Administration Transit Noise and Vibration Impact Assessment Manual.
- (b) The Parties acknowledge and agree that Table 8.1 and 8.2 of this Article 8 summarize the noise and vibration performance requirements for particular sources and receivers of ground-borne or air-borne noise or vibration (the “**Noise and Vibration Performance Limits**”). For the purposes of Table 8.1 and 8.2, the following definitions apply:
- (i) “**Descriptor**” means a quantitative metric used to identify a specific measure of sound or vibration;
 - (ii) “**L_{eq}**” means the A-weighted sound level of a steady sound carrying the same total energy in the time period T as the observed fluctuating sound, as defined in NPC-300;
 - (iii) “**L_{eq,passby}**” or “**Passby L_{eq}**” means the L_{eq} measured over the time during which the Revenue Vehicle is passing the point on the line closest to the measurement point;

- (iv) “**Limit Requiring Mitigation**” means the noise or vibration level above which mitigation is necessary to comply with the Applicable Noise and Vibration Requirements;
 - (v) “**L_{max}**” means the maximum A-weighted sound level due to equipment operation, measured using slow response on a Class 1 or Class 2 sound level meter;
 - (vi) “**Receiver**” has the meaning set out in Article 1 of this Schedule 17;
 - (vii) “**residence**” means a property of a person that accommodates a dwelling, including a legal non-confirming residential use;
 - (viii) “**SIL**” means the speech interference level, as defined in ANSI s-12.65, calculated as the arithmetic mean of octave bands sounds pressure levels from 500 to 4000 Hz inclusive; and
 - (ix) “**Source**” means the source of noise and/or vibration.
- (c) Where both air-borne and ground-borne noises are impacting a building, Project Co shall ensure that the ground-borne noise is mitigated to either the limit shown in Table 8.2 or to a level that is 5 dB below the mitigated air-borne sound level (within the applicable space), whichever is higher.

Table 8.1 Air-borne Noise Performance Limits

| Source | Receiver | Descriptor | Limit Requiring Mitigation |
|--|--|---|---|
| <p>Combined Revenue Vehicle operations and road traffic noise for years 1 to 10, (inclusive) of the Operational Term following the Substantial Completion Date.</p> <p>Revenue Vehicle operations for years 11 to 30 of the Operational Term</p> | <p>Residence exterior, 15 m or more from the nearest track’s centreline.</p> <p>For residences closer than 15m to the nearest track’s centreline the L_{eq} shall be extrapolated out to 15m from the nearest track’s centreline using FTA-VA-90-1003-06 Section 6.3.1, STAMSON or other similar prediction.</p> | <p>L_{eq,16h} and L_{eq,8h}</p> | <p>Daytime limit (07:00-23:00): Not to exceed the greater of: a) 5 dB above 55 dBA; or b) 5 dB above the existing ambient L_{eq,16h}, prior to commencement of Construction Activities.</p> <p>Night time limit (23:00-07:00): Not to exceed the greater of: a) 5 dB above 50 dBA; or b) 5 dB above the existing ambient L_{eq,8h}, prior to commencement of Construction Activities.</p> <p>Mitigation is required where either the daytime or night time limit is exceeded.</p> |

| Source | Receiver | Descriptor | Limit Requiring Mitigation |
|---|--|--|---|
| Construction equipment | Nearest Sensitive Receiver | $L_{eq,8h}$ | 80 dBA during daytime/evening (any 8 hour period between 07:00-23:00) and 70 dBA during night-time (23:00-07:00) |
| Construction equipment | Source-based limits – as described in the relevant publication set out in the “Limit Requiring Mitigation” column | As described in the relevant publication set out in the “Limit Requiring Mitigation” column | For a particular item of equipment, the most stringent sound power level contained in: a) MOECP NPC 115; b) MOECP NPC 118; and Only broadband backup alarms are permitted. |
| Stationary equipment noise | Noise sensitive receivers as defined in MOECP noise guideline NPC-300 | $L_{eq,1h}$ | Noise level limits for stationary noise sources as set out in MOECP noise guideline NPC-300. The areas surrounding the project are tentatively identified as “Urban Class 2”. |
| Emergency operations noise | Emergency evacuation areas and routes | a) $L_{eq,5min}$ b) SIL (500-4000Hz) | Most stringent of: a) $L_{eq,5min}$ 80 dBA; and b) SIL 70 dB |
| Workspace in Project Co System Infrastructure or New Third Party Infrastructure (including headsets and other communications) | Employee of any entity working in or on Project Co System Infrastructure or New Third Party Infrastructure, including those involved in construction | $L_{eq,8h}$, as defined in CSA Z107.56-2013 (<i>Ontario Health and Safety Act</i> , R.R.O 1990 Industrial Establishments Regulation 851) | Not to exceed equivalent sound exposure of $L_{eq,8h}$ of 85 dBA (as defined in Ontario Regulation 851, section 139 under the <i>Occupational Health and Safety Act</i> (Ontario)). |

Table 8.2 - Ground-borne Noise and Vibration Performance Limits

| Source | Receiver | Descriptor | Limit Requiring Mitigation |
|---|---|---|--|
| Revenue Vehicle passby vibration, | Inside highly sensitive buildings (e.g. concert halls, television studios, recording studios, vibration-sensitive research and manufacturing facilities, hospitals with vibration-sensitive equipment, some university research facilities) | Vertical vibration velocity | Not to exceed 0.045 mm/sec RMS |
| | Inside residences and buildings where people normally sleep (e.g. residential buildings, hotels, hospitals); theatres and auditoriums | Vertical vibration velocity | Not to exceed 0.1 mm/sec RMS |
| | Inside sensitive institutional buildings, office buildings (e.g. schools, places of worship and commercial offices) | Vertical vibration velocity | Not to exceed 0.14 mm/sec RMS |
| Revenue Vehicle passby ground borne noise measured as maximum passby sound pressure level using slow response or as passby L_{eq} | Inside concert halls, television studios, recording studios | Ground-borne passby L_{eq} or $L_{max,S}$ | Not to exceed 25dBA re: 20 micro-pascals |
| | Inside theatres and auditoriums | Ground-borne passby L_{eq} or $L_{max,S}$ | Not to exceed 30dBA re: 20 micro-pascals |
| | Inside residences and buildings where people normally sleep (e.g. residential buildings, hotels, hospitals); | Ground-borne passby L_{eq} or $L_{max,S}$ | Not to exceed 35dBA re: 20 micro-pascals |
| | Inside institutional buildings without vibration-sensitive equipment (e.g. schools, places of worship, office buildings, other institutions) | Ground-borne passby L_{eq} or $L_{max,S}$ | Not to exceed 40dBA re: 20 micro-pascals |

| Source | Receiver | Descriptor | Limit Requiring Mitigation |
|------------------------|-----------------------------|------------------------|---|
| Construction Equipment | Ground outside any building | Peak Particle Velocity | Refer to construction vibration damage criteria in the Federal Transit Administration’s Transit Noise and Vibration Impact Assessment, Report FTA VA 90 1003 06, Federal Transit Administration, U.S. Department of Transportation, 2006, as amended. |

- (d) Project Co shall update the list of Noise and Vibration Reference Documents as necessary to reflect changes in Applicable Noise and Vibration Requirements and Applicable Law and submit such updates, including the impact of any change in a Noise and Vibration Reference Document on the Project Operations and operation of the Project Co System Infrastructure and New Third Party Infrastructure, to the Contracting Authority Representative.

8.3 Noise and Vibration Control Plan

- (a) Project Co, shall develop a noise and vibration control plan (the “**Noise and Vibration Control Plan**”) to identify and document the processes, required analyses and surveys, and any other supporting effort necessary to ensure that the Project Operations are carried out in compliance with the Applicable Noise and Vibration Requirements during the Project Term and to ensure that the Project Co System Infrastructure and New Third Party Infrastructure operate in compliance with Applicable Noise and Vibration Requirements during the Project Term. Project Co shall submit the Noise and Vibration Control Plan to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17. Project Co shall update the Noise and Vibration Control Plan and submit the updated plan to the Contracting Authority Representative every six months and in accordance with Schedule 10 – Review Procedure. The Noise and Vibration Control Plan shall, at a minimum:
 - (i) include a schedule of proposed activities and efforts as well as required deliverables and inputs required to comply with Applicable Noise and Vibration Requirements throughout the Project Term;
 - (ii) identify major noise and vibration producing Construction Activities and identify a plan to minimize, monitor and mitigate noise and vibration levels to the extent reasonably possible and at least to meet the Applicable Noise and Vibration Requirements;

- (iii) identify ground-borne and air-borne noise and vibration prediction and measurement procedures, and methods to evaluate ground-borne and air-borne noise and vibration from the Project Operations, the Project Co System Infrastructure, the New Third Party Infrastructure and the operation of the Revenue Vehicles on the Hurontario LRT in accordance with the LRT Rules and Standard Operating Procedures;
 - (iv) provide a complete list of ground-borne and air-borne noise and vibration performance requirements, including the Applicable Noise and Vibration Requirements, based on this Schedule 17 and any other sources identified by Project Co in consultation with Contracting Authority;
 - (v) identify possible mitigation measures to be applied when and where calculated ground-borne or air-borne noise or vibration levels exceed the Noise and Vibration Performance Limits or any other limit under the Applicable Noise and Vibration Requirements, provided that the inclusion or absence of a mitigation measure from this Noise and Vibration Control Plan shall not limit Project Co's obligation to mitigate any amount of noise and vibration required under the Project Agreement;
 - (vi) provide Project Co's procedures for conducting compliance verification measurements, measurement processes, measurement equipment and analysis methods, during the Construction Period and Operational Term to confirm that,
 - (A) the Project Operations are being carried out in compliance with Applicable Noise and Vibration Requirements and Additional Sensitive Receiver Performance Requirements; and
 - (B) Project Co System Infrastructure is operating in compliance with Applicable Noise and Vibration Requirements and Additional Sensitive Receiver Performance Requirements;
 - (vii) provide Project Co's procedures for identifying potential Representative Sensitive Receivers, including taking baseline measurements;
 - (viii) provide Project Co's procedures for carrying out the Project Co Services to ensure compliance with the Noise and Vibration Performance Limits; and
 - (ix) provide Project Co's procedures for carrying out regular maintenance of train wheels and rails to eliminate conditions such as wheel flats or corrugations that could affect ground-borne noise or vibration levels, ensuring compliance with the Noise and Vibration Performance Limits.
- (b) Project Co shall implement the Noise and Vibration Control Plan that receives a notification as "NO COMMENT" by Contracting Authority in accordance with Schedule 10 – Review Procedure.

8.4 Sensitive Receivers and Representative Sensitive Receivers – Identification and Requirements

- (a) Prior to commencement of Construction Activities, Project Co shall conduct a survey of the Lands and the vicinity of the planned alignment of the Hurontario LRT, including a zone of influence for the applicable Noise and Vibration Performance Limits that are potentially exceeded from the planned Project Operations, Project Co System Infrastructure and New Third Party Infrastructure, to identify Representative Sensitive Receivers, including heritage structures. The survey shall:
- (i) include the identification of specific sensitive equipment, structures, facilities or procedures;
 - (ii) be conducted in consultation with the potential Sensitive Receivers and accordance with any public consultation requirements set out in Schedule 18 – Communications and Public Engagement Protocol;
 - (iii) select Representative Sensitive Receivers such that they:
 - (A) are exposed to the worst case effects of ground borne vibration, and air and ground borne noise compared to all the Sensitive Receivers that the Representative Sensitive Receiver is intended to represent; and
 - (B) are distributed across areas with differing characteristics affecting noise and vibration levels along the corridor. Example characteristics shall include:
 - differences in setback from the alignment;
 - differences in grade elevation between alignment and receiver;
 - differences in traffic volume (e.g. on either side of arterial roadways, or large commercial centres and institutions);
 - differences in road/LRT alignment;
 - differences in track configuration or special trackwork (e.g. crossovers, or areas with the potential to cause wheel squeal (radius curves less than 300 metres));
 - differences in shielding from alignment (e.g. barriers); and
 - receivers with different sensitivity to vibration; and
 - (C) have soil and structural characteristics, geometry and propagation characteristics from the Project similar to the other Receivers the Representative Sensitive Receiver is intended to represent; and

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- (iv) perform and record baseline noise and vibration measurements at or within each Representative Sensitive Receiver determined by Project Co in consultation with the Sensitive Receivers. Measurements shall consist of:
 - (A) 48 hours unattended outdoor noise and vibration monitoring at each location, provided that the weather conditions are suitable for measurement as per MOECP publication NPC-103; and
 - (B) one hour of attended indoor noise and vibration measurements.
 - (b) Project Co shall prepare, and keep up to date, a list of Representative Sensitive Receivers and shall submit the list, along with any updates, in accordance with the Review Procedure. Project Co shall submit all baseline noise and vibration measurement data to the Contracting Authority Representative.
 - (c) If Project Co and a property owner or receiver do not agree on whether to designate a particular location or property as a Sensitive Receiver, Contracting Authority shall make a final determination based on,
 - (i) a review of the baseline noise and vibration measurement data for the particular property or location; and
 - (ii) any evidence of susceptibility of the location or property to noise or vibration levels at or lower than the Applicable Noise and Vibration Requirements.
 - (d) Project Co shall develop additional noise and vibration performance requirements (the “**Additional Sensitive Receiver Performance Requirements**”) for individual Sensitive Receivers through an assessment and evaluation of the baseline measurements, consultation with the Sensitive Receiver groups (including property owners and tenants), and a review of the noise and vibration requirements for any sensitive equipment or operation that may be impacted by the Project Operations, the operation of the Project Co System Infrastructure and New Third Party Infrastructure or the operation of the Revenue Vehicles on the Hurontario LRT.
 - (e) Project Co shall submit all Additional Sensitive Receiver Performance Requirements, including any associated measurement data, to the Contracting Authority Representative for review in accordance with Schedule 10 - Review Procedure.

8.5 Prediction and Assessment

- (a) Project Co shall, at a minimum, undertake ground-borne and air-borne noise and vibration assessments for Representative Sensitive Receivers in compliance with:
 - (i) the “General Assessments” and “Detailed Analysis Methods”, as such terms are defined and described in the Federal Transit Administration’s Transit Noise and Vibration Impact Assessment, Report FTA VA 90 1003 06, Federal Transit Administration, U.S. Department of Transportation, 2006, as amended (subject to Section 18 of the Project Agreement); and

- (ii) MOECP publications NPC-300 and NPC-233 in relation to noise and vibration emitted by Stationary Sources.
- (b) Project Co shall complete an inventory of existing noise barriers in the vicinity of the Works and incorporate the results of such inventory in Project Co's noise and vibration assessments.
- (c) Where there reasonably could be differences between adjacent structures, predictions shall be made for all buildings which could potentially be exposed to noise or vibration above the limits.
- (d) Project Co may apply an alternative and equivalent method of assessment to the method set out in Section 8.5(a) if such alternative is deemed appropriate by Contracting Authority, provided that such alternative assessment shall satisfy the requirements of any applicable Governmental Authority, including the City of Mississauga and City of Brampton and the MOECP.
- (e) Project Co shall submit a report of all ground-borne and air-borne noise and vibration assessments (the “**Noise and Vibration Assessments**”) conducted in accordance with Section 8.5 or Section 8.6 to the Contracting Authority Representative in accordance with Schedule 10 - Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17.

8.6 Assessment and Monitoring During the Construction Period

- (a) Prior to the commencement of any Construction Activity that is,
 - (i) expected to exceed the ambient $L_{eq16h-day}$ or $L_{eq8h-night}$ due to road traffic (as measured or predicted by Project Co in accordance with MOECP procedures), by 10dB or more;
 - (ii) expected to exceed a construction vibration zone of influence threshold of 5 mm/s; or
 - (iii) expected to last more than seven days and reasonably expected to produce air-borne or ground-borne noise exceeding the ambient L_{eq1h} due to road traffic (as measured by Project Co in accordance with MOECP procedures),

Project Co shall conduct, and submit to Contracting Authority in accordance with Schedule 10 – Review Procedure, an assessment at all Representative Sensitive Receivers likely to be impacted by such Construction Activity. The assessment shall include estimated ground-borne and air-borne noise and vibration, the expected duration and the mitigation measures that Project Co will apply to demonstrably minimize any impacts of noise and vibration and to meet the Applicable Noise and Vibration Requirements and Additional Sensitive Receiver Performance Requirements.

- (b) Prior to the use of any construction equipment on a Site, Project Co shall conduct an assessment (using either the manufacturer's noise data or by measurement) to confirm that such equipment can and will be used in compliance with the Applicable Noise and Vibration Requirements and Additional Sensitive Receiver Performance Requirements.
- (c) Prior to the commencement of the Works, Project Co shall develop, as a component of its Construction Period Complaints Protocol detailed in Schedule 18 – Communications and Public

Engagement Protocol, a process for managing and responding to noise and vibration concerns during the Construction Period. This component of the Construction Period Complaints Protocol shall be developed in consultation with Sensitive Receivers, if applicable, and other concerned Stakeholders identified by Project Co.

- (d) During any Construction Activities that have the potential to impact a Sensitive Receiver or that are expected to exceed the Applicable Noise and Vibration Requirements, Project Co shall monitor ground-borne and air-borne noise and vibration levels for that portion of the Construction Activities at Representative Sensitive Receivers during the construction phase of the Project. During the Construction Period, Project Co shall prepare and submit to the Contracting Authority Representative a weekly report describing the monitoring conducted and data collected for the reporting period (each a “**Weekly Noise and Vibration Monitoring Report**”). Project Co shall submit each Weekly Noise and Vibration Monitoring Report to the Contracting Authority Representative in accordance with the timeframe set out in Appendix B to this Schedule 17.
- (e) Project Co shall report any non-conformance with Applicable Noise and Vibration Requirements or the assessment carried out in accordance with Section 8.6(a), or if applicable, Additional Sensitive Receiver Performance Requirements, resulting from the monitoring activities set out in this Section 8.6 to the Contracting Authority Representative no later than 24 hours after the identification of such non-conformance. Project Co shall develop and implement mitigation measures to address the non-conformance in consultation with any such Sensitive Receiver and Contracting Authority.
- (f) During construction, in cases where it is not practicable to meet the Applicable Noise and Vibration Requirements or, if applicable, the Additional Sensitive Receiver Performance Requirements, Project Co shall coordinate with the affected Sensitive Receivers and the Contracting Authority Representative to identify acceptable alternative means and measures to allow construction to proceed, which may include temporary relocation and accommodation of property occupants of the affected Sensitive Receivers.
- (g) Project Co shall implement such acceptable alternative means and measures as agreed by the affected Sensitive Receivers and the Contracting Authority Representative.

8.7 Noise and Vibration Commissioning

- (a) Project Co shall develop and implement a noise and vibration compliance verification measurement plan for Commissioning of Project Co System Infrastructure and New Third Party Infrastructure in accordance with Schedule 14 – Commissioning. The compliance verification noise and vibration measurements shall be representative of the applicable criteria, and be taken at the same locations, where possible, referenced in Section 8.4, and be representative of the worst-case sensitive points of reception surrounding the Project.
- (b) Test equipment, including all microphones and transducers, shall be selected appropriately to ensure they have low enough noise floors to measure levels consistent with the applicable criteria. As a minimum, Project Co shall use the following measurement equipment: Type 1 sound level meter with octave band filters and vibration transducers with sensitivities of 1 V/g.

- (c) Measurements shall be conducted by Project Co with consideration for the intended use of the space. Unless dictated otherwise by the use of the space, ambient noise measurements shall be performed in octave bands with the meter time constant set to fast (125 ms) response, and shall be performed during ambient conditions that are representative of the intended usage of the space. Where appropriate, and consistent with the intended use, extraneous noise interruptions shall be excluded from the measurements.

8.8 Monitoring During the Operational Term - Representative Sensitive Receivers

- (a) Over the first five years of the Operational Term, Project Co shall carry out a survey of ground-borne and air-borne noise and vibration measurements (each a “**Noise and Vibration Survey**”) to confirm that the Project Co Services are in compliance with Applicable Noise and Vibration Requirements or Additional Sensitive Receiver Performance Requirements, as applicable. The monitoring shall be conducted at:
- (i) all receivers referenced in Section 8.4 during the first year of the Operational Term;
 - (ii) 50% of the receivers referenced in Section 8.4, during each of the following four years. The locations selected for monitoring shall be approximately equally distributed along the length of the corridor. The locations monitored shall alternate each year (i.e. total number of receivers = A+B, where A = one half of the receivers and B= the other half of the receivers, then monitor as follows: Year 2-A, Year 3-B, Year 4-A, Year 5-B); and
 - (iii) the OMSF and TPSS locations during the Operational Term.
- (b) For each year after the first five years of the Operational Term, the number of receivers at which the Noise and Vibration Survey is conducted may be reduced to no less than 10% of the receivers referenced in Section 8.4. The monitored locations shall be approximately equally distributed along the corridor and vary from year to year with priority placed on locations for areas near special trackwork or tight radius curves.
- (c) Project Co shall submit the Noise and Vibration Survey to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17.
- (d) Project Co shall report any non-conformance with the Applicable Noise and Vibration Requirements or any Additional Sensitive Receiver Performance Requirements resulting from the Noise and Vibration Survey to the Contracting Authority Representative no later than 24 hours after the identification of such non-conformance and shall comply with Section 8.10 in respect of all such non-conformances.

8.9 Complaints During Operational Term

- (a) Project Co shall address and respond to each complaint regarding noise or vibration received during the Operational Term in accordance with the Operational Term Complaints Protocol developed in accordance with Schedule 18 – Communication and Public Engagement Protocol. Upon receipt of a request by Contracting Authority to investigate a complaint regarding noise or

vibration, Project Co shall conduct ground-borne and air-borne noise and vibration measurements, as required, to determine,

- (i) the source of the ground-borne and air-borne noise and vibration that is the subject of the complaint;
 - (ii) if the ground-borne or air-borne noise or vibration is above any of the limits required by the Applicable Noise and Vibration Requirements; and to determine; and
 - (iii) if mitigation or additional monitoring is needed.
- (b) If Project Co determines that mitigation is needed pursuant to Section 8.9(a), Project Co shall,
- (i) take steps toward defining the mitigation measures within 48 hours; and
 - (ii) completely define the mitigation measures within seven days,
- of the completion of field measurements conducted in accordance with the request by Contracting Authority to investigate, or within a longer time frame agreed to by the Contracting Authority Representative. Project Co shall implement the mitigation measures, in full, within a timeframe agreed upon by the Parties on a case by case basis and shall rectify any non-conformance with Applicable Noise and Vibration Requirements.
- (c) If Project Co determines that additional monitoring is needed pursuant to Section 8.9(a), Project Co shall,
- (i) commence site-specific noise and vibration measurements for the affected receivers within 48 hours; and
 - (ii) complete the site-specific noise and vibration measurements for the affected receivers within seven days,
- of completion of field measurements conducted in accordance with the request by Contracting Authority to investigate, or within an alternative timeframe agreed to by the Parties.
- (d) Project Co shall provide the results of any site-specific noise and vibration measurements, conducted in accordance with Section 8.9(a), 8.9(b) or 8.9(c) to the Contracting Authority Representative no later than 48 hours after completion of field measurements required for the investigation, wherever possible, or within an alternative timeframe agreed to in writing by the Contracting Authority Representative.
- (e) Project Co shall be responsible for all costs and expenses related to any noise and vibration measurements required in accordance with Section 8.9(a) in response to the first,
- (i) 50 separate requests by Contracting Authority to investigate a complaint during the first Contract Year;

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- (ii) 30 separate requests by Contracting Authority to investigate a complaint during the second, third and fourth Contract Year; and
 - (iii) 10 separate requests by Contracting Authority to investigate a complaint for each Contract Year in the remainder of the Project Term.
- (f) The costs of any additional site-specific noise and vibration measurements required in any Contract Year above the number set out in Section 8.9(e) shall be borne by,
- (i) Project Co, if the results indicate that, the Project Co Services were not in compliance with Applicable Noise and Vibration Requirements or, if applicable, the Additional Sensitive Receiver Performance Requirements, and
 - (ii) Project Co, who shall be reimbursed by Contracting Authority by way of a Variation, if the results indicate that the Project Co Services were in compliance with Applicable Noise and Vibration Requirements or, if applicable, the Additional Sensitive Receiver Performance Requirements

8.10 Non-Conformance During Operational Term

- (a) If the results of a Noise and Vibration Survey conducted pursuant to Section 8.8 demonstrate that the Project Co Services or Project Co's mitigation measures under Section 8.9(b) do not result in full compliance with any Applicable Noise and Vibration Requirement or Additional Sensitive Receiver Performance Requirement, then Project Co shall rectify all such non-conformance within a time period and using mitigation methods agreed in writing between the Contracting Authority Representative and Project Co Representative. Project Co shall carry out all necessary measurements to demonstrate that non-conformances have been rectified and shall provide the results of such measurements to the Contracting Authority Representative no later than two Business Days after completion of the measurement or in accordance with the timeframe agreed between the Parties.

8.11 Inquiries to Governmental Authorities – Noise and Vibration

- (a) Unless otherwise specified in the Project Agreement, Project Co shall liaise directly with applicable Governmental Authorities regarding Project Co's noise and vibration obligations.
- (b) Where requested by Contracting Authority, Project Co shall cooperate with and promptly provide the Contracting Authority Representative with any written documentation or authorizations required for any inquiry of any Governmental Authority by Contracting Authority relating to Project Co's compliance with this Schedule 17, any Applicable Noise and Vibration Requirements or any Permits, Licences and Approvals relating to noise and vibration for the Project.
- (c) Project Co shall forward to the Contracting Authority Representative a copy of any report, submission, application or other document relating to noise and vibration matters on, at, affecting or otherwise relating to the Project Operations or the Lands, concurrent with the filing or

submission of the report, submission, application or other document to any Governmental Authority.

ARTICLE 9. OTHER ENVIRONMENTAL MATTERS

9.1 Endangered Species, Species-at-Risk Permits and Documentation

- (a) If required, Project Co shall obtain any necessary permits required under the *Endangered Species Act* (Ontario), *Migratory Birds Convention Act*, S.C. 1994, c.22, as amended from time to time, *Species at Risk Act* (Canada), Ministry of Natural Resources and Forestry (Ontario), Credit Valley Conservation, or Toronto Regional Conservation Authority and shall provide any required protection, mitigation, compensation or monitoring required to adhere to such permits, and shall provide any supplementary documentation or reporting needed to achieve compliance with such permits, except where such obligations are set out specifically as Contracting Authority Environmental Commitments.
- (b) During detailed design, if it is determined that a suitable habitat to support Bobolink or Eastern Meadowlark is present at the OMSF site and the habitat is within the Metrolinx Lands, Project Co shall complete targeted breeding bird surveys to confirm the presence or absence of Bobolink and Eastern Meadowlark.

9.2 Wetland, Tree and Vegetation Compensation

- (a) Project Co is responsible for wetland, tree and vegetation replacement, compensation and management activities until Substantial Completion, including compliance with all Applicable Law and required design, construction, maintenance, monitoring and/or reporting activities. Project Co shall ensure that Contracting Authority is kept apprised of all discussions and agreements respecting wetland replacement and compensation.

9.3 Organic Materials

- (a) Organic materials from excavation operations may contain peat, topsoil and subsoil materials. Project Co shall salvage and stockpile these materials in separate stockpiles in accordance with Good Industry Practice. Project Co shall not allow burial of any salvaged organic materials.
- (b) Where possible, Project Co shall re-use salvaged organic materials, except for peat materials, in the Works.

9.4 Protection/Decommissioning of Existing Monitoring Wells

- (a) Project Co shall be responsible for temporary protection and final decommissioning of all existing or newly installed monitoring wells in accordance with Regulation 903-Wells under the *Ontario Water Resources Act*, R.S.O. c. O.40, as amended from time to time, as directed by Contracting Authority, including with respect to:
 - (i) any and all monitoring wells installed as part of geotechnical, environmental, or hydrogeological investigations in connection with the Project; and

- (ii) all wells installed as part of the studies undertaken by Contracting Authority and that were provided as part of the Background Information.
- (b) Project Co shall complete monitoring well decommissioning at any additional locations identified and as directed by Contracting Authority from time to time prior to Commercial Close.
- (c) Project Co shall, prior to Substantial Completion (unless Contracting Authority provides an alternative timing), decommission any supplementary wells installed by Project Co as part of its own investigation and monitoring work as necessary to complete the Works.

9.5 Tree Protection and Preservation Plans

- (a) Project Co shall engage an Arborist to ensure proper arboriculture techniques are employed prior to and during Construction Activities and to confirm the preservation or removal requirements for trees located on private property.
- (b) Project Co shall, in consultation with the Municipalities, develop a tree preservation and protection plans and arborist report (the “**Tree Preservation and Protection Plans and Arborist Report**”) prior to any work being undertaken in the vicinity of relevant trees within the Project study areas to ensure proper tree protection measures are implemented.
- (c) Project Co shall submit the Tree Preservation and Protection Plans and Arborist Report to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure by the deadline set out in Appendix B to this Schedule 17.

9.6 OMSF Site Maintenance

- (a) Project Co shall ensure that the grasses and shrubs on the OMSF site are maintained at a length and condition that are not conducive to nesting or provide a habitat to species at risk. Any establishment of a species at risk habitat and/or nesting sites and any associated studies, reports, permits or delays in construction that result from that habitat or nesting areas are the sole responsibility of Project Co.

9.7 Phase 2 Environmental Site Assessment – Highway 403

- (a) Project Co shall undertake, complete and deliver to Contracting Authority (as an addressee) a phase two environmental site assessment to assess the actual or potential impacts to soil and/or groundwater quality at Highway 403.

ARTICLE 10. PERFORMANCE CRITERIA

10.1 Application of Performance Criteria

- (a) The Performance Criteria set out in Section 10.2 have been established in accordance with Schedule 20 – Payment Mechanism. Project Co shall achieve the Performance Criteria set out in Section 10.2 during the Operational Term. For clarity, the Quality Failures and associated payment deductions set out in Section 10.2 shall be applicable after the Substantial Completion Date.

10.2 Performance Criteria

Table 10.1 - Performance Criteria Definitions

| Failure Type | Failure Category | Response, Rectification, Remediation | Recording Frequency |
|--|--|--|--|
| <p>“SF” means Service Failure. “QF” means Quality Failure.</p> | <p>“Major” means Major Failure category. “Medium” means Medium Failure category. “Minor” means a Minor Failure category.</p> | <p>“Resp. Time” means Response Time. “Rect. Time” means Rectification Time. “Remed. Period” means Remedial Period. “T” means Immediately. “N/A” means not applicable. “NOD” means the next operational day before the next start of Revenue Service.</p> | <p>“PR” means per request. “PE” means per Event. “D” means daily. “W” means weekly. “M” means monthly. “Q” means quarterly. “B” means bi-annually. “A” means annually. “R” means randomly.</p> |

Table 10.2 –Performance Criteria

| Section Reference (Schedule 17) | Parameter | Failure Type | Category | Resp. Time | Rect. Or Remed. Period | Recording Frequency | Application (Maximum Project Co exposure) |
|---------------------------------|---|--------------|----------|------------|------------------------|---------------------|---|
| 3.9(c) | Submission of Environmental Management System Updates in accordance with Schedule 10 – Review Procedure. | QF | Medium | N/A | seven days | PE | 1 QF per day |
| 3.11(a) | Submission of Annual Environmental Compliance Monitoring Reports in accordance with Schedule 10 – Review Procedure. | QF | Medium | N/A | seven days | PE | 1 QF per day |
| 3.11(c) | Submission Independent Environmental Audit in accordance with Appendix B to this Schedule 17. | QF | Medium | N/A | seven days | PE | 1 QF per day |

| Section Reference (Schedule 17) | Parameter | Failure Type | Category | Resp. Time | Rect. Or Remed. Period | Recording Frequency | Application (Maximum Project Co exposure) |
|---------------------------------|--|--------------|----------|------------|--|---------------------|--|
| 3.10(c),(d) and (e) | Submission of Sustainability Annual Report in accordance with Appendix B to this Schedule 17. | QF | Medium | N/A | seven days | PE | 1 QF per day |
| 8.2 | Project Co shall ensure that air-borne and ground-borne noise and vibration impacts at receivers resulting from the Project Co Services with respect to the Project Co System Infrastructure during the Operational Term shall not exceed the criteria specified in Applicable Noise and Vibration Requirements. | SF | Major | 24 hours | two days or longer as agreed to by the Parties acting reasonably | PR | 1 SF applied per day when condition of non-conformance is identified |
| 8.4 | Project Co shall ensure that air-borne and ground-borne noise and vibration impacts on Sensitive Receivers do not exceed the Additional Sensitive Receiver Performance Requirements | SF | Major | 24 hours | one day or longer as agreed to by the Parties acting reasonably | PE | 1 SF applied per day when condition of non-conformance is identified |

| Section Reference (Schedule 17) | Parameter | Failure Type | Category | Resp. Time | Rect. Or Remed. Period | Recording Frequency | Application (Maximum Project Co exposure) |
|---------------------------------|---|--------------|----------|------------|-------------------------------|---------------------|--|
| 8.8(a) | Once every two years during the Operational Term, Project Co shall carry out and submit a Noise and Vibration Survey for each Sensitive Receiver and Representative Sensitive Receiver, to confirm that operation of the Project Co System Infrastructure and the operation of the Revenue Vehicles on the Hurontario LRT is in compliance with Applicable Noise and Vibration Requirements or Additional Sensitive Receiver Performance Requirements, as applicable. | QF | Major | N/A | one day | PE | 1 QF per day |
| 8.9(b) | If Project Co determines that mitigation is needed pursuant to Section 8.9(a), Project Co shall take the measures set out in Section 8.9(b) within the time periods specified in Section 8.9(b). Project Co shall implement the mitigation measures, in full, within a timeframe agreed upon by the Parties on a case by case basis and shall rectify any non-conformance with Applicable Noise and Vibration Requirements. | SF | Major | N/A | As agreed between the Parties | PE | 1 SF applied per day after condition of non-conformance is identified. |

| Section Reference (Schedule 17) | Parameter | Failure Type | Category | Resp. Time | Rect. Or Remed. Period | Recording Frequency | Application (Maximum Project Co exposure) |
|---------------------------------|---|--------------|----------|------------|--|---------------------|---|
| 8.9(c) | If Project Co determines that additional monitoring is needed pursuant to Section 8.9(a), Project Co shall take the measures set out in Section 8.9(c) within the time periods specified in Section 8.9(c). | QF | Major | N/A | 48 hours, or as otherwise agreed between Parties | PE | 1 QF per day |

**APPENDIX A-1
CONTRACTING AUTHORITY ENVIRONMENTAL COMMITMENTS**

Excerpted from Hurontario-Main LRT Project,
Environmental Project Report¹

| I.D.# | EPR Commitment | Notes |
|------------|--|-------|
| 1.0 | Property | |
| 1.1 | Lands owned by the Ontario Infrastructure and Lands Corporation (IO) and leased or managed by other users (MTO, Hydro One, utilities companies) are to be used for project operations. This includes lands for construction of a new Maintenance and Storage Facility <i>OMSF</i> in the southeast quadrant of the Hurontario Street/Highway 407 Interchange; construction of a new LRT guideway between Rathburn Road and Hurontario Street at the Highway 403 Interchange; and at four other locations adjacent to the LRT corridor. Acquisition, or transfer, of these lands will be completed in accordance with prevailing requirements for the transfer and licensing of provincial property. {Section 5.2, Page 5-1} | |
| 1.2 | Refine property requirements through the <i>preliminary</i> design phase. {Section 6.4, Page 6-34} | |
| 1.3 | Proceed with acquisition of the required property through negotiation, or expropriation if required. <i>If necessary, expropriate the required property following negotiation efforts to acquire the necessary land in a timely and efficient manner.</i> {Section 6.4, Page 6-34} | |
| 1.4 | Proceed with provincial property acquisition, or transfer, in accordance with the prevailing property transfer and licensing requirements. {Section 6.4, Page 6-34} | |
| 2.0 | Utilities | |
| 2.1 | Develop and implement a detailed utilities relocation/replacement plan that is fully integrated with the traffic management plan to ensure minimum disruption of services. {Section 6.4, Page 6-34} | |
| 2.2 | Temporary easements may be required during construction. Permanent easements for utility relocations (for example, stabilizing guy wires for hydro poles) may also be required. <i>Negotiate temporary easements during construction and permanent easements for utility relocation, where required.</i> {Section 2.8, Page 2-18} | |
| 3.0 | Project Funding | |

¹ Strikethrough and italic font is used to denote changes from the original text of the Hurontario-Main LRT Project, Environmental Project Report. Strikethrough font is used to denote deletions, while italic font is used to denote additions.

| I.D.# | EPR Commitment | Notes |
|-------|--|-------|
| 3.1 | Discussions between the City of Mississauga, the City of Brampton and Metrolinx about provincial funding for the project are underway. Metrolinx has active representation in the project working groups and provides ongoing support and information in this regard. Funding through Metrolinx will be identified as they continue to develop an investment strategy for supporting transportation infrastructure improvements within the Greater Toronto and Hamilton Area. {Section 6.4, Page 6-34} | |
| 3.2 | The City of Mississauga, the City of Brampton and Metrolinx will also continue to explore other funding opportunities for the HMLRT project, including provincial sources other than Metrolinx, and federal programs (e.g., to date, the City of Mississauga has successfully proceeded through the screening phase of the Public Private Partnership (P3) Canada merit-based and competitive funding application process). {Section 6.4, Page 6-34} | |

APPENDIX A-2

Shared Environmental Commitments
Excerpted from Hurontario-Main LRT Project,
Environmental Project Report²

| I.D.# | EPR Commitment | Notes |
|------------|---|--|
| 1.0 | Design | |
| 1.1 | <p>Due to the established high potential for the recovery of Aboriginal <i>Indigenous</i> and Euro-Canadian remains within the study corridor limits <i>area</i>, all identified undisturbed areas <i>affected by construction</i> should be subjected to a Stage 2 archaeological field assessment, prior to the commencement of construction activities. {Section 3.4.2, Page 3-71}</p> | <p>Contracting Authority to undertake Stage 2 archaeological field assessment, prior to Commercial Close, on lands associated with RCD and conceptual grading/landscape limits, subject to Permission to Enter.</p> <p>Project Co to undertake Stage 2 archaeological field assessment on remaining lands not assessed prior to Commercial Close, including all undisturbed lands to be affected by construction (which may be different than RCD).</p> <p>For all Stage 2 archaeological field assessments completed by Project Co, Project Co will provide the Indigenous engagement deliverables/inputs and Contracting Authority will complete and facilitate the Indigenous engagement.</p> |
| 1.2 | <p>A Designated Substances Survey (DSS) is required to confirm if ACMs, lead and other designated substances are present on-site prior to the MSF Site buildings demolition. <i>Conduct Designated Substances Surveys (DSS) for buildings or structures that require widening, modification, or demolition to confirm if asbestos-containing materials, lead, and other designated substances are present on-site prior to demolition.</i> Upon completion, additional mitigation measures will be identified. {Table 4.13, Page 4-42}</p> | <p>Contracting Authority will undertake the DSS for any buildings or structures located on the Metrolinx Lands which require widening, modification, or demolition.</p> <p>Project Co will undertake the DSS that have not previously been completed prior to Commercial Close, for any buildings or structures that require widening, modification, or demolition.</p> <p>As the “Constructor”, Project Co is responsible for incorporating the findings of DSS in construction contract documents.</p> |

²Strikethrough and italic font is used to denote changes from the original text of the Hurontario-Main LRT Project, Environmental Project Report. Strikethrough font is used to denote deletions, while italic font is used to denote additions.

| I.D.# | EPR Commitment | Notes |
|------------|---|--|
| 1.3 | <p>The greater stop spacing of the LRT service will result in longer walking distances (balanced by reduced in vehicle time and greater reliability), which may have an impact on people with reduced mobility. Where warranted, local transit service will be maintained at a reduced transit frequency in order to support those individuals. The details of the routing of the residual service will be developed by MiWay and Brampton Transit during the implementation phase of the project. Consult with MiWay and Zum regarding routing to provide a lower frequency residual service to support people with reduced mobility that are unable to manage the greater spacing between stops. {Section 6.4, Page 6-33}</p> | <p>Contracting Authority responsible for consultation with MiWay and Zum prior to Commercial Close.</p> <p>Contracting Authority will provide the MiWay and Zum contacts to Project Co. Contracting Authority has the right to attend any meetings held.</p> <p>After Commercial Close, Project Co consults with and provides all deliverables / inputs to facilitate the discussion, setup and host the meetings.</p> |
| 1.4 | <p>As design progresses, the project proponents will continue to monitor the HMLRT project for potential Canadian Environmental Assessment Act requirements (CEAA, 2012 includes provisions for the Minister of the Environment to amend the Regulations to designate a project if it has the potential to cause adverse environmental effects, contingent upon appropriate consultation). If required, the project proponents will prepare a Project Description for review by the Canadian Environmental Assessment Agency. {Section 5.3, Page 5-2}</p> | <p>Project Co to prepare the project description for Contracting Authority review and submission to CEAA.</p> <p>Contracting Authority will monitor the potential CEAA changes prior to Commercial Close and Project Co will monitor the potential CEAA changes after Commercial Close.</p> |
| 2.0 | Construction Activities and Monitoring | |
| 2.1 | <p>Develop and implement a construction monitoring program to confirm compliance with contract requirements, and to assess the overall performance and effectiveness of the required environmental construction practices in the field. It is recommended to conduct full-time construction supervision, including inspection and monitoring services, to confirm the project is constructed in accordance with provincial, regional and city standards.</p> | <p>Refer to Contracting Authority and Project Co rights and obligations in Schedule 11 – Quality Management.</p> |

| I.D.# | EPR Commitment | Notes |
|------------|---|--|
| 3.0 | Permits, Licences, Approvals and Agreements | |
| 3.1 | <p>If an agreement (or an amendment to an existing agreement) cannot be reached with CP Rail for the bridge works at the Galt Subdivision crossing at Cooksville, and with CN Rail for work on the Main Street structure on the Weston Subdivision in downtown Brampton, approval by the Canadian Transportation Agency (CTA) under the <i>Canada Transportation Act</i> may be required.</p> <p>Generally, all works on, above or below railway property will need to be coordinated with railway operations and comply with the following requirements:</p> <ul style="list-style-type: none"> • Rules, policies, standards and procedures for working within the railway right-of-way; • Liability insurance requirements for works performed on and/or in proximity to the railway or within railway right-of-way; and • Safety and related requirements and instructions for work on railway right-of-way by non-railway personnel. {Section 5.3, Page 5-2} | Refer to Contracting Authority and Project Co rights and obligations in Schedule 34 – Item No. 1. |
| 3.2 | Finalize approval from the Ministry of Transportation for crossing the Highway 401, Highway 403, and Queen Elizabeth Way (QEW) crossing arrangements and Highway 407 Transitway Lands. {Section 5.2, Page 5-1} | Refer to Contracting Authority and Project Co rights and obligations in Schedule 34 – Item No. 7. |
| 3.3 | Finalize agreement with 407 ETR Concession Company Limited for crossing the 407 ETR corridor and operating the LRT system on the 407 ETR Hurontario Street structure. {Section 5.2, Page 5-1} | Refer to Contracting Authority and Project Co rights and obligations in Schedule 34 – Item No. 6. |
| 3.4 | Finalize approval from Hydro One for crossing under its corridors at five (5) locations. {Section 5.2, Page 5-1} | Refer to Contracting Authority and Project Co rights and obligations in Schedule 34 – Items No. 9 and 10. |
| 3.5 | Finalize approval from Enbridge Gas and Trans-Northern Pipelines for crossing their facilities in the corridor. {Section 5.2, Page 5-1} | Refer to Contracting Authority and Project Co rights and obligations in Schedule 34 – Items No. 2, 3, 4 and 5. |

| I.D.# | EPR Commitment | Notes |
|------------|--|--|
| 4.0 | Ongoing Consultation | |
| 4.1 | Continue general consultation with the public, property owners, business operators, regulatory and other government agencies, Aboriginal <i>Indigenous</i> communities, and other interested stakeholders in finalizing design of the LRT alignment, guideway, stops and ancillary facilities, such as Traction Power Substations- TPSS and the Maintenance and Storage Facility OMSF. {Section 6.4, Page 6-33} | Contracting Authority and Project Co shall engage and consult with regional and city staff in finalizing design of the LRT alignment, guideway, stops and ancillary facilities, such as TPSS and the OMSF. Project Co shall support Contracting Authority in reporting outcomes to City Council, as required. Project Co is responsible for implementation of all deliverables identified in such consultation. Refer to Schedule 18 – Communication and Public Engagement Protocol. |
| 4.2 | Continue consultation with TRCA and CVC with respect to restoration opportunities in directly affected reaches of Etobicoke Creek, Mary Fix Creek and Cooksville Creek. {Section 6.4, Page 6-33} | Contracting Authority and Project Co shall engage and communicate with interested Stakeholders during the design and construction phases on the noted issues. Project Co is responsible for implementation of all deliverables identified in such consultation. Refer to Schedule 18 – Communication and Public Engagement Protocol |
| 4.3 | Continue consultation on integration of the LRT system and public realm enhancement (Complete Street) initiatives. {Section 6.4, Page 6-33} | |
| 4.4 | Work with residents and businesses along the corridor to further develop property access, parking and loading strategies to minimize impacts. In particular, every attempt will be made to minimize or replace any parking loss for individual homes and businesses, both in the short term during the construction stages and in the longer term, once the project is constructed and operational. As part of the Detailed Design phase of the project, delivery and loading arrangements and potential parking replacement solutions will be formulated and discussed with the affected property/business owners. {Section 6.4, Page 6-33} | |
| 4.5 | Continue to address 407 ETR Concession Company Limited’s concerns in the vicinity of the Hurontario Street/407 ETR Interchange in the context of its Concession and Ground Lease Agreement with the Province. {Section 6.4, Page 6-33} | |
| 4.6 | The HMLRT preferred alignment for this TPAP is from Port Credit GO to Brampton. Both municipalities <i>City of Mississauga and City of Brampton</i> are undertaking various studies along the Hurontario Main corridor and seeking approvals, as may be required or directed by their respective councils. {Section 6.4, Page 6-33} | |

| I.D.# | EPR Commitment | Notes |
|------------|---|---|
| 5.0 | Addendum | |
| 5.1 | <p>Changes to the project may also be required if there is a significant lapse of time (i.e., ten years) between the Statement of Completion and the start of construction, which will require a formal review of the project by the City of Mississauga, the City of Brampton and Metrolinx (in accordance with Section 16 of the Regulation). The results of the review must be posted on the Cities City of Mississauga, and City of Brampton’s and Metrolinx’s websites. Where changes to the project are identified through the review, the cities Metrolinx may follow the EPR Addendum process described herein in O. Reg. 231/08 (Transit Projects and Metrolinx Undertakings). Project Co shall support Metrolinx in the EPR Addendum process by providing technical data, analysis, reports and supporting information as requested by Contracting Authority. {Section 5.4.1, Page 5-2}</p> | <p>Contracting Authority will coordinate postings on the various project websites.</p> <p>Project Co is responsible for implementation of all deliverables identified in such consultation and completing the EPR Addendum process.</p> |
| 6.0 | Property | |
| 6.1 | <p>Develop a property acquisition strategy based on how implementation of the project will be staged. {Section 6.4, Page 6-34}</p> | <p>Project Co to provide the staging information.</p> <p>Contracting Authority to develop the property acquisition strategy based on Project Co staging information.</p> |

APPENDIX A-3

Shared Environmental Commitments (Addendum Process)

Excerpted from Hurontario LRT – “Not Significant Changes Memo” and supporting documents (December 20, 2017)³

| I.D.# | EPR Commitment | Notes |
|-------|---|--|
| 1.0 | Design | |
| 1.1 | Further changes made to the project design through a subsequent project phase not captured in the EPR or the EPR Addendum documented in the Not Significant Changes Memo and supporting documents shall be documented by the EPR Addendum process consistent with O. Reg. 231/08 | Contracting Authority shall be responsible for EPR Addendum preparation prior to Commercial Close. Project Co shall be responsible for EPR Addendum preparation after Commercial Close. |
| 2.0 | Archaeological Resources | |
| 2.1 | All additional property required for the Project which was not previously assessed for archaeological potential will require a Stage 1 Archaeological Assessment, and if required, further archaeological assessment will be undertaken (i.e. Stages 2-4). {Section 5.4, Page 20} | Contracting Authority shall be responsible for archaeological assessments prior to Commercial Close for lands associated with RCD subject to PTE. Project Co shall be responsible for archaeological assessments after Commercial Close on undisturbed lands not previously assessed which will be utilized for construction. |

³ Strikethrough and italic font is used to denote changes from the original text of the “Hurontario Light Rail Transit Project – Environmental Project Report Addendum for Not Significant Changes” memo (September 26, 2017) . Strikethrough font is used to denote deletions, while italic font is used to denote additions.

APPENDIX B

PLANS AND REPORTS

Schedule of Plans and Reports Submission Requirements

| No | Key Performance Criteria* | Deliverable Name | Schedule 17 Reference | Due Date | Deliverable Submission Period | Submitted in accordance with the Review Procedure |
|----|---------------------------|---|------------------------------|--|---|---|
| 1 | n/a | Environmental Management System (initial version) | Section 3.9(a) | The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities | By due date | Yes |
| 2 | Yes | Environmental Management System Update | Section 3.9(c) | Annually, no later than March 31 | Throughout Project Term | Yes |
| 3 | n/a | Sustainability Plan (Construction Period) | Section 3.10(b) | The earlier of, a) 120 days after Financial Close; or b) 30 days prior to the planned date for commencement of Construction Activities | By due date | Yes |
| 4 | n/a | Sustainability Plan (Operational Term) | Section 3.10(b) | 120 days after the Substantial Completion Date; | By due date | Yes |
| 5 | Yes | Sustainability Annual Report | Sections 3.10(d) and 3.10(e) | Annually, no later than March 31 | Throughout the Project Term | Yes |
| 6 | Yes | Annual Environmental Compliance Monitoring Report | Section 3.11(a) | Annually, no later than March 31 st | Throughout the Project Term if necessary until all Environmental Assessment commitments are satisfied | Yes |
| 7 | Yes | Independent Environmental Audit | Section 3.11(c) | June 1 st annually | Throughout the Project Term | No |

| No | Key Performance Criteria* | Deliverable Name | Schedule 17 Reference | Due Date | Deliverable Submission Period | Submitted in accordance with the Review Procedure |
|----|---------------------------|--|-----------------------|--|-------------------------------|---|
| 8 | n/a | Air Quality Management Plan | Section 7.1(b) | The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities | By due date | Yes |
| 9 | n/a | Soil and Excavated Material Management Plan | Section 4.4(b) | The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities | By due date | Yes |
| 10 | n/a | Soil and Excavated Material Management Monthly Monitoring Report | Section 4.4(d) | 7 th Day of each month | By due date | No |
| 11 | n/a | Soil and Excavated Material Management Implementation Report | Section 4.4(f) | 14 days prior to Substantial Completion | By due date | No |
| 12 | n/a | Groundwater Management and Dewatering Plan | Section 4.5(b) | The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities | By due date | Yes |
| 13 | n/a | Groundwater Management and Dewatering Monthly Monitoring Report | Section 4.5(c) | Monthly | By due date | No |
| 14 | n/a | Groundwater Management and Dewatering Implementation Report | Section 4.5(d) | 14 days prior to Substantial Completion | By due date | No |

| No | Key Performance Criteria* | Deliverable Name | Schedule 17 Reference | Due Date | Deliverable Submission Period | Submitted in accordance with the Review Procedure |
|----|---------------------------|---|-----------------------|---|-------------------------------|---|
| 15 | n/a | Spill Prevention and Response Plan | Section 4.8(b) | The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities | By due date | Yes |
| 16 | n/a | Spill Prevention and Response Occurrence Report | Section 4.8(c) | a) Within 5 Business Days following the occurrence of a Spill; and b) in the event the remediation is not completed within 5 Business Days following such Spill, a follow-up amendment to the Spill Prevention and Response Occurrence Report for such Spill shall be submitted within 1 Business Day of the completion of such remediation. | By due date | No |
| 17 | n/a | Spill Prevention and Response Implementation Report | Section 4.8(d) | 14 days prior to Substantial Completion | By due date | No |
| 18 | n/a | Archaeological Risk Management Plan | Section 6.1(a) | The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities | By due date | Yes |

| No | Key Performance Criteria* | Deliverable Name | Schedule 17 Reference | Due Date | Deliverable Submission Period | Submitted in accordance with the Review Procedure |
|----|---------------------------|--|-----------------------|--|--|---|
| 19 | n/a | Noise and Vibration Control Plan | Section 8.3(a) | 1) The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities; and 2) updates every 6 months after commencement of Construction Activities. | By due date with updates throughout Project Term | Yes |
| 20 | n/a | Noise and Vibration Assessments | Section 8.5(e) | 1) The earlier of, a) 120 days after Financial Close; or b) 30 days prior to the planned date for the commencement of Construction Activities. | By due date | Yes |
| 21 | n/a | Weekly Noise and Vibration Monitoring Report | Section 8.6(d) | Friday each week in areas where Construction Activities are underway | By due date | No |
| 22 | Yes | Noise and Vibration Survey | Section 8.8(c) | June 1 st biennially | Throughout Operational Term | Yes |

| No | Key Performance Criteria* | Deliverable Name | Schedule 17 Reference | Due Date | Deliverable Submission Period | Submitted in accordance with the Review Procedure |
|----|---------------------------|---|-----------------------|--|-------------------------------|---|
| 23 | n/a | Documentation demonstrating qualifications of the Environmental Director, Environmental Compliance Officer(s), Environmental Manager(s), Environmental Specialists, Environmental Permits and Approvals Coordinator, and Environmental Inspectors | Article 3 | 30 days after Financial Close, except in the case of Environmental Inspectors, 30 days prior to planned date for commencement of Construction Activities | By due date | Yes |
| 24 | n/a | Heritage Impact Assessment (as updated by Project Co) | Section 6.2(a) | At the Preliminary New Municipal Infrastructure Design Development Submittal, as applicable for subject heritage properties | By due date | Yes |
| 25 | Yes | Monthly Environmental Report | Section 3.11(b) | Monthly | Throughout Project Term | Yes |
| 26 | n/a | Tree Preservation and Protection Plans and Arborist Report | Section 9.5(b) | 90 days prior to the planned date for commencement of Construction Activities in vicinity of relevant trees within the Project study areas | By due date | Yes |
| 27 | n/a | Environmental Completion Report | Section 3.11(d) | 14 days prior to Substantial Completion | By due date | No |

| No | Key Performance Criteria* | Deliverable Name | Schedule 17 Reference | Due Date | Deliverable Submission Period | Submitted in accordance with the Review Procedure |
|----|---------------------------|---|-----------------------|--|--|---|
| 28 | n/a | Designated Substances and Hazardous Materials Management Plan | 4.9(a) | 60 days prior to planned date for commencement of Demolition activities for any structures | By due date | Yes |
| 29 | n/a | Designated Substances and Hazardous Materials Implementation Report | Section 4.9(b) | 90 days after completion date of last structure Demolition | By due date | No |
| 30 | n/a | Phase two environmental site assessment – Highway 403 | Article 9.7 | 60 days prior to the planned date for the commencement of Construction Activities within the MTO Road Allowance at Highway 403. | By due date | Yes |
| 31 | n/a | Cultural Heritage Risk Management Plan | Article 6.2(b) | 1) The earlier of: a) 120 days after Financial Close; or b) 30 days prior to the planned date for the commencement of Construction Activities. | By due date with updates throughout Project Term | Yes |

* Performance Criteria in this table are only applicable following the Substantial Completion Date.

APPENDIX C

Draft Table of Contents: Environmental Management System

1. Introduction
 - 1.1. Project Description
 - 1.2. Key Parties / Organization Overview
 - 1.3. EMS Overview
 - 1.4. Purpose and Scope
 - 1.5. Reference to Associated Documents
2. Environmental Policy
3. Planning
 - 3.1. Environmental Aspects
 - 3.2. Legal and Other Requirements
 - 3.3. Environmental Objectives and Targets
4. Implementation and Operation
 - 4.1. Resources, Roles, Responsibility, and Authority
 - 4.2. Competence, Training and Awareness
 - 4.3. Communications
 - 4.3.1. Internal Communication
 - 4.3.2. External Communication
 - 4.4. EMS Documentation
 - 4.5. Control of Documents
 - 4.6. Operational Control
 - 4.7. Emergency Preparedness and Response
 - 4.8. Sustainability Plan Integration
5. Checking
 - 5.1. Monitoring and Measurement
 - 5.2. Environmental Audits
 - 5.2.1. Environmental Compliance Audits
 - 5.2.2. Environmental Management System Audits
 - 5.3. Nonconformity, Corrective Action and Preventive Action
 - 5.4. Control of Records
6. Management Review
7. Change Management

Appendices:

Project Co's Environmental Management Plans (as defined in Schedule 17)

SCHEDULE 18

COMMUNICATION AND PUBLIC ENGAGEMENT PROTOCOL

1. DEFINITIONS

In this Schedule 18, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 18) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 “**Business Improvement Areas**” means locally-designated neighbourhoods along Hurontario Street.
- 1.2 “**Communications and Public Engagement Protocol**” means this Schedule 18.
- 1.3 “**Communications Working Group**” has the meaning given in Section 7.1(a).
- 1.4 “**Community Engagement and Stakeholder Relations Plan**” has the meaning given in Section 4.2(a).
- 1.5 “**Construction Activities Incident**” has the meaning given in Section 6(e).
- 1.6 “**Construction Period Complaints Protocol**” has the meaning given in Section 5.12(b)(i).
- 1.7 “**Contracting Authority Community Liaison Representative**” means the individual(s) employed by Contracting Authority as community liaison worker(s) for the Project who are stationed in the community offices or at Metrolinx’ offices during the Construction Period.
- 1.8 “**Crisis Communication Plan**” has the meaning given in Section 5.3(a).
- 1.9 “**Municipal Communications Contact**” means the person designated by the Cities to provide the external communications activities as set out in the Project Agreement, including this Schedule 18.
- 1.10 “**Operational Term Complaints Protocol**” has the meaning given in Section 5.12(e)(ii);
- 1.11 “**Project Co Communications Protocol**” has the meaning given in Section 3.1(a).
- 1.12 “**Project Co Communications Team**” has the meaning given in Section 3.1(a)(iii).
- 1.13 “**Project Co Construction Communications Plan**” has the meaning given in Section 3.2(a).
- 1.14 “**Project Co Operational Term Communications Plan**” has the meaning given in Section 3.2(c).
- 1.15 “**Project Website**” means Contracting Authority’s website www.metrolinx.com, a section of which will be designated for the Project.

2. GENERAL**2.1 Communications Principles**

- (a) The Project represents an important transit infrastructure commitment by Contracting Authority. As Project Co carries out its responsibilities under the Project Agreement, comprehensive communications and Stakeholder relations plans are required to ensure the public is informed and engaged where necessary and to meet Contracting Authority's communications requirements. These communications and Stakeholder relations plans will support effective timely, transparent communications between Project Co and Contracting Authority, and Stakeholders, local businesses, residents, transit users and the public during the Project Term.
- (b) Project Co acknowledges that:
- (i) Project Co is Contracting Authority's and the Stakeholders' primary source of information with respect to all matters within Project Co's control in respect of the Project; and
 - (ii) Contracting Authority and the Stakeholders, at all times during the Project Term, shall rely upon Project Co not only to anticipate matters which may be of interest and concern to Stakeholders during the Project Term (based on its experience as well as lessons learned during the course of the Project), but also to proactively organize and disseminate such information in accordance with its obligations in the Project Agreement so as to permit the Parties to perform their obligations hereunder.
- (c) The communications and community engagement objectives of the Project are as follows:
- (i) to provide regular and timely updates during the Construction Period and Operational Term in order to communicate construction progress, Project highlights, potential traffic or transit system changes and other traffic or transit information to the public, to proactively identify issues, and to generally enhance opportunities for open, transparent, effective and proactive communications with the public so as to minimize complaints and increase the public's understanding of the Project;
 - (ii) to ensure that Stakeholder input is obtained in a timely manner so that it may be properly considered by the Parties, and to provide the Stakeholders with regular and timely information in respect of Project status and progress, potential traffic or transit system changes and noise, dust, vibration, congestion, impacts on businesses and residents and other actual and potential impacts of Project activities;
 - (iii) to be accountable to the Stakeholders for the effective delivery of communications and community engagement plans as set out in the Project Agreement; and
 - (iv) to recognize the contribution of the Parties in the Project Agreement.

Contracting Authority and Project Co shall work together to deliver these communications and public engagement activities pursuant to the Project Agreement, including this Schedule 18.

- (d) The scope of this Schedule 18 includes but is not limited to all print, event and electronic communications related to: planning, design, environmental assessments, Environmental Approvals, Construction Activities, Project Co Services, Project milestones, community and Stakeholder relations, media relations, media or governmental events, public information meetings, branded products, the Project Website, social media, complaints and issues related to the Project and any responses to such complaints or issues.

3. GENERAL COMMUNICATIONS RESPONSIBILITIES

- (a) Project Co shall:
- (i) carry out all activities required to fulfill all of Project Co's communications and community engagement obligations in accordance with and as set out in this Schedule 18;
 - (ii) develop all plans, protocols, and other documentation that Project Co is required to develop in accordance with this Schedule 18 in consultation with Contracting Authority, Stakeholders, and Governmental Authorities, and submit all such plans, protocols and documentation to Contracting Authority for review in accordance with Schedule 10 – Review Procedure;
 - (iii) in consultation with Contracting Authority, Stakeholders, and Governmental Authorities, implement and comply with all plans, protocols and other documentation that have been reviewed and approved by Contracting Authority in accordance with this Schedule 18;
 - (iv) provide all information, materials, support and consultation to Contracting Authority as Contracting Authority may require with respect to Contracting Authority's communications, public engagement, community liaison and public notification activities, Stakeholder consultation, and reporting related to the Project as the Project is designed and constructed, commissioned, operated and maintained;
 - (v) be available to assist Contracting Authority, the Cities, and the Municipal Communications Contact, as applicable, in responding to media, government and public enquiries related to the Project as requested and in accordance with all timelines prescribed by Contracting Authority;
 - (vi) review and develop communications and/or technical materials reasonably requested by Contracting Authority;
 - (vii) provide regular updates to Contracting Authority related to the management of local traffic during the Construction Period;
 - (viii) provide experienced communications and public engagement staff, as set out in Section 3.1(a)(iii), to support the implementation of the Project Co Construction Communications Plan, the Project Co Operational Term Communications Plan, and the Community Engagement Stakeholder Relations Plan, and to participate in the Communications Working Group, internal and external meetings and public events;

- (ix) provide dedicated communications and Project experts to participate in communications meetings and the Communications Working Group;
- (x) support Contracting Authority’s development and execution of business disruption mitigation and business engagement strategies, in order to address business concerns about Construction Activities and to foster positive relationships;
- (xi) work with Contracting Authority to build and foster relationships with local businesses and the public in order to address the community’s concerns about the Works that may impact the community, and use best practices for seeking and receiving public comments;
- (xii) consult with Contracting Authority with respect to design opportunities to engage the community in the Project’s design process, where feasible and as directed by Contracting Authority;
- (xiii) support Contracting Authority, the Cities, and the Municipal Communications Contact, as applicable, in making communications materials accessible to the public;
- (xiv) work with all Project Co Parties, Contracting Authority, the Municipalities, the Municipal Communications Contact, and other Stakeholders of the Project, MTO, MOI, conservation authorities and other Governmental Authorities, utility companies, emergency service providers, neighbourhood groups (property owners, ratepayers, citizens), local businesses (individual operators and Business Improvement Areas) and various community interest groups (environmental, health, natural and cultural heritage, advocacy) in carrying out Project Co’s obligations as set out in this Schedule 18;
- (xv) ensure that Project Co and the Project Co Parties exhibit a high degree of professionalism and courteousness with respect to carrying out all of Project Co’s obligations under this Schedule 18, including,
 - (A) attendance at public consultations and events;
 - (B) staff and contractor parking that will not negatively impact neighbourhood access;
 - (C) not littering and being respectful of public and private property;
 - (D) making reasonable amends to replace or rehabilitate waste receptacles, plantings and signage should these items become damaged; and
 - (E) not engaging in inconsiderate conversation near public spaces.
- (xvi) during the Operational Term, support a positive relationship with System Users in consideration of their complete transit experience, including,
 - (A) System Users’ experience with the built environment of the Hurontario LRT;
 - (B) System Users’ experience with Project Co’s staff; and

- (C) the use of accessible and clear visual and electronic communication, as well as management and timely response to System Users' complaints;
 - (xvii) during the Operational Term, support a positive relationship with Contracting Authority and the Cities in consideration of their responsibility to provide a positive transit experience for the public; and
 - (xviii) during the Operational Term, share with Contracting Authority, the Cities, and the Municipal Communications Contact, as applicable, lessons learned and best practices to support the communications-related activities and requirements of Contracting Authority.
- (b) Project Co acknowledges and agrees that, notwithstanding any other provision in this Schedule 18,
- (i) all communications-related protocols, plans, materials, advertisements, notices, activities, approaches and strategies with respect to the Project, shall be subject to Contracting Authority's review and approval and, as applicable, the approval of the Cities or the Municipal Communications Contact; and
 - (ii) Contracting Authority retains the right to review all communications and communications-related materials with respect to the Project, and Project Co may not make any communication or disseminate any materials to the public with respect to the Project without the prior consent of Contracting Authority and, as applicable, the Cities or the Municipal Communications Contact.

3.1 Project Co Communications Protocol

- (a) Subject to Section 3.1(c), Project Co shall, no later than 60 days following Financial Close, submit a communications protocol for review by Contracting Authority pursuant to Schedule 10 – Review Procedure that describes how Project Co will meet its communications-related obligations under the Project Agreement (the "**Project Co Communications Protocol**"). The Project Co Communications Protocol shall include the following:
- (i) An executive summary of objectives and description of Project Co's approach to all communications aspects of the Project;
 - (ii) A summary of proposed communication tools to be used by Project Co to consult with and report to Contracting Authority in accordance with this Schedule 18, with a view towards ensuring that a system is in place for media and community relations, social media management, graphics capabilities, issues management, complaints management, dispute resolution and crisis communications for the purposes of informing and engaging the community, businesses and other Stakeholders about the progress of the Project, as well as any impacts and the benefits of the Project; and
 - (iii) A description of Project Co's dedicated communications team (the "**Project Co Communications Team**"), including the roles, responsibilities and experience of each team member who will assist in any aspect of the Project Co Communications Protocol during the Construction Period. The Project Co Communications Team shall:

- (A) be led by the Communications and Public Engagement Lead (a Key Individual as identified in Schedule 9), who shall oversee the Project Co Communications Team and ensure that Project Co's communications-related obligations under the Project Agreement during the Construction Period are being met. The Communications and Public Engagement Lead shall be a media-trained spokesperson with a minimum of 10 years of transit or construction-related communications experience in media relations, crisis communications, issues management, corporate and community relations;
 - (B) work closely with Project Co's property access and business continuity manager to coordinate communication and community engagement functions; and
 - (C) be comprised of no less than five full-time staff, each member possessing a minimum of five years of communications experience (transit-specific or construction/infrastructure-related experience will be considered an asset), with relevant experience in media relations, crisis communications, issues management, community relations and public engagement. Project Co shall provide any additional staff required in order for Project Co to fulfill its communications obligations under the Project Agreement.
- (b) Project Co shall update the Project Co Communications Protocol
- (i) on an annual basis; or
 - (ii) more frequently as may be requested by Contracting Authority, or as may be required to account for any changes in the circumstances of or lessons learned with respect to the Project.

Project Co shall resubmit each updated Project Co Communications Protocol to Contracting Authority for review pursuant to Schedule 10 – Review Procedure; and

- (c) With respect to the Operational Term, Project Co shall, no later than 180 days prior to Substantial Completion, update the Project Co Communications Protocol to identify a communications lead and a staff person who shall satisfy Project Co's communications-related obligations under the Project Agreement during the Operational Term. These two persons are required to work full-time on the Project, have a minimum of five years of communications experience (transit or construction/infrastructure-related experience will be considered an asset) and have relevant experience in media relations, issues management, and public engagement. Further necessary qualifications for such persons will be provided by Contracting Authority and the Cities to Project Co at least 270 days prior to the Scheduled Substantial Completion Date.

3.2 Project Co Construction and Operational Communications Plans

- (a) Project Co shall, no later than 120 days following Financial Close and prior to initiating any communications-related activity or disseminating any communications-related materials, submit a construction communications plan for review by Contracting Authority pursuant to Schedule 10 – Review Procedure that describes how Project Co will meet its communications-related obligations under the Project Agreement during the Construction Period (the “**Project Co**

Construction Communications Plan”). The Project Co Construction Communications Plan shall include:

- (i) a detailed description of the communication tools outlined in the Project Co Communications Protocol;
 - (ii) a description of the communications activities as set out in Section 5, including a description of how Project Co will carry out such communications activities in accordance with its obligations set out in this Schedule 18;
 - (iii) a coordinated approach with respect to other protocols and plans developed by Contracting Authority or Project Co as part of this Schedule 18;
 - (iv) a calendar outlining various communications deliverables and activities for the next six-month period, including the identification and scope of each deliverable or activity being addressed, tactic or tools to be employed, objectives, target audience, timing or deadline, and Project Co resources assigned; and
 - (v) a dashboard (e.g. via Wordpress site) to maintain transparency and provide regular monthly updates about Construction Activities, including statistics, amount of local investments, number of direct jobs and training through registered apprenticeship programs, schedule and other information that will support Contracting Authority’s communications and social media strategies.
- (b) Project Co shall update the Project Co Construction Communications Plan
- (i) on an annual basis; or
 - (ii) more frequently as may be requested by Contracting Authority, or as may be required to account for any changes in the circumstances of or lessons learned with respect to the Project.

Project Co shall resubmit each updated Project Co Construction Communications Plan to Contracting Authority for review pursuant to Schedule 10 – Review Procedure.

- (c) Project Co shall, no later than 180 days prior to Substantial Completion and prior to initiating any communications-related activity or disseminating any communications-related materials, submit a communications plan with respect to the Operational Term (the “**Project Co Operational Term Communications Plan**”) for review by Contracting Authority pursuant to Schedule 10 – Review Procedure. The Project Co Operational Term Communications Plan shall include:
- (i) a description of the communications activities as set out in Section 5, including a description of how Project Co will carry out such communications activities in accordance with its obligations set out in this Schedule 18;
 - (ii) a description of any outstanding communications-related issues (including enquiries or complaints) that originated during the Construction Period and a plan for addressing and resolving such issues; and

- (iii) a description of Project Co’s approach with respect to
 - (A) Project Co’s involvement and participation in meetings to update internal and external Stakeholders as required, including involvement and participation in special events as requested by Contracting Authority or a City;
 - (B) how Project Co will coordinate communications activities with Contracting Authority, the Cities and the Municipal Communications Contact during the Operational Term generally; and
 - (C) how Project Co will respond to communications-related requests from Contracting Authority, the Cities and the Municipal Communications Contact on topics applicable to the performance of the Project Co Services.
- (d) Project Co shall update the Project Co Operational Term Communications Plan
 - (i) on an annual basis; or
 - (ii) more frequently as may be requested by Contracting Authority, or as may be required to account for any changes in the circumstances of or lessons learned with respect to the Project.

Project Co shall resubmit each updated Project Co Operational Term Communications Plan to Contracting Authority for review pursuant to Schedule 10 – Review Procedure.

4. COMMUNITY ENGAGEMENT DURING THE CONSTRUCTION PERIOD

4.1 General

- (a) During the Construction Period, public engagement activities shall be conducted by Contracting Authority and Project Co on a range of topics, some of which will be overarching and apply to the length of the Project (e.g. public realm), while others may be more staged, topic or geographic area-specific (e.g. Environmental Assessments, noise mitigation, dust control, access to affected business and changes in service). The nature or form of the public engagement may vary based on the topic being addressed.

4.2 Community Engagement and Stakeholder Relations Plan

- (a) No later than 120 days following Financial Close and prior to initiating any communications-related activity or disseminating any communications-related materials, Project Co shall submit a community engagement and Stakeholder relations plan with respect to the Construction Period for review by Contracting Authority pursuant to Schedule 10 – Review Procedure that describes how Project Co will meet its communications-related obligations under the Project Agreement during the Construction Period (the “**Community Engagement and Stakeholder Relations Plan**”). For clarity, the Community Engagement and Stakeholder Relations Plan is distinct from and in addition to the Community Benefits and Liaison Plan as set out in Section 20.15 of the Project Agreement. The Community Engagement and Stakeholder Relations Plan shall include,

- (i) a description of Project Co’s objectives and strategies and specific tactics, timelines, deliverables and responsibilities to support
 - (A) initiatives for public engagement and consultation; and
 - (B) local or community based communications, advertising and notification related to the Works;
 - (ii) a description of the communications activities as set out in Section 5, and Project Co’s including a description of how Project Co will carry out such communications activities in accordance with its obligations set out in this Schedule 18 and in order to meet its obligations to support communications and community engagement strategies and activities;
 - (iii) a calendar outlining various communications deliverables and activities for the next six-month period, including the identification and scope of each deliverable or activity being addressed, tactic or tools to be employed, objectives, target audience, timing or deadline, and Project Co resources assigned; and
 - (iv) a description of Project Co’s approach and strategy with respect to carrying out its obligations as set out in Section 4.3.
- (b) Project Co shall update the Community Engagement and Stakeholder Relations Plan,
- (i) on an annual basis; or
 - (ii) more frequently as may be requested by Contracting Authority, or as may be required to account for any changes in the circumstances of or lessons learned with respect to the Project.

Project Co shall resubmit each updated Community Engagement and Stakeholder Relations Plan to Contracting Authority for review pursuant to Schedule 10 – Review Procedure.

4.3 Project Co’s Community Engagement and Stakeholder Relations Obligations

- (a) Project Co shall:
- (i) in consultation with Contracting Authority, plan, organize and execute at least 24 public engagement events or meetings per year for the Project in accordance with the logistical requirements set out in Section 5.7, including,
 - (A) preparing and submitting to Contracting Authority for review and approval individual plans and materials for each public engagement meeting or event, at least one month prior to each event, including clear objectives, target audiences, meeting format, approach and tactics; and
 - (B) preparing public engagement meeting and event summaries to Contracting Authority for approval, including both quick turnaround synopses for

Contracting Authority's exclusive use and more comprehensive reports at the conclusion of a particular public engagement program (e.g., a set of workshops);

- (ii) in consultation with Contracting Authority, plan, organize and execute two public tradeshows (one in the City of Mississauga and one in the City of Brampton) up to 180 days following Financial Close, and annually thereafter, in accordance with the logistical requirements set out in Section 5.7, including,
 - (A) ensuring that the trade show provides a beneficial networking opportunity between Project Co and local contractors, vendors, community businesses and agencies, with the intent to foster mutually beneficial relationships and contracts;
 - (B) preparing and submitting to Contracting Authority for approval plans and materials for the tradeshow at least two months prior to the event (to allow sufficient time for advertising and invitations), with an outline of clear objectives, target guest list, tradeshow format, approach and tactics; and
 - (C) preparing a post-event report summarizing feedback from event participants, lessons learned and confirmed contracts and business opportunities attained for the Project as a result of the tradeshow;
- (iii) attend, with representatives of Contracting Authority, Stakeholder meetings, municipal council meetings and presentations, and such other meeting or events as Contracting Authority deems necessary, including providing sufficient and appropriately experienced personnel to staff the meeting and events at sign-in tables, displays, roundtable discussions, draft meeting materials for review by Contracting Authority, and presenting, if requested by Contracting Authority;
- (iv) provide technical staff for involvement and participation in community events and meetings, including,
 - (A) Key Individuals engaged during the Construction Period;
 - (B) architects;
 - (C) urban designers;
 - (D) landscape architects;
 - (E) noise and vibration specialists; and
 - (F) other technical staff as requested by Contracting Authority;
- (v) attend at least 50 events and meetings at local schools, community associations, Contracting Authority's events and other Stakeholder events and otherwise as reasonably requested by Contracting Authority per year, provide materials for such events, and provide Project Co staff to present on the event topic or theme and/or have

Project Co staff available to conduct outreach by engaging with the public, collecting feedback and distributing marketing information to support the Project;

- (vi) in consultation with Contracting Authority, determine how Stakeholder input shall be considered, responded to, and/or accommodated in the Project, including provision of respectful, meaningful, and timely feedback to those providing comments and ideas;
- (vii) provide any necessary information required to demonstrate compliance with and fulfillment of the consultation related provisions of the Environmental Approvals;
- (viii) in order to allow local residents and businesses easy access to information about progress, Construction Activities, mitigation measures and other Project information, provide support to Contracting Authority, as well as dedicated communications staff in accordance with Section 3.1(a)(iii) to work out of Contracting Authority's community offices at the following locations:
 - (A) 3024 Hurontario Street, Unit G12, Mississauga; and
 - (B) 17 Ray Lawson Boulevard, Unit 9, Brampton;
- (ix) make staff available to respond to enquiries from the public and Stakeholders about the Works;
- (x) in consultation with Contracting Authority, provide regular updates to the immediately affected property owners, tenants and neighbourhoods on Works-related issues with particular attention to communicating the scope, schedule and status of the Works. This will include processes to proactively address any Works-related enquiries and issues (e.g., public enquiries and complaints regarding noise, hours of work, dust, etc.);
- (xi) in consultation with Contracting Authority, notify affected residents and businesses, including Contracting Authority's community relations representatives, as soon as possible of unplanned or unexpected impacts of Construction Activities (including by going door-to-door and providing updates for the Project Website and updated messages on Contracting Authority's existing information telephone line and 3-1-1 for after-hours support), and provide an estimate of the expected duration of the impact;
- (xii) support Contracting Authority in arranging meetings, in advance, with residents and businesses where Project Co requires access to properties;
- (xiii) maintain a written record of all public enquiries, complaints and communications and provide copies to Contracting Authority's lead communications contact on a weekly basis (or immediately if urgent) as per the Construction Period Complaints Protocol and the Operational Term Complaints Protocol, each as set out Section 5.12; and
- (xiv) develop a tracking and reporting system (via a dashboard) to demonstrate the progress of the Community Benefits and Liaison Plan in accordance with Section 20.15 of the Project Agreement, noting local economic impacts of the Project, with reporting to Contracting Authority at least bi-annually.

5. COMMUNICATIONS ACTIVITIES**5.1 Communications Activities – General**

- (a) Project Co shall support Contracting Authority and the Cities in the implementation of the following communication tactics during the Project Term:
- (i) Contracting Authority and the Cities' website and social media;
 - (ii) crisis communications;
 - (iii) issues management;
 - (iv) media relations;
 - (v) government relations;
 - (vi) special events;
 - (vii) signage;
 - (viii) advertising communications and marketing;
 - (ix) Project identity and graphic design;
 - (x) high resolution, professional-quality photography and video production;
 - (xi) the Construction Period Complaints Protocol; and
 - (xii) performance review.

5.2 Project Website and Social Media

- (a) Project Co shall:
- (i) during the Construction Period, support:
 - (A) Contracting Authority's social media strategy for the Project (which includes tools such as Twitter, Facebook and YouTube); and
 - (B) the Project Website by providing static (written) and dynamic (multimedia) content;
 - (ii) during the Operational Term, support:
 - (A) each City's social media strategy for the applicable Operations Services as identified by the Municipal Communications Contact (which includes tools such as Twitter, Facebook and YouTube);

- (B) the Cities' website(s) for the applicable Operations Services by providing static (written) and dynamic (multimedia) content as identified by the Municipal Communications Contact;
- (iii) attend and participate in a monthly editorial process with Contracting Authority to guide production of Project content and approval of identified topics;
- (iv) during the Construction Period, provide for review and approval by Contracting Authority
 - (A) a content calendar, based on the monthly editorial process;
 - (B) static (written) and dynamic (multimedia) content, including at least one monthly feature content piece highlighting, but not limited to, one aspect of the Project including, design, innovation, local workers, general contractors or local companies, Construction Activities, or Project benefits, with a minimum length of 500 words, along with additional content to support related posts on the Project's social media channels;
 - (C) at least one weekly content piece on Project construction with a minimum length of 150 words, along with additional content to support related posts on Project's social media channels;
 - (D) monthly e-newsletter content and one related tweet;
 - (E) notifications of public consultations, consultation materials and post-consultation summaries; and
 - (F) up-to-date graphics, high resolution, professional-quality photos and video clips showcasing the design of each Station and progress of the Construction Activities;
- (v) employ social media tools to monitor and analyze public responses to the Project;
- (vi) provide, for review and approval by Contracting Authority, drafts of proactive and reactive content for responses to crisis situations, immediate issues, public queries or complaints, no later than 2 hours after Project Co or Contracting Authority becomes aware of any such crisis situation, immediate issue, public query or complaint;
- (vii) provide draft advance notification for the purposes of Project Website and social media updates for review and approval by Contracting Authority with respect to meetings, events, initiatives, Construction Activities or Project Co Services that will have a direct impact on roads, traffic and/or transit; and
- (viii) develop web content to support government Stakeholder (e.g. MOI and MTO) web and social media communications needs for review and approval by Contracting Authority.

5.3 Crisis Communication

- (a) Subject to Section 5.3(c), no later than 60 days following Financial Close, Contracting Authority shall develop, in consultation with Project Co, a crisis communications plan that outlines the roles and responsibilities of Project Co, Contracting Authority and other partners as required (e.g. local transit authorities, MTO, etc.) with respect to crisis communications, and to identify and rank a list of potential crisis issues that could develop during the performance of the Works (the “**Crisis Communication Plan**”). No later than 60 days prior to Substantial Completion, Contracting Authority shall revise and update, in consultation with Project Co, the Crisis Communication Plan to outline the roles and responsibilities of Project Co, Contracting Authority and other partners as required with respect to crisis communications during the Operational Term and to identify and rank a list of potential crisis issues that could develop during the performance of the Project Co Services.
- (b) During the Project Term, Project Co shall:
- (i) consult with and provide assistance to Contracting Authority in Contracting Authority’s development of the Crisis Communication Plan and any revisions and updates to the Crisis Communication Plan;
 - (ii) during a crisis situation, make available sufficient Project Co communications staff and Project resources in order to work effectively with Contracting Authority to proactively manage and perform Project Co’s communications responsibilities as set out in this Schedule 18; and
 - (iii) conduct a crisis simulation annually.
- (c) No later than 60 days prior to Substantial Completion, Project Co shall revise and update, in consultation with Contracting Authority and the Cities, the Crisis Communication Plan to outline the roles and responsibilities of Project Co, Contracting Authority, the Cities and the Municipal Communications Contact with respect to crisis communications during the Operational Term and to identify and rank a list of potential crisis issues that could develop during the performance of the Project Co Services.

5.4 Issues Management

- (a) During the Project Term, Project Co shall consult with and provide reasonable assistance to Contracting Authority, the Cities and the Municipal Communications Contact, as applicable, with respect to
- (i) identifying issues and trends as they emerge and develop strategies for tracking, addressing, mitigating, and minimizing issues related to the Project;
 - (ii) developing messages and strategies to address issues and provide accurate and timely information to affected Stakeholders; and
 - (iii) sharing information about potential issues related to the Project with other partners.

- (b) Project Co shall respond to all issues identified by Contracting Authority, the Cities or the Municipal Communications Contact, as applicable, within a timeframe as determined by such identifying party.
- (c) Project Co shall carry out safety, security and emergency management services in accordance with Article 4 of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements.

5.5 Media Relations

- (a) During the Project Term, Project Co shall
 - (i) direct all media enquiries and interview requests to Contracting Authority's lead communications contact or the Municipal Communications Contact, as applicable, who will determine the organization that is most suitable to respond to the enquiry;
 - (ii) provide draft responses and messaging to Contracting Authority or the Municipal Communications Contact, as applicable, with respect to all media enquiries and interview requests in a timely manner and track each request that Project Co responds to in a media request log;
 - (iii) support Contracting Authority or the Municipal Communications Contact, as applicable, with respect to all media enquiries and interview requests;
 - (iv) provide designated media relations staff (with back up media trained personnel, as required) with 24/7 availability to monitor, draft messaging and respond to enquiries as requested by Contracting Authority or the Municipal Communications Contact, as applicable;
 - (v) provide communications training to Project Co staff, including refresher training regarding Contracting Authority's or the Municipal Communications Contact's communication protocols and policies for handling media, public, and Stakeholder interaction, as applicable; and
 - (vi) make available a Project Co designated media relations staff member and construction manager or similar expert for the purposes of responding to technical matters related to media requests and interview requests if required and as requested by Contracting Authority or the Municipal Communications Contact, as applicable.
- (b) For greater certainty, Project Co's obligations to the Municipal Communications Contact set out in Section 5.5(a) shall only apply during the Operational Term.

5.6 Government Relations

- (a) Except as otherwise set out in this Section 5.6, as between Project Co and Contracting Authority (or the Municipalities, as applicable), Contracting Authority (or the Municipalities, as applicable) shall be responsible for any government relations activities and Project Co shall not engage with any elected officials or their staff or agents without the prior approval of Contracting Authority or the Municipalities, as applicable.

- (b) During the Project Term, Project Co shall:
 - (i) support Contracting Authority as Contracting Authority liaises with affected Governmental Authorities and boards to provide information about the Project status, upcoming milestones, and issues that may affect the Project;
 - (ii) not engage with elected officials at any level of government without Contracting Authority representatives present;
 - (iii) support Contracting Authority by regularly providing information about construction status, upcoming Works milestones, issues related to Construction Activities or Project Co Services, and reviewing messaging for government relations purposes; and
 - (iv) participate in meetings with Contracting Authority, the Municipalities, and Stakeholders as and when requested by Contracting Authority (or, during the Operational Term, the Municipalities, as applicable).

5.7 Special Events

- (a) Contracting Authority, the Cities, the Municipal Communications Contact and Project Co shall collaborate to develop, plan, and coordinate various special events during the Project Term.
- (b) During the Project Term, Contracting Authority shall
 - (i) lead and organize special events, including tours of the Metrolinx Lands and milestone celebrations, costs of which will be borne by Contracting Authority (excluding costs related to shutdown of the Project Operations or accommodations at the Metrolinx Lands to organize such events, which shall be borne by Project Co); and
 - (ii) provide at least one week advance notice to Project Co to support any event described in Section 5.7(b)(i) as requested by Contracting Authority.
- (c) During the Construction Period, Contracting Authority shall provide support and direction to Project Co on the 24 public engagement events or meetings per year and the tradeshow event, which events or meetings shall be led by Project Co.
- (d) Project Co shall
 - (i) during the Construction Period and in consultation with Contracting Authority, plan, organize and execute 24 public engagement events or meetings per year in accordance with Section 4.3(a)(i), the costs of which will be borne by Project Co, including costs with respect to
 - (A) renting the venue, tables, chairs;
 - (B) production of displays, invitations, signage and printed material;
 - (C) providing light refreshments for all attendees;

- (D) print and radio advertising in trade and community and national media outlets as determined by Contracting Authority;
 - (E) issuing invitations, tracking RSVPs and administering surveys to ensure engagement of locals in the immediate area;
 - (F) using best efforts to ensure that the majority of attendees at each event are residents or individuals associated with a business and/or Stakeholder located within a one kilometre radius of the area;
 - (G) providing overall event logistics;
 - (H) supplying computers, projectors, cables, power cords, screens, easels, flip charts, pens, markers, registration and sign in sheets; and
 - (I) producing post-event report that includes high resolution, professional-quality photos (and video, where appropriate) to Contracting Authority for review and approval, the content of which may be posted publicly to the Project Website;
- (ii) during the Construction Period and in consultation with Contracting Authority, plan, organize and execute two public tradeshow (one in the City of Mississauga and one in the City of Brampton) up to 180 days following Financial Close, and annually thereafter, and in accordance with Section 4.3(a)(ii), the costs of which will be borne by Project Co, including costs with respect to
- (A) renting the venue, tables, chairs;
 - (B) production of displays, invitations, signage and printed material;
 - (C) catering;
 - (D) print and radio advertising in trade and community and national media outlets as determined by Contracting Authority;
 - (E) issuing invitations, tracking RSVPs and administering a survey;
 - (F) using best efforts to ensure a minimum attendance of 100 individuals, of which at least 25-30% of attendees consist of Peel Community Benefits Network Stakeholders and at least 50% of attendees consist of industry vendors, suppliers and other Works-related businesses and contacts;
 - (G) providing overall event logistics and event production; and
 - (H) production of post-event report that includes high resolution, professional-quality photos (and video, where appropriate) to Contracting Authority, the content of which may be posted publicly to the Project Website; and
- (iii) during the Project Term,

- (A) participate in planning and executing special events for the Project as needed and as requested by Contracting Authority or the Cities;
- (B) facilitate reasonable access to the Metrolinx Lands and the Project Co System Infrastructure from time to time for governmental, public relations, media and public tours and events;
- (C) ensure sufficient insurance and liability coverage is in place for any special events or venues;
- (D) make Project Co staff available for events, tours of the Metrolinx Lands, and provide accommodation and support as may be required by Contracting Authority or the Municipalities, as applicable; and
- (E) attend, with representatives of Contracting Authority, the Municipalities, Stakeholders, other signatories and such other parties as Contracting Authority deems necessary, any public events scheduled by Contracting Authority relating to the Apprenticeship Declaration.

5.8 Promotional Signage and Livery

- (a) With respect to promotional signage during the Construction Period, Project Co shall:
 - (i) upon request from Contracting Authority provide dimensions of hoarding, fencing and barriers to support temporary signage provided by Contracting Authority;
 - (ii) design, produce, print, install, remove and store signage, including Contracting Authority signage, City signage, Project signage, wayfinding, business and “shop local” signage;
 - (iii) ensure that a minimum of 80 per cent of the public facing surface area of all construction hoarding, fencing and barriers is covered with project signs;
 - (iv) choose signage material based on best practices and in accordance with Applicable Law;
 - (v) prior to installation, provide to Contracting Authority for approval, stamped shop drawings of the sign fabrication and installation details, together with a mock-up of the signage, location and confirmation of the applicable Permit, Licence or Approval;
 - (vi) ensure appropriate signage is provided in a visible location to indicate the presence of and means of accessing affected businesses;
 - (vii) ensure the government Project signs are visibly displayed along the corridor;
 - (viii) ensure that all signage is kept in good condition when installed and when not in use;
 - (ix) replace any signage that is damaged by Project Co at Project Co’s expense;
 - (x) remove graffiti on all Project signage within 24 hours or, in the event that graffiti cannot be removed by means of normal cleaning methods, notify the Contracting Authority

Community Liaison Representative, who may choose to supply replacement signage, and assist with the installation of any such replacement signage; and

- (xi) install, remove and relocate signage within 10 Business Days after Contracting Authority, acting reasonably, directs Project Co to do so.
- (b) During the Project Term, Project Co shall:
- (i) use a corporate brand that:
 - (A) visually differentiates Project Co from Metrolinx, Infrastructure Ontario, GO Transit, UP Express, MiWay, Brampton Transit, and any other project of Contracting Authority;
 - (B) is simple in design, and consistently applied at all times; and
 - (C) is applied to Project Co's requirements for:
 - (I) corporate communications materials;
 - (II) uniforms and identification for personnel (including as set out in Section 2.8 of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements); and
 - (III) branding on items such as vehicles, equipment, plant, and facilities; and
 - (ii) consult with Contracting Authority and the Cities on Project Co's proposals for its brand identity and livery.
- (c) Contracting Authority may, in its sole discretion, review and approve Project Co's brand identity and livery prior to its use by Project Co.
- (d) Contracting Authority shall not retain design rights over Project Co's brand identity.

5.9 Advertising Communications and Marketing

- (a) During the Construction Period, Contracting Authority shall:
- (i) plan, develop and execute advertisement and communications marketing strategies for the Project;
 - (ii) review advertisements produced by Project Co about the Project's design and construction impacts and public engagement opportunities related to the Project; and
 - (iii) provide templates to Project Co to use for public notices and advertisements of public engagement opportunities and construction impacts.
- (b) During the Construction Period, Project Co shall, as required:

- (i) support and contribute to the planning, development and execution of Contracting Authority's public education and advertising campaigns related to the Works;
- (ii) at Project Co's cost, plan, develop, and coordinate the placement of advertisements to communicate ongoing construction impacts and to inform the public of public engagement activities through a mix of media, including but not limited to, print community and commuter newspapers, multi-lingual community newspapers and radio stations, radio and television, online media, multimedia and unaddressed mail in accordance with the following:
 - (A) For each of the 24 public engagement meetings per year, Project Co shall provide one insertion in a transit daily publication as well as two local newspaper ads (black and white, half page in size);
 - (B) For construction notices that indicate significant, long-term construction impacts of more than six months in duration, the frequency of the ads placed or notices issued will be based on the Construction Contractor's schedule and will include one local newspaper notice per major stage in work (black and white, quarter page in size);
 - (C) In support of 'shop local' or local business sustainment and promotion efforts, Project Co shall:
 - (I) release two direct mail pieces annually to residential and business owners, tenants and other property occupants who own, lease and otherwise occupy property within 1,000 metres on either side and end of the corridor, segmented as required;
 - (II) annually issue four ads in each City consisting of two ad insertions in local newspapers (full-colour, half page in size), and utilize elevator advertising as directed by Contracting Authority;
 - (III) conduct quantitative and qualitative research on an annual basis with local Chambers of Commerce or equivalent to develop, and amend as required, a 'shop local' campaign and business support strategy;
 - a. develop and fund promoted social media advertising to support a 'shop local' campaign;
 - b. develop promotions and "construction hat specials" for local businesses (particularly the restaurants/service industry);
 - c. leverage restaurant week-type events or create events if no program exists on the corridor for the duration of construction, and on-board restaurants along the corridor with food delivery platforms;

- d. hire a promotional/events company to design and carry out community events in support of a ‘shop local’ campaign and cover street event fees for community events, if applicable;
 - e. in conjunction with local arts councils or equivalent, conduct a review of street art/mural and/or alleyway opportunities along the corridor and commission new projects at Project Co’s expense; and
- (IV) contract, or develop and implement an asset based engagement program canvassing every street-level, front-facing corridor property, and providing information sessions for residential and commercial high rises, within 4-6 weeks twice annually to provide project updates, address concerns and inform on-going communications planning; source cloud-based canvass software to support program; recruit, train, support and manage a part-time, seasonal team, providing seasonal apparel with project identifier and logos as identified by Contracting Authority; and produce and print canvassing materials as identified by Contracting Authority;
- (D) For significant, long-term construction impacts and in support of ‘shop local’ or local business sustainment and promotion efforts, Project Co is responsible for the production of and cost to book regular 15 second sponsor messages on weekdays, in the morning and afternoon peak commuter times. Radio ads will be played twice each hour between 6:00 a.m. and 10:00 a.m. in the morning and between 3:00 p.m. and 7:00 p.m. in the afternoon. Ads should appear on local radio stations of equal Gross Rating Points to CFRB and/or 680 News (for radio) and CP24 (for TV) or regional radio stations reaching into in the City of Brampton and in the City of Mississauga; and
- (E) Project Co shall secure paid advertising space for a four-week time slot per quarter, which includes,
- (I) two transit shelters at each Station/Stop location between Port Credit and Brampton Gateway, including Rathburn;
 - (II) seven horizontal billboards and mobile signs (colour, 10’ x 20’ in size);
 - (III) three superboards (48’ x 14’ in size) and/or horizontal backlights (22’ x 9’); and
 - (IV) geotargeted programmatic display advertising between Port Credit and Brampton Gateway, including Rathburn at each Station/Stop location; and
- (F) as required, Project Co is responsible for the cost and coordination of Canada Post distribution of construction notices based on a distribution area of 500 metres west and 500 metres east of Hurontario Street and 500 metres north of Steeles Avenue and south of the Port Credit GO, where the applicable Construction Activities are set up;

- (iii) produce and use sample designs in public information and public engagement materials to illustrate principles, provided that such information and materials are reviewed and approved by Contracting Authority;
 - (iv) write content and design quarterly newsletters about the Project, the content of which is to be approved in advance by Contracting Authority;
 - (v) not use hoarding or any other areas within the Lands for advertisement and shall not permit, engage or authorize any third party to use any areas within the Lands for advertisement, without the prior written consent of Contracting Authority; and
 - (vi) obtain written approval from Contracting Authority prior to posting any Project Co-branded materials on the Revenue Vehicles or Project Co System Infrastructure.
- (c) During the Construction Period, Project Co shall submit all advertisements, insertions, construction notices, messages, and other associated documentation contemplated in Section 5.9(b) for review and approval by Contracting Authority or the Municipal Communications Contact (as applicable) prior to distributing, placing, posting, issuing, or producing any such advertisement, insertion, construction notice, message or any other documentation.
- (d) During the Operational Term, Project Co acknowledges and agrees that as between the Parties, Contracting Authority shall be solely responsible for all advertising, promotional materials or public information notices to be displayed, placed, posted or issued on or in the Project Co System Infrastructure, including the Revenue Vehicles (and such responsibility shall include the actual physical placement of such advertising on the Project Co System Infrastructure) and any revenues derived therefrom shall be for the account of Contracting Authority. Project Co further acknowledges and agrees that Contracting Authority may, in its sole discretion, grant rights to the Cities in respect of such advertising.

5.10 Project Identity and Graphic Design

- (a) Contracting Authority shall develop the brand identity for the Project, in coordination with Contracting Authority's marketing and brand guidelines, and provide templates to Project Co as required during the Construction Period. For greater certainty, during the Operational Term, Contracting Authority or the Municipal Communications Contact may provide this information to Project Co, as applicable.
- (b) During the Construction Period, Project Co shall
- (i) apply Contracting Authority's design templates for information related to the Project and comply with Project identity standards on all information materials;
 - (ii) provide all content and design layout of communication and community engagement materials, including quarterly newsletters, advertisements, public notices, flyers and publications to Contracting Authority for review and approval at least three weeks prior to distribution; and
 - (iii) only use any Project Co identifier with the prior approval of Contracting Authority.

5.11 Photography and Video

- (a) For the purposes of record-keeping and demonstrating the progress of the Project during the Construction Period, Project Co shall:
- (i) provide daily site photos showing the progress of all Construction Activities, including environmental control measures and signage;
 - (ii) at least three times per week, and per the list identified during the editorial process in Section 5.2(a)(i)(A), provide high resolution, professional-quality photos, graphics and images of the Project to Contracting Authority for use in publications, presentations and on the Project Website;
 - (iii) provide high quality video clips of the Project to Contracting Authority for use on the Project Website each month, including:
 - (A) installing a high-definition camera that will provide broadcast-ready professional quality (high resolution) images and video footage capturing the construction of the Project at the Site from start to finish. This shall include photographs taken a few times per hour and, if desired by Contracting Authority, shall also include live-streaming of construction of the Project at the Site; and
 - (B) providing to Contracting Authority, a professional quality (high resolution) time-lapse video with music; and
 - (iv) obtain all of the rights necessary for Project Co and Contracting Authority to use, reproduce, modify and brand all of the images and footage described without restrictions.
- (b) During the Project Term, Project Co shall, as reasonably requested by Contracting Authority or the Municipal Communications Contact, facilitate access for designated photographers and videographers.

5.12 Complaints Protocols

- (a) During the Project Term, Contracting Authority shall be responsible for approving all responses to complaints and enquiries relating to the Project.
- (b) During the Construction Period, Project Co shall:
- (i) incorporate into the Project Co Construction Communications Plan and the Community Engagement and Stakeholder Relations Plan, and align with the Crisis Communication Plan, a “**Construction Period Complaints Protocol**” that addresses how Project Co will deal with and respond to enquiries, suggestions and complaints received with respect to the Project and identify complaints that require escalation, provided that the Construction Period Complaints Protocol shall contemplate that all complaints, enquiries and suggestions be dealt with no later than 5 days following receipt;

- (ii) provide a 24/7 call service and support on a 24/7 basis to support the Construction Period Complaints Protocol;
 - (iii) provide and maintain a software system that will track all complaints, enquiries and suggestions received and responses received with respect to the Project;
 - (iv) provide monthly complaint reports to Contracting Authority, including an analysis of the main areas of concern to complainants; and
 - (v) coordinate Project Co's complaint tracking and complaint reports with any internal complaint tracking or complaint reports established by Contracting Authority with respect to the Project as requested by Contracting Authority.
- (c) Project Co shall update the Construction Period Complaints Protocol
- (i) on a semi-annual basis; or
 - (ii) more frequently as may be requested by Contracting Authority, or as may be required to account for any changes in the circumstances of or lessons learned with respect to the Project.
- (d) Project Co acknowledges and agrees that the Construction Period Complaints Protocol may be made publicly available at the request of Contracting Authority.
- (e) Project Co shall
- (i) during the Operational Term,
 - (A) direct public enquiries and complaints to the Municipal Communications Contact, copying Contracting Authority; and
 - (B) maintain a record of all material public enquiries, complaints and communications and provide copies to the lead communications contact for Contracting Authority and the Municipal Communications Contact on a weekly basis, or immediately if urgent; and
 - (ii) incorporate into the Project Co Operational Term Communications Plan, a revised complaints protocol for the Operational Term addressing how Project Co will record and direct enquiries, suggestions and complaints received with respect to the Project during the Operational Term to Contracting Authority and the Municipal Communications Contact (the "**Operational Term Complaints Protocol**"), provided that the Operational Term Complaints Protocol shall contemplate that all complaints, enquiries and suggestions be dealt with no later than 5 days following receipt.
- (f) Project Co acknowledges and agrees that the Operational Term Complaints Protocol may be made publicly available at the request of Contracting Authority.

5.13 Operations Notifications and Announcements

- (a) During the Operational Term, Project Co shall:
- (i) cooperate with the Municipal Communications Contact in drafting and distributing notices and making non-routine announcements in respect of the Revenue Service; and
 - (ii) be responsible for communicating to System Users informing them on matters related to the Revenue Service, including any information concerning any disruption to Revenue Service (including due to Emergencies).

5.14 Performance Review

- (a) Contracting Authority shall review Project Co's performance in its support and successful execution of the protocols, strategies and plans developed for the Project to support overall communications, and community, customer and Stakeholder relations.

6. NOTIFICATION

- (a) With respect to Construction Activities that are reasonably anticipated to have a major impact on third party property owners, Project Co shall:
- (i) provide Notice to Contracting Authority of such Construction Activities at least six months prior to the commencement of such Construction Activities; and
 - (ii) provide a draft public notification at least five months prior to the commencement of such Construction Activities to Contracting Authority for review.

The draft notices provided by Project Co in accordance with this Section 6(a) shall include a comprehensive list of the elements owned by a third party which Project Co anticipates will have to be removed or relocated by the property owner, what elements can remain on the property, detailed drawings that describes the proposed Construction Activities (including new location of relocated items or impacts that might result from the Construction Activities and restoration plans), proposed timeline for Construction Activities (including duration and anticipated completion), contact information to obtain additional information, and any updates or complaints relating to such Construction Activities.

- (b) With respect to Construction Activities that are reasonably anticipated to have a major impact on transit users, pedestrians, cyclists, residents, traffic, and/or the public generally, Project Co shall:
- (i) provide Notice to Contracting Authority of such Construction Activities at least 90 days prior to the commencement of such Construction Activities; and
 - (ii) provide a draft public notification at least 60 days prior to the commencement of such Construction Activities to Contracting Authority for review.

For the purposes of this Section 6(b), "major impact" shall include overnight construction, temporary Construction Activities, final paving, commissioning activities, privately owned elements to be relocated or removed by Project Co, and transit stop relocations.

- (c) With respect to Construction Activities that are reasonably anticipated to have a medium impact on transit users, pedestrians, cyclists, residents, traffic, and/or the public generally, Project Co shall:
- (i) provide Notice to Contracting Authority of such Construction Activities at least 15 Business Days prior to the commencement of such Construction Activities; and
 - (ii) provide a draft public notification at least 10 Business Days prior to the commencement of such Construction Activities to Contracting Authority for review.

For the purposes of this Section 6(c), “medium impact” shall include major intersection work, any disruption to water, gas and/or other utilities, and impacts from noise or dust. For clarity, the notification provided by Project Co pursuant to Section 6(c)(ii) shall be delivered by Contracting Authority to all affected properties by Project Co and in consultation with Utility Companies, as applicable.

- (d) With respect to Construction Activities that are reasonably anticipated to have a minor impact on transit users, pedestrians, residents, traffic and/or the public generally, Project Co shall:
- (i) provide Notice to Contracting Authority of such Construction Activities at least 5 Business Days prior to the commencement of such Construction Activities; and
 - (ii) provide a draft public notification at least 48 hours prior to the commencement of such Construction Activities to Contracting Authority for review.

For the purposes of this Section 6(d), “minor impact” shall include short-term lane closures, minor pedestrian detours, and access and driveway work. Project Co shall ensure that access is maintained to properties impacted by the Construction Activities.

- (e) With respect to an incident related to Construction Activities that are reasonably anticipated to have an impact on Project Co employees and contractors, transit users, pedestrians, residents, traffic and/or the public generally, and with respect to which Project Co cannot reasonably provide advance notice of any kind to Contracting Authority or the public (a “**Construction Activities Incident**”), Project Co shall:
- (i) immediately notify Contracting Authority of such Construction Activities Incident;
 - (ii) provide a draft public notification or messaging no later than 2 hours following the commencement of such Construction Activities Incident to Contracting Authority for review;
 - (iii) be prepared to provide a public statement with respect to the Construction Activities Incident at the request of Contracting Authority; and
 - (iv) be prepared to enact a crisis communications plan in consultation with Contracting Authority and to react quickly to provide an immediate response to the public and Stakeholders.

For the purposes of this Section 6(e), a Construction Activities Incident shall include an accident on site or a major catastrophe.

- (f) With respect to Project Co Services during the Operational Term that are reasonably anticipated to have an impact to transit users, pedestrians, residents, traffic and the public, Project Co shall provide Notice to Contracting Authority of such Project Co Services and a draft public notification for Contracting Authority's review at least 30 Business Days prior to the commencement of such Project Co Services. For the purposes of this Section 6(f), Project Co Services that are reasonably anticipated to have an impact to transit users, pedestrians, residents, traffic and the public shall include changes to service, advance notification of scheduled maintenance, delays, connections to other transit modes, special events, slowed operations, and short turns due to Project Co Services.

7. COMMUNICATIONS WORKING GROUP

7.1 Communications Working Group

- (a) Contracting Authority and Project Co shall provide staff to support all communications and public engagement activities related to the Project. These staff will form a communications working group (the "**Communications Working Group**"). The Communications Working Group shall develop and implement all communications plans and public consultation and community engagement activities for the Project. Project Co shall ensure that the Construction Manager, Design Manager and any other staff from Project Co or any Project Co Party that Contracting Authority may require, are made available to support the Communications Working Group as required.
- (b) Within 45 days following Financial Close, the Communications Working Group will convene to discuss the Project Co Communications Protocol and to identify the working relationship, roles and responsibilities matrix, and approvals processes for the Project. The Communications Working Group will provide direction and feedback on communications deliverables and plans expected from Project Co on an ongoing basis.
- (c) The Communications Working Group will meet initially once per week at the start of the Project and later, bi-weekly and monthly throughout the Construction Period (or more frequently if requested by any Party), to plan and implement communications and public engagement strategies for the Project, share information, discuss community relations updates, identify and plan for communications and Project milestones, manage issues and receive schedule updates. Strategies and tactics developed will,
- (i) provide for timely, open, transparent, effective, consistent and proactive communications with the public and elected officials;
 - (ii) foster and maintain positive and constructive relationships with neighbourhoods, agencies and businesses that may be affected by decisions regarding the scope of the Project as well as Construction Activities; and
 - (iii) build trust and maximize public understanding and support for the Project.

- (d) At least monthly at Communications Working Group meetings, Project Co shall be prepared to present:
- (i) a calendar outlining various communications deliverables and activities for the next four-month period, including identification and scope of the deliverable or activity being addressed, tactic or tools to be employed, objectives, target audience, timing or deadline, and Project Co resources assigned; and
 - (ii) a dashboard to provide regular monthly updates about Construction Activities and Project Co Services, including statistics, amount of local investments, number of direct jobs and training through registered apprenticeship programs, schedule, and other information that will support Contracting Authority's communications and social media strategies.
- (e) Project Co shall prepare Communications Working Group meeting minutes and distribute to the Contracting Authority Representative within five days following Communications Working Group meetings.

8. ACCESSIBILITY

8.1 Accessibility

- (a) Project Co shall ensure that all communications with respect to the Project comply with the *Accessibility for Ontarians with Disabilities Act* (Ontario).
- (b) As required, Project Co shall provide translation of communication materials into French and in the top five languages most commonly used in the City of Mississauga and the City of Brampton.

9. PUBLIC DISCLOSURE AND MEDIA RELEASES

9.1 Public Disclosure and Media Releases

- (a) Except as otherwise permitted in the Project Agreement:
- (i) neither Project Co nor any of Project Co's Parties shall 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, the Project Agreement, Contracting Authority's activities or any related matters, without the prior written consent of Contracting Authority; and
 - (ii) 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, the Project Agreement, Contracting Authority activities or any matter related thereto, without the prior written consent of the other Party.
- (b) Project Co shall comply and shall ensure that all Project Co Parties comply, at all times, with Contracting Authority's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by Contracting Authority from time to time.

SCHEDULE 19

LIQUIDATED DAMAGES

1. DEFINITIONS

1.1 Definitions

In this Schedule 19, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 19) shall have the meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Additional Delayed Go Transit Lakeshore West Line Train”** has the meaning given in Section 3.1(a)(ii).
- (b) **“Cancelled Major Track Closure”** has the meaning given in Section 3.6(c).
- (c) **“Cancelled Major Track Closure Liquidated Damages”** has the meaning given in Section 3.6(c).
- (d) **“Cancelled Minor Track Closure”** has the meaning given in Section 3.5(a).
- (e) **“Cancelled Minor Track Closure Liquidated Damages”** has the meaning given in Section 3.5(a).
- (f) **“Category A Key Individual Failure Liquidated Damages”** has the meaning given in Section 4.1(a).
- (g) **“Category A Key Individual Replacement Liquidated Damages”** has the meaning given in Section 4.1(b).
- (h) **“CN Rail Train Delay”** has the meaning given in Section 3.3(a).
- (i) **“CN Rail Train Delay Liquidated Damages”** has the meaning given in Section 3.3(a).
- (j) **“Detailed Construction Work Plan”** has the meaning given in Schedule 42 – Rail Corridor Access and Flagging.
- (k) **“Failure to Vacate”** has the meaning given in Section 3.6(a).

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- (l) **“Failure to Vacate Liquidated Damages”** has the meaning given in Section 3.6(a).
 - (m) **“First Delayed Go Transit Lakeshore West Line Train”** has the meaning given in Section 3.1(a)(i).
 - (n) **“Incident of Train Delay”** means an incident of delay to an applicable train that causes a Train Delay and may cause one or more subsequent related Train Delays.
 - (o) **“Lakeshore West Line”** means the commuter passenger train line operated by GO Transit running from, as of the date of the Project Agreement, Union Station in the City of Toronto to West Harbour GO Station in the City of Hamilton.
 - (p) **“Lakeshore West Line Alternative Transportation Event”** has the meaning given in Section 3.1(g).
 - (q) **“Lakeshore West Line Alternative Transportation Event Liquidated Damages”** has the meaning given in Section 3.1(g).
 - (r) **“Lakeshore West Line GO Train Cancellation”** means any cancellation by Metrolinx of a scheduled Go Transit passenger train as a result of an actual Lakeshore West Line GO Train Delay or as a result of an anticipated Lakeshore West Line GO Train Delay.
 - (s) **“Lakeshore West Line GO Train Delay”** has the meaning given in Section 3.1(a).
 - (t) **“Lakeshore West Line GO Train Delay Liquidated Damages”** has the meaning given in Section 3.1(a).
 - (u) **“LEED Silver Rating Liquidated Damages”** has the meaning given in Section 4.3(a)
 - (v) **“Major Track Closure”** has the meaning given in Schedule 42 – Rail Corridor Access and Flagging.
 - (w) **“Minor Track Closure”** has the meaning given in Schedule 42 – Rail Corridor Access and Flagging.
 - (x) **“Rail Corridor Access Plan”** has the meaning given in Schedule 42 – Rail Corridor Access and Flagging.
 - (y) **“Significant Incident of Train Delay”** means an Incident of Train Delay that causes one or more Train Delays that has a duration of more than five minutes.
 - (z) **“Significant Train Delay Event”** has the meaning given in Section 5.1(b).
 - (aa) **“Specified Costs”** means the ordinary course costs and expenses of Contracting Authority or the Province Persons in relation to staffing, technical advisors and other

consultants engaged by Contracting Authority or the Province Persons for the Project and the Independent Certifier, in each case assuming normal utilization.

- (bb) **“Specified Costs Substantial Completion Liquidated Damages”** has the meaning given in Section 4.2(a).
- (cc) **“Substantial Completion LD Commencement Date”** has the meaning given in Section 4.2(a).
- (dd) **“Train Delay”** means a Lakeshore West Line GO Train Delay or a CN Rail Train Delay, as the case may be.
- (ee) **“Train Delay Rectification Plan”** has the meaning given in Section 5.1(a).

2. LIQUIDATED DAMAGES – GENERAL

- (a) Except as expressly otherwise set out in the Project Agreement (including for clarity this Schedule 19), nothing in this Schedule 19 shall restrict, limit, prejudice or in any other way impair the rights or remedies of the Parties under any other provision of the Project Agreement.
- (b) Project Co acknowledges and agrees that all liquidated damages set out in this Schedule 19 shall be payable by Project Co whether or not Contracting Authority incurs or mitigates its damages, and that Contracting Authority shall have no obligation to mitigate any of its damages.
- (c) Project Co agrees that Project Co is, and shall be, estopped from alleging that any liquidated damages set out in this Schedule 19 are a penalty and not liquidated damages, or are otherwise unenforceable for any reason whatsoever, including that any of the underlying damages were not incurred by Contracting Authority.
- (d) The Parties agree that the liquidated damages set out in this Schedule 19 are not a penalty but represent a genuine and reasonable pre-estimate of:
 - (i) with respect to any Lakeshore West Line GO Train Delay Liquidated Damages (including, for greater certainty, with respect to Sections 3.1(e) and 3.1(f)), (A) Contracting Authority’s Specified Costs and the costs related to customer ticket refunds resulting from a Lakeshore West Line GO Train Delay, and (B) Specified Costs and the costs related to customer ticket refunds resulting from a Lakeshore West Line GO Train Cancellation;
 - (ii) with respect to any Lakeshore West Line Alternative Transportation Event Liquidated Damages, Contracting Authority’s Specified Costs and the other costs associated with operating a bus bridge or any other alternative transportation resulting from a Lakeshore West Line Alternative Transportation Event;

- (iii) with respect to any CN Rail Train Delay Liquidated Damages, the damages that Contracting Authority is obliged to pay to CN Rail in respect of a CN Rail Train Delay;
 - (iv) with respect to any Cancelled Minor Track Closure Liquidated Damages, Contracting Authority's Specified Costs for an individual Cancelled Minor Track Closure;
 - (v) with respect to any Failure to Vacate Liquidated Damages, Contracting Authority's Specified Costs for an individual Failure to Vacate;
 - (vi) with respect to any Cancelled Major Track Closure Liquidated Damages, Contracting Authority's Specified Costs for an individual Cancelled Major Track Closure;
 - (vii) **[Intentionally Deleted];**
 - (viii) with respect to any Category A Key Individual Failure Liquidated Damages, Contracting Authority's Specified Costs arising from Project Co's failure to comply with Section 10.4(a) of the Project Agreement;
 - (ix) with respect to any Category A Key Individual Replacement Liquidated Damages, Contracting Authority's Specified Costs arising from Project Co's failure to replace the applicable Key Individual in accordance with Section 10.4(c) of the Project Agreement;
 - (x) with respect to any Specified Costs Substantial Completion Liquidated Damages, Contracting Authority's Specified Costs arising from Project Co failing to achieve the requirements for the Substantial Completion Certificate and a Substantial Completion Certificate not being issued on or before the Substantial Completion LD Commencement Date; and
 - (xi) with respect to any LEED Silver Rating Liquidated Damages, Contracting Authority's damages as a result of Project Co's failure to satisfy either or both of the requirements of Section 23.6(d)(i) or Section 23.6(d)(ii) of the Project Agreement.
- (e) Notwithstanding anything to the contrary in this Schedule 19, Project Co shall not be obligated to pay any liquidated damages amount pursuant to this Schedule 19:
- (i) if and to the extent that such liquidated damages amount became payable as a result of a breach by Contracting Authority of the Project Agreement or a deliberate or negligent act or omission of Contracting Authority or any Province Person; and

- (ii) for greater certainty, if Contracting Authority has agreed with Project Co, in advance and in writing, that no such liquidated damages amount shall be payable.

3. LIQUIDATED DAMAGES – TRAIN DELAYS AND TRACK CLOSURES

3.1 Lakeshore West Line GO Train Delay

- (a) In the event and at any time that Project Co fails to comply with the Project Agreement and such failure results in a delay to an in-service Go Transit passenger train with passengers on the Lakeshore West Line or to a Go Transit passenger train without passengers that is heading into service on the Lakeshore West Line and such train is subsequently delayed from going into service, (each, a “**Lakeshore West Line GO Train Delay**”) then Project Co shall pay to Contracting Authority liquidated damages in the following cumulative liquidated damages amounts calculated on an incremental basis for each delayed GO Transit passenger train (“**Lakeshore West Line GO Train Delay Liquidated Damages**”):
 - (i) in respect of each Lakeshore West Line GO Train Delay for the first delayed Go Transit passenger train (the “**First Delayed Go Transit Lakeshore West Line Train**”) that has a duration of five minutes or more:

Table 1

| Duration of a Lakeshore West Line GO Train Delay (in minutes) | Incremental liquidated damages amounts payable in respect of each Lakeshore West Line GO Train Delay for the First Delayed Go Transit Lakeshore West Line Train | Cumulative liquidated damages amounts payable based on the duration of each Lakeshore West Line GO Train Delay for the First Delayed Go Transit Lakeshore West Line Train |
|--|--|--|
| 1 | [\$REDACTED] | [\$REDACTED] |
| 2 | [\$REDACTED] | [\$REDACTED] |
| 3 | [\$REDACTED] | [\$REDACTED] |
| 4 | [\$REDACTED] | [\$REDACTED] |
| 5 | [\$REDACTED] | [\$REDACTED] |
| 6 | [\$REDACTED] | [\$REDACTED] |
| 7 | [\$REDACTED] | [\$REDACTED] |
| 8 | [\$REDACTED] | [\$REDACTED] |
| 9 | [\$REDACTED] | [\$REDACTED] |
| 10 | [\$REDACTED] | [\$REDACTED] |
| 11 | [\$REDACTED] | [\$REDACTED] |
| 12 | [\$REDACTED] | [\$REDACTED] |

| Duration of a Lakeshore West Line GO Train Delay (in minutes) | Incremental liquidated damages amounts payable in respect of each Lakeshore West Line GO Train Delay for the First Delayed Go Transit Lakeshore West Line Train | Cumulative liquidated damages amounts payable based on the duration of each Lakeshore West Line GO Train Delay for the First Delayed Go Transit Lakeshore West Line Train |
|---|--|--|
| 13 | [\$REDACTED] | [\$REDACTED] |
| 14 | [\$REDACTED] | [\$REDACTED] |
| 15 | [\$REDACTED] | [\$REDACTED] |
| 16 | [\$REDACTED] | [\$REDACTED] |
| Each additional minute of Lakeshore West Line GO Train Delay for the First Delayed Go Transit Lakeshore West Line Train starting at 17 minutes until the cessation of the Lakeshore West Line GO Train Delay in respect of such train | [\$REDACTED] | Each cumulative amount shall be calculated for each Lakeshore West Line GO Train Delay for the First Delayed Go Transit Lakeshore West Line Train on the same basis set out in each row of this Table 1, and, for clarity, will depend on the duration of each Lakeshore West Line GO Train Delay in respect of such train |

- (ii) in respect of each Lakeshore West Line GO Train Delay to a delayed Go Transit passenger train other than to the First Delayed Go Transit Lakeshore West Line Train (each is an “**Additional Delayed Go Transit Lakeshore West Line Train**”) that has a duration of five minutes or more:

Table 2

| Duration of a Lakeshore West Line GO Train Delay (in minutes) | Incremental liquidated damages amounts payable in respect of each Lakeshore West Line GO Train Delay for each Additional Delayed Go Transit Lakeshore West Line Train | Cumulative liquidated damages amounts payable based on the duration of each Lakeshore West Line GO Train Delay for each Additional Delayed Go Transit Lakeshore West Line Train |
|--|--|--|
| 1 | [\$REDACTED] | [\$REDACTED] |
| 2 | [\$REDACTED] | [\$REDACTED] |

| Duration of a Lakeshore West Line GO Train Delay (in minutes) | Incremental liquidated damages amounts payable in respect of each Lakeshore West Line GO Train Delay for each Additional Delayed Go Transit Lakeshore West Line Train | Cumulative liquidated damages amounts payable based on the duration of each Lakeshore West Line GO Train Delay for each Additional Delayed Go Transit Lakeshore West Line Train |
|---|---|--|
| 3 | \${REDACTED} | \${REDACTED} |
| 4 | \${REDACTED} | \${REDACTED} |
| 5 | \${REDACTED} | \${REDACTED} |
| 6 | \${REDACTED} | \${REDACTED} |
| 7 | \${REDACTED} | \${REDACTED} |
| 8 | \${REDACTED} | \${REDACTED} |
| 9 | \${REDACTED} | \${REDACTED} |
| 10 | \${REDACTED} | \${REDACTED} |
| 11 | \${REDACTED} | \${REDACTED} |
| 12 | \${REDACTED} | \${REDACTED} |
| 13 | \${REDACTED} | \${REDACTED} |
| 14 | \${REDACTED} | \${REDACTED} |
| 15 | \${REDACTED} | \${REDACTED} |
| 16 | \${REDACTED} | \${REDACTED} |
| Each additional minute of Lakeshore West Line GO Train Delay for each Additional Delayed Go Transit Lakeshore West Line Train starting at 17 minutes until the cessation of the Lakeshore West Line GO Train Delay in respect of such train | \${REDACTED} | Each cumulative amount shall be calculated for each Lakeshore West Line GO Train Delay for each Additional Delayed Go Transit Lakeshore West Line Train on the same basis set out in each row of this Table 2, and, for clarity, will depend on the duration of each Lakeshore West Line GO Train Delay in respect of such train |

- (b) For the purpose of calculating all Lakeshore West Line GO Train Delay Liquidated Damages, the duration of each Lakeshore West Line GO Train Delay in respect of each delayed Go Transit passenger train shall be determined by Contracting Authority based on the then current GO Transit train schedule that is established, maintained and publically disclosed by Metrolinx prior to the date of each applicable Lakeshore West Line GO Train Delay and the records and train data established and maintained by the Go Transit Control Centre.

- (c) Following the cessation of each Lakeshore West Line GO Train Delay, Contracting Authority shall provide Notice to Project Co setting out the duration of the Lakeshore West Line GO Train Delay and Contracting Authority's calculation and determination of the associated Lakeshore West Line GO Train Delay Liquidated Damages.
- (d) For greater certainty, if a Lakeshore West Line Go Train Delay has arisen or is anticipated to arise, then Metrolinx may, in its sole discretion, implement a Lakeshore West Line GO Train Cancellation.
- (e) If, in the sole discretion of Metrolinx, any actual Lakeshore West Line GO Train Delay requires a Lakeshore West Line GO Train Cancellation, Project Co shall be obliged to pay liquidated damages to Contracting Authority in accordance with Section 3.1(a), subject to the following:
- (i) if the Lakeshore West Line GO Train Delay that required the Lakeshore West Line GO Train Cancellation had a duration of five or more minutes but less than 15 minutes, the Lakeshore West Line GO Train Delay shall be deemed to be a Lakeshore West Line GO Train Delay that had a duration of 15 minutes; and
 - (ii) if the Lakeshore West Line GO Train Delay that required the Lakeshore West Line GO Train Cancellation had a duration of 15 minutes or more, liquidated damages shall be assessed on the full period of the applicable Lakeshore West Line GO Train Delay.
- (f) If a Lakeshore West Line GO Train Cancellation occurs prior to an actual Lakeshore West Line GO Train Delay because of an anticipated Lakeshore West Line GO Train Delay, the anticipated Lakeshore West Line GO Train Delay that required the Lakeshore West Line GO Train Cancellation shall be deemed to be a Lakeshore West Line GO Train Delay that had a duration of 15 minutes and Project Co shall be obliged to pay liquidated damages to Contracting Authority in accordance with Section 3.1(a).
- (g) If, in the sole discretion of Metrolinx, a Lakeshore West Line GO Train Cancellation requires the use of a bus bridge or the use of any other alternative transportation (each use of a bus bridge and each use of any other alternative transportation, a "**Lakeshore West Line Alternative Transportation Event**"), Project Co shall, in addition to any other liquidated damages payable pursuant to this Section 3.1, pay to Contracting Authority a lump sum amount of \$[REDACTED] for each Lakeshore West Line Alternative Transportation Event ("**Lakeshore West Line Alternative Transportation Event Liquidated Damages**").
- (h) For clarity, in the event a Lakeshore West Line GO Train Delay delays
- (i) multiple GO Transit passenger trains, Project Co shall pay to Contracting Authority liquidated damages in accordance with this Section 3.1 for each GO Transit passenger train that is delayed; and

- (ii) one or more GO Transit passenger trains on the Lakeshore West Line and one or more CN Rail trains, Project Co shall pay to Contracting Authority liquidated damages in accordance with this Section 3.1 and Section 3.3.

3.2 [INTENTIONALLY DELETED]

3.3 CN Rail Train Delay

- (a) In the event and at any time that Project Co fails to comply with the Project Agreement and such failure results in a delay to an in-service train of CN Rail (each, a “**CN Rail Train Delay**”), then Project Co shall pay to Contracting Authority liquidated damages in the following cumulative liquidated damages amounts calculated on an incremental basis for each delayed in-service train of CN Rail (“**CN Rail Train Delay Liquidated Damages**”):

Table 5

| Duration of a CN Rail Train Delay (in minutes) | Incremental liquidated damages amounts payable in respect of each CN Rail Train Delay for each CN Rail in-service train | Cumulative liquidated damages amounts payable based on the duration of each CN Rail Train Delay for each CN Rail in-service train |
|---|--|---|
| 1 | [\$REDACTED] | [\$REDACTED] |
| 2 | [\$REDACTED] | [\$REDACTED] |
| 3 | [\$REDACTED] | [\$REDACTED] |
| 4 | [\$REDACTED] | [\$REDACTED] |
| 5 | [\$REDACTED] | [\$REDACTED] |
| 6 | [\$REDACTED] | [\$REDACTED] |
| 7 | [\$REDACTED] | [\$REDACTED] |
| Each additional minute of CN Rail Train Delay for each CN Rail in-service train starting at 8 minutes until the cessation of the CN Rail Train Delay in respect of such train | [\$REDACTED] | Each cumulative amount shall be calculated for each CN Rail Train Delay for each CN Rail in-service train on the same basis set out in each row of this Table 5, and, for clarity, will depend on the duration of each CN Rail Train Delay in respect of such train |

- (b) For the purpose of calculating all CN Rail Train Delay Liquidated Damages, the duration of each CN Rail Train Delay in respect of each in-service train of CN Rail shall be determined by Contracting Authority, with the assistance of CN Rail (if required), and

shall be based on the records and train data established and maintained by Metrolinx and CN Rail.

- (c) Following the cessation of each CN Rail Train Delay, Contracting Authority shall provide Notice to Project Co setting out the duration of the CN Rail Train Delay and Contracting Authority's calculation and determination of the associated CN Rail Train Delay Liquidated Damages.
- (d) The CN Rail Train Delay Liquidated Damages shall not be assessed on or payable by Project Co in the following circumstances:
 - (i) where the CN Rail Train Delay is, in whole or in part, a result of CN Rail's failure to provide any flagging resources requested by Metrolinx; or
 - (ii) where the CN Rail Train Delay is the result of a deliberate, negligent or fraudulent act or omission of CN Rail, any of its subcontractors or any other person for whom CN Rail is responsible for at law.
- (e) For clarity, in the event a CN Rail Train Delay delays any in-service train of CN Rail and any one or more GO Transit passenger trains on the Lakeshore West Line, Project Co shall pay to Contracting Authority liquidated damages in accordance with Section 3.1 and this Section 3.3 for each train that is delayed.

3.4 [INTENTIONALLY DELETED]

3.5 Cancelled Minor Track Closure

- (a) If Project Co causes the cancellation of any Minor Track Closure (each a "**Cancelled Minor Track Closure**") without providing Contracting Authority at least three weeks' prior Notice of such cancellation, Project Co shall pay to Contracting Authority liquidated damages in the amount of \$[REDACTED] ("**Cancelled Minor Track Closure Liquidated Damages**").

3.6 Major Track Closures

- (a) With respect to any Major Track Closure, if Project Co fails to vacate and reinstate the track by the deadline and in the manner approved by Metrolinx and set out in the Detailed Construction Work Plan for the Major Track Closure (each a "**Failure to Vacate**") Project Co shall pay to Contracting Authority liquidated damages as follows:
 - (i) \$[REDACTED] for each minute of the Failure to Vacate, until the Failure to Vacate triggers a Train Delay; plus

- (ii) the liquidated damages for each Train Delay (including any Lakeshore West Line GO Train Cancellation), if any, arising as a result of the Failure to Vacate payable pursuant to Section 3.1,

(“**Failure to Vacate Liquidated Damages**”).

- (b) Following the cessation of each Failure to Vacate, Contracting Authority shall provide Notice to Project Co setting out the duration of the Failure to Vacate and Contracting Authority’s calculation and determination of the associated Failure to Vacate Liquidated Damages.
- (c) If Project Co causes the cancellation of any Major Track Closure (each, a “**Cancelled Major Track Closure**”) without providing Contracting Authority at least three weeks’ prior Notice of such cancellation, Project Co shall pay to Contracting Authority liquidated damages in the amount of \$[REDACTED] (“**Cancelled Major Track Closure Liquidated Damages**”).

4. LIQUIDATED DAMAGES – KEY INDIVIDUALS AND FAILURE TO ACHIEVE SUBSTANTIAL COMPLETION AND LEED REQUIREMENTS

4.1 Key Individuals

- (a) If Project Co fails to comply with Section 10.4(a) of the Project Agreement, Project Co shall pay to Contracting Authority an amount equal to \$[REDACTED] for each Key Individual Category A to which the failure to comply applies, as liquidated damages (“**Category A Key Individual Failure Liquidated Damages**”).
- (b) In the event that Project Co fails to nominate a competent, suitably qualified and experienced permanent replacement or replacements for a period of greater than 120 days from the date it became necessary for Project Co to replace any individual identified in Schedule 9 – Key Individuals, as set out in Section 10.4(c) of the Project Agreement, Project Co shall, commencing on the 121st day from the date it became necessary for Project Co to replace the individual, pay to Contracting Authority an amount equal to \$[REDACTED] per day for each Key Individual Category A which has not been permanently replaced, as liquidated damages (“**Category A Key Individual Replacement Liquidated Damages**”).

4.2 Failure to Achieve Substantial Completion

- (a) If Project Co has failed to achieve the requirements for the Substantial Completion Certificate and a Substantial Completion Certificate has not been issued on or before the date which is 30 days following the Scheduled Substantial Completion Date (the “**Substantial Completion LD Commencement Date**”), Project Co shall pay liquidated damages in the amount of \$[REDACTED] per Business Day (“**Specified Costs**”).

Substantial Completion Liquidated Damages”), commencing on the Substantial Completion LD Commencement Date and concluding on the earlier of

- (i) the Substantial Completion Date; and
 - (ii) the date on which the termination of the Project Agreement takes effect in accordance with its terms.
- (b) For greater certainty, Project Co’s obligation to indemnify Contracting Authority pursuant to Section 56.1(a)(i) of the Project Agreement shall remain unaffected by, and shall apply in addition to, any Specified Costs Substantial Completion Liquidated Damages that have been paid or are payable by Project Co pursuant to Section 4.2(a), provided, however, that any amount for which Project Co is required to indemnify Contracting Authority pursuant to Section 56.1(a)(i) of the Project Agreement shall exclude the Specified Costs in respect of which such liquidated damages have been paid or are payable.

4.3 Failure to Satisfy LEED Silver Rating Requirements

- (a) In the event that Project Co fails to satisfy the requirements of either or both of Section 23.6(d)(i) or Section 23.6(d)(ii) of the Project Agreement, Project Co shall pay to Contracting Authority liquidated damages in the amount of \$[REDACTED] (“**LEED Silver Rating Liquidated Damages**”). For greater certainty, any such failure shall not result in a Project Co Event of Default.

5. WITHDRAWAL OF RAIL CORRIDOR ACCESS PRIVILEGES

5.1 Withdrawal of Rail Corridor Access Privileges

- (a) If, on any day, Project Co causes more than one Significant Incident of Train Delay, Project Co shall, no later than five Business Days after the day on which the last Significant Incident of Train Delay occurred, provide a detailed explanation to Contracting Authority as to the cause of each Significant Incident of Train Delay and a rectification plan designed to eliminate future Train Delays (each a “**Train Delay Rectification Plan**”) for the review by and approval of Contracting Authority, in its sole discretion.
- (b) If Project Co
- (i) causes more than three Significant Incidents of Train Delay in a calendar quarter; or
 - (ii) has paid or is obligated to pay an aggregate amount of liquidated damages that is equal to [REDACTED]% or more of the aggregate maximum amount set out in Section 57.5(a) of the Project Agreement,

(each a “**Significant Train Delay Event**”) then Project Co shall immediately lose all of its rights to access the Rail Corridor, subject to demobilization and any directions issued by Contracting Authority with respect to vacating the Rail Corridor. Project Co shall, no later than five Business Days after the last Significant Train Delay Event occurs, provide to Contracting Authority both a Train Delay Rectification Plan and a revised Rail Corridor Access Plan, each setting out a rectification plan designed to eliminate future Train Delays for the review by and approval of Contracting Authority. Project Co’s rights to access the Rail Corridor shall not be re-instated until Contracting Authority has reviewed and approved, in its sole discretion, the Train Delay Rectification Plan and the revised Rail Corridor Access Plan, which approval may contain conditions imposed on Project Co and intended to eliminate Train Delays.

- (c) Contracting Authority shall review the Train Delay Rectification Plan and the revised Rail Corridor Access Plan submitted in accordance with Section 5.1(b) and provide its comments, if any, by no later than 10 Business Days after the date of Project Co’s submission.

SCHEDULE 20

PAYMENT MECHANISM

PART A: DEFINITIONS

Section 1. Definitions

In this Schedule 20, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 20) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 “**Accumulated Points**” is described in Section 1.8 of Part D.
- 1.2 “**Aggregate Availability Ratio**” means Total Trips Availability Ratio or Aggregate Passenger Facility Availability Ratio.
- 1.3 “**Aggregate Passenger Facility Availability Ratio**” is described in Section 2.2 of Part D.
- 1.4 “**Annual Service Payment**” means the sum in Canadian dollars calculated in accordance with the provisions set out in Section 2 of Part B.
- 1.5 “**Annual Service Payment – Capital Portion**” means the sum in Canadian dollars representing the capital payment portion of an Annual Service Payment, as identified in Section 2 of Part B.
- 1.6 “**Annual Service Payment – Service Portion**” means the sum in Canadian dollars representing the service payment portion of an Annual Service Payment, as identified in Section 2 of Part B.
- 1.7 “**Auxiliary Facilities Occupants**” has the meaning given in Schedule 15 – Output Specifications.
- 1.8 “**Availability Failure**” means either a Trip Availability Failure or a Passenger Facility Availability Failure.
- 1.9 “**Available Scheduled Special Trip Points**” is described in Section 1.12 of Part D.
- 1.10 “**Average Monthly Lifecycle Payment**” means the total nominal amount of the Lifecycle Payments set out in the Financial Model (as amended from time to time), divided by the number of Contract Months in the Operational Term, being \$[REDACTED].
- 1.11 “**AW2 Loading**” has the meaning given in Schedule 15 – Output Specifications.
- 1.12 “**Base Trip**” has the meaning given in Schedule 15 – Output Specifications.
- 1.13 “**Base Trip Total Points**” are identified in Table 2 of Appendix E.
- 1.14 “**Bedding-In Period**” means the 180 calendar day period following the Payment Commencement Date.

- 1.15 “**Booking Process**” has the meaning given in Schedule 15 – Output Specifications.
- 1.16 “**Contract Month**” means a calendar month, except with respect to:
- (a) the first Contract Month of the Operational Term, which runs from the Payment Commencement Date until the end of the calendar month in which such day falls; and
 - (b) the last Contract Month of the Operational Term, which runs from the first day of the calendar month in which the Expiry Date falls until the Expiry Date.
- 1.17 “**Contract Year**” means the period of 12 calendar months that commences on April 1st of each calendar year and ends on March 31st of the next ensuing calendar year, provided that:
- (a) the first Contract Year shall be such period that commences on the first day of the first Contract Month and ends on the next ensuing March 31st; and
 - (b) the final Contract Year shall be such period that commences on April 1st that precedes the date on which the Project Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of the Project Agreement.
- 1.18 “**Corridor**” has the meaning given in Schedule 15 – Output Specifications.
- 1.19 “**CPI-XFET**” means the Consumer Price Index excluding food, energy, and the effect of indirect taxes, as reported by Statistics Canada for Canada.
- 1.20 “**Daily Performance Report**” has the meaning given in Schedule 15 – Output Specifications.
- 1.21 “**Deduction**” means a deduction made from a Monthly Service Payment in accordance with this Schedule 20.
- 1.22 “**Deduction Factor**” has the meaning given in Section 1.2 of Part D.
- 1.23 “**Departure Headway**” means the actual Headway achieved against the Scheduled Headway and as measured at the departure of the Revenue Vehicle from a Terminus.
- 1.24 “**Destination**” means a final Station or Stop serviced on the Special Trip.
- 1.25 “**Driver**” has the meaning given in Schedule 15 – Output Specifications.
- 1.26 “**Energy Failure**” means any failure by Project Co to provide the Project Co Services in accordance with the Energy Performance Measures designated Failure Type “EF” in Schedule 8 – Energy Matters.
- 1.27 “**Energy Failure Deduction**” means a Deduction which may be made in respect of an Energy Failure.

- 1.28 “**Energy Performance Measures**” means a description in Schedule 8 – Energy Matters of the level of performance that Project Co must achieve to attain compliance with the relevant Output Specification.
- 1.29 “**Escalation Factor**” means the escalation factor calculated in accordance with Section 5.1 of Part B.
- 1.30 “**Event**” means:
- (a) a Trip Availability Failure;
 - (b) a Passenger Facility Availability Failure; or
 - (c) an incident or state of affairs which does not meet or comply with the Performance Criteria or the Energy Performance Measures, which is capable of becoming a Quality Failure, a Service Failure or an Energy Failure.
- 1.31 “**Event of Vandalism**” has the meaning given in Schedule 15 – Output Specifications.
- 1.32 “**Failure Points**” means points allocated to Project Co in respect of the occurrence of Availability Failures, System Events, Passenger Facility Events, Service Failures and Quality Failures which are determined by the provisions set out in Part G. For the avoidance of doubt, there are no Failure Points allocated to Energy Failures.
- 1.33 “**Group 1 Passenger Facilities**” and “**Group 2 Passenger Facilities**” are defined in Appendix D.
- 1.34 “**Headway**” has the meaning given in Schedule 15 – Output Specifications.
- 1.35 “**Headway Buffer**” means a period of time equal to:
- (a) one minute for the Brampton Gateway Stop and Port Credit Station, and
 - (b) two minutes for the Mississauga City Centre Stop.
- 1.36 “**Headway Factor**” has the meaning given in Section 1.9 of Part D.
- 1.37 “**Help Desk**” means the contact point to be established by Project Co pursuant to Schedule 15 – Outputs Specifications in respect of the help desk service for the notification of Events and other day to day matters arising during the Operational Term.
- 1.38 “**Inflation Base Date**” means April 1st, 2019.
- 1.39 “**Insurance Adjustment**” means the adjustment calculated in accordance with Schedule 25 – Insurance and Performance Security Requirements.
- 1.40 “**Insurance Review Date**” has the meaning given in Schedule 25 – Insurance and Performance Security Requirements.

- 1.41 “**Labour Industrial Aggregate Index**” means the industrial aggregate excluding unclassified businesses index for Canada, CANSIM 281-0063, as reported by Statistics Canada.
- 1.42 “**Lifecycle Escalation Factor**” means the escalation factor calculated in accordance with Section 5.2 of Part B.
- 1.43 “**Lifecycle Payment**” means the relevant amounts for each Contract Month as represented in Table 2 in Appendix A and does not include additional costs other than anticipated costs (and directly related contingencies and reserves) in respect of the replacement, refreshment and/or refurbishment of the Project Co System Infrastructure during the Operational Term.
- 1.44 “**Major Energy Failure**” means an Energy Failure which has been designated with a failure category of “major” in Schedule 8 – Energy Matters.
- 1.45 “**Major Maintenance Shutdown**” has the meaning given in Schedule 15 – Output Specifications.
- 1.46 “**Major Quality Failure**” means a Quality Failure which has been designated with a failure category of “major” in Schedule 11 – Quality Management, Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations, or this Schedule 20.
- 1.47 “**Major Service Change**” has the meaning given in Schedule 15 – Output Specifications.
- 1.48 “**Major Service Failure**” means a Service Failure which has been designated with a failure category of “major” in Schedule 11 – Quality Management, Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations, or this Schedule 20.
- 1.49 “**Maximum Available Points**” is described in Section 1.10 and Section 1.11 of Part D.
- 1.50 “**Medium Energy Failure**” means an Energy Failure which has been designated with a failure category of “medium” in Schedule 8 – Energy Matters.
- 1.51 “**Medium Quality Failure**” means a Quality Failure which has been designated with a failure category of “medium” in Schedule 11 – Quality Management, Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations, or this Schedule 20.
- 1.52 “**Medium Service Failure**” means a Service Failure which has been designated with a failure category of “medium” in Schedule 11 – Quality Management, Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations, or this Schedule 20.
- 1.53 “**Minimum Dwell Time**” has the meaning given in Schedule 15 – Output Specifications.
- 1.54 “**Minor Energy Failure**” means an Energy Failure which has been designated with a failure category of “minor” in Schedule 8 – Energy Matters.
- 1.55 “**Minor Quality Failure**” means a Quality Failure which has been designated with a failure category of “minor” in Schedule 11 – Quality Management, Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations, or this Schedule 20.

- 1.56 “**Minor Service Failure**” means a Service Failure which has been designated with a failure category of “minor” in Schedule 11 – Quality Management, Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations, or this Schedule 20.
- 1.57 “**Monthly Service Payment**” means the sum in Canadian Dollars payable by Contracting Authority to Project Co in accordance with the Project Agreement, as calculated in Section 1.1 of Part B.
- 1.58 “**Non-Project Co Cause**” has the meaning given in Section 2 of this Part A.
- 1.59 “**Off-Peak Fleet**” has the meaning given in Schedule 15 – Output Specifications.
- 1.60 “**Off-Peak Period Passenger Facility Availability Ratio**” is described in Section 2.5 of Part D.
- 1.61 “**Off-Peak Period Total Trips Availability Ratio**” is described in Section 1.7 of Part D.
- 1.62 “**Origin**” means the first Station or Stop serviced on the Special Trip.
- 1.63 “**Origin Terminus**” means the Terminus at which a Trip begins and ends.
- 1.64 “**Partial Station and Stop Access Standard**” has the meaning given in Schedule 15 – Output Specifications.
- 1.65 “**Passenger Facility**” means a Station or Stop.
- 1.66 “**Passenger Facility Availability Failure**” occurs where any Station or Stop does not comply with the Station and Stop Access Standard other than by reason of any Non-Project Co Cause. For the avoidance of doubt, Passenger Facility Availability Failures include the occurrence of Passenger Facility Events.
- 1.67 “**Passenger Facility Availability Failure Deduction**” means a Deduction calculated in accordance with Section 2.1 of Part D.
- 1.68 “**Passenger Facility Availability Failure Hours**” means, for any Station or Stop, the total number of hours during a Contract Month during which there is a condition of Passenger Facility Availability Failure. For each Contract Month, Passenger Facility Availability Failure Hours shall be rounded to the nearest 15-minute increment, and may be expressed as a decimal.¹
- 1.69 “**Passenger Facility Event**” means an event identified as such in Table 2 in Section 2.6 of Part D. For the avoidance of doubt, a Passenger Facility Event is classified as a Passenger Facility Availability Failure.
- 1.70 “**Peak Fleet**” has the meaning given in Schedule 15 – Output Specifications.

¹Example: Three (3) hours and fifteen (15) minutes of Passenger Facility Availability Failure shall be represented as 3.25 Passenger Facility Availability Failure Hours.

- 1.71 “**Peak Period Passenger Facility Availability Ratio**” is described in Section 2.4 of Part D.
- 1.72 “**Peak Period Total Trips Availability Ratio**” is described in Section 1.6 of Part D.
- 1.73 “**Performance Criteria**” means a description in Schedule 11 – Quality Management, Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations, or this Schedule 20 of the level of performance that Project Co must achieve to attain compliance with the relevant output specification.
- 1.74 “**Permanent Repair**” means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 4 of Part E.
- 1.75 “**Policy Headway**” has the meaning given in Schedule 15 – Output Specifications.
- 1.76 “**Quality Failure**” means any failure by Project Co to provide the Project Co Services in accordance with any Performance Criteria designated as Failure Type “QF” in Schedule 11 – Quality Management, Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations, or this Schedule 20, other than by reason of any Non-Project Co Cause.
- 1.77 “**Quality Failure Deduction**” means a Deduction which may be made in respect of a Quality Failure.
- 1.78 “**Rectification**” means, following the occurrence of an Event and where rectification is applicable in accordance with Schedule 8 – Energy Matters, Schedule 11 – Quality Management, Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations, or this Schedule 20, making good the Event so that the subject matter of the Event complies with the levels of service required pursuant to the Project Agreement. Without prejudice to the generality of the foregoing this shall include (a) restoring any functional capability which has been disabled or is otherwise not in compliance with the relevant Schedule; (b) repairing any defect, hazard, or other condition which was not in compliance with the relevant Schedule; and (c) formally notifying the Help Desk that Rectification has been completed; and “**Rectify**” or “**Rectified**” shall be construed accordingly.
- 1.79 “**Rectification Time**” means the period specified in Schedule 8 – Energy Matters, Schedule 11 – Quality Management, Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations, or this Schedule 20 within which Rectification of the relevant Event must be completed, calculated from the time that such Event is reported to the Help Desk. For the avoidance of doubt, if no period for rectification is specified in any of the above mentioned Schedules in respect of the relevant Event, no Rectification Time applies.
- 1.80 “**Relevant Labour Action**” means any official or unofficial strike, work to rule or other labour related action involving employees of Project Co or any Project Co Party occurring during the Operational Term that:
- (a) affects the Project Co System Infrastructure;
 - (b) causes a failure by Project Co to perform its obligations under the Project Agreement; and

- (c) is not a Relief Event pursuant to Section 43.1(a)(vi) of the Project Agreement.
- 1.81 **“Relevant Labour Action Period”** means the period of time during which a Relevant Labour Action has occurred and is continuing.
- 1.82 **“Remedial Period”** means the period allowed for remedying a Quality Failure in accordance with Section 1.3 of Part E or an Energy Failure in accordance with Section 3.3 of Part E.
- 1.83 **“Response”** means, following the notification of the occurrence of an Event and where response is applicable in accordance with Schedule 11 – Quality Management, Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations, or this Schedule 20, the following actions by Project Co:
- (a) establishing the location, investigating the nature and cause of the Event and attending the site if necessary;
 - (b) appointing a suitably qualified, experienced and accountable person to assess the situation who, within reasonable limits, is empowered to take or to authorize any required action;
 - (c) taking any necessary actions to make the non-compliant system or item safe and secure, thereby as a minimum fulfilling all health and safety requirements;
 - (d) when necessary, giving the Contracting Authority Representative an assessment of the problem, the action taken, details of any work required with timescales and any limitations that this may impose on the Project Co System Infrastructure and the Project Co Services; and
 - (e) formally advising the Help Desk that the Response has been completed.
- 1.84 **“Response Time”** means the time required by Schedule 11 – Quality Management, Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations, or this Schedule 20 for Project Co to complete its Response measured from when an Event is reported to the Help Desk.
- 1.85 **“Revenue Vehicle”** has the meaning given in Schedule 15 – Output Specifications.
- 1.86 **“Scheduled Base Trips”** means the total Base Trips required in a Contract Month by Contracting Authority through the Booking Process and reported by the Monthly Performance Monitoring Report for that Contract Month.
- 1.87 **“Scheduled Headway”** means the Policy Headway required by Contracting Authority through the Booking Process.
- 1.88 **“Scheduled Passenger Facility Hours”** means the total number of hours during a Contract Month that a Passenger Facility is required to be open and available for use in accordance with the Station and Stop Access Standard, based on the Operations Service Plan then in effect.

- 1.89 “**Scheduled Special Trips**” means the total Special Trips required in a Contract Month by Contracting Authority through the Booking Process and reported by the Monthly Performance Monitoring Report for that Contract Month.
- 1.90 “**Scheduled Trips**” means any of the Scheduled Base Trips, or Scheduled Special Trips.
- 1.91 “**Security Operations Office**” has the meaning given in Schedule 15 – Output Specifications.
- 1.92 “**Security Provider**” has the meaning given in Schedule 15 – Output Specifications.
- 1.93 “**Service Failure**” means any failure by Project Co to provide the Project Co Services in accordance with Performance Criteria designated Failure Type “SF” in Schedule 11 – Quality Management, Schedule 15 – Output Specifications, or Schedule 17 – Environmental Obligations and which, where a Response Time or Rectification Time applies, has not been responded to or rectified (as the case may be) within the relevant time, other than by reason of any Non-Project Co Cause. For the avoidance of doubt, where no Response Time and/or Rectification Time applies (for example, in respect of scheduled activities) there shall be a Service Failure at the point at which the non-compliance occurred (for example, non-performance of the scheduled activity by the scheduled time).
- 1.94 “**Service Failure Deduction**” means a Deduction which may be made in respect of a Service Failure.
- 1.95 “**Service Payment Adjustment**” means the amount referenced and as calculated in accordance with Section 3 of Part B.
- 1.96 “**Service Volume Change**” means the amount referenced and as calculated in accordance with Section 3 of Part B.
- 1.97 “**Special Trip**” means:
- (a) movement of a Revenue Vehicle along the track departing from the Origin and arriving at the Destination, and
 - (b) can only be performed at the direction of Contracting Authority, and
 - (c) excludes any Scheduled Base Trips.
- 1.98 “**Station and Stop Access Standard**” means the standard set out in Schedule 15 – Output Specifications.
- 1.99 “**System Event**” means an event identified as such in Table 1 in Section 1.13 of Part D. For the avoidance of doubt, a System Event is classified as a Trip Availability Failure.
- 1.100 “**System Event Deductions**” has the meaning given in Section 1.13 of Part D.

- 1.101 “**Temporary Repair**” means, in respect of the occurrence of an Event which results in a Service Failure, Quality Failure, or Availability Failure, works of a temporary nature that do not constitute Rectification but temporarily allow for safe use of the affected elements of the Project Co System Infrastructure and substantially make good the relevant Event for the period until a Permanent Repair can be undertaken.
- 1.102 “**Temporary Terminus**” has the meaning given in Section 3.3 of Part D.
- 1.103 “**Terminus**” means:
- (a) Brampton Gateway Stop, Port Credit Station and Mississauga City Centre Stop for the Base Trip, unless designated otherwise in accordance with Section 3 of Part D; and
 - (b) any Station or Stop for Special Trips as designated by Contracting Authority.
- 1.104 “**Total Trips Availability Ratio**” is described in Section 1.2 of Part D.
- 1.105 “**Trip**” means the movement of a Revenue Vehicle throughout its route, departing from the Origin Terminus, stopping at every Station and Stop, and returning to the Origin Terminus. For clarity, each Base Trip, and Special Trip is a Trip.
- 1.106 “**Trip Availability Failure**” means any failure of the Project Co System Infrastructure contributing to the inability to attain the Scheduled Trips for a Contract Month, other than by reason of any Non-Project Co Cause. For the avoidance of doubt, Trip Availability Failures include the occurrence of System Events.
- 1.107 “**Trip Availability Failure Deduction**” means a Deduction calculated in accordance with Section 1.1 of Part D.
- 1.108 “**Un-Adjusted Service Payment**” means the amount that would be calculated for the relevant Contract Month in accordance with the formula set out in Section 1.1 of Part B, with the following exception as applicable:
- (a) without applying the sums represented by the symbols ΣD , GS or PS.
- 1.109 “**Weekday**” means Monday, Tuesday, Wednesday, Thursday, or Friday.

Section 2. Non-Project Co Causes

- 2.1 Subject to Sections 2.2(c) and 2.4 of this Part A, for the purposes of this Schedule 20, a Non-Project Co Cause is one of the following issues or events, only if and to the extent that such issue or event causes a Trip Availability Failure, Passenger Facility Availability Failure, Quality Failure, or Service Failure:

- (a) an action or order issued by Contracting Authority, Security Provider or a Governmental Authority, including:
 - (i) slowing down, re-routing or stopping a Revenue Vehicle service from its schedule;
 - (ii) closing or partially closing a Station or Stop; and
 - (iii) any action or orders resulting from an Emergency;
- (b) with regards to Passengers:
 - (i) Passenger requests for emergency stops;
 - (ii) sick or injured Passengers requiring medical attention; or
 - (iii) attendance of Project Co's staff, Security Provider or Emergency Service Providers to respond to Passenger actions;
- (c) any blockage of the Guideway, including intersections, caused by:
 - (i) a pedestrian, road vehicle, vehicle loads (including spillages), failed traffic signal; or
 - (ii) objects, except where those objects should have been identified by Project Co as part of its periodic inspection process and/or subsequently removed by Project Co within the rectification time outlined in KPM-25 in Article 5 of Part 1 of Schedule 15-3 – Operations and Maintenance Requirements;
- (d) an Event of Vandalism;
- (e) the unlawful or negligent acts or omissions of System Users, Protesters and Trespassers subject to Section 9.7(c) of the Project Agreement, Governmental Authorities, Additional Contractors, Third Party Contractors, Security Provider or Auxiliary Facilities Occupants; for the avoidance of doubt, in respect of this Section 2.1(e), these include:
 - (i) any breach or failure to comply with by-laws applicable to Systems Users; and
 - (ii) failure by any person who is subject to the Standard Operating Procedures and/or LRT Rules to act in accordance with the Standard Operating Procedures and/or LRT Rules;
- (f) the actions of Additional Contractors subject to Section 9.8 of the Project Agreement, provided that if Contracting Authority has assigned certain responsibilities to Project Co in accordance with Section 9.8 of the Project Agreement, then a Non-Project Co Cause shall only apply where Contracting Authority fails to carry out its responsibilities in Section 9.8(d) of the Project Agreement;

- (g) conditions exceeding the operating environmental parameters specified in Appendix A to Part 3 of Schedule 15-2 – Design and Construction Requirements that result in the degradation of the performance of the Revenue Vehicles;
- (h) an interruption to the Project Co Services caused by a loss of utility service from a Utility Company or by electrical power supplied outside of the allowed variance (as specified by the Utility Company) from the nominal value (as specified by the Utility Company), including as a result of any lawful imposition of restrictions by a Governmental Authority;
- (i) Passenger Facility Availability Failures caused by the fit out contractor of any Auxiliary Facilities Occupants;
- (j) a Major Maintenance Shutdown, subject to Project Co receiving written approval from Contracting Authority in accordance with Section 2.4 of Part 3 of Schedule 15-3 – Operations and Maintenance Requirements; and
- (k) any Trip Availability Failure caused by:
 - (i) with respect to a Revenue Vehicle for which a Warranty Claim has been made in accordance with Section 7 of Part 1 of the Revenue Vehicle Supply Contract and until the end of the Equipment Warranty Period, a design or manufacturing defect in such Revenue Vehicle or non-compliance of such Revenue Vehicle with the Revenue Vehicle Supply Contract; or
 - (ii) with respect to a Revenue Vehicle for which notification of an Epidemic Defect has been made in accordance with Section 7 of Part 1 of the Revenue Vehicle Supply Contract and until the end of the Endemic/Epidemic Protection Period, an Epidemic Defect in such Revenue Vehicle.

2.2 Project Co shall only be entitled to relief and a Non-Project Co Cause shall only be applicable pursuant to this Section 2 if and to the extent that:

- (a) the issue or event described in Section 2.1 of this Part A,
 - (i) was not caused or contributed to by any act or omission of Project Co or any Project Co Party;
 - (ii) was not caused or contributed to by any Province Person acting in accordance with a written recommendation or instruction of Project Co or any Project Co Party; or
 - (iii) could not have been prevented or mitigated by the proper performance of Project Co's obligations under the Project Agreement;
- (b) Project Co has taken, and continued to take, commercially-reasonable steps to mitigate the consequences of the Non-Project Co Cause; and

- (c) Project Co is not entitled to compensation payable pursuant to any insurance policy that clearly and expressly by the policy's terms reimburses Project Co for the Deductions that would be applied by Contracting Authority in respect of such Non-Project Co Cause, or would have been entitled to recover under any insurance policy that clearly and expressly by the policy's terms reimburses Project Co for Deductions had it complied with the requirements of the Project Agreement in respect of insurance or the terms of any policy of insurance required under the Project Agreement;
- 2.3 For clarity, if the issue or event described in Section 2.1 of this Part A entitles Project Co to relief and/or compensation under Sections 42, 43 or 44 of the Project Agreement, Project Co shall only be entitled to rely on Non-Project Co Causes to the extent that Sections 42, 43 or 44 of the Project Agreement do not apply.
- 2.4 Following an issue or event described in Section 2.1 of this Part A, Project Co shall resume performance of the Project Co Services as soon as practicable.
- 2.5 For the avoidance of doubt, to the extent that an issue or event described in Section 2.1 of this Part A does not directly prevent Project Co's ability to respond to or rectify (as the case may be) a Quality Failure or Service Failure (as applicable), Project Co shall not be relieved of such Quality Failure or Service Failure by reason of any Non-Project Co Cause (as applicable).

PART B: CALCULATION OF SERVICE PAYMENTS

Section 1. Monthly Service Payment

1.1 The Monthly Service Payment shall be payable in respect of each Contract Month *m* during the Operational Term. The Monthly Service Payment shall be calculated in accordance with the following formula:

$$MSP_m = \left(\frac{ASP_n}{12} \right) + SPA_m + LCP_m - \Sigma D_m + GS - PS$$

Where:

| | |
|------------------------|---|
| <i>MSP_m</i> | Means the Monthly Service Payment for the Contract Month <i>m</i> for which the formula is to be applied; |
| <i>ASP_n</i> | Means the applicable Annual Service Payment for the relevant Contract Year <i>n</i> , calculated in accordance with the provisions set out in Section 2.1 of this Part B. |
| <i>SPA_m</i> | Means the Service Payment Adjustment for the relevant Contract Month <i>m</i> , calculated in accordance with the provisions set out in Section 3 of this Part B. |
| <i>LCP_m</i> | Means the Lifecycle Payment for the relevant Contract Month <i>m</i> , calculated in accordance with the provisions set out in Section 4.1 of this Part B. |
| <i>ΣD_m</i> | Means the sum of Trip Availability Failure Deductions, Passenger Facility Availability Failure Deductions, Quality Failure Deductions, Service Failure Deductions, and Energy Failure Deductions in respect of the relevant Contract Month <i>m</i> ; |
| <i>GS</i> | Means any Gainshare Adjustment arising pursuant to the terms of Schedule 8 – Energy Matters; and |
| <i>PS</i> | Means any Painshare Adjustment arising pursuant to the terms of Schedule 8 – Energy Matters. |

1.2 In the Contract Month in which the Payment Commencement Date falls and in the last Contract Month of the Project Term, a pro rata adjustment shall be made to reflect the actual number of days in the relevant Contract Month from and including the Payment Commencement Date (for the first month) and up to and including the last day of the Project Term (for the last month). Additionally, in the Contract Month in which the Payment Commencement Date falls, the number of days in the Contract Month shall be adjusted to include such number of calendar days after the Substantial Completion Date and before the Payment Commencement Date that Project Co has provided the Project Co Services.

- 1.3 Project Co shall apply any Gainshare Adjustment and/or Painshare Adjustment calculated for a Contract Year as a single lump sum amount, applied to the Monthly Service Payment in respect of the Contract Month *m* in which the relevant Gainshare Adjustment and/or Painshare Adjustment was determined in accordance with Schedule 8 – Energy Matters.

Section 2. Annual Service Payment

- 2.1 The Annual Service Payment for any Contract Year shall be calculated in accordance with the following formula:

$$ASP_n = ASPcap_n + (ASPser_n * ESC_n) + IA$$

Where:

- ASP_n* Means the total, escalated Annual Service Payment for the relevant Contract Year *n*;
- ASPcap_n* Means the Annual Service Payment – Capital Portion during the relevant Contract Year *n*, as referenced in Column B of Table 1 in Appendix A;
- ASPser_n* Means the un-escalated Annual Service Payment – Service Portion during the relevant Contract Year *n*, as referenced in Column C of Table 1 in Appendix A;
- ESC_n* Means the Escalation Factor for the relevant Contract Year *n* as calculated in accordance with Section 5.1 of this Part B.
- IA* Means any Insurance Adjustment calculated in accordance with Section 2.2 of this Part B.

- 2.2 In the event that Project Co is entitled to an Insurance Adjustment pursuant to Section 7.5 of Schedule 25 – Insurance and Performance Security Requirements of the Project Agreement, then either (a) on the Payment Commencement Date, such Insurance Adjustment shall constitute an adjustment to the Annual Service Payment, or (b) on each Insurance Review Date following the Payment Commencement Date, the Insurance Adjustment shall be applied in accordance with Section 2.1 of this Part B.

Section 3. Service Payment Adjustment

- 3.1 The Service Payment Adjustment for any Contract Month shall be a reduction or an increase to the Monthly Service Payment and is calculated in accordance with the following formula:

$$SPA_m = \left(\frac{ASPser_n * ESC_n}{12} \right) * CAF * SVC_m$$

Where:

| | |
|---------------|---|
| SPA_m | Means the total, escalated Service Payment Adjustment for the relevant Contract Month m ; |
| ASP_{ser_n} | Means the un-escalated Annual Service Payment – Service Portion during the relevant Contract Year n , as referenced in Column C of Table 1 in Appendix A; |
| ESC_n | Means the Escalation Factor for the relevant Contract Year n as calculated in accordance with Section 6.1 of this Part B. |
| CAF | Means the cost adjustment factor set at [REDACTED]%; |
| SVC_m | Means the positive or negative Service Volume Change in % for the relevant Contract Month m calculated in accordance with the provisions set out in 3.2 of this Part B; and |

3.2 The Service Volume Change in % for the relevant Contract Month m shall be calculated in accordance with the following formula:

$$SVC_m = \left(\frac{SC_m}{BTS_0} \right)$$

Where:

| | |
|---------|---|
| SVC_m | Means the Service Volume Change in % for the relevant Contract Month m which can result in a positive or negative variation; |
| SC_m | Means the net total of: <ol style="list-style-type: none"> (i) the number of Stations and Stops that, as a result of a Scheduled Special Trip requested by Contracting Authority for the relevant Contract Month m, a Revenue Vehicle is required to pass through for the purposes of entering into or exiting from service for that Scheduled Special Trip or any Station or Stop in a Scheduled Special Trip that, at the direction of Contracting Authority, is not required to meet Minimum Dwell Time and a Revenue Vehicle is permitted to pass through for the purposes of completing that Scheduled Special Trip; and (ii) the incremental increase or decrease in the number of Stations and Stops required to meet Minimum Dwell Time for Scheduled Trips for the relevant Contract Month m as a result of any modification to the Operations Service Plan, including as a result of any Scheduled Special Trips requested by Contracting Authority that is not a Major Service Change. |

For greater clarity, the number shall be equal to the incremental increase or decrease in the number of Stations and Stops for Scheduled Trips set out above for the relevant Contract Month *m* and not based on the actual performance of Project Co calculated in accordance with Section 1 of Part D; and

BTS₀ Means the total number of Stops or Stations required to meet Minimum Dwell Time for the Scheduled Base Trips as set out in the Operations Service Plan at Financial Close or as modified through a Major Service Change in accordance with Article 4 of Part 2 of Schedule 15-3 – Operations and Maintenance Requirements to the Project Agreement for the relevant Contract Month *m*. For greater clarity, the number of Stops and Stations for Scheduled Base Trips is shown in Table 2 of Appendix E to this Schedule 20.

3.3 If the aggregate Service Volume Change in % for any relevant Contract Month *m* exceeds [REDACTED]%, then:

- (a) the Annual Service Payment – Service Portion for the relevant Contract Month(s) *m* in which the Service Volume Change exceeds [REDACTED]% shall, subject to and in accordance with Schedule 22 – Variation Procedure, be adjusted and result in a Variation; and
- (b) the Lifecycle Payment for the relevant Contract Month(s) *m* in which the Service Volume Change exceeds [REDACTED]% shall, subject to and in accordance with Schedule 22 – Variation Procedure, be adjusted and result in a Variation only if an additional mid-life rebuild, life-extension rebuild or overhaul of major systems of the Revenue Vehicle Fleet is required.

For clarity, the portion of the Service Volume Change less than or equal to [REDACTED]% will continue to be subject to Section 3.1 of this Part B.

Section 4. Lifecycle Payment

4.1 The Lifecycle Payment applicable for any Contract Month *m* shall be calculated in accordance with the following formula:

$$LCP_m = (LCP_{Month\ m} * PESCLC * LCESC_n) + (LCP_{Month\ m} * (1 - PESCLC))$$

Where:

LCP_m Means the total, escalated Lifecycle Payment applicable for the relevant Contract Month *m*;

LCP_{Month m} Means the Lifecycle Payment for the relevant Contract Month *m* as set out in Column C of Table 2 in Appendix A;

PESCLC Means [REDACTED]%; and

LCESC_n Means the Lifecycle Escalation Factor for the relevant Contract Year *n* as calculated in accordance with Section 5.2 of this Part B.

Section 5. Escalation Factor

5.1 The Escalation Factor shall be calculated in accordance with the following formula:

$$ESC_n = \frac{(CPI_n * W_{CPI})}{(CPI_o)} + \frac{(Labour_n * W_L)}{(Labour_o)}$$

Where:

ESC_n Means the Escalation Factor applicable to the relevant Contract Year *n*;

CPI_n Means the value of CPI-XFET on April 1 of the relevant Contract Year *n*, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 – Dispute Resolution Procedure, which most closely resembles such index;

CPI_o Means the value of CPI-XFET on the Inflation Base Date, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index at the Inflation Base Date;

W_{CPI} Means [REDACTED]%;

Labour_n Means the value of the Labour Industrial Aggregate Index on April 1 of the relevant Contract Year *n*, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 – Dispute Resolution Procedure, which most closely resembles such index;

W_L Means [REDACTED]%; and

Labour_o Means the value of the Labour Industrial Aggregate Index on the Inflation Base Date, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index at the Inflation Base Date, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 – Dispute Resolution Procedure, which most closely resembles such index.

5.2 The Lifecycle Escalation Factor shall be calculated in accordance with the following formula:

$$LCESC_n = \frac{(CPI_n * WLC_{CPI})}{(CPI_o)} + \frac{(Labour_n * WLC_L)}{(Labour_o)}$$

Where:

LCESC_n Means the Lifecycle Escalation Factor applicable to the relevant Contract Year *n*;

CPI_n Means the value of CPI-XFET on April 1 of the relevant Contract Year *n*, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 – Dispute Resolution Procedure, which most closely resembles such index;

WLC_{CPI} Means [REDACTED]%;

Labour_n Means the value of the Labour Industrial Aggregate Index on April 1 of the relevant Contract Year *n*, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 – Dispute Resolution Procedure, which most closely resembles such index.

WLC_L Means [REDACTED]%;

CPI_o Means the value of CPI-XFET on the Inflation Base Date, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index at the Inflation Base Date, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 – Dispute Resolution Procedure, which most closely resembles such index; and

Labour_o Means the value of the Labour Industrial Aggregate Index on the Inflation Base Date, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index at the Inflation Base Date, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 – Dispute Resolution Procedure, which most closely resembles such index.

PART C: DEDUCTIONS FROM MONTHLY SERVICE PAYMENTS - GENERAL**Section 1. Entitlement to Make Deductions**

- 1.1 If at any time during the Operational Term a Quality Failure, Service Failure, Energy Failure, or Availability Failure shall occur, Contracting Authority shall be entitled to make a Deduction from the relevant Monthly Service Payment in respect of that Quality Failure, Service Failure, Energy Failure, or Availability Failure.
- 1.2 The maximum aggregate of all Deductions that Contracting Authority can make from a Monthly Service Payment in respect of any Contract Month shall be the Un-Adjusted Service Payment relating to that Contract Month.

Section 2. Classification of Deductions

- 2.1 Subject to Section 2.2 of this Part C, the classification of an Event as a potential Quality Failure, Service Failure, Energy Failure, or Availability Failure (or a combination thereof) shall be made at the time at which the occurrence of the Event is reported to the Help Desk. An Event which is incorrectly classified may be re-classified with the approval of the Contracting Authority Representative and the Project Co Representative, acting reasonably, in which case the applicable Monthly Performance Monitoring Report and Daily Performance Report will be revised accordingly.
- 2.2 Subject to the requirements of Section 3 of Part D, a Trip Availability Failure is not required to be reported to the Help Desk. Trip Availability Failures will be determined through the Daily Performance Report process and summarized for Payment Mechanism calculation purposes in the Monthly Performance Monitoring Report.

PART D: DEDUCTIONS FOR TRIP AND PASSENGER FACILITY

Section 1. Trip Availability Failure Deductions

1.1 The Trip Availability Failure Deduction in respect of a Contract Month m , shall be calculated in accordance with the following formula:

$$TAFD_m = TDF_m * (USP_m) + \sum SED_m$$

Where:

$TAFD_m$ Means the Trip Availability Failure Deduction applicable to Contract Month m ;

TDF_m Means the Deduction Factor in respect of Trip Availability Failures during Contract Month m , determined in accordance with Section 1.2 of this Part D;

USP_m Means the Un-Adjusted Service Payment for Contract Month m ; and

$\sum SED_m$ Means the sum of System Event Deductions applicable to Contract Month m , calculated in accordance with Section 1.13 of this Part D.

1.2 The Deduction Factor in respect of Trip Availability Failures during Contract Month m (TDF_m) shall be determined by calculating the Total Trips Availability Ratio for Contract Month m , in accordance with the formula set out below, and applying the corresponding Deduction Factor from Table 1 in Appendix B.

$$TTAR_{A,m} = (TTAR_{P,m} * [\text{REDACTED}]) + (TTAR_{OP,m} * [\text{REDACTED}])$$

Where:

$TTAR_{A,m}$ Means the Total Trips Availability Ratio during Contract Month m ;

$TTAR_{P,m}$ Means the Peak Period Total Trips Availability Ratio during Contract Month m ; and

$TTAR_{OP,m}$ Means the Off-Peak Period Total Trips Availability Ratio during Contract Month m .

1.3 For the purposes of Section 1.2 of this Part D, when selecting a Deduction Factor from the Table 1 in Appendix B, the Total Trips Availability Ratio shall be rounded up to the nearest **[REDACTED]**%.

1.4 For the purposes of Section 1.2 of this Part D, during

(a) the first 90 calendar days of the Bedding-In Period, when the Total Trips Availability Ratio for Contract Month m is greater than or equal to **[REDACTED]**%, the Deduction Factor

shall be [REDACTED]%. No adjustment will be made to the Deduction Factor when, during the Bedding-In Period, the Total Trips Availability Ratio for Contract Month *m* is less than or equal to [REDACTED]%; and

- (b) the last 90 calendar days of the Bedding-In Period, when the Total Trips Availability Ratio for Contract Month *m* is greater than or equal to [REDACTED]%, the Deduction Factor shall be [REDACTED]%. No adjustment will be made to the Deduction Factor when, during the Bedding-In Period, the Total Trips Availability Ratio for Contract Month *m* is less than or equal to [REDACTED]%. During the last Contract Month of such last 90 calendar days of the Bedding-In Period, for the purposes of calculating the Total Trips Availability Ratio and selecting the Deduction Factor, a pro rata adjustment shall be made to reflect the actual number of days in the relevant Contract Month that the Bedding-In Period applies.

1.5 For clarity, Failure Points relating to Trip Availability Failures during the Bedding-In Period shall be awarded in accordance with Part G of this Schedule 20.

1.6 The Peak Period Total Trips Availability Ratio for Contract Month *m* shall be calculated in accordance with the formula set out below:

$$TTAR_{P,m} = \frac{(BTP_{P,m} + STP_{P,m} + NPCCP_{P,m})}{MAP_{P,m}}$$

Where:

TTAR_{P,m} Means the Peak Period Total Trips Availability Ratio during Contract Month *m*;

BTP_{P,m} Means the total Accumulated Points for Scheduled Base Trips during Peak Periods for Contract Month *m* calculated in accordance with Section 1.8 of this Part D;

STP_{P,m} Means the total Accumulated Points for Scheduled Special Trips during Peak Periods for Contract Month *m* calculated in accordance with Section 1.8 of this Part D;

NPCCP_{P,m} Means the sum of Accumulated Points for all Scheduled Trips which were “missed” or not achieved at Peak Periods during Contract Month *m* and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause; and

MAP_{P,m} Means the total Maximum Available Points for the Scheduled Trips during Peak Periods for Contract Month *m* calculated in accordance with Section 1.10 of this Part D.

- 1.7 The Off-Peak Period Total Trips Availability Ratio for Contract Month m shall be calculated in accordance with the formula set out below:

$$TTAR_{OP,m} = \frac{(BTP_{OP,m} + STP_{OP,m} + NPCCP_{OP,m})}{MAP_{OP,m}}$$

Where:

- $TTAR_{OP,m}$ Means the Off-Peak Period Total Trips Availability Ratio during Contract Month m ;
- $BTP_{OP,m}$ Means the total Accumulated Points for Scheduled Base Trips during Off-Peak Periods for Contract Month m calculated in accordance with Section 1.8 of this Part D;
- $STP_{OP,m}$ Means the total Accumulated Points for Scheduled Special Trips during Off-Peak Periods for Contract Month m calculated in accordance with Section 1.8 of this Part D;
- $NPCCP_{OP,m}$ Means the sum of Accumulated Points for all the Scheduled Trips which were “missed” or not achieved at Off-Peak Periods during Contract Month m and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause; and
- $MAP_{OP,m}$ Means the total Maximum Available Points for the Scheduled Trips during Off-Peak Periods for Contract Month m calculated in accordance with Section 1.11 of this Part D.

- 1.8 Accumulated Points for the Scheduled Trip shall be calculated in accordance with the following formula:

$$AP_T = (\sum P_S) \times F_H$$

Where:

- AP_T Means the Accumulated Points calculated for each of the Scheduled Trips;
- P_S Means points for each respective Station or Stop which was required and met the Minimum Dwell Time. Points are allocated in accordance with Appendix E of this Schedule 20; and
- F_H Means Headway Factor calculated in accordance with Section 1.9 of Part D.

- 1.9 Headway Factor is calculated in accordance with the following:

- [REDACTED]% When a Departure Headway not greater than the sum of the Scheduled Headway plus the Headway Buffer is achieved on [REDACTED]% of designated Termini;
- [REDACTED]% When a Departure Headway not greater than the sum of the Scheduled Headway plus the Headway Buffer is achieved on [REDACTED]% of designated Termini;
- [REDACTED]% When a Departure Headway not greater than the sum of the Scheduled Headway plus the Headway Buffer is achieved on [REDACTED]% of designated Termini;
- [REDACTED]% When a Departure Headway not greater than the sum of the Scheduled Headway plus the Headway Buffer is achieved on [REDACTED]% of designated Termini; and
- [REDACTED]% When a Departure Headway not greater than the sum of Scheduled Headway plus the Headway Buffer is achieved on fewer than [REDACTED]% of designated Termini.

1.10 The total Maximum Available Points for the Scheduled Trips during Peak Periods for Contract Month m , shall be calculated in accordance with the following formula:

$$MAP_{P,m} = \sum BT_{P,m} \times BTP + \sum ST_{P,m} \times TP_{P,m}$$

Where:

- $MAP_{P,m}$ Means the total Maximum Available Points for the Scheduled Trips during Peak Periods for Contract Month m ;
- $BT_{P,m}$ Means the Scheduled Base Trips during Peak Periods for Contract Month m ;
- BTP Base Trip Total Points, calculated in accordance with Table 2 of Appendix E;
- $ST_{P,m}$ Means the Scheduled Special Trips during Peak Periods for Contract Month m ; and
- $TP_{P,m}$ Means the Available Scheduled Special Trip Points calculated for each respective Scheduled Special Trip during Peak Periods for Contract Month m in accordance with Section 1.12 of this Part D.

1.11 The total Maximum Available Points for the Scheduled Trips during Off-Peak Periods for Contract Month *m*, shall be calculated in accordance with the following formula:

$$MAP_{OP,m} = \sum BT_{OP,m} \times BTP + \sum ST_{OP,m} \times TP_{OP,m}$$

Where:

- MAP_{OP,m}* Means the total Maximum Available Points for the Scheduled Trips during Off-Peak Periods for Contract Month *m*;
- BT_{OP,m}* Means the Scheduled Base Trips during Off-Peak Periods for Contract Month *m*;
- BTP* Base Trip Total Points, calculated in accordance with Table 2 of Appendix E;
- ST_{OP,m}* Means the Scheduled Special Trip during Off-Peak Periods for Contract Month *m*; and
- TP_{OP,m}* Means the Available Scheduled Special Trip Points calculated for each respective Scheduled Special Trip during Off-Peak Periods for Contract Month *m* in accordance with Section 1.12 of this Part D.

1.12 Available Scheduled Special Trip Points shall be calculated in accordance with the following formula:

$$TP_{ST} = \sum P_{ST}$$

Where:

- TP_{ST}* Means the Available Scheduled Special Trip Points calculated for each of the Scheduled Special Trips; and
- P_{ST}* Means Points for each respective Station or Stop required to meet the Minimum Dwell Time during the Scheduled Special Trip. Points are assigned in accordance with Appendix E of this Schedule 20.

1.13 The following deductions (“**System Event Deductions**”) shall also apply in respect of Trip Availability Failures. The maximum aggregate amount of System Event Deductions to be applied in one day shall be \$[REDACTED]. To the extent that a System Event Deduction is applied, no directly corresponding Quality Failure Deduction or Service Failure Deduction shall be applied in addition to the System Event Deduction.

SYSTEM EVENT DEDUCTIONS – TABLE 1

| System Event is triggered where | System Event Deduction Applied |
|---------------------------------|--------------------------------|
|---------------------------------|--------------------------------|

| | |
|--|---|
| <p>On any single Weekday during a Contract Month, the Peak Period Total Trips Availability Ratio for either (a) morning Peak Period service or (b) afternoon Peak Period service is less than [REDACTED]%. </p> | <p>\$(REDACTED) per occurrence</p> <p>For clarity, each Peak Period which fails to meet the [REDACTED]% service standard shall result in the \$(REDACTED) System Event Deduction, such that Project Co could receive two such deductions in a single day, one in respect of morning Peak Period service and the second in respect of afternoon Peak Period service.</p> |
| <p>On any single day during a Contract Month, the Total Trips Availability Ratio for that day is less than [REDACTED]%. </p> | <p>\$(REDACTED) per occurrence</p> |
| <p>On any single day during a Contract Month, an inability to provide train service to a Group 1 Passenger Facility for any duration that is in excess of any cumulative [REDACTED] minute period during that day due to a failure other than by reason of any Non-Project Co Cause.</p> | <p>\$(REDACTED) per occurrence per Group 1 Passenger Facility</p> |

- 1.14 The System Event Deductions and the maximum daily aggregate amount listed above, shall be index-linked using the Escalation Factor as referred to in Section 5.1 of Part B.
- 1.15 For clarity, and subject to Sections 2.2(c) and 2.4 of Part A, System Event Deductions shall not be applied to the extent that the triggering System Event is directly caused by a Non-Project Co Cause as described in Section 2.1 of Part A.

Section 2. Passenger Facility Availability Failure Deductions

- 2.1 The Passenger Facility Availability Failure Deduction in respect of a Contract Month *m*, shall be calculated in accordance with the following formula:

$$PFAFD_m = PFDF_m * (USP_m) + \sum PFED_m$$

Where:

PFAFD_m Means the Passenger Facility Availability Failure Deduction applicable to Contract Month *m*;

- $PFDF_m$ Means the Deduction Factor in respect of Passenger Facility Availability Failures during Contract Month m , determined in accordance with Section 2.2 of this Part D;
- USP_m Means the Un-Adjusted Service Payment for Contract Month m ; and
- $\Sigma PFED_m$ Means the sum of Passenger Facility Event Deductions applicable to Contract Month m , calculated in accordance with Section 2.6 of this Part D.

2.2 The Deduction Factor in respect of Passenger Facility Availability Failures during Contract Month m ($PFDF_m$) shall be determined by calculating the Aggregate Passenger Facility Availability Ratio for Contract Month m , in accordance with the formula set out below, and applying the corresponding Deduction Factor from Table 2 in Appendix B.

$$PFAR_{A,m} = (PFAR_{P,m} * [REDACTED]) + (PFAR_{OP,m} * [REDACTED])$$

Where:

- $PFAR_{A,m}$ Means the Aggregate Passenger Facility Availability Ratio during Contract Month m ;
- $PFAR_{P,m}$ Means the Peak Period Passenger Facility Availability Ratio during Contract Month m ; and
- $PFAR_{OP,m}$ Means the Off-Peak Period Passenger Facility Availability Ratio during Contract Month m .

2.3 For the purposes of Section 2.2 of this Part D, when selecting a Deduction Factor from Table 2 in Appendix B, the Aggregate Passenger Facility Availability Ratio shall be rounded up to the nearest [REDACTED] %.

2.4 The Peak Period Passenger Facility Availability Ratio for Contract Month m shall be calculated in accordance with the formula set out below:

$$PFAR_{P,m} = [REDACTED] * \left[\frac{(PFSH_{Gp.1P,m} - PFAF_{Gp.1P,m} + NPCChr_{p.1P,m})}{PFSH_{Gp.1P,m}} \right] + [REDACTED] * \left[\frac{(PFSH_{Gp.2P,m} - PFAF_{Gp.2P,m} + NPCChr_{Gp.2P,m})}{PFSH_{Gp.2P,m}} \right]$$

Where:

- $PFAR_{P,m}$ Means the Peak Period Passenger Facility Availability Ratio during Contract Month m ;
- $PFSH_{Gp.1P,m}$ Means the sum total of Scheduled Passenger Facility Hours for all Group 1 Passenger Facilities during Peak Periods for Contract Month m ;

- PFAF_{Gp.1P, m}* Means the sum total of Passenger Facility Availability Failure Hours for all Group 1 Passenger Facilities during Peak Periods for Contract Month *m*;
- NPCChr_{Gp.1 P, m}* Means the number of Scheduled Passenger Facility Hours which were “missed” or not achieved for all Group 1 Passenger Facility at Peak Periods during Contract Month *m* and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause;
- PFSH_{Gp.2P, m}* Means the sum total of Scheduled Passenger Facility Hours for all Group 2 Passenger Facilities during Peak Periods for Contract Month *m*;
- PFAF_{Gp.2P, m}* Means the sum total of Passenger Facility Availability Failure Hours for all Group 2 Passenger Facilities during Peak Periods for Contract Month *m*; and
- NPCChr_{Gp.2 P, m}* Means the number of Scheduled Passenger Facility Hours which were “missed” or not achieved for all Group 2 Passenger Facilities at Peak Periods during Contract Month *m* and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause.

2.5 The Off-Peak Period Passenger Facility Availability Ratio for Contract Month *m* shall be calculated in accordance with the formula set out below:

$$PFAR_{OP, m} = [\text{REDACTED}] * \left[\frac{(PFSH_{Gp.1 OP, m} - PFAF_{Gp.1 OP, m} + NPCChr_{Gp.1 OP, m})}{PFSH_{Gp.1 OP, m}} \right] + [\text{REDACTED}] * \left[\frac{(PFSH_{Gp.2 OP, m} - PFAF_{Gp.2 OP, m} + NPCChr_{Gp.2 OP, m})}{PFSH_{Gp.2 OP, m}} \right]$$

Where:

- PFAR_{OP, m}* Means the Off-Peak Period Passenger Facility Availability Ratio during Contract Month *m*;
- PFSH_{Gp.1OP, m}* Means the sum total of Scheduled Passenger Facility Hours for all Group 1 Passenger Facilities during Off-Peak Periods for Contract Month *m*;
- PFAF_{Gp.1OP, m}* Means the sum total of Passenger Facility Availability Failure Hours for all Group 1 Passenger Facilities during Off-Peak Periods for Contract Month *m*;
- NPCChr_{Gp.1 OP, m}* Means the number of Scheduled Passenger Facility Hours which were “missed” or not achieved for all Group 1 Passenger Facilities at Off-Peak Periods during Contract Month *m* and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause;
- PFSH_{Gp.2OP, m}* Means the sum total of Scheduled Passenger Facility Hours for all Group 2 Passenger Facilities during Off-Peak Periods for Contract Month *m*;

- PFAF_{Gp,2OP, m}* Means the sum total of Passenger Facility Availability Failure Hours for all Group 2 Passenger Facilities during Off-Peak Periods for Contract Month m; and
- NPCChr_{Gp,2 OP, m}* Means the number of Scheduled Passenger Facility Hours which were “missed” or not achieved for all Group 2 Passenger Facilities at Off-Peak Periods during Contract Month m and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause.

2.6 The following deductions (“**Passenger Facility Event Deductions**”) shall also apply in respect of Passenger Facility Availability Failures. To the extent that a Passenger Facility Event Deduction is applied, no directly corresponding Quality Failure Deduction or Service Failure Deduction shall be applied in addition to the Passenger Facility Event Deduction.

PASSENGER FACILITY EVENT DEDUCTIONS - TABLE 2

| Passenger Facility Event is triggered where | Passenger Facility Event Deduction Applied |
|---|--|
| On any single day during a Contract Month, any Passenger Facility is not made available by the scheduled opening time per the Station and Stop Access Standard. | \$[REDACTED] per occurrence for each Group 1 Passenger Facility and \$[REDACTED] per occurrence for each Group 2 Passenger Facility. |

- 2.7 The Passenger Facility Event Deductions listed above shall be index-linked using the Escalation Factor as referred to in Section 5.1 of Part B.
- 2.8 For clarity, and subject to Sections 2.2(c) and 2.4 of Part A, Passenger Facility Event Deductions shall not be applied to the extent that the triggering Passenger Facility Event is directly caused by a Non-Project Co Cause as described in Section 2.1 of Part A.

Section 3. Terminus Change

- 3.1 Project Co shall at all times perform the Project Co Services in accordance with the Operations Service Plan.
- 3.2 In the event that Project Co becomes aware that the Project Co Services shall or may not be performed in accordance with the Operations Service Plan for any reason whatsoever, except as a result of the addition of any Scheduled Special Trip by Contracting Authority, Project Co shall notify Contracting Authority within one hour.
- 3.3 If an event described in Section 3.2 of this Part D arises, Project Co may, if required and acting reasonably, designate a Station or Stop that is not a Terminus to be a temporary terminus (a “**Temporary Terminus**”), and such Temporary Terminus shall temporarily be considered a Terminus for the purposes of calculating the Total Trips Availability Ratio (including for the measurement of the Departure Headway) until such time as Rectification in respect of such event is completed.

- 3.4 Contracting Authority may, within three calendar days and acting reasonably, reject the designation by Project Co of a Temporary Terminus pursuant to Section 3.3 of this Part D.
- 3.5 If Contracting Authority exercises its discretion under Section 3.4 of this Part D to reject the designation by Project Co of a Temporary Terminus, such rejection may, in the sole discretion of Contracting Authority, be applied retroactively.
- 3.6 Contracting Authority may, in its sole discretion, apply Failure Points in respect of a Quality Failure in accordance with Section 2.2 of Part H, if the notification under Section 3.2 of this Part D was not provided by Project Co by the expiry of the time period set out in such Section.
- 3.7 Once Rectification for event under Section 3.2 of this Part D has been completed, Project Co shall notify Contracting Authority within three hours of such completion.

Section 4. Trip Availability and Passenger Availability Failures

- 4.1 In respect of a Trip Availability Failure:
- (a) Where a Station or Stop which is not:
- (i) Brampton Gateway Stop; or
 - (ii) Mississauga City Centre Stop; or
 - (iii) Port Credit Station; or
 - (iv) a Terminus as designated by Contracting Authority for Scheduled Special Trips only,

has been permitted to be designated as a Temporary Terminus for any of the Scheduled Trips as a result of an act or omission of Project Co that is not a Non-Project Co Cause and that results in a Trip Availability Failure, then the Accumulated Points for such Scheduled Trips shall be deemed to be reduced by [REDACTED]%.

- 4.2 In respect of a Passenger Facility Availability Failure:
- (a) Where a Station or Stop does not meet the Station and Stop Access Standard but does meet the Partial Station and Stop Access Standard requirements of Section 7.2 of Article 7.2 of Part 3 to Schedule 15-3 – Operations and Maintenance Requirements to the Project Agreement, the Passenger Facility Availability Failure Hours that would otherwise be assessed for the duration of the Station's or Stop's failure to meet the Station and Stop Access Standard shall be reduced by [REDACTED]%.

PART E: DEDUCTIONS FOR QUALITY FAILURES AND SERVICE FAILURES**Section 1. Amount of Deductions for Quality Failures**

- 1.1 The amount of the Deduction in respect of a Quality Failure shall be as follows:
- (a) in the case of a Minor Quality Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 5.1 of Part B;
 - (b) in the case of a Medium Quality Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 5.1 of Part B; and
 - (c) in the case of a Major Quality Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 5.1 of Part B.
- 1.2 There are no Response Times or Rectification Times in respect of Quality Failures. The occurrence of a Quality Failure will result in an immediate Quality Failure Deduction in respect of the Contract Month in which the Quality Failure occurred.
- 1.3 Following the occurrence of a Quality Failure, Project Co shall be allowed a Remedial Period. The length of the relevant Remedial Period shall be specified by the relevant Performance Criteria. If, before the expiry of the Remedial Period, Project Co demonstrates, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Quality Failure, no further Deduction shall be made in respect of the Quality Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 1.1 of this Part E) and a further Remedial Period or Remedial Periods of equal duration (unless otherwise set out for such Quality Failure) shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Quality Failure.

Section 2. Amount of Deductions for Service Failures

- 2.1 The amount of the Deduction in respect of a Service Failure shall be as follows:
- (a) in the case of a Minor Service Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 5.1 of Part B;
 - (b) in the case of a Medium Service Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 5.1 of Part B; and
 - (c) in the case of a Major Service Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 5.1 of Part B.
- 2.2 Where a Service Failure has a Performance Criteria with a Response Time or a Rectification Time, a Service Failure shall only occur if the Event in question has not been responded to within the applicable Response Time or rectified within the applicable Rectification Time.

- 2.3 Following the occurrence of a Service Failure, Project Co shall be allowed an additional Response Time or Rectification Time (as the case may be) equivalent to the original Response Time or Rectification Time. If, before the expiry of this additional period, Project Co demonstrates, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Service Failure, no further Deduction shall be made in respect of the Service Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 2.1 of this Part E) and a further Response Time or Rectification Time of equal duration (unless otherwise set out for such Service Failure) shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Service Failure.
- 2.4 The provisions of Section 2.3 of this Part E shall not apply to Service Failures where, if the response or rectification is not carried out within the Response Time or the Rectification Time, as applicable, the Contracting Authority Representative notifies the Project Co Representative that Contracting Authority no longer requires Project Co to address such Service Failure.
- 2.5 Where a Service Failure has a Performance Criteria with no Response Time or Rectification Time, a Service Failure shall occur upon the occurrence of the Event in question and a Service Failure Deduction shall apply in accordance with Section 2.1 of this Part E.

Section 3. Amount of Deductions for Energy Failures

- 3.1 The amount of the Deduction in respect of an Energy Failure shall be as follows:
- (a) in the case of a Minor Energy Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 5.1 of Part B in this Schedule 20;
 - (b) in the case of a Medium Energy Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 5.1 of Part B in this Schedule 20; and
 - (c) in the case of a Major Energy Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 5.1 of Part B in this Schedule 20.
- 3.2 The Rectification Times in respect of Energy Failures shall correspond to the frequency stated in Schedule 8 – Energy Matters. The occurrence of an Energy Failure will result in an Energy Failure Deduction in respect of the Contract Month in which the Energy Failure occurred.
- 3.3 Following the occurrence of an Energy Failure, Project Co shall be allowed a Remedial Period equal to the period specified in Schedule 8 – Energy Matters. If, before the expiry of the Remedial Period, Project Co demonstrates, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Energy Failure, no further Deduction shall be made in respect of the Energy Failure. Otherwise, a further Energy Failure (as described in Schedule 8 – Energy Matters) and a corresponding Deduction shall be made in the appropriate amount (as described in Section 3.1 of this Part E) and a further Remedial Period or Remedial Periods shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co demonstrates, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Energy Failure.

Section 4. Temporary Repairs

- 4.1 If Project Co informs Contracting Authority that it is unable to Rectify an Event within the specified Remedial Period or Rectification Time due to the need for specialized materials or personnel that are not, and cannot reasonably be expected to be, immediately available but that a Temporary Repair can be effected:
- (a) Contracting Authority may, in its discretion and acting reasonably, permit Project Co to carry out the Temporary Repair proposed by Project Co; and
 - (b) where a Temporary Repair is permitted, a deadline by which a Permanent Repair must be made shall be agreed to by the Parties, each acting reasonably, giving Project Co a reasonable period within which to carry out the Permanent Repair (the “**Permanent Repair Deadline**”).
- 4.2 If the Temporary Repair is effected within the specified Remedial Period and the Permanent Repair is effected by no later than the Permanent Repair Deadline, only the first Quality Failure will be deemed to have occurred, and a Quality Failure Deduction may be made in respect of the Event. If the Temporary Repair is effected within the specified Rectification Time and the Permanent Repair is effected by no later than the Permanent Repair Deadline, no Service Failure will occur, and no Service Failure Deduction may be made in respect of the Event.
- 4.3 If the Temporary Repair is not effected within the specified Remedial Period or Rectification Time, a Quality Failure or Service Failure (as applicable) shall be deemed to occur and the following provisions shall apply:
- (a) there shall be a further period beginning at the expiry of the Remedial Period or Rectification Time and of a duration equal to that of the Remedial Period or Rectification Time;
 - (b) Project Co shall ensure that the Temporary Repair is successfully carried out prior to the expiry of the additional period referred to in Section 4.3(a) of this Part E;
 - (c) if the Temporary Repair is not successfully carried out prior to the expiry of the additional period referred to in Section 4.3(a) of this Part E, a further Quality Failure or Service Failure (as applicable) shall occur and a further additional period shall commence;
 - (d) unless the Temporary Repair has been successfully carried out prior to the expiry of the additional period then a further Quality Failure or Service Failure (as applicable) shall occur until such time as the Temporary Repair shall have been successfully completed; and
 - (e) if the Temporary Repair is not successfully carried out prior to the Permanent Repair Deadline, and no Permanent Repair has been successfully carried out, the right for Project Co to carry out a Temporary Repair pursuant to this Section 4 shall cease and Section 4.4 of this Part E shall apply.

- 4.4 If the Permanent Repair is not effected by the Permanent Repair Deadline, a Quality Failure or Service Failure (as applicable) shall be deemed to occur.
- (a) Following the occurrence of a Quality Failure per Section 4.4 of this Part E, Project Co shall be allowed a Remedial Period. The length of the relevant Remedial Period shall be specified by the relevant Performance Criteria. If, before the expiry of the Remedial Period, Project Co demonstrates, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Quality Failure, no further Deduction shall be made in respect of the Quality Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 1.1 of this Part E) and a further Remedial Period or Remedial Periods of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Quality Failure.
 - (b) Following the occurrence of a Service Failure per Section 4.4 of this Part E, Project Co shall be allowed an additional Response Time or Rectification Time (as the case may be) equivalent to the original Response Time or Rectification Time. If, before the expiry of this additional period, Project Co demonstrates, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Service Failure, no further Deduction shall be made in respect of the Service Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 2.1 of this Part E) and a further Response Time or Rectification Time of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Service Failure.

PART F: REVIEW AND AMENDMENT OF PAYMENT MECHANISM, AND ANNUAL SERVICE PAYMENT LIFECYCLE PAYMENT ADJUSTMENTS**Section 1. Five Year Review**

- 1.1 The amount of Deductions for Trip Availability Failures, Passenger Facility Availability Failures, Quality Failures, Service Failures, and Energy Failures, as well as the overall functioning of the Payment Mechanism shall be reviewed by Contracting Authority and Project Co at any time if requested by either Party, up to a maximum of one review per Contract Year. In any event, a review shall be carried out at least once in every five Contract Years.
- 1.2 Contracting Authority and Project Co shall act reasonably and diligently in carrying out the reviews.
- 1.3 For the avoidance of doubt, the Parties intend that any changes made as a result of such a review shall not alter the overall risk profile of the relevant Project Co Services or the likely magnitude of Trip Availability Failures, Passenger Facility Availability Failures, Quality Failures, Service Failures, and Energy Failures. Where proposed changes would result in any such alteration, the matter shall be deemed to be a Variation and Schedule 22 – Variation Procedure shall apply.
- 1.4 Contracting Authority and Project Co may in respect of each matter that is the subject of the review either:
- (a) agree that the status of the relevant matter shall continue to apply unchanged in the Contract Year immediately following the review; or
 - (b) agree adjustments to the relevant matter to take effect in the Contract Year immediately following the review.
- 1.5 Any agreed adjustment pursuant to a review shall be effective from the commencement of the Contract Year immediately following the relevant review carried out in accordance with Section 1.1 of this Part F.

Section 2. Peak Periods and Passenger Facility Grouping

- 2.1 Contracting Authority may change the hours within the definition of “Peak Period” within Schedule 15 – Output Specifications for the purposes of the Payment Mechanism, at its sole discretion at any time during the Operational Term by providing Project Co with sixty (60) days written Notice, provided that the total number of Peak Period hours in a week does not exceed thirty (30) hours, and the two daily peak periods are separated by a minimum of three (3) hours.
- 2.2 Contracting Authority may, in its sole discretion, change the grouping of Passenger Facilities (Group 1 and Group 2 definitions), for the purposes of the Payment Mechanism, at any time during the Operational Term by providing Project Co with sixty (60) days written Notice, provided that:
- (a) Group 1 shall not include more than 4 Passenger Facilities; and

- (b) if the change in the grouping causes a change in the overall risk profile of the relevant Project Co Services, Project Co shall be entitled to a Variation and Schedule 22 – Variation Procedure shall apply.

2.3 Contracting Authority may increase the total number of Peak Period hours per week and/or increase the number of Group 1 Passenger Facilities, beyond the limits set out in Sections 2.1 and 2.2, above, subject to agreement between the Parties on appropriate amendments to the Payment Mechanism in order to ensure there is no change in overall risk profile of the relevant Project Co Services or the likely magnitude of Trip Availability Failures, Passenger Facility Availability Failures, Quality Failures and Service Failures. Where proposed changes would result in any such alteration in the risk profile, the matter shall be deemed to be a Variation and Schedule 22 – Variation Procedure shall apply.

Section 3. Annual Service Payment and Lifecycle Payment Adjustments

3.1 Project Co shall, subject to and accordance with Schedule 22 – Variation Procedure and subject to the restrictions set out in this Section 3 of this Part F, be entitled to a Variation and an adjustment to the Annual Service Payment – Service Portion and the Lifecycle Payment for each occurrence of any of the following events:

- (a) Revenue Vehicles leaving a specific Station or Stop exceed an AW2 Loading, when measured for any morning or afternoon weekday Peak Period or Off-Peak Period and averaged over six Contract Months; or
- (b) the timing and/or signal logic of one or more traffic signals along the Corridor differs from the parameters set out in Section 9.3 of Part 2 of Schedule 15-2 – Design and Construction Requirements,

if and to the extent that such event materially adversely affects Project Co's ability to satisfy the Operations Service Plan and results in material additional costs being incurred by Project Co.

3.2 An adjustment to the Annual Service Payment – Service Portion and the Lifecycle Payment pursuant to Section 3.1 of this Part F, will only be permitted if such adjustment is:

- (a) directly attributable to one or more of the events listed in Section 3.1 of this Part F, and
- (b) not be attributable to any other inability of Project Co to satisfy the Operations Service Plan.

3.3 No adjustment to the Annual Service Payment – Service Portion pursuant to Section 3.1 of this Part F shall be greater than an amount equal to the product of:

- (a) the Annual Service Payment – Service Portion, multiplied by
- (b) the cost adjustment factor set out in Section 3.1 of Part B , multiplied by
- (c) **[REDACTED]** percent.

- 3.4 No adjustment to the Annual Service Payment – Capital Portion will be permitted pursuant to Section 3.1 of this Part F.
- 3.5 Project Co and Contracting Authority shall, acting reasonably, work collaboratively to minimize the adjustments to the Annual Service Payment – Service Portion and the Lifecycle Payment pursuant to Section 3.1 of this Part F, and, wherever possible, agree to adjustments to the Operations Service Plan as a Major Service Change in accordance with Article 4 of Part 2 of Schedule 15-3 – Operations and Maintenance Requirements.

PART G: FAILURE POINTS**Section 1. Failure Points**

- 1.1 Failure Points shall be awarded for every Quality Failure, Service Failure, System Event, Passenger Facility Event and Availability Failure which occurs during the Operational Term, unless such Failure Points are cancelled pursuant to any other provision of the Project Agreement.
- 1.2 The number of Failure Points attributable to Quality Failures, Service Failures, System Events, Passenger Facility Events and Availability Failures is set out in Appendix C.
- (a) Failure Points in respect of System Events shall be awarded following the identification of each such System Event through the Daily Performance Report;
 - (b) Failure Points in respect of Passenger Facility Events shall be awarded following the identification of each such Passenger Facility Event through the Daily Performance Report;
 - (c) Failure Points in respect of Trip Availability Failure shall be awarded for each Contract Month based on the relevant Total Trip Availability Ratio calculated for that Contract Month, in accordance with Sections 1.1 and 1.2 of Appendix C;
 - (d) Failure Points in respect of Passenger Facility Availability Failure shall be awarded for each Contract Month based on the relevant Aggregate Passenger Facility Availability Ratio calculated for that Contract Month, in accordance with Section 4.1 of Appendix C; and
 - (e) Failure Points in respect of Quality Failures and Service Failures shall be awarded in respect of each Quality Failure and Service Failure, in accordance with Section 5 of Appendix C.
- 1.3 For the avoidance of doubt when awarding Failure Points, where a further Quality Failure or Service Failure is deemed to have occurred in accordance with Section 1 or Section 2 of Part E, the appropriate number of Failure Points shall be awarded in respect of each such Quality Failure and Service Failure, even though they arise from the same circumstances.
- 1.4 For the purposes of this Section 1 of this Part G, during
- (a) the first 90 calendar days of the Bedding-In Period, when the Total Trips Availability Ratio for Contract Month m is greater than or equal to [REDACTED]%, the Failure Points awarded for Contract Month m shall be 0. No adjustment will be made to the Failure Points awarded when, during the Bedding-In Period, the Total Trips Availability Ratio for Contract Month m is less than or equal to [REDACTED]%; and
 - (b) the last 90 calendar days of the Bedding-In Period, when the Total Trips Availability Ratio for Contract Month m is greater than or equal to [REDACTED]%, the Failure Points awarded for Contract Month m shall be 0. No adjustment will be made to the Failure Points awarded when, during the Bedding-In Period, the Total Trips Availability Ratio for Contract Month m is less than or equal to [REDACTED]%. During the last Contract

Month of such last 90 calendar days of the Bedding-In Period, for the purposes of calculating the Total Trips Availability Ratio and awarding Failure Points, a pro rata adjustment shall be made to reflect the actual number of days in the relevant Contract Month that the Bedding-In Period applies.

1.5 Subject to Section 1.6 of this Part G, for the purposes of this Section 1 of this Part G, during any Relevant Labour Action Period, in respect of any Availability Failures, Quality Failures, Service Failures or System Events occurring or arising as a result of, or attributable to, the Relevant Labour Action, the maximum aggregate number of Failure Points that can be awarded is **[REDACTED]** in each Contract Month for up to and including four Contract Months. Failure Points awarded during any Relevant Labour Action Period in respect of any Availability Failures, Quality Failures, Service Failures or System Events occurring or arising as a result of, or attributable to, the Relevant Labour Action following the fourth Contract Month are not subject to any maximum number of Failure Points pursuant to this Section 1.5 of this Part G.

1.6 During any Relevant Labour Action Period:

- (a) Project Co shall take commercially reasonable steps to mitigate the consequences of the Relevant Labour Action upon the performance of its obligations under the Project Agreement, shall resume performance of its obligations affected by Relevant Labour Action as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that Project Co does not comply with its obligations under this Section 1.6 of this Part G, such failure shall preclude such Party's entitlement to relief pursuant to Section 1.5 of this Part G.
- (c) Project Co shall give written Notice to Contracting Authority within 5 Business Days of Project Co becoming aware of the Relevant Labour Action. Such initial Notice shall give sufficient details to identify the particular event claimed to be a Relevant Labour Action.
- (d) A subsequent written Notice shall be given by Project Co to Contracting Authority within a further 5 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 the effect of the Relevant Labour Action on the ability of Project Co to perform, the action being taken in accordance with Section 1.6(a) of this Part G, the date of the occurrence of the Relevant Labour Action, and an estimate of the period of time required to overcome the Relevant Labour Action and/or its effects.
- (e) Project Co shall notify Contracting Authority as soon as the consequences of the Relevant Labour Action 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 1.6(d) of this Part G, Project Co receives or becomes aware of any further information relating to the Relevant Labour Action and/or any failure to perform, Project Co shall submit such further information to Contracting Authority as soon as reasonably possible.

PART H: MONITORING AND REPORTING

Section 1. Sources of Information

1.1 The table below sets out the sources of the factual information regarding the performance of the Project Co Services for the relevant Contract Month for the purposes of calculating the relevant Monthly Service Payment, the Deductions assessed and the number of Failure Points awarded.

| Item | Source |
|---|---|
| Number of Scheduled Base Trips for Peak and Off-Peak Periods for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Number of Scheduled Special Trips for Peak and Off-Peak Periods for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Maximum Available Points for Scheduled Base Trips for Peak Periods and Off-Peak Periods for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Maximum Available Points for Scheduled Special Trips for Peak Periods and Off-Peak Periods for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Accumulated Points for Scheduled Base Trips for Peak and Off-Peak Periods for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Accumulated Points for Scheduled Special Trips for Peak and Off-Peak Periods for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Number of Scheduled Trips, including separate number for Scheduled Base Trips and Scheduled Special Trips, which were “missed” or not traveled by Project Co due to a Non-Project Co Cause, for Peak and Off-Peak Periods for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Total number and types of System Events (including details of triggering event for each) for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Passenger Facility Availability Failure Hours for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |

| | |
|---|---|
| Scheduled Passenger Facility Hours for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Number of Scheduled Passenger Facility Hours which were “missed” by Project Co due to a Non-Project Co Cause, for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Total number of Passenger Facility Events (including details of triggering event for each) for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Quality Failures and associated Failure Points for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Service Failures and associated Failure Points for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Energy Failures for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |
| Total sum of Failure Points assigned due to the occurrence of Trip Availability Failures, Passenger Facility Availability Failures, System Events and Passenger Facility Events for Contract Month <i>m</i> | Monthly Performance Monitoring Report for Contract Month <i>m</i> |

Section 2. Failure by Project Co to Monitor or Report

- 2.1 If there shall be any error or omission in the Monthly Performance Monitoring Report for any Contract Month, Project Co and Contracting Authority shall agree the amendment to the Monthly Performance Monitoring Report or, failing agreement within 10 days of notification of the error or omission which shall not be made more than 2 calendar months following the relevant Monthly Performance Monitoring Report, except in the circumstances referred to in Section 2.4 of this Part H either party may refer the matter to the Dispute Resolution Procedure.
- 2.2 If Project Co fails to monitor or accurately report any Availability Failure, Service Failure, Quality Failure, or Energy Failure then, without prejudice to the Deduction to be made in respect of the relevant Availability Failure, Service Failure, Quality Failure, or Energy Failure, the failure to monitor or report shall be deemed to be a new Quality Failure, and Project Co shall be awarded [REDACTED] Quality Failure points for each occurrence of such Quality Failure, unless the circumstances set out in Section 2.4 of this Part H apply, in which case Project Co shall be awarded [REDACTED] Quality Failure points for each such occurrence.
- 2.3 In the event that any inspection or investigation by Contracting Authority of records made available pursuant to the Project Agreement reveals any further matters of the type referred to in Sections 2.1

and 2.2 of this Part H, those matters shall be dealt with in accordance with Section 2.1 and 2.2 of this Part H, as appropriate, and Contracting Authority shall, in addition, be entitled to make Deductions in respect of any Availability Failure, Service Failure, Quality Failure, or Energy Failure, in the manner prescribed in Part C. Any such Deductions shall be made from the Monthly Service Payment, payable in respect of the Contract Month in which the relevant matters were revealed by Contracting Authority's investigations or, to the extent that Contracting Authority is unable to make any further deductions from the Monthly Service Payment in respect of that Contract Month by virtue of Section 1.2 of Part C, may be carried forward and deducted from Monthly Service Payments due in respect of subsequent Contract Months.

- 2.4 For the purposes of Sections 2.1 and 2.2 of this Part H the relevant circumstances are:
- (a) fraudulent action or inaction;
 - (b) deliberate misrepresentation; or
 - (c) gross misconduct or incompetence in each case on the part of Project Co or a Project Co Party.
- 2.5 The provisions of this Part H shall be without prejudice to any rights of Contracting Authority pursuant to Sections 32, 45 and 60 of the Project Agreement.

APPENDIX A: ANNUAL SERVICE PAYMENT INPUTS

Table 1

| COLUMN A | COLUMN B | COLUMN C |
|----------------------|---|---|
| Contract Year | Annual Service Payment – Capital Portion | Annual Service Payment – Service Portion (in Inflation Base Date prices) |
| 1 | \$(REDACTED) | \$(REDACTED) |
| 2 | \$(REDACTED) | \$(REDACTED) |
| 3 | \$(REDACTED) | \$(REDACTED) |
| 4 | \$(REDACTED) | \$(REDACTED) |
| 5 | \$(REDACTED) | \$(REDACTED) |
| 6 | \$(REDACTED) | \$(REDACTED) |
| 7 | \$(REDACTED) | \$(REDACTED) |
| 8 | \$(REDACTED) | \$(REDACTED) |
| 9 | \$(REDACTED) | \$(REDACTED) |
| 10 | \$(REDACTED) | \$(REDACTED) |
| 11 | \$(REDACTED) | \$(REDACTED) |
| 12 | \$(REDACTED) | \$(REDACTED) |
| 13 | \$(REDACTED) | \$(REDACTED) |
| 14 | \$(REDACTED) | \$(REDACTED) |
| 15 | \$(REDACTED) | \$(REDACTED) |
| 16 | \$(REDACTED) | \$(REDACTED) |
| 17 | \$(REDACTED) | \$(REDACTED) |
| 18 | \$(REDACTED) | \$(REDACTED) |

| | | |
|----|--------------|--------------|
| 19 | \$(REDACTED) | \$(REDACTED) |
| 20 | \$(REDACTED) | \$(REDACTED) |
| 21 | \$(REDACTED) | \$(REDACTED) |
| 22 | \$(REDACTED) | \$(REDACTED) |
| 23 | \$(REDACTED) | \$(REDACTED) |
| 24 | \$(REDACTED) | \$(REDACTED) |
| 25 | \$(REDACTED) | \$(REDACTED) |
| 26 | \$(REDACTED) | \$(REDACTED) |
| 27 | \$(REDACTED) | \$(REDACTED) |
| 28 | \$(REDACTED) | \$(REDACTED) |
| 29 | \$(REDACTED) | \$(REDACTED) |
| 30 | \$(REDACTED) | \$(REDACTED) |
| 31 | \$(REDACTED) | \$(REDACTED) |

Table 2

| COLUMN A | COLUMN B | COLUMN C |
|-----------------------|------------------------------|--|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 1 | Sep 27, 2024 / Sep 30, 2024 | \$(REDACTED) |
| 2 | Oct 01, 2024 / Oct 31, 2024 | \$(REDACTED) |
| 3 | Nov 01, 2024 / Nov 30, 2024 | \$(REDACTED) |
| 4 | Dec 01, 2024 / Dec 31, 2024 | \$(REDACTED) |
| 5 | Jan 01, 2025 / Jan 31, 2025 | \$(REDACTED) |
| 6 | Feb 01, 2025 / Feb 28, 2025 | \$(REDACTED) |
| 7 | Mar 01, 2025 / Mar 31, 2025 | \$(REDACTED) |
| 8 | Apr 01, 2025 / Apr 30, 2025 | \$(REDACTED) |
| 9 | May 01, 2025 / May 31, 2025 | \$(REDACTED) |
| 10 | Jun 01, 2025 / Jun 30, 2025 | \$(REDACTED) |
| 11 | Jul 01, 2025 / Jul 31, 2025 | \$(REDACTED) |
| 12 | Aug 01, 2025 / Aug 31, 2025 | \$(REDACTED) |
| 13 | Sep 01, 2025 / Sep 30, 2025 | \$(REDACTED) |
| 14 | Oct 01, 2025 / Oct 31, 2025 | \$(REDACTED) |
| 15 | Nov 01, 2025 / Nov 30, 2025 | \$(REDACTED) |
| 16 | Dec 01, 2025 / Dec 31, 2025 | \$(REDACTED) |
| 17 | Jan 01, 2026 / Jan 31, 2026 | \$(REDACTED) |
| 18 | Feb 01, 2026 / Feb 28, 2026 | \$(REDACTED) |
| 19 | Mar 01, 2026 / Mar 31, 2026 | \$(REDACTED) |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 20 | Apr 01, 2026 / Apr 30, 2026 | [\$REDACTED] |
| 21 | May 01, 2026 / May 31, 2026 | [\$REDACTED] |
| 22 | Jun 01, 2026 / Jun 30, 2026 | [\$REDACTED] |
| 23 | Jul 01, 2026 / Jul 31, 2026 | [\$REDACTED] |
| 24 | Aug 01, 2026 / Aug 31, 2026 | [\$REDACTED] |
| 25 | Sep 01, 2026 / Sep 30, 2026 | [\$REDACTED] |
| 26 | Oct 01, 2026 / Oct 31, 2026 | [\$REDACTED] |
| 27 | Nov 01, 2026 / Nov 30, 2026 | [\$REDACTED] |
| 28 | Dec 01, 2026 / Dec 31, 2026 | [\$REDACTED] |
| 29 | Jan 01, 2027 / Jan 31, 2027 | [\$REDACTED] |
| 30 | Feb 01, 2027 / Feb 28, 2027 | [\$REDACTED] |
| 31 | Mar 01, 2027 / Mar 31, 2027 | [\$REDACTED] |
| 32 | Apr 01, 2027 / Apr 30, 2027 | [\$REDACTED] |
| 33 | May 01, 2027 / May 31, 2027 | [\$REDACTED] |
| 34 | Jun 01, 2027 / Jun 30, 2027 | [\$REDACTED] |
| 35 | Jul 01, 2027 / Jul 31, 2027 | [\$REDACTED] |
| 36 | Aug 01, 2027 / Aug 31, 2027 | [\$REDACTED] |
| 37 | Sep 01, 2027 / Sep 30, 2027 | [\$REDACTED] |
| 38 | Oct 01, 2027 / Oct 31, 2027 | [\$REDACTED] |
| 39 | Nov 01, 2027 / Nov 30, 2027 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 40 | Dec 01, 2027 / Dec 31, 2027 | [\$REDACTED] |
| 41 | Jan 01, 2028 / Jan 31, 2028 | [\$REDACTED] |
| 42 | Feb 01, 2028 / Feb 29, 2028 | [\$REDACTED] |
| 43 | Mar 01, 2028 / Mar 31, 2028 | [\$REDACTED] |
| 44 | Apr 01, 2028 / Apr 30, 2028 | [\$REDACTED] |
| 45 | May 01, 2028 / May 31, 2028 | [\$REDACTED] |
| 46 | Jun 01, 2028 / Jun 30, 2028 | [\$REDACTED] |
| 47 | Jul 01, 2028 / Jul 31, 2028 | [\$REDACTED] |
| 48 | Aug 01, 2028 / Aug 31, 2028 | [\$REDACTED] |
| 49 | Sep 01, 2028 / Sep 30, 2028 | [\$REDACTED] |
| 50 | Oct 01, 2028 / Oct 31, 2028 | [\$REDACTED] |
| 51 | Nov 01, 2028 / Nov 30, 2028 | [\$REDACTED] |
| 52 | Dec 01, 2028 / Dec 31, 2028 | [\$REDACTED] |
| 53 | Jan 01, 2029 / Jan 31, 2029 | [\$REDACTED] |
| 54 | Feb 01, 2029 / Feb 28, 2029 | [\$REDACTED] |
| 55 | Mar 01, 2029 / Mar 31, 2029 | [\$REDACTED] |
| 56 | Apr 01, 2029 / Apr 30, 2029 | [\$REDACTED] |
| 57 | May 01, 2029 / May 31, 2029 | [\$REDACTED] |
| 58 | Jun 01, 2029 / Jun 30, 2029 | [\$REDACTED] |
| 59 | Jul 01, 2029 / Jul 31, 2029 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 60 | Aug 01, 2029 / Aug 31, 2029 | [\$REDACTED] |
| 61 | Sep 01, 2029 / Sep 30, 2029 | [\$REDACTED] |
| 62 | Oct 01, 2029 / Oct 31, 2029 | [\$REDACTED] |
| 63 | Nov 01, 2029 / Nov 30, 2029 | [\$REDACTED] |
| 64 | Dec 01, 2029 / Dec 31, 2029 | [\$REDACTED] |
| 65 | Jan 01, 2030 / Jan 31, 2030 | [\$REDACTED] |
| 66 | Feb 01, 2030 / Feb 28, 2030 | [\$REDACTED] |
| 67 | Mar 01, 2030 / Mar 31, 2030 | [\$REDACTED] |
| 68 | Apr 01, 2030 / Apr 30, 2030 | [\$REDACTED] |
| 69 | May 01, 2030 / May 31, 2030 | [\$REDACTED] |
| 70 | Jun 01, 2030 / Jun 30, 2030 | [\$REDACTED] |
| 71 | Jul 01, 2030 / Jul 31, 2030 | [\$REDACTED] |
| 72 | Aug 01, 2030 / Aug 31, 2030 | [\$REDACTED] |
| 73 | Sep 01, 2030 / Sep 30, 2030 | [\$REDACTED] |
| 74 | Oct 01, 2030 / Oct 31, 2030 | [\$REDACTED] |
| 75 | Nov 01, 2030 / Nov 30, 2030 | [\$REDACTED] |
| 76 | Dec 01, 2030 / Dec 31, 2030 | [\$REDACTED] |
| 77 | Jan 01, 2031 / Jan 31, 2031 | [\$REDACTED] |
| 78 | Feb 01, 2031 / Feb 28, 2031 | [\$REDACTED] |
| 79 | Mar 01, 2031 / Mar 31, 2031 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 80 | Apr 01, 2031 / Apr 30, 2031 | [\$REDACTED] |
| 81 | May 01, 2031 / May 31, 2031 | [\$REDACTED] |
| 82 | Jun 01, 2031 / Jun 30, 2031 | [\$REDACTED] |
| 83 | Jul 01, 2031 / Jul 31, 2031 | [\$REDACTED] |
| 84 | Aug 01, 2031 / Aug 31, 2031 | [\$REDACTED] |
| 85 | Sep 01, 2031 / Sep 30, 2031 | [\$REDACTED] |
| 86 | Oct 01, 2031 / Oct 31, 2031 | [\$REDACTED] |
| 87 | Nov 01, 2031 / Nov 30, 2031 | [\$REDACTED] |
| 88 | Dec 01, 2031 / Dec 31, 2031 | [\$REDACTED] |
| 89 | Jan 01, 2032 / Jan 31, 2032 | [\$REDACTED] |
| 90 | Feb 01, 2032 / Feb 29, 2032 | [\$REDACTED] |
| 91 | Mar 01, 2032 / Mar 31, 2032 | [\$REDACTED] |
| 92 | Apr 01, 2032 / Apr 30, 2032 | [\$REDACTED] |
| 93 | May 01, 2032 / May 31, 2032 | [\$REDACTED] |
| 94 | Jun 01, 2032 / Jun 30, 2032 | [\$REDACTED] |
| 95 | Jul 01, 2032 / Jul 31, 2032 | [\$REDACTED] |
| 96 | Aug 01, 2032 / Aug 31, 2032 | [\$REDACTED] |
| 97 | Sep 01, 2032 / Sep 30, 2032 | [\$REDACTED] |
| 98 | Oct 01, 2032 / Oct 31, 2032 | [\$REDACTED] |
| 99 | Nov 01, 2032 / Nov 30, 2032 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 100 | Dec 01, 2032 / Dec 31, 2032 | [\$REDACTED] |
| 101 | Jan 01, 2033 / Jan 31, 2033 | [\$REDACTED] |
| 102 | Feb 01, 2033 / Feb 28, 2033 | [\$REDACTED] |
| 103 | Mar 01, 2033 / Mar 31, 2033 | [\$REDACTED] |
| 104 | Apr 01, 2033 / Apr 30, 2033 | [\$REDACTED] |
| 105 | May 01, 2033 / May 31, 2033 | [\$REDACTED] |
| 106 | Jun 01, 2033 / Jun 30, 2033 | [\$REDACTED] |
| 107 | Jul 01, 2033 / Jul 31, 2033 | [\$REDACTED] |
| 108 | Aug 01, 2033 / Aug 31, 2033 | [\$REDACTED] |
| 109 | Sep 01, 2033 / Sep 30, 2033 | [\$REDACTED] |
| 110 | Oct 01, 2033 / Oct 31, 2033 | [\$REDACTED] |
| 111 | Nov 01, 2033 / Nov 30, 2033 | [\$REDACTED] |
| 112 | Dec 01, 2033 / Dec 31, 2033 | [\$REDACTED] |
| 113 | Jan 01, 2034 / Jan 31, 2034 | [\$REDACTED] |
| 114 | Feb 01, 2034 / Feb 28, 2034 | [\$REDACTED] |
| 115 | Mar 01, 2034 / Mar 31, 2034 | [\$REDACTED] |
| 116 | Apr 01, 2034 / Apr 30, 2034 | [\$REDACTED] |
| 117 | May 01, 2034 / May 31, 2034 | [\$REDACTED] |
| 118 | Jun 01, 2034 / Jun 30, 2034 | [\$REDACTED] |
| 119 | Jul 01, 2034 / Jul 31, 2034 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 120 | Aug 01, 2034 / Aug 31, 2034 | [\$REDACTED] |
| 121 | Sep 01, 2034 / Sep 30, 2034 | [\$REDACTED] |
| 122 | Oct 01, 2034 / Oct 31, 2034 | [\$REDACTED] |
| 123 | Nov 01, 2034 / Nov 30, 2034 | [\$REDACTED] |
| 124 | Dec 01, 2034 / Dec 31, 2034 | [\$REDACTED] |
| 125 | Jan 01, 2035 / Jan 31, 2035 | [\$REDACTED] |
| 126 | Feb 01, 2035 / Feb 28, 2035 | [\$REDACTED] |
| 127 | Mar 01, 2035 / Mar 31, 2035 | [\$REDACTED] |
| 128 | Apr 01, 2035 / Apr 30, 2035 | [\$REDACTED] |
| 129 | May 01, 2035 / May 31, 2035 | [\$REDACTED] |
| 130 | Jun 01, 2035 / Jun 30, 2035 | [\$REDACTED] |
| 131 | Jul 01, 2035 / Jul 31, 2035 | [\$REDACTED] |
| 132 | Aug 01, 2035 / Aug 31, 2035 | [\$REDACTED] |
| 133 | Sep 01, 2035 / Sep 30, 2035 | [\$REDACTED] |
| 134 | Oct 01, 2035 / Oct 31, 2035 | [\$REDACTED] |
| 135 | Nov 01, 2035 / Nov 30, 2035 | [\$REDACTED] |
| 136 | Dec 01, 2035 / Dec 31, 2035 | [\$REDACTED] |
| 137 | Jan 01, 2036 / Jan 31, 2036 | [\$REDACTED] |
| 138 | Feb 01, 2036 / Feb 29, 2036 | [\$REDACTED] |
| 139 | Mar 01, 2036 / Mar 31, 2036 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 140 | Apr 01, 2036 / Apr 30, 2036 | [\$REDACTED] |
| 141 | May 01, 2036 / May 31, 2036 | [\$REDACTED] |
| 142 | Jun 01, 2036 / Jun 30, 2036 | [\$REDACTED] |
| 143 | Jul 01, 2036 / Jul 31, 2036 | [\$REDACTED] |
| 144 | Aug 01, 2036 / Aug 31, 2036 | [\$REDACTED] |
| 145 | Sep 01, 2036 / Sep 30, 2036 | [\$REDACTED] |
| 146 | Oct 01, 2036 / Oct 31, 2036 | [\$REDACTED] |
| 147 | Nov 01, 2036 / Nov 30, 2036 | [\$REDACTED] |
| 148 | Dec 01, 2036 / Dec 31, 2036 | [\$REDACTED] |
| 149 | Jan 01, 2037 / Jan 31, 2037 | [\$REDACTED] |
| 150 | Feb 01, 2037 / Feb 28, 2037 | [\$REDACTED] |
| 151 | Mar 01, 2037 / Mar 31, 2037 | [\$REDACTED] |
| 152 | Apr 01, 2037 / Apr 30, 2037 | [\$REDACTED] |
| 153 | May 01, 2037 / May 31, 2037 | [\$REDACTED] |
| 154 | Jun 01, 2037 / Jun 30, 2037 | [\$REDACTED] |
| 155 | Jul 01, 2037 / Jul 31, 2037 | [\$REDACTED] |
| 156 | Aug 01, 2037 / Aug 31, 2037 | [\$REDACTED] |
| 157 | Sep 01, 2037 / Sep 30, 2037 | [\$REDACTED] |
| 158 | Oct 01, 2037 / Oct 31, 2037 | [\$REDACTED] |
| 159 | Nov 01, 2037 / Nov 30, 2037 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 160 | Dec 01, 2037 / Dec 31, 2037 | [\$REDACTED] |
| 161 | Jan 01, 2038 / Jan 31, 2038 | [\$REDACTED] |
| 162 | Feb 01, 2038 / Feb 28, 2038 | [\$REDACTED] |
| 163 | Mar 01, 2038 / Mar 31, 2038 | [\$REDACTED] |
| 164 | Apr 01, 2038 / Apr 30, 2038 | [\$REDACTED] |
| 165 | May 01, 2038 / May 31, 2038 | [\$REDACTED] |
| 166 | Jun 01, 2038 / Jun 30, 2038 | [\$REDACTED] |
| 167 | Jul 01, 2038 / Jul 31, 2038 | [\$REDACTED] |
| 168 | Aug 01, 2038 / Aug 31, 2038 | [\$REDACTED] |
| 169 | Sep 01, 2038 / Sep 30, 2038 | [\$REDACTED] |
| 170 | Oct 01, 2038 / Oct 31, 2038 | [\$REDACTED] |
| 171 | Nov 01, 2038 / Nov 30, 2038 | [\$REDACTED] |
| 172 | Dec 01, 2038 / Dec 31, 2038 | [\$REDACTED] |
| 173 | Jan 01, 2039 / Jan 31, 2039 | [\$REDACTED] |
| 174 | Feb 01, 2039 / Feb 28, 2039 | [\$REDACTED] |
| 175 | Mar 01, 2039 / Mar 31, 2039 | [\$REDACTED] |
| 176 | Apr 01, 2039 / Apr 30, 2039 | [\$REDACTED] |
| 177 | May 01, 2039 / May 31, 2039 | [\$REDACTED] |
| 178 | Jun 01, 2039 / Jun 30, 2039 | [\$REDACTED] |
| 179 | Jul 01, 2039 / Jul 31, 2039 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 180 | Aug 01, 2039 / Aug 31, 2039 | [\$REDACTED] |
| 181 | Sep 01, 2039 / Sep 30, 2039 | [\$REDACTED] |
| 182 | Oct 01, 2039 / Oct 31, 2039 | [\$REDACTED] |
| 183 | Nov 01, 2039 / Nov 30, 2039 | [\$REDACTED] |
| 184 | Dec 01, 2039 / Dec 31, 2039 | [\$REDACTED] |
| 185 | Jan 01, 2040 / Jan 31, 2040 | [\$REDACTED] |
| 186 | Feb 01, 2040 / Feb 29, 2040 | [\$REDACTED] |
| 187 | Mar 01, 2040 / Mar 31, 2040 | [\$REDACTED] |
| 188 | Apr 01, 2040 / Apr 30, 2040 | [\$REDACTED] |
| 189 | May 01, 2040 / May 31, 2040 | [\$REDACTED] |
| 190 | Jun 01, 2040 / Jun 30, 2040 | [\$REDACTED] |
| 191 | Jul 01, 2040 / Jul 31, 2040 | [\$REDACTED] |
| 192 | Aug 01, 2040 / Aug 31, 2040 | [\$REDACTED] |
| 193 | Sep 01, 2040 / Sep 30, 2040 | [\$REDACTED] |
| 194 | Oct 01, 2040 / Oct 31, 2040 | [\$REDACTED] |
| 195 | Nov 01, 2040 / Nov 30, 2040 | [\$REDACTED] |
| 196 | Dec 01, 2040 / Dec 31, 2040 | [\$REDACTED] |
| 197 | Jan 01, 2041 / Jan 31, 2041 | [\$REDACTED] |
| 198 | Feb 01, 2041 / Feb 28, 2041 | [\$REDACTED] |
| 199 | Mar 01, 2041 / Mar 31, 2041 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 200 | Apr 01, 2041 / Apr 30, 2041 | [\$REDACTED] |
| 201 | May 01, 2041 / May 31, 2041 | [\$REDACTED] |
| 202 | Jun 01, 2041 / Jun 30, 2041 | [\$REDACTED] |
| 203 | Jul 01, 2041 / Jul 31, 2041 | [\$REDACTED] |
| 204 | Aug 01, 2041 / Aug 31, 2041 | [\$REDACTED] |
| 205 | Sep 01, 2041 / Sep 30, 2041 | [\$REDACTED] |
| 206 | Oct 01, 2041 / Oct 31, 2041 | [\$REDACTED] |
| 207 | Nov 01, 2041 / Nov 30, 2041 | [\$REDACTED] |
| 208 | Dec 01, 2041 / Dec 31, 2041 | [\$REDACTED] |
| 209 | Jan 01, 2042 / Jan 31, 2042 | [\$REDACTED] |
| 210 | Feb 01, 2042 / Feb 28, 2042 | [\$REDACTED] |
| 211 | Mar 01, 2042 / Mar 31, 2042 | [\$REDACTED] |
| 212 | Apr 01, 2042 / Apr 30, 2042 | [\$REDACTED] |
| 213 | May 01, 2042 / May 31, 2042 | [\$REDACTED] |
| 214 | Jun 01, 2042 / Jun 30, 2042 | [\$REDACTED] |
| 215 | Jul 01, 2042 / Jul 31, 2042 | [\$REDACTED] |
| 216 | Aug 01, 2042 / Aug 31, 2042 | [\$REDACTED] |
| 217 | Sep 01, 2042 / Sep 30, 2042 | [\$REDACTED] |
| 218 | Oct 01, 2042 / Oct 31, 2042 | [\$REDACTED] |
| 219 | Nov 01, 2042 / Nov 30, 2042 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 220 | Dec 01, 2042 / Dec 31, 2042 | [\$REDACTED] |
| 221 | Jan 01, 2043 / Jan 31, 2043 | [\$REDACTED] |
| 222 | Feb 01, 2043 / Feb 28, 2043 | [\$REDACTED] |
| 223 | Mar 01, 2043 / Mar 31, 2043 | [\$REDACTED] |
| 224 | Apr 01, 2043 / Apr 30, 2043 | [\$REDACTED] |
| 225 | May 01, 2043 / May 31, 2043 | [\$REDACTED] |
| 226 | Jun 01, 2043 / Jun 30, 2043 | [\$REDACTED] |
| 227 | Jul 01, 2043 / Jul 31, 2043 | [\$REDACTED] |
| 228 | Aug 01, 2043 / Aug 31, 2043 | [\$REDACTED] |
| 229 | Sep 01, 2043 / Sep 30, 2043 | [\$REDACTED] |
| 230 | Oct 01, 2043 / Oct 31, 2043 | [\$REDACTED] |
| 231 | Nov 01, 2043 / Nov 30, 2043 | [\$REDACTED] |
| 232 | Dec 01, 2043 / Dec 31, 2043 | [\$REDACTED] |
| 233 | Jan 01, 2044 / Jan 31, 2044 | [\$REDACTED] |
| 234 | Feb 01, 2044 / Feb 29, 2044 | [\$REDACTED] |
| 235 | Mar 01, 2044 / Mar 31, 2044 | [\$REDACTED] |
| 236 | Apr 01, 2044 / Apr 30, 2044 | [\$REDACTED] |
| 237 | May 01, 2044 / May 31, 2044 | [\$REDACTED] |
| 238 | Jun 01, 2044 / Jun 30, 2044 | [\$REDACTED] |
| 239 | Jul 01, 2044 / Jul 31, 2044 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 240 | Aug 01, 2044 / Aug 31, 2044 | [\$REDACTED] |
| 241 | Sep 01, 2044 / Sep 30, 2044 | [\$REDACTED] |
| 242 | Oct 01, 2044 / Oct 31, 2044 | [\$REDACTED] |
| 243 | Nov 01, 2044 / Nov 30, 2044 | [\$REDACTED] |
| 244 | Dec 01, 2044 / Dec 31, 2044 | [\$REDACTED] |
| 245 | Jan 01, 2045 / Jan 31, 2045 | [\$REDACTED] |
| 246 | Feb 01, 2045 / Feb 28, 2045 | [\$REDACTED] |
| 247 | Mar 01, 2045 / Mar 31, 2045 | [\$REDACTED] |
| 248 | Apr 01, 2045 / Apr 30, 2045 | [\$REDACTED] |
| 249 | May 01, 2045 / May 31, 2045 | [\$REDACTED] |
| 250 | Jun 01, 2045 / Jun 30, 2045 | [\$REDACTED] |
| 251 | Jul 01, 2045 / Jul 31, 2045 | [\$REDACTED] |
| 252 | Aug 01, 2045 / Aug 31, 2045 | [\$REDACTED] |
| 253 | Sep 01, 2045 / Sep 30, 2045 | [\$REDACTED] |
| 254 | Oct 01, 2045 / Oct 31, 2045 | [\$REDACTED] |
| 255 | Nov 01, 2045 / Nov 30, 2045 | [\$REDACTED] |
| 256 | Dec 01, 2045 / Dec 31, 2045 | [\$REDACTED] |
| 257 | Jan 01, 2046 / Jan 31, 2046 | [\$REDACTED] |
| 258 | Feb 01, 2046 / Feb 28, 2046 | [\$REDACTED] |
| 259 | Mar 01, 2046 / Mar 31, 2046 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 260 | Apr 01, 2046 / Apr 30, 2046 | [\$REDACTED] |
| 261 | May 01, 2046 / May 31, 2046 | [\$REDACTED] |
| 262 | Jun 01, 2046 / Jun 30, 2046 | [\$REDACTED] |
| 263 | Jul 01, 2046 / Jul 31, 2046 | [\$REDACTED] |
| 264 | Aug 01, 2046 / Aug 31, 2046 | [\$REDACTED] |
| 265 | Sep 01, 2046 / Sep 30, 2046 | [\$REDACTED] |
| 266 | Oct 01, 2046 / Oct 31, 2046 | [\$REDACTED] |
| 267 | Nov 01, 2046 / Nov 30, 2046 | [\$REDACTED] |
| 268 | Dec 01, 2046 / Dec 31, 2046 | [\$REDACTED] |
| 269 | Jan 01, 2047 / Jan 31, 2047 | [\$REDACTED] |
| 270 | Feb 01, 2047 / Feb 28, 2047 | [\$REDACTED] |
| 271 | Mar 01, 2047 / Mar 31, 2047 | [\$REDACTED] |
| 272 | Apr 01, 2047 / Apr 30, 2047 | [\$REDACTED] |
| 273 | May 01, 2047 / May 31, 2047 | [\$REDACTED] |
| 274 | Jun 01, 2047 / Jun 30, 2047 | [\$REDACTED] |
| 275 | Jul 01, 2047 / Jul 31, 2047 | [\$REDACTED] |
| 276 | Aug 01, 2047 / Aug 31, 2047 | [\$REDACTED] |
| 277 | Sep 01, 2047 / Sep 30, 2047 | [\$REDACTED] |
| 278 | Oct 01, 2047 / Oct 31, 2047 | [\$REDACTED] |
| 279 | Nov 01, 2047 / Nov 30, 2047 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 280 | Dec 01, 2047 / Dec 31, 2047 | [\$REDACTED] |
| 281 | Jan 01, 2048 / Jan 31, 2048 | [\$REDACTED] |
| 282 | Feb 01, 2048 / Feb 29, 2048 | [\$REDACTED] |
| 283 | Mar 01, 2048 / Mar 31, 2048 | [\$REDACTED] |
| 284 | Apr 01, 2048 / Apr 30, 2048 | [\$REDACTED] |
| 285 | May 01, 2048 / May 31, 2048 | [\$REDACTED] |
| 286 | Jun 01, 2048 / Jun 30, 2048 | [\$REDACTED] |
| 287 | Jul 01, 2048 / Jul 31, 2048 | [\$REDACTED] |
| 288 | Aug 01, 2048 / Aug 31, 2048 | [\$REDACTED] |
| 289 | Sep 01, 2048 / Sep 30, 2048 | [\$REDACTED] |
| 290 | Oct 01, 2048 / Oct 31, 2048 | [\$REDACTED] |
| 291 | Nov 01, 2048 / Nov 30, 2048 | [\$REDACTED] |
| 292 | Dec 01, 2048 / Dec 31, 2048 | [\$REDACTED] |
| 293 | Jan 01, 2049 / Jan 31, 2049 | [\$REDACTED] |
| 294 | Feb 01, 2049 / Feb 28, 2049 | [\$REDACTED] |
| 295 | Mar 01, 2049 / Mar 31, 2049 | [\$REDACTED] |
| 296 | Apr 01, 2049 / Apr 30, 2049 | [\$REDACTED] |
| 297 | May 01, 2049 / May 31, 2049 | [\$REDACTED] |
| 298 | Jun 01, 2049 / Jun 30, 2049 | [\$REDACTED] |
| 299 | Jul 01, 2049 / Jul 31, 2049 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 300 | Aug 01, 2049 / Aug 31, 2049 | [\$REDACTED] |
| 301 | Sep 01, 2049 / Sep 30, 2049 | [\$REDACTED] |
| 302 | Oct 01, 2049 / Oct 31, 2049 | [\$REDACTED] |
| 303 | Nov 01, 2049 / Nov 30, 2049 | [\$REDACTED] |
| 304 | Dec 01, 2049 / Dec 31, 2049 | [\$REDACTED] |
| 305 | Jan 01, 2050 / Jan 31, 2050 | [\$REDACTED] |
| 306 | Feb 01, 2050 / Feb 28, 2050 | [\$REDACTED] |
| 307 | Mar 01, 2050 / Mar 31, 2050 | [\$REDACTED] |
| 308 | Apr 01, 2050 / Apr 30, 2050 | [\$REDACTED] |
| 309 | May 01, 2050 / May 31, 2050 | [\$REDACTED] |
| 310 | Jun 01, 2050 / Jun 30, 2050 | [\$REDACTED] |
| 311 | Jul 01, 2050 / Jul 31, 2050 | [\$REDACTED] |
| 312 | Aug 01, 2050 / Aug 31, 2050 | [\$REDACTED] |
| 313 | Sep 01, 2050 / Sep 30, 2050 | [\$REDACTED] |
| 314 | Oct 01, 2050 / Oct 31, 2050 | [\$REDACTED] |
| 315 | Nov 01, 2050 / Nov 30, 2050 | [\$REDACTED] |
| 316 | Dec 01, 2050 / Dec 31, 2050 | [\$REDACTED] |
| 317 | Jan 01, 2051 / Jan 31, 2051 | [\$REDACTED] |
| 318 | Feb 01, 2051 / Feb 28, 2051 | [\$REDACTED] |
| 319 | Mar 01, 2051 / Mar 31, 2051 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 320 | Apr 01, 2051 / Apr 30, 2051 | [\$REDACTED] |
| 321 | May 01, 2051 / May 31, 2051 | [\$REDACTED] |
| 322 | Jun 01, 2051 / Jun 30, 2051 | [\$REDACTED] |
| 323 | Jul 01, 2051 / Jul 31, 2051 | [\$REDACTED] |
| 324 | Aug 01, 2051 / Aug 31, 2051 | [\$REDACTED] |
| 325 | Sep 01, 2051 / Sep 30, 2051 | [\$REDACTED] |
| 326 | Oct 01, 2051 / Oct 31, 2051 | [\$REDACTED] |
| 327 | Nov 01, 2051 / Nov 30, 2051 | [\$REDACTED] |
| 328 | Dec 01, 2051 / Dec 31, 2051 | [\$REDACTED] |
| 329 | Jan 01, 2052 / Jan 31, 2052 | [\$REDACTED] |
| 330 | Feb 01, 2052 / Feb 29, 2052 | [\$REDACTED] |
| 331 | Mar 01, 2052 / Mar 31, 2052 | [\$REDACTED] |
| 332 | Apr 01, 2052 / Apr 30, 2052 | [\$REDACTED] |
| 333 | May 01, 2052 / May 31, 2052 | [\$REDACTED] |
| 334 | Jun 01, 2052 / Jun 30, 2052 | [\$REDACTED] |
| 335 | Jul 01, 2052 / Jul 31, 2052 | [\$REDACTED] |
| 336 | Aug 01, 2052 / Aug 31, 2052 | [\$REDACTED] |
| 337 | Sep 01, 2052 / Sep 30, 2052 | [\$REDACTED] |
| 338 | Oct 01, 2052 / Oct 31, 2052 | [\$REDACTED] |
| 339 | Nov 01, 2052 / Nov 30, 2052 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 340 | Dec 01, 2052 / Dec 31, 2052 | [\$REDACTED] |
| 341 | Jan 01, 2053 / Jan 31, 2053 | [\$REDACTED] |
| 342 | Feb 01, 2053 / Feb 28, 2053 | [\$REDACTED] |
| 343 | Mar 01, 2053 / Mar 31, 2053 | [\$REDACTED] |
| 344 | Apr 01, 2053 / Apr 30, 2053 | [\$REDACTED] |
| 345 | May 01, 2053 / May 31, 2053 | [\$REDACTED] |
| 346 | Jun 01, 2053 / Jun 30, 2053 | [\$REDACTED] |
| 347 | Jul 01, 2053 / Jul 31, 2053 | [\$REDACTED] |
| 348 | Aug 01, 2053 / Aug 31, 2053 | [\$REDACTED] |
| 349 | Sep 01, 2053 / Sep 30, 2053 | [\$REDACTED] |
| 350 | Oct 01, 2053 / Oct 31, 2053 | [\$REDACTED] |
| 351 | Nov 01, 2053 / Nov 30, 2053 | [\$REDACTED] |
| 352 | Dec 01, 2053 / Dec 31, 2053 | [\$REDACTED] |
| 353 | Jan 01, 2054 / Jan 31, 2054 | [\$REDACTED] |
| 354 | Feb 01, 2054 / Feb 28, 2054 | [\$REDACTED] |
| 355 | Mar 01, 2054 / Mar 31, 2054 | [\$REDACTED] |
| 356 | Apr 01, 2054 / Apr 30, 2054 | [\$REDACTED] |
| 357 | May 01, 2054 / May 31, 2054 | [\$REDACTED] |
| 358 | Jun 01, 2054 / Jun 30, 2054 | [\$REDACTED] |
| 359 | Jul 01, 2054 / Jul 31, 2054 | [\$REDACTED] |

| COLUMN A | COLUMN B | COLUMN C |
|----------------|-----------------------------|---|
| Contract Month | Period Start/End Date | Lifecycle Payment (in Inflation Base Date prices) |
| 360 | Aug 01, 2054 / Aug 31, 2054 | \${REDACTED} |
| 361 | Sep 01, 2054 / Sep 24, 2054 | \${REDACTED} |

APPENDIX B: DEDUCTION FACTORS

TRIP AVAILABILITY FAILURE DEDUCTION - TABLE 1

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 100.00% | [REDACTED]% |
| 99.90% | [REDACTED]% |
| 99.80% | [REDACTED]% |
| 99.70% | [REDACTED]% |
| 99.60% | [REDACTED]% |
| 99.50% | [REDACTED]% |
| 99.40% | [REDACTED]% |
| 99.30% | [REDACTED]% |
| 99.20% | [REDACTED]% |
| 99.10% | [REDACTED]% |
| 99.00% | [REDACTED]% |
| 98.90% | [REDACTED]% |
| 98.80% | [REDACTED]% |
| 98.70% | [REDACTED]% |
| 98.60% | [REDACTED]% |
| 98.50% | [REDACTED]% |
| 98.40% | [REDACTED]% |
| 98.30% | [REDACTED]% |
| 98.20% | [REDACTED]% |
| 98.10% | [REDACTED]% |
| 98.00% | [REDACTED]% |
| 97.90% | [REDACTED]% |
| 97.80% | [REDACTED]% |
| 97.70% | [REDACTED]% |
| 97.60% | [REDACTED]% |
| 97.50% | [REDACTED]% |
| 97.40% | [REDACTED]% |

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 97.30% | [REDACTED]% |
| 97.20% | [REDACTED]% |
| 97.10% | [REDACTED]% |
| 97.00% | [REDACTED]% |
| 96.90% | [REDACTED]% |
| 96.80% | [REDACTED]% |
| 96.70% | [REDACTED]% |
| 96.60% | [REDACTED]% |
| 96.50% | [REDACTED]% |
| 96.40% | [REDACTED]% |
| 96.30% | [REDACTED]% |
| 96.20% | [REDACTED]% |
| 96.10% | [REDACTED]% |
| 96.00% | [REDACTED]% |
| 95.90% | [REDACTED]% |
| 95.80% | [REDACTED]% |
| 95.70% | [REDACTED]% |
| 95.60% | [REDACTED]% |
| 95.50% | [REDACTED]% |
| 95.40% | [REDACTED]% |
| 95.30% | [REDACTED]% |
| 95.20% | [REDACTED]% |
| 95.10% | [REDACTED]% |
| 95.00% | [REDACTED]% |
| 94.90% | [REDACTED]% |
| 94.80% | [REDACTED]% |
| 94.70% | [REDACTED]% |

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 94.60% | [REDACTED]% |
| 94.50% | [REDACTED]% |
| 94.40% | [REDACTED]% |
| 94.30% | [REDACTED]% |
| 94.20% | [REDACTED]% |
| 94.10% | [REDACTED]% |
| 94.00% | [REDACTED]% |
| 93.90% | [REDACTED]% |
| 93.80% | [REDACTED]% |
| 93.70% | [REDACTED]% |
| 93.60% | [REDACTED]% |
| 93.50% | [REDACTED]% |
| 93.40% | [REDACTED]% |
| 93.30% | [REDACTED]% |
| 93.20% | [REDACTED]% |
| 93.10% | [REDACTED]% |
| 93.00% | [REDACTED]% |
| 92.90% | [REDACTED]% |
| 92.80% | [REDACTED]% |
| 92.70% | [REDACTED]% |
| 92.60% | [REDACTED]% |
| 92.50% | [REDACTED]% |
| 92.40% | [REDACTED]% |
| 92.30% | [REDACTED]% |
| 92.20% | [REDACTED]% |
| 92.10% | [REDACTED]% |
| 92.00% | [REDACTED]% |

TRIP AVAILABILITY FAILURE DEDUCTION - TABLE 1 (CONT'D)

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 91.90% | [REDACTED]% |
| 91.80% | [REDACTED]% |
| 91.70% | [REDACTED]% |
| 91.60% | [REDACTED]% |
| 91.50% | [REDACTED]% |
| 91.40% | [REDACTED]% |
| 91.30% | [REDACTED]% |
| 91.20% | [REDACTED]% |
| 91.10% | [REDACTED]% |
| 91.00% | [REDACTED]% |
| 90.90% | [REDACTED]% |
| 90.80% | [REDACTED]% |
| 90.70% | [REDACTED]% |
| 90.60% | [REDACTED]% |
| 90.50% | [REDACTED]% |
| 90.40% | [REDACTED]% |
| 90.30% | [REDACTED]% |
| 90.20% | [REDACTED]% |
| 90.10% | [REDACTED]% |
| 90.00% | [REDACTED]% |
| 89.90% | [REDACTED]% |
| 89.80% | [REDACTED]% |
| 89.70% | [REDACTED]% |
| 89.60% | [REDACTED]% |
| 89.50% | [REDACTED]% |
| 89.40% | [REDACTED]% |
| 89.30% | [REDACTED]% |

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 89.20% | [REDACTED]% |
| 89.10% | [REDACTED]% |
| 89.00% | [REDACTED]% |
| 88.90% | [REDACTED]% |
| 88.80% | [REDACTED]% |
| 88.70% | [REDACTED]% |
| 88.60% | [REDACTED]% |
| 88.50% | [REDACTED]% |
| 88.40% | [REDACTED]% |
| 88.30% | [REDACTED]% |
| 88.20% | [REDACTED]% |
| 88.10% | [REDACTED]% |
| 88.00% | [REDACTED]% |
| 87.90% | [REDACTED]% |
| 87.80% | [REDACTED]% |
| 87.70% | [REDACTED]% |
| 87.60% | [REDACTED]% |
| 87.50% | [REDACTED]% |
| 87.40% | [REDACTED]% |
| 87.30% | [REDACTED]% |
| 87.20% | [REDACTED]% |
| 87.10% | [REDACTED]% |
| 87.00% | [REDACTED]% |
| 86.90% | [REDACTED]% |
| 86.80% | [REDACTED]% |
| 86.70% | [REDACTED]% |
| 86.60% | [REDACTED]% |

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 86.50% | [REDACTED]% |
| 86.40% | [REDACTED]% |
| 86.30% | [REDACTED]% |
| 86.20% | [REDACTED]% |
| 86.10% | [REDACTED]% |
| 86.00% | [REDACTED]% |
| 85.90% | [REDACTED]% |
| 85.80% | [REDACTED]% |
| 85.70% | [REDACTED]% |
| 85.60% | [REDACTED]% |
| 85.50% | [REDACTED]% |
| 85.40% | [REDACTED]% |
| 85.30% | [REDACTED]% |
| 85.20% | [REDACTED]% |
| 85.10% | [REDACTED]% |
| 85.00% | [REDACTED]% |
| 84.90% | [REDACTED]% |
| 84.80% | [REDACTED]% |
| 84.70% | [REDACTED]% |
| 84.60% | [REDACTED]% |
| 84.50% | [REDACTED]% |
| 84.40% | [REDACTED]% |
| 84.30% | [REDACTED]% |
| 84.20% | [REDACTED]% |
| 84.10% | [REDACTED]% |
| 84.00% | [REDACTED]% |
| 83.90% | [REDACTED]% |

TRIP AVAILABILITY FAILURE DEDUCTION - TABLE 1 (CONT'D)

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 83.80% | [REDACTED]% |
| 83.70% | [REDACTED]% |
| 83.60% | [REDACTED]% |
| 83.50% | [REDACTED]% |
| 83.40% | [REDACTED]% |
| 83.30% | [REDACTED]% |
| 83.20% | [REDACTED]% |
| 83.10% | [REDACTED]% |
| 83.00% | [REDACTED]% |
| 82.90% | [REDACTED]% |
| 82.80% | [REDACTED]% |
| 82.70% | [REDACTED]% |
| 82.60% | [REDACTED]% |
| 82.50% | [REDACTED]% |
| 82.40% | [REDACTED]% |
| 82.30% | [REDACTED]% |
| 82.20% | [REDACTED]% |
| 82.10% | [REDACTED]% |
| 82.00% | [REDACTED]% |
| 81.90% | [REDACTED]% |
| 81.80% | [REDACTED]% |
| 81.70% | [REDACTED]% |
| 81.60% | [REDACTED]% |
| 81.50% | [REDACTED]% |
| 81.40% | [REDACTED]% |
| 81.30% | [REDACTED]% |
| 81.20% | [REDACTED]% |

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 81.10% | [REDACTED]% |
| 81.00% | [REDACTED]% |
| 80.90% | [REDACTED]% |
| 80.80% | [REDACTED]% |
| 80.70% | [REDACTED]% |
| 80.60% | [REDACTED]% |
| 80.50% | [REDACTED]% |
| 80.40% | [REDACTED]% |
| 80.30% | [REDACTED]% |
| 80.20% | [REDACTED]% |
| 80.10% | [REDACTED]% |
| 80.00% | [REDACTED]% |
| 79.90% | [REDACTED]% |
| 79.80% | [REDACTED]% |
| 79.70% | [REDACTED]% |
| 79.60% | [REDACTED]% |
| 79.50% | [REDACTED]% |
| 79.40% | [REDACTED]% |
| 79.30% | [REDACTED]% |
| 79.20% | [REDACTED]% |
| 79.10% | [REDACTED]% |
| 79.00% | [REDACTED]% |
| 78.90% | [REDACTED]% |
| 78.80% | [REDACTED]% |
| 78.70% | [REDACTED]% |
| 78.60% | [REDACTED]% |
| 78.50% | [REDACTED]% |

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 78.40% | [REDACTED]% |
| 78.30% | [REDACTED]% |
| 78.20% | [REDACTED]% |
| 78.10% | [REDACTED]% |
| 78.00% | [REDACTED]% |
| 77.90% | [REDACTED]% |
| 77.80% | [REDACTED]% |
| 77.70% | [REDACTED]% |
| 77.60% | [REDACTED]% |
| 77.50% | [REDACTED]% |
| 77.40% | [REDACTED]% |
| 77.30% | [REDACTED]% |
| 77.20% | [REDACTED]% |
| 77.10% | [REDACTED]% |
| 77.00% | [REDACTED]% |
| 76.90% | [REDACTED]% |
| 76.80% | [REDACTED]% |
| 76.70% | [REDACTED]% |
| 76.60% | [REDACTED]% |
| 76.50% | [REDACTED]% |
| 76.40% | [REDACTED]% |
| 76.30% | [REDACTED]% |
| 76.20% | [REDACTED]% |
| 76.10% | [REDACTED]% |
| 76.00% | [REDACTED]% |
| 75.90% | [REDACTED]% |
| 75.80% | [REDACTED]% |

TRIP AVAILABILITY FAILURE DEDUCTION - TABLE 1 (CONT'D)

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 75.70% | [REDACTED]% |
| 75.60% | [REDACTED]% |
| 75.50% | [REDACTED]% |
| 75.40% | [REDACTED]% |
| 75.30% | [REDACTED]% |
| 75.20% | [REDACTED]% |
| 75.10% | [REDACTED]% |
| 75.00% | [REDACTED]% |
| 74.90% | [REDACTED]% |
| 74.80% | [REDACTED]% |
| 74.70% | [REDACTED]% |
| 74.60% | [REDACTED]% |
| 74.50% | [REDACTED]% |
| 74.40% | [REDACTED]% |
| 74.30% | [REDACTED]% |
| 74.20% | [REDACTED]% |
| 74.10% | [REDACTED]% |
| 74.00% | [REDACTED]% |
| 73.90% | [REDACTED]% |
| 73.80% | [REDACTED]% |
| 73.70% | [REDACTED]% |
| 73.60% | [REDACTED]% |
| 73.50% | [REDACTED]% |
| 73.40% | [REDACTED]% |
| 73.30% | [REDACTED]% |
| 73.20% | [REDACTED]% |
| 73.10% | [REDACTED]% |

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 73.00% | [REDACTED]% |
| 72.90% | [REDACTED]% |
| 72.80% | [REDACTED]% |
| 72.70% | [REDACTED]% |
| 72.60% | [REDACTED]% |
| 72.50% | [REDACTED]% |
| 72.40% | [REDACTED]% |
| 72.30% | [REDACTED]% |
| 72.20% | [REDACTED]% |
| 72.10% | [REDACTED]% |
| 72.00% | [REDACTED]% |
| 71.90% | [REDACTED]% |
| 71.80% | [REDACTED]% |
| 71.70% | [REDACTED]% |
| 71.60% | [REDACTED]% |
| 71.50% | [REDACTED]% |
| 71.40% | [REDACTED]% |
| 71.30% | [REDACTED]% |
| 71.20% | [REDACTED]% |
| 71.10% | [REDACTED]% |
| 71.00% | [REDACTED]% |
| 70.90% | [REDACTED]% |
| 70.80% | [REDACTED]% |
| 70.70% | [REDACTED]% |
| 70.60% | [REDACTED]% |
| 70.50% | [REDACTED]% |
| 70.40% | [REDACTED]% |

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 70.30% | [REDACTED]% |
| 70.20% | [REDACTED]% |
| 70.10% | [REDACTED]% |
| 70.00% | [REDACTED]% |

PASSENGER FACILITY AVAILABILITY FAILURE DEDUCTION - TABLE 2

| Availability Ratio | Deduction Factor | Availability Ratio | Deduction Factor | Availability Ratio | Deduction Factor |
|--------------------|------------------|--------------------|------------------|--------------------|------------------|
| 100.00% | [REDACTED]% | 97.30% | [REDACTED]% | 94.60% | [REDACTED]% |
| 99.90% | [REDACTED]% | 97.20% | [REDACTED]% | 94.50% | [REDACTED]% |
| 99.80% | [REDACTED]% | 97.10% | [REDACTED]% | 94.40% | [REDACTED]% |
| 99.70% | [REDACTED]% | 97.00% | [REDACTED]% | 94.30% | [REDACTED]% |
| 99.60% | [REDACTED]% | 96.90% | [REDACTED]% | 94.20% | [REDACTED]% |
| 99.50% | [REDACTED]% | 96.80% | [REDACTED]% | 94.10% | [REDACTED]% |
| 99.40% | [REDACTED]% | 96.70% | [REDACTED]% | 94.00% | [REDACTED]% |
| 99.30% | [REDACTED]% | 96.60% | [REDACTED]% | 93.90% | [REDACTED]% |
| 99.20% | [REDACTED]% | 96.50% | [REDACTED]% | 93.80% | [REDACTED]% |
| 99.10% | [REDACTED]% | 96.40% | [REDACTED]% | 93.70% | [REDACTED]% |
| 99.00% | [REDACTED]% | 96.30% | [REDACTED]% | 93.60% | [REDACTED]% |
| 98.90% | [REDACTED]% | 96.20% | [REDACTED]% | 93.50% | [REDACTED]% |
| 98.80% | [REDACTED]% | 96.10% | [REDACTED]% | 93.40% | [REDACTED]% |
| 98.70% | [REDACTED]% | 96.00% | [REDACTED]% | 93.30% | [REDACTED]% |
| 98.60% | [REDACTED]% | 95.90% | [REDACTED]% | 93.20% | [REDACTED]% |
| 98.50% | [REDACTED]% | 95.80% | [REDACTED]% | 93.10% | [REDACTED]% |
| 98.40% | [REDACTED]% | 95.70% | [REDACTED]% | 93.00% | [REDACTED]% |
| 98.30% | [REDACTED]% | 95.60% | [REDACTED]% | 92.90% | [REDACTED]% |
| 98.20% | [REDACTED]% | 95.50% | [REDACTED]% | 92.80% | [REDACTED]% |
| 98.10% | [REDACTED]% | 95.40% | [REDACTED]% | 92.70% | [REDACTED]% |
| 98.00% | [REDACTED]% | 95.30% | [REDACTED]% | 92.60% | [REDACTED]% |
| 97.90% | [REDACTED]% | 95.20% | [REDACTED]% | 92.50% | [REDACTED]% |
| 97.80% | [REDACTED]% | 95.10% | [REDACTED]% | 92.40% | [REDACTED]% |
| 97.70% | [REDACTED]% | 95.00% | [REDACTED]% | 92.30% | [REDACTED]% |
| 97.60% | [REDACTED]% | 94.90% | [REDACTED]% | 92.20% | [REDACTED]% |
| 97.50% | [REDACTED]% | 94.80% | [REDACTED]% | 92.10% | [REDACTED]% |
| 97.40% | [REDACTED]% | 94.70% | [REDACTED]% | 92.00% | [REDACTED]% |

PASSENGER FACILITY AVAILABILITY FAILURE DEDUCTION - TABLE 2 (CONT'D)

| Availability Ratio | Deduction Factor | Availability Ratio | Deduction Factor | Availability Ratio | Deduction Factor |
|--------------------|------------------|--------------------|------------------|--------------------|------------------|
| 91.90% | [REDACTED]% | 89.20% | [REDACTED]% | 86.50% | [REDACTED]% |
| 91.80% | [REDACTED]% | 89.10% | [REDACTED]% | 86.40% | [REDACTED]% |
| 91.70% | [REDACTED]% | 89.00% | [REDACTED]% | 86.30% | [REDACTED]% |
| 91.60% | [REDACTED]% | 88.90% | [REDACTED]% | 86.20% | [REDACTED]% |
| 91.50% | [REDACTED]% | 88.80% | [REDACTED]% | 86.10% | [REDACTED]% |
| 91.40% | [REDACTED]% | 88.70% | [REDACTED]% | 86.00% | [REDACTED]% |
| 91.30% | [REDACTED]% | 88.60% | [REDACTED]% | 85.90% | [REDACTED]% |
| 91.20% | [REDACTED]% | 88.50% | [REDACTED]% | 85.80% | [REDACTED]% |
| 91.10% | [REDACTED]% | 88.40% | [REDACTED]% | 85.70% | [REDACTED]% |
| 91.00% | [REDACTED]% | 88.30% | [REDACTED]% | 85.60% | [REDACTED]% |
| 90.90% | [REDACTED]% | 88.20% | [REDACTED]% | 85.50% | [REDACTED]% |
| 90.80% | [REDACTED]% | 88.10% | [REDACTED]% | 85.40% | [REDACTED]% |
| 90.70% | [REDACTED]% | 88.00% | [REDACTED]% | 85.30% | [REDACTED]% |
| 90.60% | [REDACTED]% | 87.90% | [REDACTED]% | 85.20% | [REDACTED]% |
| 90.50% | [REDACTED]% | 87.80% | [REDACTED]% | 85.10% | [REDACTED]% |
| 90.40% | [REDACTED]% | 87.70% | [REDACTED]% | 85.00% | [REDACTED]% |
| 90.30% | [REDACTED]% | 87.60% | [REDACTED]% | 84.90% | [REDACTED]% |
| 90.20% | [REDACTED]% | 87.50% | [REDACTED]% | 84.80% | [REDACTED]% |
| 90.10% | [REDACTED]% | 87.40% | [REDACTED]% | 84.70% | [REDACTED]% |
| 90.00% | [REDACTED]% | 87.30% | [REDACTED]% | 84.60% | [REDACTED]% |
| 89.90% | [REDACTED]% | 87.20% | [REDACTED]% | 84.50% | [REDACTED]% |
| 89.80% | [REDACTED]% | 87.10% | [REDACTED]% | 84.40% | [REDACTED]% |
| 89.70% | [REDACTED]% | 87.00% | [REDACTED]% | 84.30% | [REDACTED]% |
| 89.60% | [REDACTED]% | 86.90% | [REDACTED]% | 84.20% | [REDACTED]% |
| 89.50% | [REDACTED]% | 86.80% | [REDACTED]% | 84.10% | [REDACTED]% |
| 89.40% | [REDACTED]% | 86.70% | [REDACTED]% | 84.00% | [REDACTED]% |
| 89.30% | [REDACTED]% | 86.60% | [REDACTED]% | 83.90% | [REDACTED]% |

PASSENGER FACILITY AVAILABILITY FAILURE DEDUCTION - TABLE 2 (CONT'D)

| Availability Ratio | Deduction Factor | Availability Ratio | Deduction Factor | Availability Ratio | Deduction Factor |
|--------------------|------------------|--------------------|------------------|--------------------|------------------|
| 83.80% | [REDACTED]% | 81.10% | [REDACTED]% | 78.40% | [REDACTED]% |
| 83.70% | [REDACTED]% | 81.00% | [REDACTED]% | 78.30% | [REDACTED]% |
| 83.60% | [REDACTED]% | 80.90% | [REDACTED]% | 78.20% | [REDACTED]% |
| 83.50% | [REDACTED]% | 80.80% | [REDACTED]% | 78.10% | [REDACTED]% |
| 83.40% | [REDACTED]% | 80.70% | [REDACTED]% | 78.00% | [REDACTED]% |
| 83.30% | [REDACTED]% | 80.60% | [REDACTED]% | 77.90% | [REDACTED]% |
| 83.20% | [REDACTED]% | 80.50% | [REDACTED]% | 77.80% | [REDACTED]% |
| 83.10% | [REDACTED]% | 80.40% | [REDACTED]% | 77.70% | [REDACTED]% |
| 83.00% | [REDACTED]% | 80.30% | [REDACTED]% | 77.60% | [REDACTED]% |
| 82.90% | [REDACTED]% | 80.20% | [REDACTED]% | 77.50% | [REDACTED]% |
| 82.80% | [REDACTED]% | 80.10% | [REDACTED]% | 77.40% | [REDACTED]% |
| 82.70% | [REDACTED]% | 80.00% | [REDACTED]% | 77.30% | [REDACTED]% |
| 82.60% | [REDACTED]% | 79.90% | [REDACTED]% | 77.20% | [REDACTED]% |
| 82.50% | [REDACTED]% | 79.80% | [REDACTED]% | 77.10% | [REDACTED]% |
| 82.40% | [REDACTED]% | 79.70% | [REDACTED]% | 77.00% | [REDACTED]% |
| 82.30% | [REDACTED]% | 79.60% | [REDACTED]% | 76.90% | [REDACTED]% |
| 82.20% | [REDACTED]% | 79.50% | [REDACTED]% | 76.80% | [REDACTED]% |
| 82.10% | [REDACTED]% | 79.40% | [REDACTED]% | 76.70% | [REDACTED]% |
| 82.00% | [REDACTED]% | 79.30% | [REDACTED]% | 76.60% | [REDACTED]% |
| 81.90% | [REDACTED]% | 79.20% | [REDACTED]% | 76.50% | [REDACTED]% |
| 81.80% | [REDACTED]% | 79.10% | [REDACTED]% | 76.40% | [REDACTED]% |
| 81.70% | [REDACTED]% | 79.00% | [REDACTED]% | 76.30% | [REDACTED]% |
| 81.60% | [REDACTED]% | 78.90% | [REDACTED]% | 76.20% | [REDACTED]% |
| 81.50% | [REDACTED]% | 78.80% | [REDACTED]% | 76.10% | [REDACTED]% |
| 81.40% | [REDACTED]% | 78.70% | [REDACTED]% | 76.00% | [REDACTED]% |
| 81.30% | [REDACTED]% | 78.60% | [REDACTED]% | 75.90% | [REDACTED]% |
| 81.20% | [REDACTED]% | 78.50% | [REDACTED]% | 75.80% | [REDACTED]% |

PASSENGER FACILITY AVAILABILITY FAILURE DEDUCTION - TABLE 2 (CONT'D)

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 75.70% | [REDACTED]% |
| 75.60% | [REDACTED]% |
| 75.50% | [REDACTED]% |
| 75.40% | [REDACTED]% |
| 75.30% | [REDACTED]% |
| 75.20% | [REDACTED]% |
| 75.10% | [REDACTED]% |
| 75.00% | [REDACTED]% |
| 74.90% | [REDACTED]% |
| 74.80% | [REDACTED]% |
| 74.70% | [REDACTED]% |
| 74.60% | [REDACTED]% |
| 74.50% | [REDACTED]% |
| 74.40% | [REDACTED]% |
| 74.30% | [REDACTED]% |
| 74.20% | [REDACTED]% |
| 74.10% | [REDACTED]% |
| 74.00% | [REDACTED]% |
| 73.90% | [REDACTED]% |
| 73.80% | [REDACTED]% |
| 73.70% | [REDACTED]% |
| 73.60% | [REDACTED]% |
| 73.50% | [REDACTED]% |
| 73.40% | [REDACTED]% |
| 73.30% | [REDACTED]% |
| 73.20% | [REDACTED]% |
| 73.10% | [REDACTED]% |

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 73.00% | [REDACTED]% |
| 72.90% | [REDACTED]% |
| 72.80% | [REDACTED]% |
| 72.70% | [REDACTED]% |
| 72.60% | [REDACTED]% |
| 72.50% | [REDACTED]% |
| 72.40% | [REDACTED]% |
| 72.30% | [REDACTED]% |
| 72.20% | [REDACTED]% |
| 72.10% | [REDACTED]% |
| 72.00% | [REDACTED]% |
| 71.90% | [REDACTED]% |
| 71.80% | [REDACTED]% |
| 71.70% | [REDACTED]% |
| 71.60% | [REDACTED]% |
| 71.50% | [REDACTED]% |
| 71.40% | [REDACTED]% |
| 71.30% | [REDACTED]% |
| 71.20% | [REDACTED]% |
| 71.10% | [REDACTED]% |
| 71.00% | [REDACTED]% |
| 70.90% | [REDACTED]% |
| 70.80% | [REDACTED]% |
| 70.70% | [REDACTED]% |
| 70.60% | [REDACTED]% |
| 70.50% | [REDACTED]% |
| 70.40% | [REDACTED]% |

| Availability Ratio | Deduction Factor |
|--------------------|------------------|
| 70.30% | [REDACTED]% |
| 70.20% | [REDACTED]% |
| 70.10% | [REDACTED]% |
| 70.00% | [REDACTED]% |

APPENDIX C: FAILURE POINTS

Section 1. Failure Points Applicable to Trip Availability Failures

1.1 Failure Points shall be awarded in each Contract Month of the Operational Term based on the Total Trips Availability Ratio calculated for that Contract Month, in accordance with the table, below.

| Aggregate Availability Ratio for Contract Month <i>m</i> | Failure Points Awarded for Contract Month <i>m</i> |
|---|---|
| 99.0% to 100.0% | [REDACTED] |
| 98.5% to 98.9% | [REDACTED] |
| 98.0% to 98.4% | [REDACTED] |
| 97.5% to 97.9% | [REDACTED] |
| 97.0% to 97.4% | [REDACTED] |
| 96.5% to 96.9% | [REDACTED] |
| 96.0% to 96.4% | [REDACTED] |
| 95.5% to 95.9% | [REDACTED] |
| 95.0% to 95.4% | [REDACTED] |
| 94.5% to 94.9% | [REDACTED] |
| 94.0% to 94.4% | [REDACTED] |
| 93.5% to 93.9% | [REDACTED] |
| 93.0% to 93.4% | [REDACTED] |
| 92.5% to 92.9% | [REDACTED] |
| 92.0% to 92.4% | [REDACTED] |
| 91.5% to 91.9% | [REDACTED] |
| 91.0% to 91.4% | [REDACTED] |
| 90.5% to 90.9% | [REDACTED] |

| | |
|----------------|------------|
| 90.0% to 90.4% | [REDACTED] |
| 89.9% or below | [REDACTED] |

Section 2. Failure Points Applicable to System Events

2.1 Failure Points shall be awarded in each Contract Month based on any System Events occurring during that Contract Month, in accordance with the table, below. The maximum aggregate amount of Failure Points to be awarded in respect of System Events for any single day shall be 100.

| System Event | Failure Points Applied |
|---|--|
| On any single Weekday during a Contract Month, the Peak Period Total Trips Availability Ratio for either (a) morning Peak Period service or (b) afternoon Peak Period service is less than [REDACTED]%. | [REDACTED] per occurrence For clarity, each Peak Period which fails to meet the [REDACTED]% service standard shall result in awarding [REDACTED] Failure Points, such that Project Co could be awarded [REDACTED] Failure Points in respect of morning Peak Period service and a further [REDACTED] Failure Points in respect of afternoon Peak Period service. |
| On any single day during a Contract Month, the Total Trips Availability Ratio for that day is less than [REDACTED]%. | [REDACTED] per occurrence |
| On any single day during a Contract Month, an inability to provide train service to a Group 1 Passenger Facility for any duration that is in excess of any cumulative [REDACTED] minute period during that day due to a failure other than by reason of any Non-Project Co Cause. | [REDACTED] per occurrence per Group 1 Passenger Facility |

2.2 To the extent that Failure Points are awarded for System Events, no Failure Points for directly corresponding Quality Failures or Service Failures shall be awarded in addition to the Failure Points awarded for System Events.

Section 3. Failure Points Applicable to Passenger Facility Events

3.1 Failure Points shall be awarded in each Contract Month based on any Passenger Facility Events occurring during that Contract Month, in accordance with the table, below.

| Passenger Facility Event | Failure Points Applied |
|---|---|
| On any single day during a Contract Month, any Passenger Facility is not made available by the scheduled opening time per the Station and Stop Access Standard. | [REDACTED] per occurrence for each Group 1 Passenger Facility and [REDACTED] per occurrence for each Group 2 Passenger Facility |

Section 4. Failure Points Applicable to Passenger Facility Availability Failures

4.1 Failure Points shall be awarded in each Contract Month based on the Aggregate Passenger Facility Availability Ratio calculated for that Contract Month, in accordance with the table, below.

| Aggregate Availability Ratio for Contract Month <i>m</i> | Failure Points Awarded for Contract Month <i>m</i> |
|---|---|
| 99.0% to 100.0% | [REDACTED] |
| 98.5% to 98.9% | [REDACTED] |
| 98.0% to 98.4% | [REDACTED] |
| 97.5% to 97.9% | [REDACTED] |
| 97.0% to 97.4% | [REDACTED] |
| 96.5% to 96.9% | [REDACTED] |
| 96.0% to 96.4% | [REDACTED] |
| 95.5% to 95.9% | [REDACTED] |
| 95.0% to 95.4% | [REDACTED] |
| 94.5% to 94.9% | [REDACTED] |
| 94.0% to 94.4% | [REDACTED] |
| 93.5% to 93.9% | [REDACTED] |
| 93.0% to 93.4% | [REDACTED] |
| 92.5% to 92.9% | [REDACTED] |
| 92.0% to 92.4% | [REDACTED] |
| 91.5% to 91.9% | [REDACTED] |
| 91.0% to 91.4% | [REDACTED] |
| 90.5% to 90.9% | [REDACTED] |
| 90.0% to 90.4% | [REDACTED] |

| Aggregate Availability Ratio for Contract Month <i>m</i> | Failure Points Awarded for Contract Month <i>m</i> |
|--|--|
| 89.9% or below | [REDACTED] |

Section 5. Failure Points Applicable to Quality Failures and Service Failures

| Category | Failure Points | Application |
|------------------------|----------------|---------------------|
| Minor Quality Failure | [REDACTED] | Per Quality Failure |
| Medium Quality Failure | [REDACTED] | |
| Major Quality Failure | [REDACTED] | |
| Minor Service Failure | [REDACTED] | Per Service Failure |
| Medium Service Failure | [REDACTED] | |
| Major Service Failure | [REDACTED] | |

APPENDIX D: PASSENGER FACILITY GROUPS

| Group 1 Passenger Facilities | Group 2 Passenger Facilities |
|---|--|
| <ul style="list-style-type: none"> • Brampton Gateway Stop • Port Credit Station • Cooksville Stop • Mississauga City Centre Stop | <ul style="list-style-type: none"> • County Court Stop • Ray Lawson Stop • Derry Stop • Courtneypark Stop • Britannia Stop • Matheson Stop • Bristol Stop • Eglinton & Hurontario Stop • Robert Speck Stop • Burnhamthorpe Stop • Fairview Stop • Dundas & Hurontario Stop • Queensway Stop • North Service Stop • Mineola Stop |

APPENDIX E: STATION OR STOP POINTS

Table 1 – Station or Stop Points

| Station/Stop | Points |
|------------------------------|------------|
| Brampton Gateway Stop | [REDACTED] |
| County Court Stop | [REDACTED] |
| Ray Lawson Stop | [REDACTED] |
| Derry Stop | [REDACTED] |
| Courtneypark Stop | [REDACTED] |
| Britannia Stop | [REDACTED] |
| Matheson Stop | [REDACTED] |
| Bristol Stop | [REDACTED] |
| Eglinton & Hurontario Stop | [REDACTED] |
| Mississauga City Centre Stop | [REDACTED] |
| Robert Speck Stop | [REDACTED] |
| Burnhamthorpe Stop | [REDACTED] |
| Fairview Stop | [REDACTED] |
| Cooksville Stop | [REDACTED] |
| Dundas & Hurontario Stop | [REDACTED] |
| Queensway Stop | [REDACTED] |
| North Service Stop | [REDACTED] |
| Mineola Stop | [REDACTED] |

Table 2 – Base Trip Total Points

| Station/Stop | Points |
|------------------------------|------------|
| Brampton Gateway Stop | [REDACTED] |
| County Court Stop | [REDACTED] |
| Ray Lawson Stop | [REDACTED] |
| Derry Stop | [REDACTED] |
| Courtneypark Stop | [REDACTED] |
| Britannia Stop | [REDACTED] |
| Matheson Stop | [REDACTED] |
| Bristol Stop | [REDACTED] |
| Eglinton & Hurontario Stop | [REDACTED] |
| Mississauga City Centre Stop | [REDACTED] |
| Robert Speck Stop | [REDACTED] |
| Burnhamthorpe Stop | [REDACTED] |
| Fairview Stop | [REDACTED] |
| Cooksville Stop | [REDACTED] |
| Dundas & Hurontario Stop | [REDACTED] |
| Queensway Stop | [REDACTED] |
| North Service Stop | [REDACTED] |
| Mineola Stop | [REDACTED] |

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| | |
|---------------------|------------|
| Port Credit Station | [REDACTED] |
|---------------------|------------|

| | |
|---|------------|
| Port Credit Station | [REDACTED] |
| Mineola Stop | [REDACTED] |
| North Service Stop | [REDACTED] |
| Queensway Stop | [REDACTED] |
| Dundas & Hurontario Stop | [REDACTED] |
| Cooksville Stop | [REDACTED] |
| Fairview Stop | [REDACTED] |
| Burnhamthorpe Stop | [REDACTED] |
| Robert Speck Stop | [REDACTED] |
| Mississauga City Centre Stop | [REDACTED] |
| Eglinton & Hurontario Stop | [REDACTED] |
| Bristol Stop | [REDACTED] |
| Matheson Stop | [REDACTED] |
| Britannia Stop | [REDACTED] |
| Courtneypark Stop | [REDACTED] |
| Derry Stop | [REDACTED] |
| Ray Lawson Stop | [REDACTED] |
| County Court Stop | [REDACTED] |
| Brampton Gateway Stop | [REDACTED] |
| Base Trip Total Points | [REDACTED] |
| Base Trip Total Stations and Stops | [REDACTED] |

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SCHEDULE 21

CONSTRUCTION PERIOD PAYMENTS

PART A – PROCESS FOR PAYMENTS

1. INTERPRETATION AND DEFINITIONS

1.1 Definitions

In this Part A Schedule 21, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Part A Schedule 21) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Actual Cumulative Construction Period Payments”** means the sum of all Construction Period Payments paid to Project Co as of a Payment Calculation Date.
- (b) **“Actual Eligible Construction Period Payment”** means, as at each Payment Calculation Date, an amount equal to, the greater of:
 - (i) the difference between (I) the product of (x) (Private Capital Invested as of such Payment Calculation Date minus the Initial Capital Investment Amount) multiplied by (y) [REDACTED] and (II) the Actual Cumulative Construction Period Payments as of such Payment Calculation Date (for greater certainty, excluding the Construction Period Payment to be made on that actual Payment Calculation Date); or
 - (ii) Zero.
- (c) **“Attachment A”**, **“Attachment B”**, **“Attachment C”** and **“Attachment D”** mean, respectively, Attachment A, Attachment B, Attachment C and Attachment D to this Schedule 21.
- (d) **“Construction Period Payment”** means a payment, which shall be no more frequent than once per calendar month, calculated in accordance with this Schedule 21.
- (e) **“Construction Period Payment Application”** has the meaning set out in Section 5.1(a).
- (f) **“Debt Financing”** means Senior Debt Amount and Junior Debt Amount provided by the Lenders to finance the costs of the Project pursuant to the Lending Agreements, excluding any acceleration penalty, default interest, and enforcement costs imposed under any of the Lending Agreements.
- (g) **“IC Construction Period Payment Authorization Certificate”** has the meaning set out in Section 5.1(c).
- (h) **“IC Construction Period Payment Confirmation Certificate”** has the meaning set out in Section 5.1(g).
- (i) **“IC Initial Capital Investment Certificate”** has the meaning set out in Section 4.1(c)(iv).

- (j) “**Initial Capital Investment**” means the threshold point at which the Private Capital Invested is equal to the Initial Capital Investment Amount.
- (k) “**Initial Capital Investment Amount**” means \$[REDACTED].
- (l) “**Initial Capital Investment Date**” means the date on which the Initial Capital Investment is achieved, as certified by the Independent Certifier in the IC Initial Capital Investment Certificate.
- (m) “**Initial Capital Investment Date Notice**” has the meaning set out in Section 4.1(b)(i).
- (n) “**Maximum Eligible Construction Period Payment**” means the Projected Cumulative Construction Period Payment minus the Actual Cumulative Construction Period Payments as of a Payment Calculation Date.
- (o) “**Payment Calculation Date**” means the date set out in Column 2 of Table A to be used to calculate the applicable Construction Period Payment, subject to Sections 2.2(a)(iii). For greater clarity, each Payment Calculation Date should occur on the last day of a month.
- (p) “**Payment Period**” means the payment period(s) identified in Column 1 of Table A.
- (q) “**Private Capital Advance Confirmations**” has the meaning set out in Section 3.1(a).
- (r) “**Private Capital Funding Confirmations**” means satisfactory evidence that Private Capital Advance Confirmations have been actually drawn, advanced, paid, funded or released, as the case may be, to Project Co. Acceptable evidence of Private Capital Funding Confirmations would include wire transfer statements, bank statements or any other acceptable form of certification or document that is agreed among Contracting Authority, Project Co and the Independent Certifier in writing.
- (s) “**Private Capital Invested**” means as at any date the total amount of Debt Financing advanced to Project Co and/or certified by the Lenders’ Consultant and authorized for release to Project Co by a collateral trustee (or an equivalent entity) and Equity Capital advanced to Project Co in cash on or prior to the relevant date. Amounts advanced to Project Co or certified by the Lenders’ Consultant to be deposited into a reserve or retention account, construction delay account (including in respect of liquidated damages) or any similar restricted account shall not be considered Private Capital Invested. Amounts certified by the Lenders’ Consultant and authorized for release to Project Co from a retention account, construction delay account or any similar restricted account shall be considered Private Capital Invested. Amounts advanced to Project Co in respect of a Construction Period Payment pursuant to a Private Capital Advance Confirmation shall be adjusted in the subsequent Construction Period Payment by amounts confirmed by an IC Construction Period Payment Confirmation Certificate as set out in Section 5.1(g).
- (t) “**Projected Construction Period Payment**” means, in respect of each Payment Period, the amount set out in Column 3 of Table A.
- (u) “**Projected Cumulative Construction Period Payment**” means, in respect of each Payment Period, the amount set out in Column 4 of Table A.

- (v) “**Request for Payment**” has the meaning set out in Section 5.1(a)(i).
- (w) “**Scheduled Initial Capital Investment Date**” means July 31, 2021.
- (x) “**Supplementary Payment Calculation Date**” has the meaning set out in Section 6.1(a).
- (y) “**Table A**” means the Table A set out in Attachment A.
- (z) “**Unpaid Construction Period Payments**” means any portion of the Projected Cumulative Construction Period Payment amount set out in Table A that is unpaid after the last Payment Period set out in Table A, whether before or after Substantial Completion.

2. PAYMENTS BY CONTRACTING AUTHORITY

2.1 Obligation to Pay

- (a) Contracting Authority shall pay to Project Co:
 - (i) the Construction Period Payments in accordance with the Project Agreement and this Schedule 21; and
 - (ii) the Substantial Completion Payment in accordance with the Project Agreement and this Schedule 21.

2.2 Calculation of the Construction Period Payments

- (a) Each Construction Period Payment shall be calculated in accordance with the following:
 - (i) Contracting Authority shall not be obliged to make any Construction Period Payment until Project Co has achieved the Initial Capital Investment and Contracting Authority has received the IC Initial Capital Investment Certificate;
 - (ii) subject to Section 2.2(a)(iii) and Section 6.1, the number of Construction Period Payments to be paid by Contracting Authority is set out in Table A;
 - (iii) notwithstanding the first Payment Calculation Date set out in Table A, the first actual Payment Calculation Date shall be the later of:
 - (A) the first Payment Calculation Date set out in Table A; or
 - (B) the end of the month following the month in which the Initial Capital Investment has been achieved. For the avoidance of doubt, Contracting Authority will not make any Construction Period Payments in the month where Initial Capital Investment is achieved,

and each Payment Calculation Date thereafter shall occur on the applicable Payment Calculation Date set out in Table A;

- (iv) each Construction Period Payment shall equal the lesser of:
 - (A) the Maximum Eligible Construction Period Payment for the applicable Payment Period; or
 - (B) the Actual Eligible Construction Period Payment for the applicable Payment Period; and
- (v) notwithstanding any other provision of the Project Agreement or this Schedule 21, the maximum dollar amount payable by Contracting Authority to Project Co for any Payment Period is the Maximum Eligible Construction Period Payment for such Payment Period.

3. PRIVATE CAPITAL ADVANCE CONFIRMATIONS AND PRIVATE CAPITAL FUNDING CONFIRMATIONS

3.1 Information to be Provided by Project Co

- (a) In order to enable Contracting Authority and the Independent Certifier to verify the Private Capital Invested and amount of each Construction Period Payment, Project Co shall deliver to the Contracting Authority Representative and the Independent Certifier in accordance with the timelines in Section 4 and 5 below:
 - (i) in the case of Debt Financing, copies of all draw requests, reports, information and documentation supporting or required to be submitted pursuant to the draw conditions under the Lending Agreements including but not limited to, payment certificates issued by the Lenders' Consultant, reports (including all reports issued by the Lenders' Consultant, information on amounts due and payable for the then current draw and amounts previously paid), any and all certification provided by the borrower or Project Co, and any other documentation supporting, or required to be submitted to the Lenders or the Lenders' Agent, as the case may be in respect of Project Co's applications for advances, draws, releases of funds or payments by the Lenders under the Lending Agreements; and
 - (ii) in respect of Equity Capital, all information, documentation and certifications (including documentation prepared by the Lenders' Consultant and/or the Lenders' Agent, which shall be delivered for each month in which Project Co does not deliver a draw request in respect of Debt Financing) supporting and/or evidencing any advances, releases, transfers of funds or payments to Project Co together with a certificate of an officer of Project Co certifying that Project Co has received the same amount in cash.
- (items in Section 3.1(a)(i) and Section 3.1(a)(ii) are collectively referred to as "**Private Capital Advance Confirmations**").
- (b) Project Co shall acquire, from the Lenders or the Lenders' Agent, in a form and content acceptable to Contracting Authority, the right for Project Co to receive, and to deliver to Contracting Authority and the Independent Certifier, copies of all Private Capital Advance Confirmations and Private Capital Funding Confirmations relating to the Debt Financing and/or Equity Capital, as applicable.

- (c) Prior to the Initial Capital Investment Date, Project Co shall deliver to Contracting Authority and the Independent Certifier copies of all Private Capital Advance Confirmations and Private Capital Funding Confirmations forthwith as they are submitted to the Lenders, the Lenders' Consultant and/or the Lenders' Agent.

4. INITIAL CAPITAL INVESTMENT

4.1 Achieving the Initial Capital Investment

- (a) Project Co shall provide Contracting Authority with at least ninety (90) days' prior notice of the date on which it anticipates achieving the Initial Capital Investment.
- (b) Once Project Co believes that it has achieved the Initial Capital Investment, it shall deliver to the Contracting Authority Representative and the Independent Certifier:
- (i) a notice (the "**Initial Capital Investment Date Notice**") indicating that all requirements necessary for the achievement of the Initial Capital Investment have been met and the date on which Project Co believes such requirements were met;
 - (ii) except to the extent already delivered to Contracting Authority, all Private Capital Advance Confirmations and Private Capital Funding Confirmations as of the date of the Initial Capital Investment Date Notice; and
 - (iii) a Project Co officer certificate, in the form attached as Attachment D to this Schedule 21, certifying that the Initial Capital Investment has been achieved.
- (c) The Independent Certifier shall, within ten (10) Business Days after receipt of the Initial Capital Investment Date Notice and associated materials, review and fully assess:
- (i) all the Private Capital Advance Confirmations and the Private Capital Funding Confirmations;
 - (ii) the documentation submitted by Project Co with the applicable Initial Capital Investment Date Notice; and
 - (iii) the Project Co officer certificate submitted pursuant to Section 4.1(b)(iii),
- and shall provide to Contracting Authority and Project Co either:
- (iv) a notice that all requirements to achieve the Initial Capital Investment have been met by Project Co (the "**IC Initial Capital Investment Certificate**"), including confirmation of the Initial Capital Investment Date; or
 - (v) a report explaining the Independent Certifier's reasons for not issuing an IC Initial Capital Investment Certificate and detailing the information that the Independent Certifier requires from Project Co to enable the Independent Certifier to issue an IC Initial Capital Investment Certificate.

- (d) If the Independent Certifier has issued a report in accordance with Section 4.1(c)(v), Project Co may give a further Initial Capital Investment Date Notice providing the Independent Certifier and the Contracting Authority Representative with all documents required to fulfill the requirements that the Independent Certifier considers are necessary to be met by Project Co to achieve the Initial Capital Investment, as indicated in the Independent Certifier's report, and the requirements of Sections 4.1(b) and 4.1(c) shall be repeated until the Independent Certifier issues the IC Initial Capital Investment Certificate or until the Parties agree that the Initial Capital Investment Certificate is not then available.
- (e) For clarity, Contracting Authority acknowledges that,
- (i) Project Co may share the IC Initial Capital Investment Certificate with the Lenders' Agent and/or the Lenders' Consultant; and
 - (ii) If Project Co achieves the Initial Capital Investment prior to the Scheduled Initial Capital Investment Date, the Independent Certifier shall complete the process set out in this Section 4, but Project Co's early achievement of the Initial Capital Investment shall not change the first Payment Calculation Date set out in Table A.

5. CONSTRUCTION PERIOD PAYMENTS

5.1 Submission and Review of Project Co Construction Period Payment Applications

- (a) No later than five (5) Business Days prior to each Payment Calculation Date, Project Co shall prepare, complete and deliver an application for payment of the applicable Construction Period Payment (a "**Construction Period Payment Application**") to the Contracting Authority Representative and the Independent Certifier. Each Construction Period Payment Application shall consist of the following items:
- (i) a request for payment substantially in the form attached as Attachment B, including all documents contemplated in the request for payment pursuant to Attachment B (each, a "**Request for Payment**"); and
 - (ii) the Private Capital Advance Confirmations relating to that particular Construction Period Payment Application.
- (b) Project Co shall cooperate fully with the Contracting Authority Representative and the Independent Certifier to permit the Independent Certifier's review and assessment of each Construction Period Payment Application. Such cooperation shall include, without limitation, responding to all inquiries by the Independent Certifier so that the Independent Certifier can verify any and all matters related to the Private Capital Advance Confirmations, and the statements contained therein, to the sole satisfaction of the Independent Certifier.
- (c) No later than four (4) Business Days prior to each Payment Calculation Date and provided that a duly completed Construction Period Payment Application has been received by the Independent Certifier, the Independent Certifier shall review the Construction Period Payment Application and confirm that it supports the amount of the Construction Period Payment requested, to the sole satisfaction of the Independent Certifier, and shall provide a certificate (an "**IC Construction**

Period Payment Authorization Certificate”) to the Contracting Authority Representative setting out:

- (i) the dollar amount of the Construction Period Payment; and
 - (ii) the supporting calculation of the Construction Period Payment pursuant to Section 2.2.
- (d) Contracting Authority shall, subject to and in accordance with Section 34.1(a) of the Project Agreement, pay the applicable Construction Period Payment to Project Co on each Payment Calculation Date.
- (e) Project Co covenants and agrees that Project Co shall:
- (i) carry out the Works and make all payments due and payable to the Construction Contractor in respect of the Works without further payments from Contracting Authority, other than Construction Period Payments and the Substantial Completion Payment as set out in this Schedule 21; and
 - (ii) continue to comply with the provisions of the Project Agreement and the *Construction Act* (Ontario), including complying with all holdback and trust obligations from its own resources, if necessary, as required under the *Construction Act* (Ontario).
- (f) No later than five (5) Business Days after each Payment Calculation Date, Project Co shall provide to Contracting Authority and the Independent Certifier the Private Capital Funding Confirmation in respect of that particular Private Capital Advance Confirmation submitted to support such particular Construction Period Payment.
- (g) No later than two (2) Business Days after receipt of each Private Capital Funding Confirmation, the Independent Certifier shall review same and confirm to the Contracting Authority Representative by a certificate (the “**IC Construction Period Payment Confirmation Certificate**”) that either the amounts received by Project Co as evidenced by the Private Capital Funding Confirmation corresponds to the amounts requested to be funded in the Private Capital Advance Confirmations relating to the applicable Construction Period Payment, or setting out any discrepancy between the two amounts, and attaching such supporting documentation or information as is requested by the Contracting Authority Representative in respect of such discrepancy.
- (h) To the extent that the IC Construction Period Payment Confirmation Certificate submitted to Contracting Authority pursuant to subparagraph (g) above shows a discrepancy between the Private Capital Invested as reflected in relevant the Private Capital Advance Confirmation and the corresponding Private Capital Funding Confirmation, the dollar amount of such discrepancy shall be deducted in the calculation of the Actual Eligible Construction Period Payment to which Project Co may be entitled on the next Payment Calculation Date.

6. UNPAID CONSTRUCTION PERIOD PAYMENTS AND SUBSTANTIAL COMPLETION PAYMENT

6.1 Payment of Unpaid Construction Period Payment(s) Prior to Substantial Completion

- (a) Following the last Payment Calculation Date set out in Column 2 of Table A, Project Co may identify additional Payment Calculation Dates (each a “**Supplementary Payment Calculation Date**”) for the purposes of seeking payment of any Unpaid Construction Period Payments, or any portion thereof, in accordance with the following:
- (i) Project Co shall provide at least thirty (30) days’ Notice to Contracting Authority of:
 - (A) each Supplementary Payment Calculation Date; and
 - (B) Project Co’s estimate of the dollar amount of the Unpaid Construction Period Payment to be paid on such Supplementary Payment Calculation Date with supporting calculations;
 - (ii) all provisions of this Schedule 21 with respect to the application for, and calculation and Independent Certifier review of, a Construction Period Payment shall apply *mutatis mutandis* to an application for, and calculation and Independent Certifier review of, a payment pursuant to this Section 6.1, including the requirement to deliver a Construction Period Payment Application to the Contracting Authority Representative and the Independent Certifier;
 - (iii) each Supplementary Payment Calculation Date shall occur no more than once per calendar month; and
 - (iv) any Unpaid Construction Period Payments, or any portion thereof, not paid pursuant to this Section 6.1 shall be paid in accordance with Section 6.2.

6.2 Payment of Substantial Completion Payment at Substantial Completion

- (a) Once Project Co believes that it has satisfied all requirements for Substantial Completion, it shall deliver to the Contracting Authority Representative and the Independent Certifier the Substantial Completion Notice contemplated in Section 25.3(b) of the Project Agreement.
- (b) Once all of the conditions for payment of the Substantial Completion Payment have been satisfied by Project Co, Contracting Authority shall pay or cause to be paid to Project Co the Substantial Completion Payment and all remaining Unpaid Construction Period Payments, in accordance with the provisions of the Project Agreement, including, but not limited to, Section 34.1 of the Project Agreement.

7. GENERAL

- (a) Project Co shall provide direction to Contracting Authority as to a bank account with a Schedule 1 Bank in Canada (or an alternative bank in Canada provided such bank is permitted under the Lending Agreements) where each Construction Period Payment, the Substantial Completion Payment and any Unpaid Construction Period Payments, together with applicable HST, are to be deposited.
- (b) Project Co acknowledges and agrees that payment by Contracting Authority of Construction Period Payments, the Substantial Completion Payment and the Unpaid Construction Period Payments in

accordance with this Schedule 21 constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay Construction Period Payments and the Substantial Completion Payment, as applicable, to Project Co under the Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under Section 7 of the *Construction Act* (Ontario) pursuant to Section 10 of the *Construction Act* (Ontario).

- (c) Notwithstanding anything to the contrary in this Schedule 21 or the Project Agreement (including achieving the Initial Capital Investment), Contracting Authority is not obligated to make any payment to Project Co (including for clarity, any Construction Period Payments or the Substantial Completion Payment) unless all conditions precedent applicable to such payment pursuant to this Schedule 21 have been satisfied by Project Co.
- (d) No Construction Period Payment or Substantial Completion Payment or partial or entire use or occupancy of the Project Co System Infrastructure, the New Third Party Infrastructure or the Lands shall constitute acceptance by Contracting Authority of the Works in accordance with the Project Agreement.
- (e) If Contracting Authority or Project Co, acting in good faith, disputes a determination of the Independent Certifier made pursuant to this Schedule 21, Contracting Authority shall pay the amounts in dispute in accordance with the determination of the Independent Certifier and the Party that wishes to dispute the decision of the Independent Certifier may refer such Dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (f) For clarity:
 - (i) Sections 34.1(a), 34.7, 34.10, 34.11 and 34.13 of the Project Agreement apply to Construction Period Payments and Unpaid Construction Period Payments; and
 - (ii) Sections 34.1(b), 34.7, 34.10, 34.11, 34.12 and 34.13 of the Project Agreement apply to the Substantial Completion Payment.
- (g) Notwithstanding anything to the contrary in the Project Agreement, Contracting Authority shall not make any deduction, set-off or withholding from any Construction Period Payment or Unpaid Construction Period Payment other than in accordance with this Schedule 21.

SCHEDULE 21

CONSTRUCTION PERIOD PAYMENTS

PART B – CONSTRUCTION PERIOD FAILURES

1. INTERPRETATION AND DEFINITIONS

1.1 Definitions

In this Part B Schedule 21, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Part B Schedule 21) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Construction Period Deduction”** means a deduction made from the Substantial Completion Payment in accordance with Section 2.
- (b) **“Construction Period Event”** means an incident or state of affairs that does not meet or comply with the Construction Period Performance Criteria, which is capable of becoming a Construction Period Quality Failure.
- (c) **“Construction Period Failure Category”** means the failure category described in the fourth column of the tables in Attachment E.
- (d) **“Construction Period Failure Type”** means in the failure type described in the third column of the tables in Attachment E.
- (e) **“Construction Period Performance Criteria”** means the level of performance (as set out in the column entitled “Requirements to be Met” in Attachment E) that Project Co must achieve to avoid a Construction Period Event for a failure to achieve compliance with the applicable provision of Schedule 15 – Output Specifications.
- (f) **“Construction Period Quality Failure”** means any failure by Project Co to provide the Works in accordance with any Construction Period Performance Criteria designated as Construction Period Failure Type of “CPQF” in Attachment E.
- (g) **“Construction Period Quality Failure Deduction”** has the meaning given in Section 2.2(a).
- (h) **“Contested Non-Conforming Works”** means Works in respect of which Contracting Authority has given Notice to Project Co, pursuant to Article 61 of the Project Agreement (but not a Non-Conformance Report initiated by Contracting Authority pursuant to Schedule 11 – Quality Management), that, in the opinion of Contracting Authority, the relevant Works are not in accordance with the Project Agreement, and Project Co has asserted that, in Project Co’s opinion, such Works are in accordance with the Project Agreement.
- (i) **“Critical Construction Period Quality Failure”** means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Critical” in Attachment E.

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- (j) “**Critical Qualifying NCR**” means a Qualifying NCR raised by Contracting Authority or Project Co on a Non-Conformance that requires all or any portion of Project Co Accepted Works to be removed or repeated because such Project Co Accepted Works have, or would reasonably be expected to have, a significant adverse or material adverse impact on:
- (i) the safety of the Project, the environment, System Users or the public;
 - (ii) the quality of the Works; or
 - (iii) the durability of the Works.
- (k) “**Critical Qualifying Process NCR**” means a Qualifying Process NCR raised by Contracting Authority or Project Co on a Non-Conformance that requires the progress of:
- (i) any critical path activity to be stopped for longer than 24 hours during any one or more Working Days; or
 - (ii) any near critical path activity to be stopped for longer than 24 hours during any one or more Working Days, such that a delay in the Scheduled Substantial Completion Date is forecasted in a Progress Works Schedule.
- (l) “**Inspection and Test Plan**” has the meaning given in Schedule 11 – Quality Management.
- (m) “**Inspection and Test Sub-Plan(s)**” has the meaning given in Schedule 11 – Quality Management.
- (n) “**Medium Construction Period Quality Failure**” means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Medium” in Attachment E.
- (o) “**Medium Qualifying NCR**” means a Qualifying NCR raised by Contracting Authority or Project Co on a Non-Conformance for all or any portion of Project Co Accepted Works that is not a Critical Qualifying NCR.
- (p) “**Medium Qualifying Process NCR**” means a Qualifying Process NCR raised by Contracting Authority or Project Co on a Non-Conformance that requires changes to a Construction Document Submittal that has been stamped as Issued For Construction and is being used by Project Co in its delivery of the Works, which is not a Critical Qualifying NCR.
- (q) “**Minor Construction Period Quality Failure**” means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Minor” in Attachment E.
- (r) “**Minor Qualifying NCR**” means a Qualifying NCR raised by Contracting Authority on a Non-Conformance on all or any portion of the Works that have been inspected and tested or approved by Project Co at a Witness and Hold Point, pursuant to the Inspection and Test Plan and relevant Inspection and Test Sub-Plan(s), but are not yet Project Co Accepted Works. For clarity, a Minor Qualifying NCR does not mean a Qualifying NCR raised by Project Co.
- (s) “**Minor Qualifying Process NCR**” means a Qualifying Process NCR raised by Contracting Authority on a Non-Conformance that is not a Critical Qualifying Process NCR or Medium

Qualifying Process NCR. For clarity, a Minor Qualifying Process NCR does not mean a Qualifying Process NCR raised by Project Co.

- (t) **“Monthly Non-Conformance Report”** has the meaning given in Schedule 11 – Quality Management Section 7.2(b)(v).
- (u) **“NCR”** means a Non-Conformance Report.
- (v) **“Non-Conformance”** has the meaning given in Schedule 11- Quality Management.
- (w) **“Non-Conformance Report”** has the meaning given in Schedule 11 – Quality Management.
- (x) **“Project Co Accepted Works”** means all physical elements of the Works that have been accepted by Project Co as meeting its acceptance criteria for those Works pursuant to the Inspection and Test Plan.
- (y) **“Qualifying NCR”** means a Non-Conformance Report in accordance with Schedule 11 – Quality Management regarding any Non-Conformance discovered in the physical elements of any of the Works:
 - (i) for which Project Co has continued, or has stated the intention to continue, construction of the Works past the relevant Witness and Hold Point in contravention of the Inspection and Test Plan and relevant Inspection and Test Sub-Plan(s); or
 - (ii) following Project Co’s stated completion of a task or component and Project Co’s statement that the requirements for Design and Construction Certification have been met in respect of such Works and such Works have been inspected and tested by Project Co pursuant to the Inspection and Test Plan and relevant Inspection and Test Sub-Plan(s),
 - (iii) and shall include “Critical Qualifying NCR”, “Medium Qualifying NCR” or “Minor Qualifying NCR”.
- (z) **“Qualifying Process NCR”** means a Non-Conformance Report in accordance with Schedule 11 – Quality Management regarding any Non-Conformance discovered in the Works that is not (i) a Qualifying NCR, or (ii) the result of an NCR related to the requirements described in Tables 1 or 3 of Attachment E – Construction Period Performance Criteria of this Schedule 21 and shall include “Critical Qualifying Process NCR”, “Medium Qualifying Process NCR” or “Minor Qualifying Process NCR”.
- (aa) **“Total Construction Period Deduction”** has the meaning given in Section 2.1(a).
- (bb) **“Witness and Hold Point”** has the meaning given in Schedule 11 – Quality Management.

2. CONSTRUCTION ENFORCEMENT DEDUCTIONS

2.1 Construction Period Deductions

- (a) If, at any time prior to Substantial Completion, Project Co commits one or more Construction Period Quality Failures, Contracting Authority may, in its sole discretion, deduct corresponding

Construction Period Deductions from the Substantial Completion Payment. For greater certainty, the cumulative amount of all Construction Period Deductions (the “**Total Construction Period Deduction**”) shall be applied against and shall decrease the Substantial Completion Payment.

2.2 Calculation of the Construction Period Deductions

- (a) Each Construction Period Deduction shall be calculated in accordance with the following formula:

$$TCPD_n = \sum CPD_n$$

Where:

$TCPD_n$ means the Total Construction Period Deduction applicable to Payment Period n; and

$\sum CPD_n$ means the sum of Construction Period Deductions in respect of the relevant Payment Period in relation to Construction Period Quality Failures calculated in accordance with this Schedule 21 (the “**Construction Period Quality Failure Deduction**”)

- (b) the deduction attributable to each Construction Period Quality Failure shall be as follows:
- (i) in the case of a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by Project Co, there shall be no deduction;
 - (ii) in the case of a Medium Construction Period Quality Failure for a Non-Conformance Report initiated by Project Co, each deduction shall equal \$[REDACTED];
 - (iii) in the case of a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by Contracting Authority:
 - (A) the first deduction shall equal \$[REDACTED]; and
 - (B) each subsequent deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period, shall be [REDACTED] per cent of the immediately previous deduction but shall not exceed [REDACTED] per cent of the first deduction;
 - (iv) in the case of a Medium Construction Period Quality Failure for a Non-Conformance Report initiated by Contracting Authority:
 - (A) the first deduction shall equal \$[REDACTED]; and
 - (B) each subsequent deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period shall equal [REDACTED] per cent of the immediately previous deduction but shall not exceed [REDACTED] per cent of the first deduction; and
 - (v) in the case of a Critical Construction Period Quality Failure for a Non-Conformance Report initiated by either Party:

- (A) the first deduction shall equal \$[REDACTED]; and
 - (B) each subsequent deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period shall equal [REDACTED] per cent of the immediately previous deduction but shall not exceed [REDACTED] per cent of the first deduction.
- (c) For clarity, subject to Project Co's right to Dispute the Construction Period Quality Failure, the occurrence of a Construction Period Quality Failure will immediately give rise to a right, on behalf of Contracting Authority, to apply the corresponding Construction Period Quality Failure Deduction against the Substantial Completion Payment, irrespective of the Remedial Period permitted.
- (d) After the occurrence of a Construction Period Quality Failure, Project Co shall remediate the Construction Period Quality Failure prior to the expiration of the applicable Remedial Period set out in Attachment E. If, prior to the expiration of the applicable Remedial Period, Project Co demonstrates, to the satisfaction of the Contracting Authority Representative, acting reasonably, that it has remedied the Construction Period Quality Failure, no further Construction Period Deduction shall be made in respect of that Construction Period Quality Failure. If Project Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period, Contracting Authority, may, in its sole discretion, apply a further Construction Period Deduction, calculated in accordance with this Section 2.2, and a further Remedial Period (or Remedial Periods) of the same duration shall be deemed to have commenced. Contracting Authority may, in its sole discretion, apply the applicable Construction Period Deduction each time Project Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period until such time as Project Co demonstrates, to the satisfaction of the Contracting Authority Representative, acting reasonably, that it has remediated the applicable Construction Period Quality Failure.
- (e) For the purposes of calculating the Construction Period Deductions in accordance with this Schedule 21, the Parties shall have regard to Sections 40.2(k) and 44.2(e) of the Project Agreement.

2.3 Tolerances for Minor Construction Period Quality Failures for Non-Conformance Reports Initiated by Contracting Authority

- (a) Contracting Authority shall assess Construction Period Quality Failures on a month to month basis. Except as provided in Section 2.3(c), Contracting Authority shall not apply a Construction Period Deduction due to a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by Contracting Authority in respect of any month in which the total number of Minor Construction Period Quality Failures for Non-Conformance Reports initiated by Contracting Authority for that month is less than or equal to [REDACTED] (the "**Minor Construction Period Quality Failure Tolerance**").
- (b) If the Minor Construction Period Quality Failure Tolerance is exceeded, Contracting Authority may, in its sole discretion, apply a Construction Period Deduction for each Minor Construction Period Quality Failure for a Non-Conformance Report initiated by Contracting Authority in excess of the Minor Construction Period Quality Failure Tolerance during the applicable month.

- (c) If, in any month, a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by Contracting Authority is due to circumstances that are substantively the same cause as a previous Minor Construction Period Quality Failure for a Non-Conformance Report initiated by Contracting Authority (within the same month or in a different month) (a “**Repeated Minor Construction Period Quality Failure**”), then a Construction Period Deduction shall be made in respect of the third and each subsequent Repeated Minor Construction Period Quality Failure, irrespective of the Minor Construction Period Quality Failure Tolerance.

2.4 Administration of Construction Period Quality Failures and Construction Period Deductions

- (a) Subject to Sections 2.4(b) to 2.4(e) inclusive, Contracting Authority shall use the Monthly Non-Conformance Report produced by Project Co for the purposes of calculating the relevant Construction Period Deductions.
- (b) If either Party believes that there is an error or omission in a Monthly Non-Conformance Report, that Party shall promptly provide Notice to the other Party of such error or omission. Immediately after a Notice given pursuant to this Section 2.4(b), Project Co and Contracting Authority shall attempt to resolve or clarify the error or omission and amend the applicable Monthly Non-Conformance Report, to their mutual satisfaction, acting reasonably. Subject to Section 2.4(e), if the Parties fail to resolve or clarify the error or omission within ten Business Days after a Notice given pursuant to this Section 2.4(b), either Party may refer the matter to the Dispute Resolution Procedure. Subject to Section 2.4(d) and Section 2.4(e), the Parties are prohibited from giving Notice of an error or omission pursuant to this Section 2.4(b) after the expiration of 60 days after the date of the applicable Monthly Non-Conformance Report.
- (c) Subject to Section 2.4(e), if Project Co fails to monitor or accurately report a Construction Period Event or Construction Period Quality Failure then, in addition to the Construction Period Deduction to be made in respect of the relevant Construction Period Quality Failure (if any), a failure to monitor or report a Construction Period Event or a Construction Period Quality Failure shall be deemed to be Minor Construction Period Quality Failure.
- (d) In the event that any inspection or investigation by Contracting Authority or Project Co pursuant to the Project Agreement reveals new errors, omissions or failures of the type referred to in Section 2.4(b) or Section 2.4(c), such errors, omissions or failures shall be dealt with in accordance with Section 2.4(b) or Section 2.4(c), as applicable, and, for clarity, Contracting Authority may, in its sole discretion, apply Construction Period Deductions in respect of any Construction Period Quality Failures discovered pursuant to this Section 2.4(d) in the manner set out in Section 2.2. Any such Construction Period Deductions shall be made from the Substantial Completion Payment. For clarity, the 60 day deadline set out in Section 2.4(b) shall not apply to errors, omissions or failures revealed pursuant to this Section 2.4(d).
- (e) For the purposes of Sections 2.4(b), 2.4(c) and 2.4(d), if Project Co or a Project Co Party has engaged in fraudulent action or inaction, deliberate misrepresentation, or gross misconduct or incompetence,
- (i) in the preparation of the Monthly Non-Conformance Report; or
 - (ii) in carrying out the Work resulting in Construction Period Quality Failures,

then,

- (iii) the 60 day deadline set out in Section 2.4(b) shall not apply; and
 - (iv) a failure to monitor or accurately report a Construction Period Event or Construction Period Quality Failure pursuant to Section 2.4(c) shall be deemed to be a Critical Construction Period Quality Failure.
- (f) For clarity, if Construction Period Performance Criteria are based upon Non-Conformance Reports, no Construction Period Deductions shall be made for a Non-Conformance Report which is subject to an objection by Project Co, a Notice of objection by Project Co or Dispute Resolution Process, pursuant to Part 7 of Schedule 11 – Quality Management.

2.5 Additional Requirements for Tracking and Reporting

- (a) In addition to the requirements of Section 7.2 of Part 7 to Schedule 11 – Quality Management, the Non Conformance Tracking System shall record Construction Period Quality Failure Deductions pursuant to this Schedule 21.
- (b) In addition to the requirements of Section 7.2 of Part 7 to Schedule 11 – Quality Management, the Monthly Non-Conformance Report shall contain:
- (i) the number of Construction Period Quality Failure Deductions in each Construction Period Failure Category accrued within the last Construction Period Month pursuant to this Schedule 21; and
 - (ii) summary statistics and historic trends since Financial Close for the number of Construction Period Quality Failure Deductions in each Construction Period Failure Category each Construction Period Month pursuant to this Schedule 21.

2.6 Disputing a Non-Conformance Report During the Construction Period

- (a) In respect of the following circumstances, the Parties shall be subject to the binding determination of the Independent Certifier pursuant to Section 4.3 and 4.4 of Schedule 27 – Dispute Resolution Procedure and the Independent Certifier’s decision shall be final and shall not be subject to Dispute Resolution:
- (i) a Notice of objection to a Non-Conformance Report has not been resolved by mutual agreement between Contracting Authority and Project Co within five Business Days after the delivery of a Notice of the objection pursuant to Section 7.1(a)(v) and Section 7.1(a)(vii) of Part 7 to Schedule 11 – Quality Management; and
 - (ii) the Non-Conformance Report referred to in Section 2.6(a)(i) would have been a Construction Period Quality Failure with a Construction Period Failure Category of “Minor” if the Notice of objection referred to in Section 2.6(a)(i) had not been issued.

ATTACHMENT A

Table A: Payment Calculation Dates and Projected Construction Period Payments

| Payment Period | Payment Calculation Date | Projected Construction Period Payment | Projected Cumulative Construction Period Payment |
|----------------|--------------------------|---------------------------------------|--|
| (Column 1) | (Column 2) | (Column 3) | (Column 4) |
| 1 | October 31, 2019 | [\$REDACTED] | [\$REDACTED] |
| 2 | November 30, 2019 | [\$REDACTED] | [\$REDACTED] |
| 3 | December 31, 2019 | [\$REDACTED] | [\$REDACTED] |
| 4 | January 31, 2020 | [\$REDACTED] | [\$REDACTED] |
| 5 | February 29, 2020 | [\$REDACTED] | [\$REDACTED] |
| 6 | March 31, 2020 | [\$REDACTED] | [\$REDACTED] |
| 7 | April 30, 2020 | [\$REDACTED] | [\$REDACTED] |
| 8 | May 31, 2020 | [\$REDACTED] | [\$REDACTED] |
| 9 | June 30, 2020 | [\$REDACTED] | [\$REDACTED] |
| 10 | July 31, 2020 | [\$REDACTED] | [\$REDACTED] |
| 11 | August 31, 2020 | [\$REDACTED] | [\$REDACTED] |
| 12 | September 30, 2020 | [\$REDACTED] | [\$REDACTED] |
| 13 | October 31, 2020 | [\$REDACTED] | [\$REDACTED] |
| 14 | November 30, 2020 | [\$REDACTED] | [\$REDACTED] |
| 15 | December 31, 2020 | [\$REDACTED] | [\$REDACTED] |
| 16 | January 31, 2021 | [\$REDACTED] | [\$REDACTED] |
| 17 | February 28, 2021 | [\$REDACTED] | [\$REDACTED] |
| 18 | March 31, 2021 | [\$REDACTED] | [\$REDACTED] |
| 19 | April 30, 2021 | [\$REDACTED] | [\$REDACTED] |

| Payment Period | Payment Calculation Date | Projected Construction Period Payment | Projected Cumulative Construction Period Payment |
|----------------|--------------------------|---------------------------------------|--|
| (Column 1) | (Column 2) | (Column 3) | (Column 4) |
| 20 | May 31, 2021 | [\$REDACTED] | [\$REDACTED] |
| 21 | June 30, 2021 | [\$REDACTED] | [\$REDACTED] |
| 22 | July 31, 2021 | [\$REDACTED] | [\$REDACTED] |
| 23 | August 31, 2021 | [\$REDACTED] | [\$REDACTED] |
| 24 | September 30, 2021 | [\$REDACTED] | [\$REDACTED] |
| 25 | October 31, 2021 | [\$REDACTED] | [\$REDACTED] |
| 26 | November 30, 2021 | [\$REDACTED] | [\$REDACTED] |
| 27 | December 31, 2021 | [\$REDACTED] | [\$REDACTED] |
| 28 | January 31, 2022 | [\$REDACTED] | [\$REDACTED] |
| 29 | February 28, 2022 | [\$REDACTED] | [\$REDACTED] |
| 30 | March 31, 2022 | [\$REDACTED] | [\$REDACTED] |
| 31 | April 30, 2022 | [\$REDACTED] | [\$REDACTED] |
| 32 | May 31, 2022 | [\$REDACTED] | [\$REDACTED] |
| 33 | June 30, 2022 | [\$REDACTED] | [\$REDACTED] |
| 34 | July 31, 2022 | [\$REDACTED] | [\$REDACTED] |
| 35 | August 31, 2022 | [\$REDACTED] | [\$REDACTED] |
| 36 | September 30, 2022 | [\$REDACTED] | [\$REDACTED] |
| 37 | October 31, 2022 | [\$REDACTED] | [\$REDACTED] |
| 38 | November 30, 2022 | [\$REDACTED] | [\$REDACTED] |
| 39 | December 31, 2022 | [\$REDACTED] | [\$REDACTED] |
| 40 | January 31, 2023 | [\$REDACTED] | [\$REDACTED] |

| Payment Period | Payment Calculation Date | Projected Construction Period Payment | Projected Cumulative Construction Period Payment |
|----------------|--------------------------|---------------------------------------|--|
| (Column 1) | (Column 2) | (Column 3) | (Column 4) |
| 41 | February 28, 2023 | [\$REDACTED] | [\$REDACTED] |
| 42 | March 31, 2023 | [\$REDACTED] | [\$REDACTED] |
| 43 | April 30, 2023 | [\$REDACTED] | [\$REDACTED] |
| 44 | May 31, 2023 | [\$REDACTED] | [\$REDACTED] |
| 45 | June 30, 2023 | [\$REDACTED] | [\$REDACTED] |
| 46 | July 31, 2023 | [\$REDACTED] | [\$REDACTED] |
| 47 | August 31, 2023 | [\$REDACTED] | [\$REDACTED] |
| 48 | September 30, 2023 | [\$REDACTED] | [\$REDACTED] |
| 49 | October 31, 2023 | [\$REDACTED] | [\$REDACTED] |
| 50 | November 30, 2023 | [\$REDACTED] | [\$REDACTED] |
| 51 | December 31, 2023 | [\$REDACTED] | [\$REDACTED] |
| 52 | January 31, 2024 | [\$REDACTED] | [\$REDACTED] |
| 53 | February 29, 2024 | [\$REDACTED] | [\$REDACTED] |
| 54 | March 31, 2024 | [\$REDACTED] | [\$REDACTED] |
| 55 | April 30, 2024 | [\$REDACTED] | [\$REDACTED] |
| 56 | May 31, 2024 | [\$REDACTED] | [\$REDACTED] |
| 57 | June 30, 2024 | [\$REDACTED] | [\$REDACTED] |
| 58 | July 31, 2024 | [\$REDACTED] | [\$REDACTED] |
| 59 | August 31, 2024 | [\$REDACTED] | [\$REDACTED] |
| 60 | September 30, 2024 | [\$REDACTED] | [\$REDACTED] |

ATTACHMENT B

FORM OF REQUEST FOR PAYMENT

| | |
|---|--|
| TO: Contracting Authority AND TO: [Independent Certifier] | BY: Mobilinx Hurontario (“Project Co”) General Partnership |
| [Construction Period Payment No:]/[Unpaid Construction Period Payments] | Project: Hurontario LRT Project (“Project”) |
| Date: [Date] | Project Agreement dated ____ (“Project Agreement”) |

1. Project Co hereby makes application for payment in the amount of _____ [insert amount in words] Dollars (\$[insert amount in numbers]) which is in respect of [Payment Period No. __ in Table A]/[Unpaid Construction Period Payments]. This payment is pursuant to the terms of the Project Agreement and Schedule 21 – Construction Period Payments. Capitalized terms used and not defined herein shall have the same meaning given to them in the Project Agreement.
2. Attached to this Request for Payment is a Project Co Officer Certificate in respect of the [Construction Period Payment]/[Unpaid Construction Period Payments] requested hereby. [Note: Use the form of certificate set out in Attachment C of this Schedule 21.]
3. Project Co hereby certifies that Private Capital Invested as of the applicable Payment Calculation Date qualifies Project Co for the [Construction Period Payment]/[Unpaid Construction Period Payments] being requested herein.
4. Attached hereto as Appendix 1 are the Private Capital Advance Confirmations for the period covered by this Request for Payment.
5. Attached hereto as Appendix 2 is a Statutory Declaration by Project Co on CCDC Form 9A (2001) evidencing compliance by Project Co with the holdback requirements of the *Construction Act* (Ontario).
6. Attached hereto as Appendix 3 is a calculation of the [Construction Period Payment]/[Unpaid Construction Period Payments] requested hereby in accordance with [Section 2.2(a)(iv)/Section 6.1(a)(i)(B)] of Schedule 21 – Construction Period Payments of the Project Agreement.
7. Attached hereto as Appendix 4 is a [monthly] summary of the following items: a list of Projected Construction Period Payments as determined at the date of the Project Agreement, a list of Construction Period Payments paid to Project Co prior to the date hereof, and a list of Actual Cumulative Construction Period Payments.

The information and calculations contained herein and on the attachments hereto are certified to be true, accurate and complete.

Dated at [City], [Province] this [day] day of [month], 20[•].

Mobilinx Hurontario General Partnership

per: _____

Appendix 1

Summary of any Private Capital Advance Confirmations for the Payment Period

Appendix 2

Statutory Declaration by Project Co on CCDC Form 9A (2001)

Appendix 3

Calculation of the [Construction Period Payment]/[Unpaid Construction Period Payments] for the Payment Period

Appendix 4

Summary ([monthly]) of Projected Construction Period Payments, Construction Period Payments and paid to Project Co to date, and Actual Cumulative Construction Period Payments

ATTACHMENT C

FORM OF PROJECT CO OFFICER CONSTRUCTION PERIOD PAYMENT CERTIFICATE

| | |
|--|--|
| TO: Contracting Authority AND TO: [Independent Certifier] | BY: Mobilinx Hurontario General Partnership (“Project Co”) |
| [Construction Period Payment No: ____]/[Unpaid Construction Period Payments] | Project: Hurontario LRT Project (“Project”) |
| Date: [Date] | Project Agreement dated ____ (“Project Agreement”) |
| | Request for Payment dated ____ (“Request for Payment”) |

I, _____, the [insert title] of [Project Co], hereby certify for and on behalf of Project Co without incurring personal liability and confirm that the same may be relied upon by Contracting Authority and the Independent Certifier without further enquiry as of _____ [insert date] that:

1. I am a duly authorized [signing officer of][signatory for] Project Co, am familiar with the provisions of Project Agreement and have made reasonable investigations of corporate records and inquiries of other officers and senior personnel of Project Co in certifying the information set out below. Capitalized terms used and not defined herein shall have the same meaning given to them in the Project Agreement.
2. No Project Co Event of Default has occurred and is continuing under the Project Agreement.
3. The requested amount set forth in the Request for Payment does not exceed the [Construction Period Payment]/[Unpaid Construction Period Payment] to which Project Co is entitled, as calculated in accordance with Section 2.2(a)(iv) of Schedule 21 – Construction Period Payments of the Project Agreement.
4. Project Co has complied with all requirements of the *Construction Act* (Ontario) in connection with the Project. No claims for lien or notices of lien under the *Construction Act* (Ontario) have been received by Project Co or any Project Co Party which have not been duly released, discharged or vacated in accordance with the requirements of the *Construction Act* (Ontario), if applicable.

Dated at [City], [Province] this [day] day of [month], 20[●].

Name: _____

Title: _____

ATTACHMENT D

FORM OF PROJECT CO OFFICER INITIAL CAPITAL INVESTMENT CERTIFICATE

| | |
|--|---|
| TO: Contracting Authority AND TO: [Independent Certifier] | BY: Mobilinx Hurontario General Partnership (“Project Co”) |
| Project: Hurontario LRT Project | (“Project”) |
| Date: [Date] | Project Agreement dated _____ (“Project Agreement”) |

I, _____, the [insert title] of [Project Co], hereby certify for and on behalf of Project Co without incurring personal liability and confirm that the same may be relied upon by Contracting Authority and the Independent Certifier without further enquiry as of _____ [insert date] that:

1. I am a duly authorized [signing officer of][signatory for] Project Co, am familiar with the provisions of Project Agreement and have made reasonable investigations of corporate records and inquiries of other officers and senior personnel of Project Co in certifying the information set out below. Capitalized terms used and not defined herein shall have the same meaning given to them in the Project Agreement.
2. The Initial Capital Investment has been achieved in accordance with the terms and conditions set out in the Project Agreement.
3. Project Co has complied with all requirements of the *Construction Act* (Ontario) in connection with the Project. No claims for lien or notices of lien under the *Construction Act* (Ontario) have been received by Project Co or any Project Co Party which have not been duly released, discharged or vacated in accordance with the requirements of the *Construction Act* (Ontario), if applicable.

Dated at [City], [Province] this [day] day of [month], 20[•].

Name: _____

Title: _____

ATTACHMENT E

CONSTRUCTION PERIOD PERFORMANCE CRITERIA

Table 1: Construction Period Performance Criteria – Non-Conformances discovered physical elements of the Works

| Reference | Requirement to be met | Construction Period Failure Type | Construction Period Failure Category | Remedial Period |
|---|--|----------------------------------|--------------------------------------|--|
| CPPC-01: Schedule 21 – Construction Period Payments | Physical elements of the Works (other than in respect of the design, construction and/or manufacture of the Revenue Vehicles) shall meet the requirements of the Project Agreement, such that: (a) a Critical Qualifying NCR with an ‘in progress status’ does not occur; or (b) Project Co Accepted Works are not Contested Non-Conforming Works. | CPQF | Critical | The first Remedial Period shall be equal to the time set out in Non-Conformance Report to resolve the Non-Conformance; thereafter, the Remedial Period shall be the lesser of 20 Business Days (or such longer period as may be approved by Contracting Authority in its sole discretion) and the first Remedial Period. |
| CPPC-02: Schedule 21 – Construction Period Payments | Physical elements of the Works (other than in respect of the design, construction and/or manufacture of the Revenue Vehicles) shall meet the requirements of the Project Agreement, such that a Medium Qualifying NCR with an ‘in progress status’ does not occur. | CPQF | Medium | The first Remedial Period shall be equal to the time set out in Non-Conformance Report to remedy the Non-Conformance; thereafter, the Remedial Period shall be the lesser of 20 Business Days (or such longer period as may be approved by Contracting Authority in its sole discretion) and the first Remedial Period. |
| CPPC-03: Schedule 21 – Construction Period Payments | Physical elements of the Works (other than in respect of the design, construction and/or manufacture of the Revenue Vehicles) shall meet the requirements of the Project Agreement, such that a Minor Qualifying NCR with an ‘in progress status’ does not occur. | CPQF | Minor | The first Remedial Period shall be equal to the time set out in Non-Conformance Report to remedy the Non-Conformance; thereafter, the Remedial Period shall be the lesser of 20 Business Days (or such longer period as may be approved by Contracting Authority in its sole discretion) and the first Remedial Period. |

Table 2: Construction Period Performance Criteria - Non-Conformances discovered that that are not physical elements of the Works

| Reference | Requirement to be met | Construction Period Failure Type | Construction Period Failure Category | Remedial Period |
|---|--|----------------------------------|--------------------------------------|---|
| CPPC-04: Schedule 21 – Construction Period Payments | Works that are not physical elements of the Works (other than in respect of the design, construction and/or manufacture of the Revenue Vehicles) shall meet the requirements of the Project Agreement, such that a Critical Qualifying Process NCR with an ‘in progress status’ does not occur | CPQF | Critical | The first Remedial Period shall be equal to the time set out in NCR to resolve the Non-Conformance; thereafter, the Remedial Period shall be the lesser of 20 Business Days (or such longer period as may be approved by Contracting Authority in its sole discretion) and the first Remedial Period. |
| CPPC-05: Schedule 21 – Construction Period Payments | Works that are not physical elements of the Works (other than in respect of the design, construction and/or manufacture of the Revenue Vehicles) shall meet the requirements of the Project Agreement, such that a Medium Qualifying Process NCR with an ‘in progress status’ does not occur. | CPQF | Medium | The first Remedial Period shall be equal to the time set out in Non-Conformance Report to remedy the Non-Conformance; thereafter, the Remedial Period shall be the lesser of 20 Business Days (or such longer period as may be approved by Contracting Authority in its sole discretion) and the first Remedial Period. |
| CPPC-06: Schedule 21 – Construction Period Payments | Works that are not physical elements of the Works (other than in respect of the design, construction and/or manufacture of the Revenue Vehicles) shall meet the requirements of the Project Agreement, such that a Minor Qualifying Process NCR with an ‘in progress status’ does not occur. | CPQF | Minor | The first Remedial Period shall be equal to the time set out in Non-Conformance Report to remedy the Non-Conformance; thereafter, the Remedial Period shall be the lesser of 20 Business Days (or such longer period as may be approved by Contracting Authority in its sole discretion) and the first Remedial Period. |

Table 3: Construction Period Performance Criteria – Other Requirements

| Reference | Requirements to be met | Construction Period Failure Type | Construction Period Failure Category | Remedial Period |
|--|---|----------------------------------|--------------------------------------|-----------------|
| CPPC-07 Schedule 40 Appendix A, Article 1.0 | Project Co shall not perform a Property Access Closure at an address for which Contracting Authority has not provided a Unit Cost pursuant to Appendix A in Schedule 40. | CPQF per Property Access Closure | Medium | One day |
| CPPC-08 Project Agreement Section 14.1(k) | Except as otherwise set out in Section 14.1(k), Project Co shall ensure that no Project Co Party uses or accesses (including trespasses upon) any lands of a third party land owner or rights holder during and for the purpose of the performance of the Project Operations. | CPQF per occurrence | Minor | 15 minutes |
| CPPC-09 Schedule 15-2 Part 7, Section 5.5 | Lane closures shall not start earlier than the specified times for closures on Highways 401, 403 and QEW mainline. | CPQF per occurrence | Medium | 15 minutes |
| CPPC-10 Schedule 15-2 Part 7, Section 5.5 | Lane closures shall not end later than the specified times for closures on Highways 401, 403 and QEW mainline. | CPQF per occurrence | Medium | 15 minutes |
| CPPC-11 Schedule 15-2 Part 7, Section 5.5 | Lane closures shall not start earlier than the specified times for closures on Highways 401, 403 and QEW Ramps | CPQF per occurrence | Medium | 15 minutes |
| CPPC-12 Schedule 15-2 Part 7, Section 5.5 | Lane closures shall not end later than the specified times for closures on Highways 401, 403 and QEW Ramps. | CPQF per occurrence | Medium | 15 minutes |

| Reference | Requirements to be met | Construction Period Failure Type | Construction Period Failure Category | Remedial Period |
|---|--|----------------------------------|--------------------------------------|--------------------|
| CPPC-13 Schedule 15-2 Part 7, Section 5.5 | Full closure of the Highways 401, 403 and QEW Ramps shall not start earlier than the specified times. | CPQF per occurrence | Critical | 15 minutes |
| CPPC-14 Schedule 15-2 Part 7, Section 5.5 | Full closure of the Highways 401, 403 and QEW Ramps shall not end later than the specified times. | CPQF per occurrence | Critical | 15 minutes |
| CPPC-15 Schedule 12 – Works Schedule Requirements Sections 9.1(a)) and 12.1(a) | No later than 120 Business Days following Financial Close, Project Co shall submit the Baseline Works Schedule and the Basis of Works Schedule Report to Contracting Authority. | CPQF | Critical | Five Business Days |
| CPPC-16 Schedule 10 – Review Procedure Part A Clause 2 | The following Submittals shall not receive a “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” comment from Contracting Authority more than two times in a row for the same reason: (a) Design Brief (S-100) (b) Design Certificates (S-106) (c) Construction Certificates (S-107) (d) Traffic Plans (S-113) (e) Communications (S-126) (f) Environmental (S-128) (g) Geotechnical Instrumentation Monitoring Plan (part of S-108) | CPQF | Medium | Five Business Days |

| Reference | Requirements to be met | Construction Period Failure Type | Construction Period Failure Category | Remedial Period |
|---|--|----------------------------------|--------------------------------------|--|
| CPPC-17 Schedule 12 – Works Schedule Requirements Sections 10(a) and 13.1(a) | No later than 1 Business Day after the last day of each month until Final Completion, Project Co shall submit to Contracting Authority an updated Progress Works Schedule and a Works Schedule Report. | CPQF | Medium | Five Business Days |
| CPPC-18 Schedule 12 – Works Schedule Requirements Section 11(b) | No later than 10 Business Days following a request by Contracting Authority in accordance with Section 11(a) of Schedule 12 – Works Schedule Requirements, Project Co shall submit to Contracting Authority a Works Micro-Schedule. | CPQF | Medium | Two Business Days |
| CPPC-19 Schedule 12 – Works Schedule Requirements Section 11(c) | Every two weeks following the initial Works Micro-Schedule, Project Co shall submit an updated Works Micro-Schedule in accordance with Section 11(c) of Schedule 12 – Works Schedule Requirements until the Works contemplated in the Works Micro-Schedule are complete. | CPQF | Medium | Five Business Days |
| CPPC-20 Schedule 15-2 Part 7 Appendix A | Comply with Maintenance Performance Requirements within the MTO Road Allowance | CPQF | Minor | In accordance with Schedule 15-2 Part 7 Appendix A |
| CPPC-21 Schedule 15-2 Part 7 Appendix A | Comply with Maintenance Performance Requirements within the MTO Road Allowance | CPQF | Medium | In accordance with Schedule 15-2 Part 7 Appendix A |

| Reference | Requirements to be met | Construction Period Failure Type | Construction Period Failure Category | Remedial Period |
|--|--|----------------------------------|--------------------------------------|--|
| CPPC-22 Schedule 15-2 Part 7 Appendix B | Comply with Maintenance Performance Requirements within the 407 ETR Road Allowance | CPQF | Minor | In accordance with Schedule 15-2 Part 7 Appendix B |
| CPPC-23 Schedule 15-2 Part 7 Appendix B | Comply with Maintenance Performance Requirements within the 407 ETR Road Allowance | CPQF | Medium | In accordance with Schedule 15-2 Part 7 Appendix B |
| CCPC-24 PA 20.13(a) | Project Co shall deliver to Contracting Authority a copy of the Apprenticeship Declaration substantially in the form attached as Schedule 38 – Apprenticeship Declaration, executed by Project Co. | CPQF | Critical | Five Business Days |

SCHEDULE 22**VARIATION PROCEDURE****1. VARIATIONS****1.1 Definitions**

- (a) In this Schedule 22, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 22) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) “**Contracting Authority Work**” has the meaning given in Section 1.7(a).
 - (ii) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 22.
 - (iii) “**Estimate**” has the meaning given in Section 1.4(a).
 - (iv) “**Overhead and Profit**” has the meaning given in Appendix B of this Schedule 22.
 - (v) “**Project Co Variation Notice**” has the meaning given in Section 2.1(a).
 - (vi) “**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 Project Co Services.
 - (vii) “**Variation Confirmation**” has the meaning given in Section 1.8(a)(ii).
 - (viii) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the Contracting Authority Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
 - (ix) “**Variation Enquiry**” has the meaning given in Section 1.3(a).

1.2 General

- (a) Contracting Authority has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22, provided that Contracting Authority shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which Contracting Authority is obligated to proceed with a Variation.
- (b) Contracting Authority shall be obligated to proceed with a Variation in certain circumstances specified in the Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.

-
- (c) The only payment or compensation payable by Contracting Authority to Project Co in connection with any Variation shall be the sum of the following amounts:
 - (i) the Direct Cost of such Variation; plus
 - (ii) Overhead and Profit.
 - (d) Project Co 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 22.
 - (e) Project Co shall attend and shall cause any relevant Subcontractors to attend any meetings requested by Contracting Authority from time to time to discuss the implementation of any Variation or Variations generally, including with respect to the administration and pricing of Variations.

1.3 Variation Enquiry

- (a) If Contracting Authority proposes or is obligated pursuant to the terms of the Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co 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 Project Co to prepare a detailed Estimate;
 - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether Contracting Authority intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Monthly Service Payments (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof; and
 - (iii) provide a preliminary indication of any provisions of the Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to the Project Agreement (including the Output Specifications or the Project Co 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, Project Co shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6 and in the form prescribed by Contracting Authority, acting reasonably.

1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to Contracting Authority'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 Applicable Law;
 - (B) cause to be revoked any of the existing Permits, Licences and Approvals required by Project Co to perform the Project Operations, and any such Permit, Licence and Approval is not, using commercially reasonable efforts, capable of amendment or renewal; or
 - (C) require any new Permits, Licences and Approvals for Project Co to perform the Project Operations, any of which will not, using commercially reasonable efforts by Project Co or Contracting Authority, as applicable, be obtainable;
 - (iii) the proposed Variation would have a material and adverse effect on the 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 22 and, if applicable, Schedule 39 – System Extension;
 - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
 - (v) Contracting Authority does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
 - (vi) the Variation would, if implemented, result in a change in the essential nature of the Project Co System Infrastructure and the New Third Party Infrastructure (including for certainty, a change in the essential nature of the Revenue Vehicles or the Revenue Vehicle Equipment);
 - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co 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 Project Co despite commercially reasonable efforts; or

- (ix) in the case of a Variation relating to the Project Co Services, the time specified for implementation of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to Contracting Authority a written Notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

1.6 Estimate Requirements

- (a) Unless Contracting Authority in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to Contracting Authority's reasonable satisfaction:
 - (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances, including a schedule, work breakdown structure, contact list, description of roles and responsibilities and an organizational structure chart;
 - (ii) any impact on the Construction Period Payments, or the Scheduled Substantial Completion Date, and any other schedule impact on the provision of the Project Co System Infrastructure and the New Third Party Infrastructure, the completion of the Works and the performance of the Project Co Services (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iii) any impact on the performance of the Project Operations and any other impact on the Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iv) any impact on expected usage of utilities, including those identified in Schedule 20 – Payment Mechanism, for the current Contract Year and subsequent Contract Years;
 - (v) any amendments to the Project Agreement (including Schedule 20 – Payment Mechanism) or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of Contracting Authority 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 Cost to Project Co and each Subcontractor of the proposed Variation, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or Contracting Authority); and

- (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co’s cash flows from incurring, reducing or avoiding such costs;
- (vii) either:
 - (A) a confirmation that the proposed Variation will not affect Project Co’s existing financing or that Project Co’s existing financing is adequate to implement the Variation; or
 - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
- (viii) Project Co’s confirmation that the projected internal rate of return on any additional equity capital required to finance the Variation will be the Base Case Equity IRR;
- (ix) Project Co’s preliminary indication of the potential increase or decrease, if any, of the Monthly Service Payments (expressed in both real dollar amounts and Base Date dollar amounts using the Escalation Factor as the discount rate), with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the proposed Variation;
- (x) any Permits, Licences and Approvals that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and Project Co or Contracting Authority, as applicable, must obtain or amend such Permits, Licences and Approvals for the Estimate to remain valid; and
- (xi) 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 the Project Agreement,

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

- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to Contracting Authority’s satisfaction, acting reasonably, that:
 - (i) subject to Sections 1.6(c) and 1.6(e), Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders, to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) except as otherwise set out in this Schedule 22, all costs of Project Co and each Subcontractor are limited to the Direct Cost of the proposed Variation described in Appendix A of this Schedule 22;
 - (iii) Overhead and Profit has been calculated in accordance with Appendix B of this Schedule 22;

- (iv) all costs of providing Project Operations, including Capital Expenditures, reflect:
 - (A) labour and material 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 any Capital Expenditure) and that all such expenditures, including all applicable amounts 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
 - (vi) Project Co has mitigated or will mitigate the impact of the Variation, including on the Project Works Schedules, the performance of the Project Operations, the expected usage of utilities, and the Direct Cost of the proposed Variation to be incurred.
- (c) Project Co shall use commercially reasonable efforts to obtain the best value for money when procuring and/or delivering any work, services, supplies, materials or equipment required by the Variation, including, at the request of Contracting Authority, applying, using and comparing applicable industry benchmarks or benchmarking data for such purposes, and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to Contracting Authority, including using commercially reasonable efforts to mitigate such costs. Also, to the extent the procurement or delivery of any work, services, supplies, materials or equipment required by the Variation results in costs or expenses that are in excess of those costs or expenses established by industry benchmarks or benchmarking data, Project Co shall provide Contracting Authority sufficient information and analysis to demonstrate to Contracting Authority's satisfaction, acting reasonably, that such excess costs or expenses are reasonable and justified in the context of the subject Variation provided that such information and analysis shall not include any Sensitive Information of the Revenue Vehicle Manufacturer or any Alstom Party.
- (d) As soon as practicable, and in any event not more than 15 Business Days after Contracting Authority receives an Estimate, Project Co and Contracting Authority shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) At the request of Contracting Authority, including if Contracting Authority is required by Applicable Law or any policy applicable to Contracting Authority, to competitively tender any contract in relation to the proposed Variation, Project Co shall seek and evaluate competitive tenders for the proposed Variation, including in accordance with such Applicable Law or policy.
- (f) Contracting Authority 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 Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify Contracting Authority 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 27 – Dispute Resolution Procedure.

1.7 Contracting Authority’s Right to Perform

- (a) In respect of the Project Co System Infrastructure and the New Third Party Infrastructure, after Substantial Completion, Contracting Authority shall have the right to perform the subject matter of a proposed Variation (“**Contracting Authority Work**”) itself, or through others contracting directly with Contracting Authority, without compensation to Project Co, except as specifically stated herein.
- (b) Contracting Authority shall indemnify and save Project Co harmless from and against any and all loss or expense which may be suffered, sustained or incurred by Project Co as a direct result of, in respect of, or arising out of the performance by Contracting Authority, or any third party, of Contracting Authority Work, including 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 27 – Dispute Resolution Procedure, Contracting Authority shall either:
- (i) subject to Section 1.2(b) and Section 1.8(f), withdraw the Variation Enquiry by written Notice to Project Co; or
 - (ii) issue a written confirmation of the Estimate signed by Contracting Authority (the “**Variation Confirmation**”), 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 Project Co obtaining financing pursuant to Section 1.9.
- (b) Within five Business Days following Project Co’s receipt of a Variation Confirmation issued pursuant to Section 1.8(a)(ii), Project Co shall execute and deliver a copy of such executed Variation Confirmation to Contracting Authority.
- (c) If Contracting Authority does not issue a Variation Confirmation within such 15 Business Days, then, subject to Section 1.2(b) and Section 1.8(f), the Variation Enquiry shall be deemed to have been withdrawn.
- (d) Upon the Variation Confirmation being issued, and if applicable upon Project Co 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 the Project Agreement necessary to implement the Variation, including in respect

of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;

- (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(d)(i), all provisions of the Project Agreement applicable to the Project Operations shall apply to the Project Operations as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; 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(d)(i).
- (e) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.9, then the Variation Confirmation shall not be effective until:
- (i) Project Co obtains such financing acceptable to Contracting Authority in its sole discretion; or
 - (ii) Contracting Authority in its sole discretion waives such requirement.
- (f) 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 Contracting Authority's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (ii) Contracting Authority may at any time withdraw a Variation Enquiry and, subject to Section 1.8(g), Contracting Authority shall not be obligated to Project Co in respect of a Variation until such time as Contracting Authority in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by Contracting Authority or Contracting Authority has waived such requirement,

provided that Contracting Authority may not withdraw a Variation Enquiry in circumstances where Contracting Authority is obligated pursuant to the terms of the Project Agreement to proceed with a Variation. In such circumstances Schedule 27 – 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 22.

- (g) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, Contracting Authority shall reimburse Project Co for the Direct Cost reasonably and properly incurred by Project Co in connection with preparing the Estimate.

1.9 Financing

- (a) If Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if Contracting Authority requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co and Contracting Authority, provided that, prior to the Substantial Completion Date, Project Co shall not be required to seek debt financing from any source other than the existing Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and Contracting Authority within 60 days of the date that Contracting Authority issues the Variation Confirmation, then Project Co 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 Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (c) If Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide Contracting Authority with details of such financing, and Contracting Authority shall, in its sole discretion, determine whether Project Co should proceed with such financing. If Contracting Authority determines that Project Co should not proceed with such financing, then Project Co 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 Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (d) Contracting Authority may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co 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 Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (e) If Contracting Authority waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.9(b), 1.9(c) or 1.9(d) then Project Co shall proceed with the Variation as set out in the Variation Confirmation and Contracting Authority 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 Project Co or has been waived by Contracting Authority, 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 (expressed only in Base Date dollar amounts using the Escalation Factor as the discount rate) 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 Project Co shall be paid as follows:
 - (A) Contracting Authority shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by Contracting Authority and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by Contracting Authority; and
 - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide 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.

In the event Contracting Authority and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by Contracting Authority (such approval not to be unreasonably withheld or delayed), the process under Schedule 27 – Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by Contracting Authority in time to make payments to that third party in accordance with its contract with Project Co.

- (b) Contracting Authority shall make payment to Project Co within 20 Business Days of receipt by Contracting Authority of invoices presented to Contracting Authority in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Payments by Contracting Authority in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Act* (Ontario), as applicable.
- (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Project Co, Contracting Authority shall provide to Project Co copies of any consent or approval issued by Contracting Authority in connection with a proposed Variation.

1.11 Reduction in Project Operations

- (a) If a Variation involves any reduction in the Project Operations which results in savings in the Direct Cost to Project Co, such savings shall result in a reduction in the compensation payable to Project

Co under the Project Agreement in an amount equal to such reduction in the Direct Cost, and Project Co shall compensate Contracting Authority by way of a reduction in the Monthly Service Payments (expressed in Base Date dollar amounts using the Escalation Factor as the discount rate).

1.12 Variation Directive

- (a) If an Estimate is not promptly agreed upon by Contracting Authority and Project Co or if there is a Dispute in relation thereto or if Contracting Authority, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then Contracting Authority may issue a Variation Directive and, following receipt of the Variation Directive, Project Co shall promptly proceed to implement the Variation.
- (b) Without limiting Project Co's obligation to promptly implement such Variation:
 - (i) 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;
 - (ii) 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 Completion) or the Contracting Authority 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 27 – Dispute Resolution Procedure; and
 - (iii) Contracting Authority shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

2. PROJECT CO VARIATIONS

2.1 General

- (a) Project Co shall deliver to Contracting Authority a written Notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

2.2 Project Co Variation Notice

- (a) A Project Co Variation Notice shall:
 - (i) set out details of the proposed Variation in sufficient detail to enable Contracting Authority to evaluate it in full;
 - (ii) specify Project Co'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 Contracting Authority, 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 Contracting Authority, in its sole discretion, elects to consider the Variation proposed by Project Co, Contracting Authority may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.
- (c) Project Co shall, promptly upon demand, reimburse Contracting Authority for all out-of-pocket costs and expenses reasonably incurred by Contracting Authority in connection with Contracting Authority's consideration of any Variation proposed by Project Co pursuant to Section 2 of this Schedule 22, including, without limitation, legal and consulting fees and disbursements, regardless of whether (i) a Variation Enquiry or Estimate is issued in connection therewith or (ii) such Variation is implemented.

3. SMALL WORKS

3.1 General

- (a) After the Substantial Completion Date, with respect to the Project Co System Infrastructure and the New Third Party Infrastructure, Project Co shall carry out all Small Works requested by Contracting Authority.
- (b) If Small Works are requested by Contracting Authority, Project Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide Contracting Authority with a price for carrying out the Small Works.
- (c) Project Co's price for Small Works shall include only (i) the Direct Cost of such Small Works and (ii) Overhead and Profit with respect to such Direct Cost calculated in accordance with this Schedule 22, including Appendix B of this Schedule 22.
- (d) If Project Co's price is accepted by Contracting Authority, in its sole discretion, Project Co shall carry out the Small Works for such price.
- (e) Contracting Authority may at any time, in its sole discretion, including if Contracting Authority does not accept the price proposed by Project Co pursuant to Section 3.1(b), issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule 22, other than this Section 3, shall apply.

3.2 Project Co to Minimize Inconvenience

- (a) Project Co shall notify Contracting Authority of the estimated duration of any Small Works so that Contracting Authority and Project Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to Contracting Authority. Project Co shall use commercially reasonable efforts to minimize the duration of any Small Works.

APPENDIX A

CALCULATION OF DIRECT COST

1. DIRECT COST

1.1 Subject to Section 1.2 of this Appendix A, the term “**Direct Cost**” means the aggregate total, without duplication, of only the following amounts, as paid or incurred by Project Co or each Subcontractor, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:

- (i) wages and benefits paid for labour in the direct employ of Project Co or each Subcontractor while performing that part of the Project Operations on the Lands together with the wages and benefits paid for labour in the direct employ of the Revenue Vehicle Manufacturer or each Alstom Party while performing that part of the Vehicle Supplier Activities in the Revenue Vehicle Manufacturer’s manufacturing facility in the Greater Toronto Area;
- (ii) salaries, wages and benefits of Project Co’s or each Subcontractor’s personnel when stationed at the office on the Lands in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment together with the salaries, wages and benefits of the Revenue Vehicle Manufacturer’s or each Alstom Party’s personnel when stationed in the Revenue Vehicle Manufacturer’s manufacturing facility in the Greater Toronto Area;
- (iii) salaries, wages and benefits of Project Co’s or each Subcontractor’s office personnel engaged in a technical capacity;
- (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) the cost of materials (including hand tools which have a retail value of \$[REDACTED] or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (vi) the rental costs of all tools (excluding hand tools which have a retail value of \$[REDACTED] or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
- (vii) deposits lost;

- (viii) except as otherwise set out in this Schedule 22, a reasonable amount of profit consistent with prevailing market rates that is charged by any Subcontractor other than the Construction Contractor, the Service Provider, the Revenue Vehicle Manufacturer and any entity not at arms-length from Project Co, any Equity Provider, the Construction Contractor, the Service Provider or the Revenue Vehicle Manufacturer;
- (ix) the reasonable fees and disbursements of the Lenders' Consultant and the external technical consultants and external legal advisors of Project Co and its Subcontractors;
- (x) the cost of third party quality assurance required by Contracting Authority, such as independent inspection and testing services;
- (xi) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xii) subject to Section 1.1(iv) of this Appendix A, Taxes (and without limiting the obligation of Contracting Authority to pay HST payable by it under the Project Agreement), but excluding:
 - (A) HST;
 - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
 - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
 - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Project Operations;
- (xiii) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under the Project Agreement;
- (xiv) termination payments which are required under Applicable Law to be made to employees of Project Co or a Subcontractor reasonably and properly incurred by Project Co or such Subcontractor arising as a direct result of any Variation reducing the scope of the Project Operations, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xv) the cost of debt financing provided by the Lenders, including all additional financing costs related to any delay caused by the implementation of the Variation;

- (xvi) the cost of competitively tendering any contract in relation to the proposed Variation that is required by Contracting Authority, including as a result of any Applicable Law or any policy applicable to Contracting Authority;
- (xvii) the cost of any additional insurance or performance security required or approved by Contracting Authority; and
- (xviii) the cost of obtaining all Project Co Permits, Licences and Approvals.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Project Operations as a result of the Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the Direct Cost with respect to the per hour cost charged by Project Co or any Subcontractor for salaried personnel shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in the Greater Toronto Area;
- (v) any amounts paid in accordance with this Appendix A for fees, wages, salaries and benefits charged by Project Co or any Subcontractor shall be reasonable and shall not exceed commercially competitive rates available in the Greater Toronto Area;
- (vi) the Direct Cost shall not include:
 - (A) any cost incurred due to the failure on the part of Project Co or any Project Co Party to exercise reasonable care and diligence in its attention to the execution of that part of the Project Operations (including any cost due to any negligence, improper work, deficiencies or breaches of contract by Project Co and/or any Subcontractor);
 - (B) the fees, costs or expenses, or any other form of compensation, paid or payable by Project Co or any Subcontractor to any person performing asset management, personnel services and/or similar, comparable or like services to or for the benefit of Project Co or any Subcontractor;
 - (C) the cost and expense of maintaining corporate offices, the cost and expense of office administration, estimation, accounting, payroll, printing, office supplies, phones and courier/postal service, the cost and expense of personnel not directly

- involved in the implementation of the Variation and any other overhead cost or expense;
- (D) the cost of travel and subsistence expenses; or
 - (E) any costs or expenses associated with the participation of Project Co and any Subcontractor in the meetings described in Section 1.2(e) of this Schedule 22;
- (vii) for greater certainty, the Direct Cost shall include the aggregate real dollar amount value of all of the costs permitted by this Appendix A related to any variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the Project Co Services associated with the Variation, provided that, in accordance with Section 1.10(a)(i), any adjustment to the Monthly Service Payments pursuant to this Schedule 22 shall only be expressed in Base Date dollar amounts using the Escalation Factor as the discount rate; and
- (viii) the Direct Cost must be quantifiable and supported by evidence and proper documentation, such as invoices, proof of payments, and detailed hourly rate information as required by Contracting Authority. Proper documentation shall include unit rates or prices and quantities for all items, including labour and materials that comprise the Direct Cost, including for all work completed by any Subcontractor. Any Direct Cost item claimed as a percentage of any other Direct Cost item, such as a “risk contingency”, will not be permissible, unless approved by Contracting Authority in writing.

APPENDIX B**CALCULATION OF OVERHEAD AND PROFIT**

- (a) **“Overhead and Profit”** means, for each of rows 1, 2, 3, 4, 5, 6 and 7 in Table A – Applicable Overhead and Profit, the product of:
- (i) the Direct Cost of, as applicable, the work or services within the category described in such row, multiplied by
 - (ii) the percentage set out in such row as determined based on the Direct Cost of the Variation.
- (b) For greater certainty, the percentages applicable to Overhead and Profit shall not be determined based on any component or components of the subject Variation (e.g. initial construction costs or annual Project Co Services costs).
- (c) Project Co, the Construction Contractor and the Service Provider shall charge no more than the amount of Overhead and Profit calculated in accordance with Appendix B of this Schedule 22.
- (d) No amount for Overhead and Profit shall be charged on any other amount of Overhead and Profit.
- (e) No other methodology for the calculation of Overhead and Profit shall be permitted or apply.
- (f) Project Co acknowledges and agrees that the Overhead and Profit payable in accordance with this Schedule 22 is intended to compensate Project Co, the Construction Contractor and the Service Provider for all costs and expenses incurred in connection with a Variation other than the Direct Cost, including, without limitation, all overhead, profit, office administration and the amounts expressly excluded from the Direct Cost pursuant to Section 1.2 of Appendix A of this Schedule 22.

TABLE A
APPLICABLE OVERHEAD AND PROFIT

| Entity | Overhead and Profit | | |
|---|---|---|--|
| | For a Variation with a Direct Cost under \$[REDACTED] | For a Variation with a Direct Cost of between \$[REDACTED] and \$[REDACTED] | For a Variation with a Direct Cost over \$[REDACTED] |
| 1. Project Co (Own Work) | [REDACTED]% | [REDACTED]% | [REDACTED]% |
| 2. Construction Contractor (Own Work) | [REDACTED]% | [REDACTED]% | [REDACTED]% |
| 3. Construction Contractor (Subcontracted Work) | [REDACTED]% | [REDACTED]% | [REDACTED]% |
| 4. Service Provider (Own Work) | [REDACTED]% | [REDACTED]% | [REDACTED]% |
| 5. Service Provider (Subcontracted Work) | [REDACTED]% | [REDACTED]% | [REDACTED]% |
| 6. Revenue Vehicle Manufacturer (Own Work) | [REDACTED]% | [REDACTED]% | [REDACTED]% |

| | | | |
|--|-------------|-------------|-------------|
| 7. Revenue Vehicle Manufacturer (Subcontracted Work) | [REDACTED]% | [REDACTED]% | [REDACTED]% |
| | | | |

SCHEDULE 23

COMPENSATION ON TERMINATION

1. DEFINITIONS

1.1 Definitions

In this Schedule 23, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 23) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Adjusted Estimated Fair Value”** means the Estimated Fair Value adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce the Estimated Fair Value (whether or not such amounts have been set off by Contracting Authority pursuant to Section 3.3(f));
 - (ii) the aggregate of the following amounts shall be deducted, without duplication, from the Estimated Fair Value;
 - (A) the Post Termination Service Amounts actually paid by Contracting Authority to Project Co prior to the Compensation Date;
 - (B) the Tender Costs; and
 - (C) amounts that Contracting Authority is entitled to set off or deduct; and
 - (iii) the aggregate of the following amounts shall be added, without duplication, to the Estimated Fair Value:
 - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value is calculated; and
 - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(a)(iii)(A),
to the extent that:
 - (C) Sections 1.1(a)(iii)(A) and 1.1(a)(iii)(B) have not been directly taken into account in calculating the Estimated Fair Value; and
 - (D) Contracting Authority has received such amounts in accordance with the Project Agreement.

- (b) **“Adjusted Highest Qualifying Tender Price”** means the price offered by the Qualifying Tenderer (if any) with the highest tender price, adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce such highest tender price (whether or not such amounts have been set off by Contracting Authority pursuant to Section 3.3(f));
 - (ii) the aggregate of the following amounts shall be deducted, without duplication, from such highest tender price:
 - (A) the Post Termination Service Amounts actually paid by Contracting Authority to Project Co prior to the Compensation Date;
 - (B) the Tender Costs; and
 - (C) amounts that Contracting Authority is entitled to set off or deduct; and
 - (iii) the aggregate of the following amounts shall be added, without duplication, to such highest tender price:
 - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Qualifying Tender is received; and
 - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(b)(iii)(A),
to the extent that:
 - (C) Sections 1.1(b)(iii)(A) and 1.1(b)(iii)(B) have not been directly taken into account in that Qualifying Tender; and
 - (D) Contracting Authority has received such amounts in accordance with the Project Agreement.
- (c) **“Breach of Refinancing Termination Sum”** has the meaning given to it in Section 6.1(b) of this Schedule 23.
- (d) **“Compensation Date”** means either:
- (i) if Section 3.3 applies, the earlier of:
 - (A) the date that the New Agreement is entered into; and
 - (B) the date on which Contracting Authority pays the Adjusted Highest Qualifying Tender Price to Project Co; or

- (ii) if Section 3.4 applies, the date that the Adjusted Estimated Fair Value has been agreed or determined.
- (e) “**Contracting Authority Default Termination Sum**” has the meaning given in Section 2.1(b).
- (f) “**Discount Rate**” means a rate equal to $((A + B) / C) + D$, where:
- A = the product of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the rate of interest applicable to such amount as shown in the Financial Model at Financial Close.
- B = the product of the Equity Capital as at Financial Close and the Base Case Equity IRR.
- C = the sum of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the Equity Capital as at Financial Close.
- D = the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation, minus the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements as shown in the Financial Model at Financial Close.
- (g) “**Employee Termination Payments**” means termination payments which are required under Applicable Law to be made to employees of Project Co or any Project Co Party as a direct result of terminating the Project Agreement (provided that Project Co or the relevant Project Co Party 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 Project Co or the relevant Project Co Party arising out of:
- (i) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
- (ii) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party other than 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 or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.
- (h) “**Estimated Fair Value**” means the amount determined in accordance with Section 3.4.
- (i) “**Invoice Date**” means the date that is the later of:
- (i) the date on which Contracting Authority receives an invoice from Project Co for the relevant termination sum; and
- (ii) the date on which Contracting Authority receives the supporting evidence required pursuant to Section 8.1(a).

- (j) “**Junior Debt Amount**” means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Junior Lenders to Project Co, together with all interest accrued thereon at that time. For greater certainty, the Junior Debt Amount includes any amount funded under the terms of the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders and excludes the Junior Debt Makewhole.
- (k) “**Junior Debt Makewhole**” means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Lending Agreements, including any “make whole” payments, breakage fees (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Junior Lenders pursuant to the Lending Agreements.
- (l) “**Lending Agreements**” means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the financing of the Project Operations, including, for greater certainty, the Credit Agreement, the Trust Indenture, the Common Terms and Intercreditor Agreement, the Security Documents, the Hedging Agreements and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to (i) any change to the financing terms or conditions of any investment instrument related to the financing of the Project Operations, or (ii) the rescheduling of their indebtedness in respect of the financing of the Project Operations or the refinancing of the Project Operations.
- (m) “**Liquid Market**” means that there are 2 or more willing parties (each of whom is capable of being a Suitable Substitute and of meeting the Qualification Criteria) in the market for agreements in Canada for the provision of operation, maintenance and rehabilitation services (and if the Termination Date occurs prior to Substantial Completion, design and construction services) to light rail transit systems under an alternative financing and procurement or similar model (where such agreements are the same as or similar to the Project Agreement) such that the retendering process in Section 3.3 can reasonably be expected to result in a highest Qualifying Tender price broadly in the range of values that would reasonably be expected to be achieved calculating the Estimated Fair Value under Section 3.4.
- (n) “**Market Value Availability Deduction Amount**” means for any Payment Period or part of a Payment Period, an amount equal to the Deductions for Availability Failures that were made from the Monthly Service Payment under the Payment Mechanism in the Payment Period immediately preceding the Termination Date which were unavailable at the Termination Date but which have subsequently become available, whether as a result of Contracting Authority incurring Rectification Costs or otherwise.
- (o) “**Maximum Service Payment**” means the Monthly Service Payments payable at any time before any Deductions under the Payment Mechanism but allowing for indexation under the Payment Mechanism.

- (p) **“New Agreement”** means an agreement on substantially the same terms and conditions as the Project Agreement as at the Termination Date, but with the following amendments:
- (i) if the Project Agreement is terminated prior to the Substantial Completion Date, then the Longstop Date shall be extended by a period to allow a New Project Co to achieve Substantial Completion prior to such extended Longstop Date;
 - (ii) any accrued Failure Points shall be cancelled;
 - (iii) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
 - (iv) any other amendments which do not adversely affect Project Co.
- (q) **“New Project Co”** means the person who has entered or who will enter into the New Agreement with Contracting Authority.
- (r) **“No Default Payment Compensation Amount”** means, with respect to an amount and a specified period of time, such amount multiplied by (i) such period of time in days divided by the actual number of days in the current year multiplied by (ii) the rate of interest per annum in effect on each such day 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.
- (s) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b).
- (t) **“Post Termination Service Amount”** means, for the purposes of Section 3.3, for the whole or any part of a Payment Period for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Service Payment which would have been payable under the Project Agreement had the Project Agreement not been terminated, less an amount equal to the aggregate (without double counting) of:
- (i) the Market Value Availability Deduction Amount for that Payment Period; and
 - (ii) the Rectification Costs incurred by Contracting Authority in that Payment Period.
- (u) **“Qualification Criteria”** means the criteria that Contracting Authority requires tenderers to meet as part of the Tender Process, which (subject to compliance with Applicable Law) shall include the following:
- (i) that the tenders confirm acceptance of the New Agreement terms;
 - (ii) that the tenderers have, and are able to demonstrate on an indicative basis on request, the financial ability to pay the lump sum tendered;
 - (iii) that tenderers may only bid on the basis of a single lump sum payment to be paid by the tenderer;
 - (iv) that the tenderer is experienced in performing the Project Co Services or similar services;

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- (v) that the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Project Operations; and
- (vi) any other tender criteria established by Contracting Authority, acting reasonably.
- (v) **“Qualifying Tender”** means a tender that meets all of the Qualification Criteria.
- (w) **“Qualifying Tenderer”** means a tenderer who submits a Qualifying Tender.
- (x) **“Rectification Costs”** means, for the purposes of any Termination Date that occurs after the Substantial Completion Date, an amount equal to the reasonable and proper costs incurred by Contracting Authority in a particular Payment Period or part of a Payment Period in ensuring that the Project Co Services are carried out.
- (y) **“Senior Debt Amount”** means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Senior Lenders to Project Co, together with all interest accrued thereon at that time, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to the Hedging Agreement(s), accrued interest in respect of such portion of the interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co under the Hedging Agreement(s) without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Provider(s) under the Hedging Agreement(s) and all references to interest payable to the Senior Lenders under the Project Agreement shall be construed accordingly. For greater certainty, the Senior Debt Amount excludes the Senior Debt Makewhole.
- (z) **“Senior Debt Makewhole”** means, (i) at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Lending Agreements with respect to the Senior Debt Amount, including any “make whole” payments, breakage costs (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Senior Lenders pursuant to the Lending Agreements with respect to the Senior Debt Amount; and (ii) any swap breakage costs (less breakage benefits), if any, then due and payable to the Hedge Provider(s) under the Hedging Agreement(s) entered into with respect to the Senior Debt Amount.
- (aa) **“Subcontractor Losses”** means, subject to Project Co’s obligations under the Project Agreement to limit any compensation to Subcontractors:
- (i) the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Construction Contract as a direct result of the termination of the Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or any Subcontractors fail to take commercially reasonable steps to mitigate such amount; and
- (ii) the amount reasonably and properly payable by Project Co to the Service Provider under the terms of the Service Contract as a direct result of the termination of the Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount,

provided that, in both cases, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:

- (iii) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee set out in any of the Ancillary Documents);
 - (iv) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties' obligations in relation to the Project; or
 - (v) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm's length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.
- (bb) **“Tender Costs”** means the reasonable and proper costs of Contracting Authority incurred in carrying out the Tender Process or in connection with any calculation of the Estimated Fair Value.
- (cc) **“Tender Process”** means the process by which Contracting Authority requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new Project Co, in accordance with Section 3.3.
- (dd) **“Tender Process Monitor”** has the meaning given in Section 3.3(g).

2. COMPENSATION ON TERMINATION FOR CONTRACTING AUTHORITY DEFAULT OR CONVENIENCE

2.1 Compensation

- (a) If Project Co terminates the Project Agreement pursuant to Section 46 of the Project Agreement or Contracting Authority terminates the Project Agreement pursuant to Section 47.3 of the Project Agreement, Contracting Authority shall pay to Project Co the Contracting Authority Default Termination Sum.
- (b) The **“Contracting Authority Default Termination Sum”** shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount and the Junior Debt Makewhole;
 - (iii) any amount payable by Contracting Authority to Project Co in accordance with Sections 43.2(b) and 44.2(b) of the Project Agreement;
 - (iv) the Employee Termination Payments and the Subcontractor Losses;
 - (v) Construction Period Payments payable by Contracting Authority in accordance with Schedule 21 on or prior to the Termination Date;

- (vi) any reasonable costs properly incurred by Project Co to wind up its operations; and
- (vii) an amount which, if paid on the Termination Date and taken together with all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date and taking account of the actual timing of all such payments, but, in any event, excluding all amounts (whether for costs, overhead, profit or otherwise) after the Termination Date, gives a nominal internal rate of return to the Termination Date equal to the Base Case Equity IRR on the amount paid for the Equity Capital (to the extent that such Equity Capital has been applied by Project Co for the purposes of the Project);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (viii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of the Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under the Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and the Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and the Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims;
- (ix) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to the Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and

- (x) amounts which Contracting Authority is entitled to set off pursuant to Section 34.12(a)(i) of the Project Agreement,

provided that the Contracting Authority Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(ix) are not realized and applied pursuant thereto, Project Co shall, on payment of the Contracting Authority Default Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Contracting Authority Default Termination Sum in accordance with Section 8.

3. COMPENSATION FOR PROJECT CO DEFAULT

3.1 Compensation

- (a) Save and except where Section 6 applies and subject to Section 4.3(c)(ii) of Schedule 39 – System Extension, if Contracting Authority terminates the Project Agreement pursuant to Section 45 of the Project Agreement (including, without limitation, as a result of a Project Co Event of Default for failing to comply with Section 60 of the Project Agreement) or pursuant to Section 4.3(c)(ii) of Schedule 39 – System Extension, Contracting Authority shall pay to Project Co either the Adjusted Highest Qualifying Tender Price according to the retendering procedure set out in Section 3.3 or the Adjusted Estimated Fair Value according to the no retendering procedure set out in Section 3.4, as applicable.

3.2 Retendering Election

- (a) Contracting Authority shall be entitled to retender the provision of the Project Operations in accordance with Section 3.3 and the provisions thereof shall apply if:
- (i) Contracting Authority notifies Project Co on or before the date falling 30 days after the Termination Date; and
 - (ii) there is a Liquid Market,

but, otherwise, Contracting Authority shall require a determination in accordance with the no retendering procedure set out in Section 3.4 and the provisions thereof shall apply.

- (b) Until it is determined that the basis for determining the compensation to Project Co will be the no retendering procedure set out in Section 3.4, Project Co shall continue to perform the Project Co Services and Contracting Authority shall pay Project Co in accordance with Section 3.3(e).

3.3 Retendering Procedure

- (a) The objective of the Tender Process shall be to enter into a New Agreement with a Qualifying Tenderer.

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- (b) Contracting Authority shall commence the Tender Process promptly after delivering the notice pursuant to Section 3.2(a) and use commercially reasonable efforts to complete the Tender Process as soon as practicable.
- (c) Contracting Authority shall, as soon as reasonably practicable, notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process and shall act reasonably in setting such requirements and terms.
- (d) Project Co authorizes the release of any information by Contracting Authority under the Tender Process which would otherwise be prevented under Section 52 of the Project Agreement that is reasonably required as part of the Tender Process.
- (e) Project Co shall continue to perform the Project Co Services, and, for all or any part of a Payment Period falling within the period from the Termination Date to the Compensation Date, Contracting Authority shall pay to Project Co:
- (i) the Post Termination Service Amount for each completed Payment Period, on or before the date falling 20 Business Days after the end of that Payment Period; and
 - (ii) the Post Termination Service Amount for the period from the end of the last completed Payment Period until the Compensation Date, on or before the date falling 30 days after the Compensation Date.
- (f) If any Post Termination Service Amount is negative, then the amount by which the Post Termination Service Amount is negative shall be carried forward and may be set off against any future positive Post Termination Service Amounts.
- (g) Project Co may, at its own cost, appoint a person (the “**Tender Process Monitor**”) to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Lenders on Contracting Authority’s compliance with the Tender Process. The Tender Process Monitor shall enter into a confidentiality agreement with Contracting Authority in a form acceptable to Contracting Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to Contracting Authority as to compliance with the Tender Process. Contracting Authority shall not be bound to consider or act upon such representations. The Tender Process Monitor will not disclose confidential information to Project Co or the Lenders but shall be entitled to advise Project Co and the Lenders on whether it considers that Contracting Authority has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Qualifying Tender Price.
- (h) As soon as practicable after tenders have been received, Contracting Authority shall, acting reasonably, review and assess the Qualifying Tenders and shall notify Project Co of the Adjusted Highest Qualifying Tender Price.
- (i) If Project Co refers a Dispute relating to the Adjusted Highest Qualifying Tender Price to dispute resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Contracting Authority shall, irrespective of such Dispute, be entitled to enter into a New Agreement.
- (j) Contracting Authority shall pay the Adjusted Highest Qualifying Tender Price in accordance with Section 8.

- (k) Contracting Authority may elect, by Notice to Project Co at any time prior to Contracting Authority ascertaining the Adjusted Highest Qualifying Tender Price, to follow the no retendering procedure set out in Section 3.4. In addition, Contracting Authority shall follow such no retendering procedure if:
 - (i) only one Qualifying Tender is received; or
 - (ii) a New Agreement has not been entered into and compensation paid under Section 8.2 on or before the date falling 18 months after the Termination Date.
- (l) Project Co may give written Notice to Contracting Authority at any time after the Termination Date and prior to the date for receipt of Qualifying Tenders that a Liquid Market does not exist (or shall not exist on the date for receipt of Qualifying Tenders). If Contracting Authority is in agreement with such Notice, the provisions of Section 3.4 shall apply. If Contracting Authority provide a written response within 10 Business Days of receipt of such Notice stating that it is in disagreement with that Notice or if no written response is provided by Contracting Authority within such 10 Business Day period, the matter shall be referred for determination in accordance with Schedule 27 – Dispute Resolution Procedure.

3.4 No Retendering Procedure

- (a) Subject to Section 3.4(b), if the provisions of this Section 3.4 apply, Project Co shall not be entitled to receive any Post Termination Service Amount.
- (b) If Contracting Authority elects to require a determination in accordance with this Section 3.4 after it has elected to follow the procedure set out in Section 3.3, then Contracting Authority shall continue to pay to Project Co each Post Termination Service Amount until the Compensation Date in accordance with Section 3.3.
- (c) In determining the Estimated Fair Value, the Parties shall be obliged to follow the principles set out below:
 - (i) All forecast amounts should be calculated in nominal terms as at the Termination Date. Where relevant, adjustments for forecast inflation between the date of calculation and the forecast payment date(s), as set out in the Project Agreement, will be made and, if made, will use an assumed inflation rate of [REDACTED]% per annum.
 - (ii) The Estimated Fair Value shall be calculated using the following formula (without double counting):

$$(A - B - C) - D$$

Where:

A = the present value of the following payments to the extent that, as at the Termination Date, such payments have not yet been paid and are forecast to be made from the Termination Date to the Expiry Date, assuming that no Deductions will be made over that period, discounted at the Discount Rate: the Monthly Service Payments, the Substantial Completion Payment and the Construction Period Payments

B = a contingency amount based on a reasonable risk assessment of any cost overruns that may reasonably arise (including in respect of any matter referred to in this Section 3.4(c)(ii)) whether or not forecast in the relevant base case and represented in the Financial Model as of the date of Financial Close, discounted at the Discount Rate

C = the present value of the costs of obtaining or performing the Project Co Services reasonably forecast to be incurred by Contracting Authority from the Termination Date to the Expiry Date to the standard required, discounted at the Discount Rate

D = any rectification costs (including Rectification Costs) that would not arise at the time or in the future had the termination not occurred, and that are reasonably required to deliver the Project Operations to the standard required, including, if applicable, to complete the Works, any costs reasonably forecast to be incurred by Contracting Authority for up-front finance fees and related costs (excluding principal and interest payments), and any other additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs (including Rectification Costs) for the purposes of this item D), the aggregate of:

- (A) any insurance proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements; and
- (B) amounts payable by Contracting Authority in respect of Capital Expenditures under the Project Agreement which have not been paid,

discounted at the Discount Rate.

- (iii) The amount of (A – B – C) as defined in Section 3.4(c)(ii) shall be no greater than the Non-Default Termination Sum.
- (iv) All costs referred to in Section 3.4(c)(ii) are to be forecast at a level that will deliver the Project Co Services and other Project Operations to the standards required by the Project Agreement and to achieve the full Monthly Service Payments (without Deductions).
- (v) The calculation will take into consideration the obligations of the Parties with respect to allowances and payments under the Project Agreement.
- (d) If the Parties cannot agree on the Estimated Fair Value, then the Estimated Fair Value shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure.
- (e) Contracting Authority shall pay the Adjusted Estimated Fair Value in accordance with Section 8.

4. CONSEQUENCES OF NON-DEFAULT TERMINATION, TERMINATION FOR DELAY IN SUPPLY OF REVENUE VEHICLES AND TERMINATION BY CONTRACTING AUTHORITY FOR RELIEF EVENT**4.1 Consequences**

- (a) If Contracting Authority terminates the Project Agreement pursuant to Section 47.1 or Section 47.5 of the Project Agreement or if either of the Parties terminate the Project Agreement pursuant to Section 47.2 of the Project Agreement, Contracting Authority shall pay to Project Co the Non-Default Termination Sum.
- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount;
 - (iii) any amount payable by Contracting Authority to Project Co in accordance with Sections 43.2(b) and 44.2(b) of the Project Agreement;
 - (iv) the Employee Termination Payments and the Subcontractor Losses (but excluding therefrom any claims for loss of profit);
 - (v) Construction Period Payments payable by Contracting Authority in accordance with Schedule 21 on or prior to the Termination Date; and
 - (vi) an amount equal to the Equity Capital as at Financial Close, less all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date, provided that where such amount is negative, it shall be deemed instead to be zero;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of the Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under the Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and the Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and the Project Agreement) to Contracting Authority and, at no

additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims; and

- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to the Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (ix) amounts which Contracting Authority is entitled to set off pursuant to Section 34.12(a)(i) of the Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole and the Junior Debt Amount.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(viii) are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Non-Default Termination Sum in accordance with Section 8.

5. INTENTIONALLY DELETED

6. CONSEQUENCES OF TERMINATION FOR BREACH OF REFINANCING

6.1 Consequences

- (a) If Contracting Authority terminates the Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 7.3 of the Project Agreement or Schedule 28 – Refinancing or the Lenders assign, transfer or otherwise dispose of any right, title or interest they may have in, or obligations they may have pursuant to, the Security Documents in breach of the Lenders' Direct Agreement, Contracting Authority shall pay to Project Co the Breach of Refinancing Termination Sum.
- (b) The "**Breach of Refinancing Termination Sum**" shall be an amount equal to the aggregate of:
 - (i) the Senior Debt Amount and the Senior Debt Makewhole;

- (ii) any amount payable by Contracting Authority to Project Co in accordance with Sections 43.2(b) and 44.2(b) of the Project Agreement;
- (iii) Construction Period Payments payable by Contracting Authority in accordance with Schedule 21 on or prior to the Termination Date; and
- (iv) the following amounts calculated in respect of the Construction Contractor and the Service Provider which Project Co can demonstrate will be paid directly to such persons:
 - (A) the Employee Termination Payments; and
 - (B) as applicable, the Construction Contractor's and the Service Provider's out-of-pocket costs incurred as a direct result of termination of the Project Agreement (excluding any breakage fees and overhead and profit of the Construction Contractor and the Service Provider, as applicable);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (v) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of the Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under the Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and the Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and the Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims;
- (vi) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to the Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or

- (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (vii) amounts which Contracting Authority is entitled to set off pursuant to Section 34.12(a)(i) of the Project Agreement.
- (c) To the extent that such assets and rights referred to in Section 6.1(b)(vi) are not realized and applied pursuant thereto, Project Co shall, on payment of the Breach of Refinancing Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay such termination sum in accordance with Section 8 of this Schedule 23.

7. CONSEQUENCES OF TERMINATION BY PROJECT CO FOR RELIEF EVENT

7.1 Consequences

- (a) If Project Co terminates the Project Agreement pursuant to Section 47.1 of the Project Agreement, Contracting Authority shall pay to Project Co a termination sum equivalent to the greater of
 - (i) an amount calculated and payable in accordance with the Breach of Refinancing Termination Sum, provided that, with respect to the calculation of the amounts which Contracting Authority is entitled to set off pursuant to Section 34.12(a)(i) of the Project Agreement under Section 6.1(b)(vii) of this Schedule 23, Contracting Authority shall only set off amounts which are due to Contracting Authority by Project Co pursuant to the terms of the Project Agreement if and to the extent the Breach of Refinancing Termination Sum exceeds the Senior Debt Amount; and
 - (ii) the Adjusted Estimated Fair Value calculated in accordance with this Schedule 23.
- (b) Contracting Authority shall pay such termination sum in accordance with Section 8.1 or 8.3, as applicable.

8. GENERAL

8.1 Payment and Interest Following Non-Project Co Default Termination

- (a) In respect of the termination payments to be made pursuant to any of Sections 2, 4, 6 or 7, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to Contracting Authority an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to Contracting Authority, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.

- (b) Contracting Authority shall:
- (i) pay to Project Co the relevant termination sum within 60 days after the Invoice Date; and
 - (ii) indemnify Project Co as provided in Section 56.2(c) of the Project Agreement in respect of any damages suffered or incurred as a result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:
 - (A) in an amount equivalent to the No Default Payment Compensation Amount 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, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (c) In respect of the termination payments to be made pursuant to any of Sections 4, 6 or 7, if the applicable termination sum is negative, Contracting Authority shall have no obligation to make any payment to Project Co and Project Co shall also thereafter indemnify Contracting Authority as provided in Section 56.1(e) of the Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date 60 days after the Invoice Date until the date of payment in an amount equivalent to the Payment Compensation Amount.

8.2 Payment and Interest Following Project Co Default - Retendering Procedure

- (a) Following the retendering procedure set out in Section 3.3, Contracting Authority shall pay to Project Co the Adjusted Highest Qualifying Tender Price no later than the date falling 30 days after the later of:
- (i) the date on which Contracting Authority enters into the New Agreement with the New Project Co; and
 - (ii) if Project Co has, pursuant to Section 3.3(i), referred a Dispute relating to the Adjusted Highest Qualifying Tender Price to be resolved in accordance with Schedule 27 – Dispute Resolution Procedure, the date on which the Dispute is finally determined, provided that Contracting Authority shall pay the undisputed amount on the date referred to in Section 8.2(a)(i),

and Contracting Authority shall indemnify Project Co as provided in Section 56.2(c) of the Project Agreement on the Adjusted Highest Qualifying Tender Price on the basis that the due date for the payment of the Adjusted Highest Qualifying Tender Price was the date on which Contracting Authority enters into the New Agreement with the New Project Co:

- (iii) in an amount equivalent to the No Default Payment Compensation Amount from the due date up to (and including) the date following 30 days from after the later of the dates determined under Section 8.2(a)(i) and (ii) above (and for clarity, on such portions of the Adjusted Highest Qualifying Tender Price in the circumstance described in paragraph (ii) above); and

- (iv) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (b) If the Adjusted Highest Qualifying Tender Price is negative, Contracting Authority shall have no obligation to make any payment to Project Co and Project Co shall, on the date of the New Agreement, pay Contracting Authority the amount by which such termination sum is negative, failing which Project Co shall also thereafter indemnify Contracting Authority as provided in Section 56.1(e) of the Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

8.3 Payment and Interest Following Project Co Default - No Retendering Procedure

- (a) If Contracting Authority follows the no retendering procedure set out in Section 3.4, Contracting Authority shall pay to Project Co the Adjusted Estimated Fair Value no later than the date falling 60 days after the date on which the Adjusted Estimated Fair Value has been agreed or determined in accordance with Section 3.4, together with interest on such amount calculated in accordance with Section 8.1(b)(ii).
- (b) If the Adjusted Estimated Fair Value is negative, Contracting Authority shall have no obligation to make any payment to Project Co and Project Co shall, on the Compensation Date, pay Contracting Authority the amount by which the Adjusted Estimated Fair Value is negative, failing which Project Co shall also thereafter indemnify Contracting Authority as provided in Section 56.1(e) of the Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for payment of the negative Adjusted Estimated Fair Value was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

8.4 Costs

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 23 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.

8.5 Undisputed Amounts

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 8 and the disputed amount shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure.

8.6 Outstanding Debt Amounts

- (a) Contracting Authority shall be entitled to rely on a certificate of the Lenders' Agent as conclusive as to the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, outstanding or payable at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Amount, the Senior Debt

Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge Contracting Authority's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

SCHEDULE 24**EXPIRY TRANSITION PROCEDURE****1. Independent Inspector**

- 1.1 Not less than 90 months prior to the Expiry Date, the Parties shall agree upon and, in accordance with Contracting Authority's procurement policies, engage an independent and suitably qualified and experienced person (the "**Independent Inspector**") to carry out inspections of the Project Co System Infrastructure pursuant to this Schedule 24.
- 1.2 Project Co and Contracting Authority shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector.
- 1.3 In the event of the Independent Inspector's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the last Independent Inspector's engagement.
- 1.4 In the event the Parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 1.1 or Section 1.3 by the specified deadline, then the Independent Inspector shall be selected as follows:
 - (a) each Party shall within 10 Business Days thereafter select three independent and suitably qualified and experienced persons that would be acceptable to that Party as the Independent Inspector, and shall provide Notice thereof to the other Party; and
 - (b) if the Parties have both selected a common person, then such common person shall be the Independent Inspector; or
 - (c) if the Parties have not selected a common person, then the Independent Inspector shall be selected in accordance with Schedule 27 – Dispute Resolution Procedure.

2. Condition of the Project Co System Infrastructure on Expiry

- 2.1 Subject to the exception specified in Section 2.2, on the Expiry Date:
 - (a) each element of the Project Co System Infrastructure (including, for the avoidance of doubt, the lands identified in the reference plan of survey produced by the post-completion survey set out in Section 25.12 of the Project Agreement and the ground soil located on those lands) shall be in a condition which is consistent with due performance by Project Co of its obligations under the Project Agreement and, in particular, is consistent with the Project Co System Infrastructure having been maintained in accordance with the Project Co Services Requirements, and, with respect to the lands and the ground soil located on the lands, does not deviate from the Pre-Existing Environmental Site Conditions by reason of any Contamination for which Project Co is responsible pursuant to the Project Agreement;

- (b) each element of the Project Co System Infrastructure shall,
 - (i) be in good operating order (normal wear and tear excepted);
 - (ii) be capable of performing in accordance with the requirements set out in the Output Specifications; and
 - (iii) successfully complete a system performance demonstration that is substantively the same as the applicable Revenue Service Demonstration that is set out in Schedule 14 – Commissioning (the “**Project Co System Infrastructure Performance Demonstration**”); and
- (c) each element of the Project Co System Infrastructure shall comply with Part 5 of the Project Co Services Requirements,

(collectively, the “**Expiry Transition Requirements**”).

2.2 For greater certainty, this Schedule 24 shall not apply to any New Third Party Infrastructure.

3. Project Co System Infrastructure Inspections and Performance Demonstrations

3.1 Project Co shall carry out a Project Co System Infrastructure Performance Demonstration,

- (a) not more than 90 months and not less than 85 months prior to the Expiry Date;
- (b) annually, no later than 90 days prior to the anniversary of the date of the original Project Co System Infrastructure Condition Report (as such term is defined in Section 3.2); and
- (c) 90 days prior to the anticipated date of delivery of the Final Project Co System Infrastructure Condition Report (as such term is defined in Section 6.1).

During each Project Co System Infrastructure Performance Demonstration, Project Co shall use reasonable efforts to minimize any disruption to the Project Co Services. For clarity, all costs and expenses related to each Project Co System Infrastructure Performance Demonstration shall be borne by Project Co.

3.2 The Parties shall cause the Independent Inspector to perform an inspection of the Project Co System Infrastructure and assess the results of the Project Co System Infrastructure Performance Demonstration that Project Co is required to carry out pursuant to Section 3.1, and to produce and deliver to each of the Parties a written report (a “**Project Co System Infrastructure Condition Report**”) not less than 84 months prior to the Expiry Date that:

- (a) identifies the condition of the Project Co System Infrastructure and each element of the Project Co System Infrastructure in relation to the Expiry Transition Requirements, and identify whether the Project Co System Infrastructure has failed the Project Co System Infrastructure Performance Demonstration;
- (b) assesses Project Co’s Expiry Transition Process Asset Preservation Work Schedule with the requirements defined in the Output Specifications;

- (c) identifies any works required to ensure the Project Co System Infrastructure and each element of the Project Co System Infrastructure will meet the Expiry Transition Requirements on the Expiry Date (the “**Expiry Transition Works**”), and specifying the Contract Year in which each of those Expiry Transition Works would be required;
 - (d) specifies the Independent Inspector’s estimate of the costs that would be required to perform the Expiry Transition Works (the “**Expiry Transition Works Costs**”); and
 - (e) details how the Expiry Transition Works Costs were calculated.
- 3.3 The Parties shall cause the Independent Inspector to perform another inspection of the Project Co System Infrastructure and produce and deliver to each of the Parties an updated Project Co System Infrastructure Condition Report (each a “**Revised Project Co System Infrastructure Condition Report**”) on each anniversary of the date of the original Project Co System Infrastructure Condition Report.
- 3.4 The Asset Management Plan shall be amended and updated annually or more frequently as Contracting Authority may reasonably request to include all Expiry Transition Works and all Expiry Transition Works Costs identified in either the Project Co System Infrastructure Condition Report or any Revised Project Co System Infrastructure Condition Report not already included in the then current Asset Management Plan.
- 3.5 Project Co shall carry out the Expiry Transition Works at its own cost notwithstanding that the actual cost of the Expiry Transition Works may be higher than the Expiry Transition Works Costs.
- 3.6 Either Party may dispute the Project Co System Infrastructure Condition Report or any Revised Project Co System Infrastructure Condition Report, including the Expiry Transition Works and the Expiry Transition Works Costs, in accordance with Schedule 27 – Dispute Resolution Procedure. In the event that a final determination in accordance with Schedule 27 – Dispute Resolution Procedure specifies Expiry Transition Works or Expiry Transition Works Costs which are different than those set out in either the Project Co System Infrastructure Condition Report or any Revised Project Co System Infrastructure Condition Report, then either the Project Co System Infrastructure Condition Report or any Revised Project Co System Infrastructure Condition Report, as the case may be, shall be deemed to be amended accordingly, as amended pursuant to Section 3.4, and all deductions and payments permitted or required by Section 4, shall be adjusted accordingly.

4. Payments To and From Escrow Account

- 4.1 Following the date for delivery of the Project Co System Infrastructure Condition Report, for the purposes of Section 4.2, the Parties shall review the amount of the Expiry Transition Works Costs and the level of capital expenditure Project Co has allocated to spend in the same period pursuant to the Financial Model (the “**Expiry Rehabilitation Costs**”). Where the Expiry Transition Works Costs are greater than the Expiry Rehabilitation Costs, the difference between the Expiry Transition Works Costs and the Expiry Rehabilitation Costs shall be apportioned equally over the Payment Periods from the date the Project Co System Infrastructure Condition Report is to be delivered hereunder to the Expiry Date (each installment being the “**Expiry Transition Amount**”). If the Project Co System Infrastructure Condition Report is delivered after the date for delivery hereunder, then the first installment to be paid shall also include the amounts to be paid under the installments that would have been payable prior to the date the Project Co System Infrastructure

- Condition Report is delivered. Where the Expiry Transition Works Costs are amended pursuant to Section 3.4 or 3.6, the Parties agree that the Expiry Transition Amount shall be adjusted accordingly.
- 4.2 Subject to Sections 4.3 and 4.5, Contracting Authority may deduct the Expiry Transition Amount from each Monthly Service Payment, and pay into a separate interest bearing bank account, upon escrow terms acceptable to the Parties or in trust (the “**Escrow Account**”), the Expiry Transition Amount. If in any Payment Period, the Expiry Transition Amount is greater than the relevant Monthly Service Payment, Contracting Authority may deduct the difference between the Expiry Transition Amount and the Monthly Service Payment from the next Monthly Service Payment or from such other Payment Period as otherwise agreed between the Parties.
- 4.3 Contracting Authority shall not deduct any amount from a Monthly Service Payment as contemplated in Section 4.2 if, at such time, the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed.
- 4.4 Project Co may from time to time, but not more often than once in any month, make written request for release of funds from the Escrow Account. Contracting Authority shall consider such request within 10 Business Days and if the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed, then Contracting Authority shall pay the excess to Project Co from the Escrow Account within 10 Business Days thereafter, together with any interest that has accrued on such amount. Project Co shall include with its request all information reasonably required by Contracting Authority to evaluate such request.
- 4.5 Following the date of any Revised Project Co System Infrastructure Condition Report, the Expiry Transition Amount shall be recalculated and if the amount in the Escrow Account (being the deductions of the Expiry Transition Amount made since the Project Co System Infrastructure Condition Report) together with the deductions scheduled to be made from the remaining Monthly Service Payments in accordance with Section 4.2 (and in accordance with any previous application of this Section 4.5) is less than the revised Expiry Transition Amount, then Contracting Authority may deduct such shortfall, in equal installments, from each remaining Monthly Service Payment until the Expiry Date, and pay each installment into the Escrow Account and Section 4.4 shall continue to apply until the Expiry Date.
- 4.6 As an alternative to the deductions permitted by Sections 4.2 and 4.5 or the retention of any amount in the Escrow Account pursuant to the foregoing provisions of this Section 4, Project Co may (and if, at any time, the amounts which Contracting Authority is permitted to deduct pursuant to Sections 4.2 and 4.5 is greater than the remaining Monthly Service Payments, Project Co shall), within 5 Business Days of a written request from Contracting Authority, provide a bond or letter of credit (the “**Expiry Transition Security**”) in favour of Contracting Authority in an amount equal to the amounts which Contracting Authority is permitted to deduct pursuant to Sections 4.2 and 4.5, in a form and from a surety or bank, as applicable, acceptable to Contracting Authority.

5. Project Co Not Relieved of Obligations

5.1 Notwithstanding:

- (a) any agreement of Contracting Authority to any Expiry Transition Works, Expiry Transition Works Costs or Expiry Transition Security;
- (b) any participation of Contracting Authority in any inspection under this Schedule 24; and
- (c) the complete or partial carrying out of the Expiry Transition Works,

Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works to the extent otherwise required by the Project Agreement, including the Output Specifications.

6. Final Project Co System Infrastructure Condition Report

6.1 The Parties shall cause the Independent Inspector to perform an inspection of the Project Co System Infrastructure and assess the results of the Project Co System Infrastructure Performance Demonstration that Project Co is required to carry out pursuant to Section 3.1, and to produce and deliver to each of the Parties a Project Co System Infrastructure Condition Report within 30 Business Days after the Expiry Date (the “**Final Project Co System Infrastructure Condition Report**”) that documents whether the Project Co System Infrastructure met the Expiry Transition Requirements on the Expiry Date, as well as identifying any Expiry Transition Works and Expiry Transition Works Costs.

6.2 If the Final Project Co System Infrastructure Condition Report identifies any Expiry Transition Works, Contracting Authority may withdraw from the Escrow Account or call upon the Expiry Transition Security an amount equivalent to such Expiry Transition Works Costs, and Contracting Authority shall pay any remaining funds in the Escrow Account (including any interest accrued) to Project Co and return any remaining Expiry Transition Security to Project Co.

6.3 Provided that the funds in the Escrow Account and/or the Expiry Transition Security is adequate to meet Project Co’s obligations in respect of the Expiry Transition Works identified in the Final Project Co System Infrastructure Condition Report, following any withdrawal from the Escrow Account or call upon the Expiry Transition Security in accordance with Section 6.2, Project Co shall have no further liability with respect to such Expiry Transition Works.

6.4 If no Expiry Transition Works are identified in the Final Project Co System Infrastructure Condition Report, Contracting Authority shall, within 20 Business Days of receipt by Contracting Authority of the Final Project Co System Infrastructure Condition Report, pay the funds in the Escrow Account (including any interest accrued) to Project Co and return the Expiry Transition Security to Project Co, unless Contracting Authority disputes the Final Project Co System Infrastructure Condition Report, in which case the Escrow Account and Expiry Transition Security shall be dealt with as determined in accordance with Schedule 27 – Dispute Resolution Procedure.

7. General Transition Procedure

7.1 Obligations of Project Co on Termination or Expiry

- (a) In addition to, and without limiting, the other obligations of Project Co pursuant to this Schedule 24 – Expiry Transition Procedures or the Project Agreement, on the service of a Notice of termination, or termination on the Expiry Date pursuant to Section 47.4 of the Project Agreement Project Co shall:
- (i) deliver to Contracting Authority one complete set of all Project Data and Intellectual Property relating to the Project Operations in the form, and incorporating the particulars, required by Contracting Authority; and
 - (ii) deliver to Contracting Authority all information, reports, documents, records and the like referred to in Section 37 of the Project Agreement, including as referred to in Schedule 26 – Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to Contracting Authority).

7.2 Assistance by Project Co

- (a) Without limiting the obligations of Project Co set forth in Subsection 7.1(a) and without limiting the rights of Contracting Authority as set out in Section 48.7 of the Project Agreement: (i) during the period of such number of days selected by Contracting Authority before the Termination Date, as notified to Project Co by Contracting Authority, or (ii) during the period of 720 days before the Expiry Date (in each case the “**Termination Transition Period**”) and from and after the Termination Date or the Expiry Date, as applicable, and continuing for such period (not to exceed 12 months) after that date as Contracting Authority specifies (the “**Post-termination Period**”), Project Co shall cooperate with Contracting Authority, to such extent as required by Contracting Authority, to complete the timely, safe, orderly, effective and efficient transition of the delivery of the Project Co Services from Project Co to Contracting Authority or another Person that all or any part of has been authorized to deliver such Project Co Services (the “**New Project Co**”) as set out in this Section 7.2.
- (b) Without limiting the generality of Subsection 7.2(a) and without limitation to any other rights of Contracting Authority in the Project Agreement including Section 48.7 of the Project Agreement:
- (i) Project Co shall comply with all requests of Contracting Authority to provide information and data in the form, and incorporating the particulars, required by Contracting Authority, relating to Project Co’s administration and costs of performing the Project Co Services. Such information shall include information relating to the anticipated administration and cost of a transfer of all or any part of the Project Co Services to a New Project Co or Contracting Authority, as the case may be. Contracting Authority shall have the right to disclose to any prospective New Project Co any or all of the information provided under this Section 7.2(b), without disclosing to Project Co the identity of any such prospective New Project Co; and
 - (ii) during the Termination Transition Period and/or the Post-termination Period, Project Co shall comply with all requests of Contracting Authority to provide all information, records, documents, agreements and data relating, directly or

indirectly, to the Project Co Services including, without limitation, such information, records, documents, agreements and data set out below in the form, and incorporating the particulars, required by Contracting Authority, relating to Project Co's administration and cost of performing the Project Co Services:

- (A) listing of all current and historical costs and expenses relating to the performance of the Project Co Services;
- (B) generic human resources catalogues and position descriptions;
- (C) training and instructor manuals for all employee positions;
- (D) information and data related to any Project Co Intellectual Property;
- (E) information related to contingent liabilities and threatened or pending litigation;
- (F) Project Co's policy and operations manuals relating to the performance of the Project Co Services;
- (G) Project Co's forms relating to the performance of the Project Co Services;
- (H) true, accurate and complete copies of all Subcontracts and all other agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments between Project Co and any persons relating to the Project Co Services;
- (I) all information relating to each employee performing the Project Co Services including description of position held, wages, salary and benefits information, hours worked and the terms of any written or oral contracts of employment; and
- (J) all technical information relating to the Project Co Services and all Project Co Intellectual Property as may be identified by Contracting Authority including, without limitation:
 - (I) data network design, configuration and architecture documents;
 - (II) data centre design, configuration, architecture and infrastructure documents;
 - (III) IT data centre equipment (e.g., servers, load balancers, etc.) design, configuration, architecture and infrastructure documents;
 - (IV) application design, configuration and architecture documents;

- (V) source code repository with all relevant source code (e.g., applications, services, drivers, configuration scripts, scripts, etc.) and configuration management scripts and documentation;
 - (VI) telephony design, configuration, architecture and infrastructure documents;
 - (VII) desktop workstation design, configuration, architecture, infrastructure documents and software images;
 - (VIII) IT peripherals design, configuration, architecture and infrastructure documents;
 - (IX) databases;
 - (X) applications;
 - (XI) database design, configuration, architecture and infrastructure documents;
 - (XII) volume metrics; and
 - (XIII) business rules.
- (c) During the Termination Transition Period, as and when requested by Contracting Authority, Project Co shall cooperate with and provide assistance and facilities to Contracting Authority and the New Project Co and/or any prospective New Project Co, save to the extent that the provision of such cooperation, assistance or facilities adversely interferes with Project Co's performance of the Project Co Services. If Project Co believes that the provision of such cooperation, assistance or facilities would have a material adverse effect on the Project Co Services, or would result in a material increase in costs to Project Co, Project Co shall provide notice in writing to Contracting Authority immediately. The parameters for such cooperation, assistance and facilities shall include:
- (i) communication;
 - (ii) provision to Contracting Authority of all materials and information as may be reasonably necessary for Contracting Authority to prepare and develop for use by New Project Co and/or any prospective New Project Co of a data room of the nature that would generally be made available to parties participating in a commercial transaction;
 - (iii) access to the areas of the Project Co System Infrastructure from which the Project Operations are being performed, including without limitation, any premises where any Project Data is stored by Project Co, provided that:
 - (A) all such access shall be during normal working hours for the purposes of general inspection and analysis of the Project Co Services; and

- (B) those persons provided with such access shall comply with the provisions of any reasonable security requirements and/or protocols, provided that such requirements and/or protocols are not in any way in conflict, or inconsistent, with the rights of inspection to be granted to Contracting Authority in the Project Agreement or the rights of Contracting Authority, New Project Co or any prospective New Project Co to obtain all necessary information as may be reasonably required in the context of a competition or procurement for the provision of services similar to the Project Co Services;
- (iv) access to Project Co Parties.
- (d) During the period that is not more than 180 days prior to the expiry of the Termination Transition Period, Project Co shall facilitate for Contracting Authority, New Project Co and/or any prospective New Project Co, if requested, meetings with the non-unionized employees of Project Co who are engaged in the performance of the Project Operations prior to such persons being released from employment by Project Co. Project Co shall in no way restrict Contracting Authority or New Project Co, as the case may be, from offering employment to any non-unionized employees of Project Co who are engaged in the performance of the Project Operations. In the event any of the non-unionized employees of Project Co who are offered positions to work with Contracting Authority or New Project Co, as the case may be, accept such offers of employment, Project Co shall complete all documentation and take all steps as may be necessary in the opinion of Contracting Authority, acting reasonably, to properly terminate such employees of Project Co including by fulfilling all severance and/or termination payment obligations required to be made and Project Co shall take all such other steps as Contracting Authority or New Project Co may reasonably require in connection with the termination of those non-unionized employees who are accepting offers of employment from Contracting Authority or New Project Co. For clarity, the rights granted to Contracting Authority or to any New Employer pursuant to this Subsection 7.2(d) shall not shall relieve, release or discharge Project Co of or from its severance and/or termination payment obligations under Applicable Law arising from the termination by Project Co of any of its non-unionized employees engaged to perform the Project Operations.
- (e) During the Termination Transition Period, effective upon prior notice from Contracting Authority, Project Co shall facilitate for Contracting Authority, New Project Co and/or any prospective New Project Co meetings with any union or bargaining agent representing any one or more groups of employees performing the Project Co Services and, if such notice has been given by Contracting Authority, Project Co shall in no way restrict Contracting Authority, New Project Co and/or any prospective New Project Co, as the case may be, from participating in such discussions with any applicable union or bargaining agent. In addition, to the extent that during the Termination Transition Period Project Co and any union or bargaining agent representing any one or more groups of employees performing the Project Co Services are participating in negotiations towards a new collective agreement or an agreement governing the manner in which the employees shall perform duties and services in connection with the performance of the Project Co Services, effective upon prior notice from New Project Co, Project Co shall include as part of Project Co's bargaining team that is participating in such negotiations any representative of New Project Co, subject at all times to New Project Co having the right to participate in such

negotiations under Applicable Law. For clarity, the rights granted to Contracting Authority or to any New Employer pursuant to this Subsection 7.2(e) shall not shall relieve, release or discharge Project Co of or from any of its obligations under Applicable Law regarding its unionized employees engaged to perform the Project Operations.

- (f) Project Co shall use its best efforts to ensure that any Subcontractor engaged or otherwise used by Project Co to perform any of the Project Co Services complies with this Section 7.
- (g) In connection with all information, records, documents, data and other materials delivered by Project Co to Contracting Authority during the Termination Transition Period as required in Section 7 (collectively, the “**Project Co Materials**”) Project Co shall deliver to Contracting Authority a certificate of an officer of Project Co addressed to Contracting Authority and New Project Co, in form and substance satisfactory to Contracting Authority, certifying, among other things, that:
 - (i) all Project Co Materials delivered to Contracting Authority and New Project Co are true, accurate and complete copies of the originals of all such Project Co Materials;
 - (ii) with respect to the Project Co Materials that constitute agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments between Project Co and any persons:
 - (A) all are in good standing and in full force and effect with no amendments and Project Co is entitled to all rights and benefits thereunder;
 - (B) Project Co has complied with all terms thereof, has paid all amounts due thereunder, has not waived any rights thereunder and no default or breach exists in respect thereof on the part of any of the parties thereto and no event has occurred which, after the giving of notice or the lapse of time or both, would constitute such a default or breach; and
 - (C) all are valid and binding obligations of the parties thereto enforceable in accordance with their respective terms; and
 - (iii) other than the Project Co Materials there no other material agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments relating to the Project Co Services.

7.3 Post-termination Obligations. Without limitation to any other obligations of Project Co under Sections 7.1 and 7.2, upon the occurrence of the Termination Date or Expiry Date, as applicable:

- (a) subject to Sections 7.1 and 7.2,
 - (i) Project Co shall immediately cease to be (and shall immediately cease to represent itself to be) authorized to perform the Project Co Services; and
 - (ii) Project Co shall cease, and shall cause all Project Co Parties to immediately cease, to perform the Project Co Services, effective as of the Termination Date or Expiry Date;

- (b) Project Co shall promptly provide Contracting Authority with a list of all agreements then in force and to which Project Co is a party that relate to the performance of the Project Co Services or the subject matter of the Project Agreement (including any agreements with Project Co Parties), and copies of all such agreements as Contracting Authority requests;
- (c) Project Co shall return to Contracting Authority all computer equipment, supporting equipment and software forming part of the Contracting Authority Intellectual Property in Project Co's possession or control.

7.4 **Public Announcements.** All public announcements by either Party concerning the termination or expiry of the Project Agreement shall be made in accordance with Schedule 18 – Communications and Public Engagement Protocol.

7.5 **Costs.** Project Co shall be solely responsible for all costs associated with the performance of its obligations pursuant to this Schedule 24.

SCHEDULE 25**INSURANCE AND PERFORMANCE
SECURITY REQUIREMENTS****ARTICLE 1
CONSTRUCTION PERIOD INSURANCE COVERAGE**

- 1.1 Subject to Article 8, from and after execution of the Project Agreement and, until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the Infrastructure Ontario Construction Insurance Program (IOCIP) the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
 - (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability;
 - (c) Project Specific Professional Liability; and
 - (d) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).
- 1.2 Subject to Article 8, from and after execution of the Project Agreement, until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A:
- (a) Automobile Liability;
 - (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Design and Construction Works) with respect to off-site/Lands operations and activities;
 - (c) Aircraft and Watercraft Liability (if any exposure);
 - (d) “All Risks” Marine Cargo (if any exposure);
 - (e) “All Risks” Contractors’ Equipment;
 - (f) Comprehensive Crime; and
 - (g) WSIB.

**ARTICLE 2
OPERATIONAL TERM INSURANCE COVERAGE**

- 2.1 Subject to Article 8, from and after the Substantial Completion Date and until the Termination Date, in respect of coverage for the Project Co Services during the Operational Term Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A:
- (a) “All Risks” Property;
 - (b) Boiler and Machinery;
 - (c) Commercial General Liability and Non-Owned Automobile Liability;
 - (d) Environmental Impairment (Pollution) Liability;
 - (e) Automobile Liability;
 - (f) Comprehensive Crime; and
 - (g) WSIB.

**ARTICLE 3
NO LIMIT ON RECOVERY**

- 3.1 Notwithstanding any other provision of the Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 25 for insurance policies, whether such policies are required to be obtained (or caused to be obtained) by Metrolinx or by Project Co, shall in no way limit Project Co’s liability or obligations to Metrolinx or Metrolinx’s liability or obligations to Project Co, as applicable.

**ARTICLE 4
ADDITIONAL COVER**

- 4.1 Without prejudice to the other provisions of this Schedule 25, Metrolinx and Project Co shall, at all relevant times and at their own expense, obtain and maintain, or cause to be obtained and maintained, those insurances which they are required to obtain and maintain, or cause to be obtained and maintained, by Applicable Law, or that they consider necessary.
- 4.2 Metrolinx reserves the right to require Project Co to purchase such additional insurance coverage as Metrolinx may reasonably require. Metrolinx also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Project Operations, contract value, industry standards, and availability of insurance) as Metrolinx may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by Metrolinx and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of Metrolinx.

**ARTICLE 5
RESPONSIBILITY FOR DEDUCTIBLES**

- 5.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain (or cause to be maintained) under this Schedule 25. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

**ARTICLE 6
COOPERATION WITH INSURER'S CONSULTANT**

- 6.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of the Project Agreement, then Metrolinx and Project Co shall, and shall require the Contracting Authority Parties and the Project Co Parties to:
- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
 - (b) allow the insurer and its consultant to attend meetings between Project Co and Metrolinx (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

**ARTICLE 7
INSURANCE ADJUSTMENT**

- 7.1 For purposes of this Article 7, the following terms shall have the following meanings:
- (a) “**Actual Relevant Insurance Cost**” means the aggregate of the annual insurance premiums reasonably incurred by Project Co to maintain or cause to be maintained the Relevant Insurance at the Relevant Insurance Inception Date and during each Insurance Review Period (expressed on an annualized basis for any policies covering multiple Insurance Review Periods), but excluding Taxes and all broker's fees and commissions.
 - (b) “**Base Relevant Insurance Cost**” means the aggregate of the annual insurance premiums which were projected to be incurred by Project Co to maintain or cause to be maintained the Relevant Insurance during each Insurance Review Period, which amounts exclude Taxes and all broker's fees and commissions and are as set out in the Financial Model.
 - (c) “**Insurance Cost Factor**” means an amount calculated in accordance with the following formula:

$$ICF_n = ARIC_n / ARIC_{n-2}$$

Where:

“**ICF_n**” is the Insurance Cost Factor for the current Insurance Review Period n;

“**ARIC_n**” is the Actual Relevant Insurance Cost for the current Insurance Review Period n, as set out in the Annual Insurance Report; and

“**ARIC_{n-2}**” is the average of ARIC over the two Insurance Review Periods immediately prior to the current Insurance Review Period n, as set out in the Annual Insurance Reports in respect of such Insurance Review Periods. Notwithstanding the foregoing, with respect to the first two Insurance Review Periods, where any amount(s) for ARIC does not exist as a result of Project Co not maintaining or causing to be maintained any Relevant Insurance before the Relevant Insurance Inception Date, with respect to such amount(s), ARIC_{n-2} shall be calculated by using the average of the annual insurance premiums that Project Co can demonstrate to Metrolinx’s reasonable satisfaction would have been reasonably incurred by Project Co to maintain or cause to be maintained the Relevant Insurance during the applicable year(s) immediately prior to the Relevant Insurance Inception Date (but excluding Taxes and all broker’s fees and commissions) if Project Co were to have maintained or caused to be maintained the Relevant Insurance during such year(s).

- (d) “**Insurance Adjustment**” means, in respect of a Severe Insurance Market Price Increase, an amount equal to (i) the Actual Relevant Insurance Cost for the current Insurance Review Period minus (ii) the average of the Actual Relevant Insurance Costs in the two Insurance Review Periods immediately prior to the current Insurance Review Period, as set out in the Annual Insurance Reports in respect of the relevant Insurance Review Periods. Notwithstanding the foregoing, with respect to the first two Insurance Review Periods, where any amount(s) for the Actual Relevant Insurance Cost does not exist as a result of Project Co not maintaining or causing to be maintained any Relevant Insurance before the Relevant Insurance Inception Date, with respect to such amount(s), for the purposes of this Project Agreement, the Actual Relevant Insurance Cost shall be calculated by using the average of the annual insurance premiums that Project Co can demonstrate to Metrolinx’s reasonable satisfaction would have been reasonably incurred by Project Co to maintain or cause to be maintained the Relevant Insurance during the applicable year(s) immediately prior to the Relevant Insurance Inception Date (but excluding Taxes and all broker’s fees and commissions) if Project Co were to have maintained or caused to be maintained the Relevant Insurance during such year(s).
- (e) “**Insurance Review Date**” means the Relevant Insurance Inception Date and thereafter each anniversary of the Relevant Insurance Inception Date, except where such date lies beyond the end of the Project Term, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the Expiry Date.
- (f) “**Insurance Review Period**” means a one year period from the Relevant Insurance Inception Date and each subsequent one year period commencing on the anniversary of the Relevant Insurance Inception Date, except where the end of such period lies beyond the end of the Project Term, in which case the Insurance Review Period shall be the period

from the end of the penultimate Insurance Review Period to the last day of the Project Term.

- (g) “**Severe Insurance Market Price Increase**” means the occurrence of circumstances generally prevailing in the worldwide insurance market that cause the Actual Relevant Insurance Cost to materially increase in an Insurance Review Period with the result that the Insurance Cost Factor for such Insurance Review Period is greater than or equal to 1.10, excluding, for greater certainty, any increase in the Actual Relevant Insurance Cost caused by or connected with claims made as a result of acts or omissions of Project Co or any Project Co Party or re-rating of Project Co or any Project Co Party.
- (h) “**Relevant Insurance**” means all policies of insurance to be obtained or caused to be obtained by Project Co in accordance with Article 2.
- (i) “**Relevant Insurance Inception Date**” means the date on which the Relevant Insurance is first providing active insurance cover to Project Co and Metrolinx being the Substantial Completion Date.

7.2 No later than 90 days prior to the Relevant Insurance Inception Date and no later than 60 days prior to each other Insurance Review Date thereafter, Project Co’s insurance broker shall, at Project Co’s sole cost and expense, prepare a report on behalf of both Project Co and Metrolinx (the “**Annual Insurance Report**”) and submit such report to Metrolinx. Each Annual Insurance Report shall contain the following information for the relevant Insurance Review Period:

- (a) a full breakdown of the Actual Relevant Insurance Cost, together with evidence satisfactory to Metrolinx, acting reasonably, in support of the Actual Relevant Insurance Cost;
- (b) the Base Relevant Insurance Cost;
- (c) the calculation of the Insurance Cost Factor, together with evidence satisfactory to Metrolinx, acting reasonably, in support of the Insurance Cost Factor;
- (d) any Severe Insurance Market Price Increase, together with:
 - (i) the opinion of Project Co’s insurance broker as to the reasons for such Severe Insurance Market Price Increase; and;
 - (ii) evidence satisfactory to Metrolinx, acting reasonably, (A) in support of such opinion (including, for greater certainty, evidence that the applicable increase in the Actual Relevant Insurance Cost was not caused by or connected with claims made as a result of acts or omissions of Project Co or any Project Co Party or re-rating of Project Co or any Project Co Party), and (B) that Project Co has complied with Section 7.4.

7.3 Project Co shall notify Metrolinx as soon as possible and, in any event, within 15 Business Days, of becoming aware of a Severe Insurance Market Price Increase or circumstances that are reasonably likely to cause a Severe Insurance Market Price Increase.

- 7.4 In the event that Project Co is or is reasonably likely to be affected by a Severe Insurance Market Price Increase, Project Co shall, and shall require all Project Co Parties to, take commercially reasonable steps to eliminate or mitigate such actual or potential Severe Insurance Market Price Increase, including the exertion of commercially reasonable efforts to obtain a better price for the Relevant Insurance. In the event that Project Co does not comply with its obligations under this Section 7.4, Project Co shall not be entitled to an Insurance Adjustment and no Insurance Adjustment shall be made.
- 7.5 In accordance with Schedule 20 – Payment Mechanism and subject to Sections 7.4, 7.6 and 7.7, in the event that a Severe Insurance Market Price Increase occurs, then the Annual Service Payment will be adjusted by the Insurance Adjustment Amount.
- 7.6 In the event that an Annual Insurance Report is not submitted to Metrolinx pursuant to Section 7.2, then, until such time as an Annual Insurance Report is submitted, (a) one or more Major Quality Failures shall arise and one or more Deductions shall apply in accordance with Schedule 15 – Output Specifications and Schedule 20 – Payment Mechanism, and (b) no Insurance Adjustment shall be made.
- 7.7 In the event that an Annual Insurance Report is submitted to Metrolinx pursuant to Section 7.2 but in Metrolinx’s reasonable opinion, such Annual Insurance Report fails to satisfy the requirements of Section 7.2, then Metrolinx may, within 15 Business Days of Metrolinx’s receipt of such Annual Insurance Report, provide notice to Project Co of such failure and the reasons why, in Metrolinx’s reasonable opinion, the Annual Insurance Report fails to satisfy such requirements. If Metrolinx provides such a notice to Project Co, then Project Co shall have 10 Business Days of Project Co’s receipt of such notice to submit a revised Annual Insurance Report to Metrolinx that satisfies the requirements of Section 7.2 (a “**Revised Annual Insurance Report**”). If Project Co fails to submit such Revised Annual Insurance Report to Metrolinx before the expiry of such 10 Business Day period, then, until such time as such Revised Annual Insurance Report is submitted, (a) one or more Major Quality Failures shall arise and one or more Deductions shall apply in accordance with Schedule 15 – Output Specifications and Schedule 20 – Payment Mechanism, and (b) no Insurance Adjustment shall be made.

ARTICLE 8 UNINSURABLE RISKS

- 8.1 The term “**Uninsurable Risk**” means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 25 and for which, at any time after the date of the Project Agreement, either:
- (a) the insurance required pursuant to this Schedule 25 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk:
 - (i) where Applicable Laws require that the insurer must be licensed in the Province of Ontario to insure such a risk, by insurers licensed in the Province of Ontario; or
 - (ii) where Applicable Laws do not require that the insurer must be licensed in the Province of Ontario to insure such a risk, by any insurer otherwise permitted under the terms of the Project Agreement; or

- (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.

Project Co has the onus of demonstrating, to Metrolinx's reasonable satisfaction that the foregoing definition applies to a particular risk.

- 8.2 Project Co shall notify Metrolinx as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide Metrolinx with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 8.3 Project Co and Metrolinx shall, as soon as possible following the provision of the notice referred to in Section 8.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and Metrolinx are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- 8.4 In the event that Project Co and Metrolinx, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 8.2, Metrolinx may, in its absolute discretion, either:
 - (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal instalments over the course of such year, from the payment or payments otherwise due to Project Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case the Project Agreement shall continue in full force and effect; or
 - (b) terminate the Project Agreement in accordance with Section 47.2 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 47.2 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.
- 8.5 On the occurrence of an Uninsurable Risk, Metrolinx may, in its absolute discretion, either:
 - (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case the Project Agreement shall continue in full force and effect; or
 - (b) terminate the Project Agreement in accordance with Section 47.2 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 47.2 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of

Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

- 8.6 With respect to any Uninsurable Risk:
- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
 - (b) Subject to Section 8.6(a), Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.
- 8.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Section 8 shall no longer apply to such risk.
- 8.8 From and after the Substantial Completion Date, the Parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 25, and may make mutually agreed changes thereto.

**ARTICLE 9
DAMAGE OR DESTRUCTION**

- 9.1 In the event of damage to, or destruction of, all or any part of the Project Co System Infrastructure and New Third Party Infrastructure for which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its obligations under the Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Project Co System Infrastructure or New Third Party Infrastructure or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations, all in accordance with the terms of the Insurance Trust Agreement.

**ARTICLE 10
SUBCONTRACTORS**

- 10.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which Metrolinx may suffer as a direct result of Project Co's failure to comply with the foregoing.
- 10.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 25 to be obtained (or caused to be obtained) by Project Co, Project Co shall:
- (a) ensure that such insurance coverage is put in place;

- (b) remove the Subcontractor from the Lands and ensure that such Subcontractor does not perform any further part of the Project Operations until after such insurance coverage is put in place; or
- (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can be covered by insurance required by this Schedule 25 or who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in the Project Agreement regarding new and replaced Subcontractors shall be complied with.

ARTICLE 11 RENEWAL

- 11.1 Project Co shall provide to Metrolinx, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained (or caused to be obtained) by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to Metrolinx, acting reasonably.

ARTICLE 12 NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION

- 12.1 All insurance provided by Project Co, shall:
- (a) include Project Co, Project Co Parties, Contracting Authority, the Contracting Authority Parties, each City and any other party specified in Appendix A as Named Insureds to the extent specified in Appendix A or as required pursuant to any agreement relating to the Project to which Project Co is a party;
 - (b) include Contracting Authority, the Contracting Authority Parties, each City, each Railway Company, MTO, Region of Peel, the Lenders, the Lenders' Agent and any other party specified in Appendix A as Additional Insureds, or loss payees (as applicable) to the extent of their respective insurable interests to the extent specified in Appendix A or as required pursuant to any agreement relating to the Project to which Project Co is a party;
 - (c) except with respect to the Project Specific Professional Liability specified in Part 1 of Appendix A and Automobile Liability, Comprehensive Crime and WSIB specified in Parts 1 and 2 of Appendix A, contain a waiver of subrogation as against Contracting Authority, the Contracting Authority Parties, each City and their respective shareholders, officials, directors, officers, employees, elected officials, servants, consultants (other than design consultants) and agents;
 - (d) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
 - (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to Contracting Authority and the Contracting Authority Parties without any right of contribution of any insurance carried by Contracting Authority and the Contracting Authority Parties.

ARTICLE 13
CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES

- 13.1 Prior to the execution of the Project Agreement, Project Co will provide Metrolinx with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 13.2 Prior to the execution of the Project Agreement, Project Co will provide Metrolinx with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to Metrolinx no later than 90 days after execution of the Project Agreement.
- 13.3 Prior to the commencement of any part of the Project Co Services, Project Co will provide Metrolinx with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 2.1 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will subsequently be provided to Metrolinx no later than 90 days after the Substantial Completion Date; however specimen wordings of all such insurance policies, along with the corresponding summary of coverage, limits and deductibles, must be provided to Metrolinx no later than 90 days prior to the Substantial Completion Date.

ARTICLE 14
FAILURE TO MEET INSURANCE REQUIREMENTS

- 14.1 If Project Co fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Schedule 25, fails to furnish to Metrolinx a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then Metrolinx shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at Metrolinx's option, be payable by Project Co to Metrolinx on demand or be deducted by Metrolinx from the next payment or payments otherwise due to Project Co.
- 14.2 If coverage under any insurance policy required to be obtained (or caused to be obtained) by Project Co should lapse, be terminated or be cancelled, then, if directed by Metrolinx, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

ARTICLE 15
MODIFICATION OR CANCELLATION OF POLICIES

- 15.1 Except as noted in Appendix A, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the addresses specified, to Contracting Authority, the Contracting Authority Parties, each City, Region of Peel, each Railway Company, the Lenders and the Lenders' Agent. For greater certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any

increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.

- 15.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the addresses specified, to Contracting Authority, the Contracting Authority Parties, each City, Region of Peel, each Railway Company, the Lenders and the Lenders' Agent.
- 15.3 With respect to Operational Term insurance, only notice of cancellation will be required for the Automobile Liability and Comprehensive Crime described in Part 2 of Appendix A.
- 15.4 With respect to insurance described in Section 1.1(a), (b) and (d), Section 1.2(d) and Section 2.1(a), (b), (c) and (d), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to Contracting Authority, the Contracting Authority Parties, each City, Region of Peel, the Lenders or any other Named Insured or Additional Insured, but only to the extent that such breach is not known to these parties.

ARTICLE 16 INSURERS

- 16.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be issued by financially sound insurers acceptable to Metrolinx and the Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.
- 16.2 To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:
- (a) a Financial Strength Rating of not lower than "A-" for three out of the previous five years but not lower than "B" at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A. M. Best Company (Best); or
 - (b) a Long-Term Financial Strength Rating of not lower than "A-" for three out of the past five years but not less than "BBB" at any time during those five years, a Short-Term Financial Strength Rating of not lower than "A-3" for three out of the previous five years and a Financial Enhancement Rating of not lower than "A-" for three out of the previous five years but not less than "BB+" at any time during those five years, such ratings being those established by Standard and Poor's (S&P); or
 - (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to Metrolinx and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

ARTICLE 17
POLICY TERMS AND CONDITIONS

- 17.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to Metrolinx and its insurance advisors, acting reasonably.
- 17.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

ARTICLE 18
FAILURE TO COMPLY

- 18.1 Neither failure to comply with nor full compliance by Project Co with the insurance provisions of this Schedule 25 shall relieve Project Co of its liabilities and obligations under the Project Agreement.

ARTICLE 19
PERFORMANCE SECURITY REQUIREMENTS

[REDACTED]

ARTICLE 20
INSURANCE TRUST AGREEMENT

- 20.1 All losses under (i) the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to the Substantial Completion Date; (ii) the Property Insurance carried by Project Co after the Substantial Completion Date; and (iii) the Boiler and Machinery Insurance carried by Project Co after the Substantial Completion Date, which, in each case, relate to property or equipment purchased by Metrolinx, shall be payable solely to Metrolinx and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

Appendix A – Insurance Requirements

Construction Period Insurance – Hurontario Light Rail Transit Project
From execution of the Project Agreement until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

| Type | Amount | Maximum Deductibles | Principal Cover |
|---|---|--|---|
| <p>“All Risks” Course of Construction Property, including Boiler and Machinery</p> | <p>Limit of liability of \$[REDACTED] including Property of every description for incorporation into the Project.</p> <p>Delay in Start-up \$[REDACTED], covering a 24 month indemnity period, including Contingent Delayed Start-Up related to losses at Revenue Vehicle Manufacturer’s, Suppliers’ or Manufacturers’ premises or other temporary storage locations (\$[REDACTED] sub-limit)</p> <p>Soft Costs \$[REDACTED] (representing [REDACTED]% of Recurring / Continuing Soft Costs)</p> <p>Extra and Expediting Expense (minimum \$[REDACTED] sub-limit)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Replacement Cost Valuation (Property) • Most Recent Technology Replacement Cost Valuation (Equipment or Machinery, except Contractors’ Equipment) • Flood (to policy limit with annual aggregate) • Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with an annual aggregate) • Electronic Data Processing equipment and media, including | <p>[REDACTED]% of loss value / \$[REDACTED] minimum; \$[REDACTED] maximum Earthquake</p> <p>\$[REDACTED] Underground losses</p> <p>\$[REDACTED] Flood and water damage</p> <p>\$[REDACTED] Testing and commissioning</p> <p>\$[REDACTED] All other losses</p> <p>30 day waiting period applicable to time element coverages, except</p> <p>48 hour waiting period, off premises services</p> | <p>“All Risks” Course of Construction Property Insurance covering the insurable replacement cost of Project Co System Infrastructure (including Revenue Vehicle Deliverables immediately following Delivery) and New Third Party Infrastructure based on the PML study, including cold and hot testing / commissioning of Equipment including HVAC, Delay in Start-Up, Soft Costs with no early occupancy restriction.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by Contracting Authority, Contracting Authority Parties or the Lenders.</p> |

| Type | Amount | Maximum Deductibles | Principal Cover |
|------|--------|---------------------|---|
| | | | <ul style="list-style-type: none"> data restoration and re-creation costs • Transit • Unnamed locations • By-laws including Demolition, Increased Cost of Repairs and Replacement (subject to a \$[REDACTED] sub-limit only with respect to existing or renovated buildings) • Debris Removal (minimum \$[REDACTED] sub-limit) • Off Premises Services Interruption (minimum \$[REDACTED] sub-limit) • Professional Fees (minimum \$[REDACTED] sub-limit) • Fire Fighting Expenses (minimum \$[REDACTED] sub-limit) • Valuable Papers (minimum \$[REDACTED] sub-limit) • Accounts Receivable (minimum \$[REDACTED] sub-limit) • Green Building and LEED Upgrades (subject to a \$[REDACTED] sub-limit) • Defence Costs (subject to a \$[REDACTED] sub-limit) • Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit) • Ammonia Contamination (minimum \$[REDACTED] sub-limit) • LEED Rectification, Commissioning and Testing Expenses (subject to a \$[REDACTED] sub-limit) • Civil Authority Access Interruption (8 weeks) |

| Type | Amount | Maximum Deductibles | Principal Cover |
|------|---|---------------------|-----------------|
| | <ul style="list-style-type: none"> • Prevention of Ingress/Egress (8 weeks) • Permission for Partial Use or Occupancy prior to Substantial Completion • Cost of Carrying Project Financing (24 Months), included in Delayed Start-Up coverage • Margin of Profit Extension for Contractors • Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident) • Testing and Commissioning – no time limitation, subject to receipt of testing and commissioning schedule. Otherwise 120 days per component time element shall apply | | |
| | <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives • Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum LEG 2 standard • War risk • Terrorism • Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use • Contractors' Equipment (unless values declared and risk accepted by insurers) • Munich Re Endorsement 101 | | |

| Type | Amount | Maximum Deductibles | Principal Cover |
|---------------------|--|---------------------|-----------------|
| | <ul style="list-style-type: none"> • Munich Re Endorsement 121 • Sanctions Clause • Latent defect or inherent vice with respect to Revenue Vehicle Deliverables • Any Revenue Vehicle Deliverables deficiencies listed on the Preliminary Acceptance Certificate | | |
| <i>Comments</i> | <ul style="list-style-type: none"> • Named Insured includes Project Co, Contracting Authority, Contracting Authority Parties, Lenders, Lender’s Agent, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, as their respective interests may appear • 407 ETR Co as an Insured but only as their interest may appear related to work performed. Existing 407 ETR Co structures are not insured under this policy • No provision permitted allowing a coinsurance penalty • Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured • Additional key extensions of coverage: <ul style="list-style-type: none"> • Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the construction of the Project • Losses payable in accordance with the Insurance Trust Agreement and Section 20.1 of Schedule 25 – Insurance and Performance Security Requirements • Upon Substantial Completion, cover will cease and be replaced by All Risk Property and Boiler & Machinery Insurance – Operational Term • Waiver of Subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, Contracting Authority, Contracting Authority Parties, each City, Region of Peel, the Construction Contractor, all subcontractors, professional consultants (other than for their professional liability), Lenders, Lenders’ Agent, as well as officers, directors and employees, servants, and agents of the foregoing • Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded • Liberalization Clause • Errors and Omissions • Breach of Conditions • Interim Payments Clause | | |
| <i>Underwriters</i> | Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements | | |

Construction Period Insurance – Hurontario Light Rail Transit Project

From execution of the Project Agreement until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

| Type | Amount | Maximum Deductibles | Principal Cover |
|--|---|---|---|
| <p>“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability</p> | <p>\$(REDACTED) each occurrence, and in the aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> • \$(REDACTED) Non-Owned Automobile Liability • \$(REDACTED) Sudden and Accidental Pollution and Hostile Fire Pollution Liability • \$(REDACTED) “All Risks” Tenants’ Legal Liability • \$(REDACTED) Prairie or Forest Fire Fighting Expenses • \$(REDACTED) Employee Benefits Administrative Errors and Omissions • \$(REDACTED) Contractors Rework • \$(REDACTED) Legal Liability for Damages to Non-Owned Automobiles (SEF 94) • \$(REDACTED)/\$ (REDACTED) Medical Payments <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Owner’s and Contractor’s Protective • Blanket Contractual (written and oral) | <p>\$(REDACTED) per occurrence</p> <p>\$(REDACTED) per claim with respect to Contractors Rework</p> <p>\$(REDACTED) per claim with respect to each of SEF 94, Tenants Legal Liability, Prairie or Forest Fire Fighting Expenses and Employee Benefits Administrative Errors and Omissions</p> | <p>Wrap-Up Commercial General Liability and Non-Owned Automobile Liability insurance covering construction operations in connection with Project Co System Infrastructure and New Third Party Infrastructure on an occurrence basis against claims for bodily injury (including death), personal injury, property damage (including Loss of Use), and including products and completed operations liability, extended for a period of not less than 36 months, effective from the Substantial Completion Date.</p> <p>Coverage shall be maintained continuously from the execution of the Project Agreement to the Substantial Completion Date, at which time the Products and Completed Operations extension will take effect.</p> <p>Pollution Liability – sudden and accidental and hostile fire pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours’ notice coverage structure).</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by Contracting Authority, Contracting Authority Parties or the Lenders.</p> |

| Type | Amount | Maximum Deductibles | Principal Cover |
|------|--------|---------------------|--|
| | | | <ul style="list-style-type: none"> • Direct and Contingent Employers Liability • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting / demolition / excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunnelling / grading and similar operations associated with all construction works, as applicable • Elevator and Hoist Collision Liability • Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co • Non-Owned Automobile Liability • Tenants’ Legal Liability (All Risks) – subject to sub-limit • Medical Expenses – subject to sub-limit • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Sudden and Accidental Pollution and Hostile Fire Pollution Liability – subject to sub-limit • Employee Benefits Administrative Errors and Omissions – subject to sub-limit • Contractors’ Rework Coverage – subject to sub-limit • Permission for Unlicensed Vehicles (partial road use) • Unlicensed Equipment |

| Type | Amount | Maximum Deductibles | Principal Cover |
|------|--------|---------------------|---|
| | | | <ul style="list-style-type: none"> • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Accident Benefits • Worldwide Territory, subject to suits being brought in Canada or the US <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except during the Broad Form Products and Completed Operations extension period • Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the site • Physical damage to the Project, except during Broad Form Products and Completed Operations extension period • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects and other professional consultants • Nuclear or radioactive contamination, except release radioactive isotopes intended for |

| Type | Amount | Maximum Deductibles | Principal Cover |
|---------------------|---|---------------------|-----------------|
| | scientific, medical, industrial or commercial use <ul style="list-style-type: none"> • Sanctions Clause • Asbestos | | |
| <i>Comments</i> | <ul style="list-style-type: none"> • Named Insured includes Project Co and its affiliates, Contracting Authority, Contracting Authority Parties, each City, Region of Peel, Revenue Vehicle Manufacturer, 407 ETR Co, Crown (as defined in Highway 407 Concession and Ground Lease Agreement, including directors, officers, employees, shareholders, legislators and officials), the Lenders, Lenders' Agent, Project Co Parties involved in the Works, including the Construction Contractor, all subcontractors, sub-subcontractors, suppliers while working on the Lands, tradesmen while working on the Lands, engineers, architects, consultants and sub-consultants (other than for professional liability), others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Lands • Each Railway Company, MTO, Utility Company as Additional Insureds • Directors, officers, shareholders, employees of the insured parties involved in the Works as Additional Insureds • Insurance is primary without right of contribution of any other insurance carried by any Named Insured • Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted • Professional service activities integral to the Project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers • Waiver of subrogation of insurers' rights of recovery against all Named and/or Additional Insureds, including Project Co, Contracting Authority, Contracting Authority Parties, each City, Region of Peel, the Construction Contractor, all subcontractors, sub-subcontractors, professional consultants, engineers and architects (other than for their professional liability), Revenue Vehicle Manufacturer, Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing | | |
| <i>Underwriters</i> | Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements | | |

Construction Period Insurance – Hurontario Light Rail Transit Project

From execution of the Project Agreement until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

| Type | Amount | Maximum Deductibles | Principal Cover |
|--|--|---|--|
| Project Specific Professional Liability | <p>[\$[REDACTED]] minimum per claim / \$[REDACTED] in the aggregate (inclusive of defense and related costs and supplementary payments)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Primary Insurance extension • Automatic addition of firms • Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured • Any individuals or personal corporations retained by the Named Insured under a personal services contract • Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the Insured or Named Insured and resulting from a single error, omission or negligent act • Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims • Duty to defend, even if the allegations are groundless, false or fraudulent | <p>[\$[REDACTED]] per claim with respect to Mitigation losses</p> <p>[\$[REDACTED]] per claim, all other losses</p> | <p>Project Specific Professional Liability Insurance in connection with the Project Co System Infrastructure and New Third Party Infrastructure from beginning of first design, through the entire construction period, to the Substantial Completion Date plus coverage for an extended reporting period of not less than 24 months.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by Contracting Authority, Contracting Authority Parties or the Lenders.</p> |

| Type | Amount | Maximum Deductibles | Principal Cover |
|-----------------|--|---------------------|-----------------|
| | <ul style="list-style-type: none"> • Worldwide territory, subject to suits brought in Canada • Mitigation of loss • Project Co endorsement <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Express warranties or guarantees • Estimates on profit, return • Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents • Design or manufacture of any good or products sold or supplied by the Named Insured • Terrorism • Nuclear Liability • Judgments and awards deemed uninsurable by law • Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement • Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees • Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies • Sanctions Clause | | |
| <i>Comments</i> | <ul style="list-style-type: none"> • Named Insured: Construction Contractor (as appropriate), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project • Professional services covered: All architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services and procurement services, including their replacements and/or sub-consultants of any tier | | |

| Type | Amount | Maximum Deductibles | Principal Cover |
|---------------------|---|---|-----------------|
| | | <ul style="list-style-type: none"> Retroactive Date: Full retroactive coverage from date of first design activity Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts or a material breach of any condition of the policy | |
| <i>Underwriters</i> | Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements | | |

Construction Period Insurance – Hurontario Light Rail Transit Project

From execution of the Project Agreement until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

| Type | Amount | Maximum Deductibles | Principal Cover |
|---|---|--|---|
| Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability – Claims Made) | \$[REDACTED] minimum per claim / \$[REDACTED] in the aggregate (inclusive of defense and related costs and supplementary payments) Principal Extensions: <ul style="list-style-type: none"> • Hazardous Substances occurring at or emanating from the System, the Public Infrastructure or the Lands during the Policy Period • Microbial Matter (including Fungus/Mould) • Underground / above ground storage tanks • First Party Restoration and Clean-up Costs • Disposal Site System, including Transportation (reporting required) • Duty to Defend • Canada and US Territory • Contractual Liability • Emergency Response Costs Permitted Exclusions: <ul style="list-style-type: none"> • Terrorism • War • Intentional Non-compliance • Prior Knowledge / Known Condition / Pre-Existing Condition (exception for exacerbation, aggravation, worsening) | \$[REDACTED] per claim inclusive of defense and all costs and expenses | Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Lands and Off-Site, as required. Extended Reporting Period: Minimum of 24 months after the Substantial Completion Date. This coverage shall be primary with respect to Project Co System Infrastructure and New Third Party Infrastructure without right of contribution of any insurance carried by Contracting Authority, Contracting Authority Parties or the Lenders. |

| Type | Amount | Maximum Deductibles | Principal Cover |
|---------------------|--|---------------------|-----------------|
| | <ul style="list-style-type: none"> • WSIB • Employers' Liability • Professional Liability • Nuclear Liability • Property Damage to Motor Vehicles during Transportation | | |
| <i>Comments</i> | <ul style="list-style-type: none"> • Named Insured will include Project Co, its Affiliates, Project Co Parties and all other parties engaged in the Works, including the Construction Contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants • Contracting Authority, Contracting Authority Parties, each City, Region of Peel, each Railway Company, Lenders and Lenders' agent will be identified as Additional Insureds • The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds | | |
| <i>Underwriters</i> | Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements | | |

Construction Period Insurance – Hurontario Light Rail Transit Project

From execution of the Project Agreement until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co

| Type | Amount | Maximum Deductibles | Principal Cover |
|--|--|---------------------|--|
| Automobile Liability | <p>[\$REDACTED] (Minimum) for Project Co and Project Co’s Construction Contractor vehicles</p> <p>[\$REDACTED] (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Lands</p> | | <p>Standard Ontario Owners Form For all vehicles operated by Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, operated in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Except with respect to cancellation for non-payment of premiums, policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to Contracting Authority, Contracting Authority Parties, each City, Region of Peel, each Railway Company or the Lenders</p> |
| <p>Commercial General Liability and Non-Owned Automobile Liability</p> <p>For Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, including Direct and Contingent Employers Liability, Products and Completed Operations Liability and Owner’s and Contractor’s</p> | <p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Project Co’s Construction Contractor</p> <p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works</p> <p>In both instances, limits of liability may be structured as any combination of Primary plus supplementary layers and Umbrella and/or Excess, or Primary plus Umbrella and/or Excess</p> | | <p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p> <p>This Commercial General Liability Insurance will cover off-site activities connected to the project and Products and Completed Operations Liability beyond the “Wrap-Up” Commercial General Liability Insurance policy’s Products and Completed Operations extension period.</p> <p>This insurance shall be maintained in effect during the Works phase until twelve (12) months following the earlier of the termination of the insured person’s involvement in the Works and the Substantial Completion Date.</p> <p>Except with respect to cancellation for non-payment of premiums, policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to Contracting Authority, Contracting Authority Parties, each City, Region of Peel, each Railway Company or the Lenders</p> |

| Type | Amount | Maximum Deductibles | Principal Cover |
|-----------------------|--|---------------------|-----------------|
| Protective extensions | <p>Sub-limits (Project Co and Project Co’s Construction Contractor):</p> <ul style="list-style-type: none"> • Full policy limits with respect to Non-Owned Automobile Liability • \$[REDACTED] Prairie or Forest Fire Fighting Expenses <p>Principal Extensions (required to be provided by the Project Co and its Construction Contractor and shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works):</p> <ul style="list-style-type: none"> • Owner’s and Contractor’s Protective • Blanket Contractual (written) • Direct and Contingent Employers Liability • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting / demolition / excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunnelling/grading and similar operations associated with the Works • Elevator and Hoist Collision Liability • Non-Owned Automobile Liability • Prairie or Forest Fire Fighting Expenses – subject to sub-limit | | |

| Type | Amount | Maximum Deductibles | Principal Cover |
|------|--------|---------------------|---|
| | | | <ul style="list-style-type: none"> • Permission for Unlicensed Vehicles’ (partial road use) • Unlicensed Equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Worldwide Territory, subject to suits being brought in Canada or the US <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations • Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the Lands • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects and other professional consultants • Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use |

| Type | Amount | Maximum Deductibles | Principal Cover |
|---------------------|---|---------------------|-----------------|
| | <ul style="list-style-type: none"> Asbestos | | |
| <i>Comments</i> | <ul style="list-style-type: none"> Contracting Authority, Contracting Authority Parties, each City, Region of Peel, each Railway Company, the Lenders and Lenders' Agent will be identified as Additional Insureds | | |
| <i>Underwriters</i> | Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements | | |

Construction Period Insurance – Hurontario Light Rail Transit Project

From execution of the Project Agreement until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co

| Type | Amount | Maximum Deductibles | Principal Cover |
|---|---|------------------------|---|
| Aircraft and Watercraft Liability (If any exposure) | Minimum \$[REDACTED] inclusive, including \$[REDACTED] passenger hazard – Owned Aircraft Minimum \$[REDACTED] inclusive – Non-Owned Aircraft Minimum \$[REDACTED] inclusive Owned or Non-Owned Watercraft | To be determined | Except with respect to cancellation for non-payment of premiums, policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to Contracting Authority, Contracting Authority Parties, each City, Region of Peel or the Lenders |
| <i>Comments</i> | <ul style="list-style-type: none"> Contracting Authority, Contracting Authority Parties, each City, Region of Peel, each Railway Company, the Lenders and Lenders’ Agent will be identified as Additional Insureds | | |
| “All Risks” Ocean Marine Cargo (if any exposure) | [REDACTED]% Replacement Cost Valuation basis | [\$REDACTED] per claim | Property of every description destined for incorporation into the System during marine transit, on a full replacement value basis, with no co-insurance provision. This coverage shall be primary with respect to Project Co System Infrastructure and New Third Party Infrastructure without right of contribution of any insurance carried by Contracting Authority, Contracting Authority Parties or the Lenders. |
| <i>Comments</i> | <ul style="list-style-type: none"> Named Insured includes Project Co, Contracting Authority, Contracting Authority Parties, Lenders, Lender’s Agent, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants as their respective interests may appear | | |
| “All Risks” Contractors’ Equipment To cover Project Co, the Construction Contractor, subcontractors, sub-subcontractors consultants and sub-consultants | If Site equipment is three years old or less, the sum insured shall be equal to [REDACTED]% of the replacement value of all contractors equipment used at the project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable. This requirement does not apply to equipment specifically insured under the “All Risks” Course of | | All Risks coverage on all owned, rented, leased or borrowed contractors’ equipment, used at the Lands. |

| Type | Amount | Maximum Deductibles | Principal Cover |
|---|--|---------------------|--|
| | Construction Property, including Boiler and Machinery policy | | |
| <i>Comments</i> | <ul style="list-style-type: none"> Waiver of Subrogation rights against Project Co, Contracting Authority, Contracting Authority Parties, each City, Region of Peel, the Construction Contractor, all subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders’ Agent, as well as officers, directors, elected officials, shareholders and employees of the foregoing | | |
| Employee Dishonesty (Crime) | \$(REDACTED) per loss | | <p>Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and its Affiliates including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors’ Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Insurance primary without right of contribution of any other insurance carried by Contracting Authority, Contracting Authority Parties or the Lenders.</p> |
| <i>Underwriters (All non-IOCIP insurance to be provided or caused to be provided by Project Co)</i> | Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements | | |
| WSIB | In accordance with Ontario Act’s established benefits and schedules | Not Applicable | <p>(i) Project Co and its affiliates shall obtain and maintain at Project Co’s expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Lands.</p> <p>Prior to commencement of the Project Operations, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon Substantial Completion, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to Metrolinx evidence of the workers compensation coverage maintained by any person involved in the Project Operations, or confirmation of that person’s exemption from workers compensation coverage.</p> |

Operational Term Insurance – Hurontario Light Rail Transit Project

From Substantial Completion Date until Termination Date

Insurance to be provided, or caused to be provided, by Project Co

| Type | Amount | Maximum Deductibles | Principal Cover |
|------------------------|--|---|--|
| “All Risk” Property | Limit of Liability to represent the PML, as approved by Contracting Authority, for all property, while on the Lands or while in transit, including material and supplies destined for incorporation into the Project or intended to be used in the performance of Project Co Services and all Project Co System Infrastructure and equipment | <p>[REDACTED]% of loss value / \$[REDACTED] minimum Earthquake</p> <p>[\$REDACTED] Flood</p> <p>[\$REDACTED] All other losses</p> <p>60 day waiting period applicable to time element coverages, underground losses</p> | <p>“All Risks” Property Insurance covering the insurable replacement cost of Project Co System Infrastructure based on the PML study, including necessary Business Interruption and Expediting Expenses.</p> <p>Coverage shall be maintained continuously from and after the Substantial Completion Date and at all times thereafter until the Termination Date.</p> <p>Such insurance will include Inland Transportation, By-Laws and Off Premises coverage.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by Contracting Authority, Contracting Authority Parties or the Lenders.</p> |
| | Revenue Vehicles in operation when not at the OMSF (minimum \$[REDACTED] per occurrence sub-limit) | 60 days waiting period applicable to time element coverages | |
| | Revenue Vehicle collision when not at the OMSF (minimum \$[REDACTED] per occurrence sub-limit) | 48 hour waiting period, off premises services | |
| | Revenue Vehicle derailment when not at the OMSF (minimum \$[REDACTED] per occurrence sub-limit) | | |
| | Business Interruption (Gross Revenue or Gross Profits Form) – 24 months period of indemnity – including interdependency and contingent coverage re losses at key supplier premises, property in transit or in storage off-site | | |

| Type | Amount | Maximum Deductibles | Principal Cover |
|------|--|---------------------|-----------------|
| | Extra and Expediting Expenses (minimum \$[REDACTED] sub-limit) | | |
| | Principal Extensions: | | |
| | <ul style="list-style-type: none"> • Replacement Cost Valuation (Property) • Most Recent Technology Replacement Cost Valuation (Equipment or Machinery) • Flood (to policy limit with annual aggregate) • Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate) • Electronic Data Processing equipment and media, including data restoration and re-creation costs • Debris Removal (minimum \$[REDACTED] sub-limit) • Transit (minimum \$[REDACTED] sub-limit) • Unnamed locations (minimum \$[REDACTED] sub-limit) • Professional Fees (minimum \$[REDACTED] sub-limit) • Fire Fighting Expenses (minimum \$[REDACTED] sub-limit) • Valuable Papers (minimum \$[REDACTED] sub-limit) • Accounts Receivable (minimum \$[REDACTED] sub-limit) • Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit) • Civil Authority Access Interruption (minimum 8 weeks) | | |

| Type | Amount | Maximum Deductibles | Principal Cover |
|---------------------|--------|---------------------|---|
| | | | <ul style="list-style-type: none"> • Prevention of Ingress/Egress (minimum 8 weeks) • Automatic Coverage for Newly Acquired Locations (90 day reporting period acceptable) • By-Laws including demolition and increased replacement / repair costs • Off Premises Services Interruption • Margin of profit extension for contractors • Joint Loss Agreement (if separate “All Risk” Property and Boiler and Machinery policies are arranged) <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives • Faulty workmanship, materials construction, design or latent defects but resultant damage to be insured • War risk • Terrorism • Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use • Sanctions Clause |
| <i>Comments</i> | | | <ul style="list-style-type: none"> • Named Insured will include Project Co, Project Co Parties, Contracting Authority, Contracting Authority Parties, and the Lenders • Losses payable in accordance with the Insurance Trust Agreement and Section 20.1 of Schedule 25 – Insurance and Performance Security Requirements. • No provision allowing a coinsurance penalty • Waiver of Subrogation against all Named Insureds, including but not limited to Project Co, Contracting Authority, Contracting Authority Parties, the Lenders, Lenders’ Agent as well as officers, employees, servants and agents of the foregoing |
| <i>Underwriters</i> | | | Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements |

Operational Term Insurance – Hurontario Light Rail Transit Project

From Substantial Completion Date until Termination Date

Insurance to be provided, or caused to be provided, by Project Co

| Type | Amount | Maximum Deductibles | Principal Cover |
|-------------------------------|--|--|---|
| Boiler & Machinery | Limit of Liability to represent the PML, as approved by Contracting Authority, for each Accident to an Insured Object Business Interruption (Gross Revenue or Gross Profits Form) – 24 months period of indemnity – including interdependency and contingent coverage re losses at key supplier premises, property in transit or in storage off-site If a covered accident to insured objects(s) causes an interruption to services or activities, the Business Interruption loss will include the costs of carrying the Project financing, during the affected period Sub-limits (\$[REDACTED] each): <ul style="list-style-type: none"> • Ammonia Contamination • Automatic Coverage • Bylaws • Errors and Omissions • Expediting Expenses • Extra Expense • Hazardous Substances • Professional Fees • Water Damage | \$[REDACTED] per claim, Direct Damage Business Interruption – Maximum 60 day Waiting Period | Boiler & Machinery insurance on a Comprehensive Policy Form basis including HVAC on a full replacement cost basis, including all appropriate endorsements and extensions as well as necessary Business Interruption and Expediting and Extra Expense coverage. Coverage shall be maintained continuously from and after the Substantial Completion Date or activation, whichever shall first occur, and at all times thereafter until the Termination Date. Boiler and Machinery Insurance may be arranged on a combined Property/Boiler and Machinery basis, subject to the Boiler and Machinery section of such a policy being arranged on a Comprehensive Form basis. This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by Contracting Authority, Contracting Authority Parties or the Lenders. |
| <i>Comments</i> | <ul style="list-style-type: none"> • Named Insured will include Project Co, Project Co Parties, Contracting Authority, Contracting Authority Parties, and the Lenders • Losses payable in accordance with the Insurance Trust Agreement and Section 20.1 of Schedule 25 – Insurance and Performance Security Requirements. • As nearly as possible, coverage will be structured to dovetail with the Property Insurance | | |
| <i>Underwriters</i> | Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements | | |

Operational Term Insurance – Hurontario Light Rail Transit Project

From Substantial Completion Date until Termination Date

Insurance to be provided, or caused to be provided, by Project Co

| Type | Amount | Maximum Deductibles | Principal Cover |
|--|--|--|--|
| Commercial General Liability and Non-Owned Automobile Liability | <p> \$[REDACTED] each accident or occurrence and in the aggregate with respect to Products and Completed Operations </p> <p>Sub-limits:</p> <ul style="list-style-type: none"> • \$[REDACTED] Non-Owned Automobile Liability, unless coverage provided under automobile liability insurance • \$[REDACTED] Sudden and Accidental Pollution and Hostile Fire Pollution • \$[REDACTED] “All Risks” Tenants’ Legal Liability, if any exposure exists • \$[REDACTED] Prairie or Forest Fire Fighting Expense • \$[REDACTED] Employee Benefits Administrative Errors and Omission Liability • \$[REDACTED] Legal Liability for Damages to Non-owned Automobiles (SEF 94), unless coverage provided under automobile liability insurance • \$[REDACTED]/\$ [REDACTED] Medical Payments <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Owner’s and Contractor’s Protective | <p> \$[REDACTED] per occurrence </p> | <p> Commercial General Liability insurance covering all Project Co Services on an occurrence basis against claims for personal injury (including bodily injury and death), Broad Form Property Damage (including Loss of Use) and including Broad Form Products and Completed Operation Liability insurance. </p> <p> Coverage shall be maintained continuously from and after the Substantial Completion Date and at all times thereafter until the Termination Date. </p> <p> Pollution Liability – Sudden and Accidental Pollution coverage to be not less than IBC 2313 form (120 hours detection/120 hours’ notice coverage structure). </p> <p> This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by Contracting Authority, Contracting Authority Parties or the Lenders. </p> |

| Type | Amount | Maximum Deductibles | Principal Cover |
|------|--------|---------------------|---|
| | | | <ul style="list-style-type: none"> • Blanket Contractual (written and oral) • Direct and Contingent Employers Liability • Employee Benefits Administrative Errors and Omissions • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting / demolition / excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunnelling / grading and similar operations, as applicable • Elevator and Hoist Collision Liability • Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co • Non-owned Automobile • Tenants’ Legal Liability (All Risks) – subject to sub-limit • Medical Expenses – subject to sub limit • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Sudden and Accidental Pollution and Hostile Fire Pollution – subject to sub-limit • Permission for unlicensed vehicles’ partial road use • Unlicensed Equipment • Loss of Use Without Property Damage |

| Type | Amount | Maximum Deductibles | Principal Cover |
|------|--------|---------------------|---|
| | | | <ul style="list-style-type: none"> • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Voluntary Compensation • Worldwide Territory, subject to suits being brought in Canada or the US <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations • Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the Project Co Services work site • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects and other professional consultants • Asbestos • Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use • Sanctions Clause |

| Type | Amount | Maximum Deductibles | Principal Cover |
|---------------------|--------|---|---|
| <i>Comments</i> | | <ul style="list-style-type: none"> Named Insured includes Project Co and its affiliates, Contracting Authority, Contracting Authority Parties, each City, Region of Peel, the Lenders, Project Co Parties involved in the Project Co Services, including all contractors, subcontractors, sub-subcontractors, suppliers while working on the Lands, tradesmen while working on the Lands, engineers, architects, consultants and sub consultants, (other than for professional liability) and others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to Project Co Services and the control and use of the Lands Each Railway Company, 407 ETR Co, Crown (as defined in Highway 407 Concession and Ground Lease Agreement, including directors, officers, employees, shareholders, legislators and officials) as Additional Insureds Directors, officers, shareholders, employees of the insured parties involved in the Project Co Services are covered as Additional Insureds Insurance primary without right of contribution of any other insurance carried by any Named Insured Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted Professional service activities integral to the Project Co Services, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers Waiver of subrogation of insurers’ rights of recovery against all Named and/or Additional Insureds, including Project Co, Contracting Authority, Contracting Authority Parties, each City, Region of Peel, the Construction Contractor, all subcontractors, sub-subcontractors, professional consultants, engineers and architects (other than for their professional liability), Lenders, Lenders’ Agent, as well as officers, directors, employees, elected officials, servants and agents of the foregoing | |
| <i>Underwriters</i> | | | Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements |

Operational Term Insurance – Hurontario Light Rail Transit Project

From Substantial Completion Date until Termination Date

Insurance to be provided, or caused to be provided, by Project Co

| Type | Amount | Maximum Deductibles | Principal Cover |
|---|---|---|--|
| Environmental Impairment (Pollution) Liability | <p>[\$REDACTED] minimum per claim / [\$REDACTED] in the aggregate (inclusive of defense and related costs and supplementary payments)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Hazardous Substances occurring at or emanating from the Project Co Services or site or the Lands during the Policy Period • Microbial Matter (including Fungus/Mould) • Biological Agents • Underground / above ground storage tanks • First Party Restoration and Clean-up • Duty to Defend • Contractual Liability <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Terrorism • Intentional Non-Compliance • WSIB • War • Employers Liability • Nuclear Liability • Professional Liability • Sanctions Clause | <p>[\$REDACTED] per claim inclusive of defense and all costs and expenses</p> | <p>Pollution Liability insurance covering third party bodily injury and property damage liability, consequential loss or damage, including necessary clean-up costs, both at the Project Co Services sites and the Lands and off-site, as required. Coverage is extended to include underground and above ground storage tanks (if applicable).</p> <p>Coverage shall be maintained continuously from and after the Substantial Completion Date and at all times thereafter until the Termination Date.</p> <p>This insurance shall include a twelve (12) month extended discovery period and reporting period provision in the event of termination of the Policy or in the event termination of the Project Agreement for any reason, including its expiration.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by Contracting Authority, Contracting Authority Parties or the Lenders.</p> |
| <i>Comments</i> | <ul style="list-style-type: none"> • Named Insured will include Project Co, its Affiliates, Project Co Parties and all other parties engaged in the Works, including the Service Provider, all subcontractors, sub-subcontractors, consultants, and sub-consultants | | |

| Type | Amount | Maximum Deductibles | Principal Cover |
|---------------------|--------|--|-----------------|
| <i>Underwriters</i> | | <ul style="list-style-type: none"> Contracting Authority, Contracting Authority Parties, each City, Region of Peel, each Railway Company, 407 ETR Co, Crown (as defined in Highway 407 Concession and Ground Lease Agreement, including directors, officers, employees, shareholders, legislators and officials), Lenders and Lenders’ Agent will be identified as Additional Insureds The directors, officers, shareholders, elected officials, and employees of the foregoing shall be Additional Insureds | |
| | | Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements | |

Operational Term Insurance – Hurontario Light Rail Transit Project

From Substantial Completion Date until Termination Date

Insurance to be provided, or caused to be provided, by Project Co

| Type | Maximum Deductibles | Principal Cover |
|-----------------------------|---|--|
| Automobile Liability | <p>[\$REDACTED] Minimum) for Project Co and Project Co’s contractor vehicles</p> <p>[\$REDACTED] (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Project Co Services site or at the Operations Services site or the lands</p> | <p>Standard Ontario Owners Form For all vehicles operated by Project Co, all contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants operated in connection with the Project Co Services.</p> <p>Coverage shall be maintained continuously from and after the Substantial Completion Date and at all times thereafter until the Termination Date.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to Contracting Authority, Contracting Authority Parties, each City, Region of Peel, each Railway Company or the Lenders.</p> |
| <i>Underwriters</i> | Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements | |
| Comprehensive Crime | <p>[\$REDACTED] per extension</p> | <p>Comprehensive Crime insurance including coverage for Employee Dishonesty against the fraudulent/dishonest acts of employees of Project Co and its Affiliates, including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors’ Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Coverage shall be maintained continuously from and after the Substantial Completion Date and at all times thereafter until the Termination Date.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by Contracting Authority, Contracting Authority Parties or the Lenders.</p> |
| <i>Underwriters</i> | Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements | |

Operational Term Insurance – Hurontario Light Rail Transit Project

From Substantial Completion Date until Termination Date

Insurance to be provided, or caused to be provided, by Project Co

| Type | | Maximum Deductibles | Principal Cover |
|------|---|---------------------|--|
| WSIB | In accordance with Ontario Act's established benefits and schedules | Not Applicable | <p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at locations where the Project Co Services are being performed.</p> <p>Prior to commencement of the Project Co Services, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon completion of the Project Co Services, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to Metrolinx evidence of the WSIB coverage maintained by any person involved in the Project Co Services or confirmation of that person's exemption from WSIB coverage.</p> |

SCHEDULE 26

RECORD PROVISIONS

1. General Requirements

- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1, as follows:
- (a) in accordance with this Section 1;
 - (b) in accordance with the Project Agreement;
 - (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 Project Co's, the Construction Contractor's and the Service Provider's normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in electronic format in accordance with Contracting Authority's designated record keeping system;
 - (i) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 37 of the Project Agreement; and
 - (j) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records at the Project Co System Infrastructure or otherwise on the Metrolinx Lands, in addition to retaining and maintaining records referred to in Section 2.1 in electronic format on Contracting Authority's designated record keeping system.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy and electronic form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including the As-Built Drawings and the Record Drawings) required to be made or supplied pursuant to the Project Agreement shall be on the most updated version of the applicable software and editable in updated base software format, and when printed, 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 Project Co to Contracting Authority, and shall conform to the Output Specifications, Good Industry Practice and the CAD Standards. All drawings are to

- be submitted via Contracting Authority's electronic control management system, with one hard copy provided to Contracting Authority. Project Co 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. Contracting Authority shall provide Project Co access to Contracting Authority's electronic control management system.
- 1.5 Records shall be stored in electronic format within Contracting Authority's electronic control management system where Project Co shall have access thereto and will continue to have access thereto, such that Contracting Authority will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 for a minimum period of at least 7 years or such longer period as required by Applicable Law.
- 1.7 Project Co shall provide Notice to Contracting Authority if Project Co wishes to destroy any records referred to in this Schedule 26, or in respect of which the required period under Section 1.6 or under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such Notice, Contracting Authority may elect to require Project Co to deliver such records to Contracting Authority, in which case Project Co shall, at the expense of Contracting Authority, deliver such records (with the exception of Sensitive Information) to Contracting Authority in the manner and to the location as Contracting Authority shall specify; or
 - (b) if Contracting Authority fails to notify Project Co of its election pursuant to Section 1.7(a) within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of termination of the Project Agreement prior to the Expiry Date, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to Contracting Authority in the manner and to the location that Contracting Authority shall reasonably specify. Contracting Authority shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 subject to prior reasonable Notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co;
 - (b) Project Co in connection with its fulfilment of any outstanding obligations under the Project Agreement; or
 - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.9 Where the termination of the Project Agreement arises:
- (a) as a result of an Contracting Authority Event of Default or pursuant to Section 47.3 of the Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by Contracting Authority; 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 Project Co.
- 1.10 Within 30 days after the end of each Contract Year, Project Co shall deliver to Contracting Authority a report, as reasonably requested by Contracting Authority in connection with Contracting Authority's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against Contracting Authority or that may be owing by Contracting Authority to Project Co. 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 the Project Agreement.
- 1.11 Project Co shall provide to Contracting Authority, prepared in accordance with Approved Accounting Principles, not later than 60 days after the end of each of the first 3 fiscal quarters in each fiscal year, part or all of which falls in a Contract Year, a copy of Project Co's quarterly unaudited financial statements in respect of that period, and not later than 180 days after the end of each fiscal year, a copy of Project Co's annual audited financial statements, in respect of that period, together with copies of all related auditors' reports and, to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners, all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 52 of the Project Agreement, shall be treated by Contracting Authority as Confidential Information of Project Co. For the purposes of this section, "**Approved Accounting Principles**" means, at any time, the generally applicable accounting principles in Canada and/or IFRS or, in relation to a person who carries on its business outside Canada, generally accepted accounting principles consistently applied in the jurisdiction in which such person carries on its business.
- 2. Records To Be Kept**
- 2.1 Without limiting any other requirement of the Project Agreement, Project Co shall prepare, retain and maintain at its own expense:
- (a) the Project Agreement, its Schedules and the Project Documents, including all amendments to such agreements;
 - (b) all records relating to the appointment and replacement of the Contracting Authority Representative and the Project Co Representative;
 - (c) any documents, drawings (including the Record Drawings) or submissions in accordance with Schedule 10 – Review Procedure;
 - (d) any documents relating to Development Approvals and other Project Co Permits, Licences and Approvals, including any refusals and appeals relating to any applications;
 - (e) a complete record of construction including:
 - (i) Traffic and Transit Management Plan and all sub-plans;

- (ii) Construction Activities progress photography;
 - (iii) construction notices or other communications with adjacent businesses, property owners or tenants;
 - (iv) planned and unplanned interruptions of Utility Infrastructure;
 - (v) a complaints log including responses and any corrective action; and
 - (vi) any other items as requested by Contracting Authority from time to time;
- (f) all records relating to any statutory inspections of the Project Co System Infrastructure or the Metrolinx Lands, including any roadways and tracks;
 - (g) any notices, reports, results and certificates relating to Substantial Completion and Final Completion of the Works and completion of the Commissioning;
 - (h) all operation and maintenance manuals;
 - (i) any documents relating to events of Force Majeure, Delay Events, Compensation Events, Relief Events and Excusing Causes;
 - (j) all records required to be recorded and retained in accordance with Schedule 15-3 – Operations and Maintenance Requirements;
 - (k) all formal notices, reports or submissions made to or received from Contracting Authority in connection with the provision of the Project Co Services, the monitoring of performance, the availability of the Project Co System Infrastructure, and payment adjustments;
 - (l) all certificates, licences, registrations or warranties related to the performance of the Project Co Services;
 - (m) the invoices for Monthly Service Payments;
 - (n) all documents submitted in accordance with Schedule 22 – Variation Procedure;
 - (o) any documents related to decisions resulting from the Dispute Resolution Procedure;
 - (p) any documents related to a Project Co Change in Ownership or Change in Control;
 - (q) any documents relating to any Refinancing;
 - (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) Project Co's liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;

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- (ii) Project Co's liabilities or payments for capital taxes based on or measured by the capital of Project Co;
 - (iii) the withholdings of any payments by Project Co; 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 Project Co referred to in Section **Error! Reference source not found.** above;
 - (t) such documents as Contracting Authority may reasonably require relating to Business Opportunities in which Contracting Authority has a right or interest;
 - (u) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Project Operations;
 - (v) any documents relating to insurance and insurance claims;
 - (w) all Jointly Developed Materials; and
 - (x) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to the Project Agreement.
- 2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1.

SCHEDULE 27**DISPUTE RESOLUTION PROCEDURE****1. General**

- 1.1 All disputes, controversies, or claims arising out of or relating to any provision of the Project Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under the Project Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of the Project Agreement, including this Schedule 27, or any matter referred to for resolution pursuant to this Schedule 27 (collectively and individually, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule 27.
- 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 on a without prejudice basis; and
 - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 2 to 9.
- 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 Contracting Authority Representative or the Project Co Representative, as applicable, a written Notice of dispute (the “**Notice of Dispute**”), which Notice of Dispute shall, subject to the terms of this Schedule 27 requiring resolution of a Dispute pursuant to a specific dispute resolution process set forth in this Schedule 27, initiate the dispute resolution process described in Sections 2 to 9, as applicable, as more particularly described in this Schedule 27. 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 Contracting Authority Representative, if given by Contracting Authority, or by the Project Co Representative, if given by Project Co.

2. Amicable Resolution by Party Representatives

- 2.1 On receipt of a Notice of Dispute, the Contracting Authority Representative and the Project Co 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.

3. Amicable Resolution by Senior Officers of each Party

- 3.1 If, following the process referred to in Section 2 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6), 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 Contracting Authority Representative or the Project Co 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.

3.2 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.

4. Independent Certifier

4.1 This Section 4 applies to all Disputes that fall within the description of Section 4.2 that cannot be resolved as provided in Sections 2 and 3 or as otherwise agreed to in writing by the Parties pursuant to Section 13.6.

4.2 All Disputes related to the Works and that:

- (a) arise prior to, or otherwise in relation to Substantial Completion;
- (b) relate to completion of Minor Deficiencies;
- (c) relate to whether any proposed work constitutes a Variation;
- (d) relate to a review of Estimates or any other matters relating to Variations as the Independent Certifier is entitled to review and determine pursuant to Section 39 of the Project Agreement;
- (e) are referred to in the Project Agreement for determination by the Independent Certifier; or
- (f) relate to the Certification Services or any Certification Services Variations (as those terms are defined in the Independent Certifier Agreement);

shall initially be submitted to the Independent Certifier for independent determination by the Independent Certifier in accordance with Section 4.3.

4.3 (a) Without limiting any obligations of the Parties under the Independent Certifier Agreement, 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 4.3(c).

- (b) The Parties shall submit all records and documents to the Independent Certifier no later than 10 Business Days following the date that the Dispute was submitted to the Independent Certifier, or such later date as the Parties may agree in writing.
- (c) The Independent Certifier shall independently determine a Dispute referred to it pursuant to Section 4.2:
 - (i) within such period as may be specified in this Project Agreement; or
 - (ii) where no period is specified, within 10 Business Days after the submission of records and documents to the Independent Certifier pursuant to Section 4.3(b) and, in any event, no later than 20 Business Days following the date that such Dispute was submitted to the Independent Certifier pursuant to Section 4.2 (irrespective of whether or not both Parties have submitted records and documents in accordance with Section 4.3(c)); or
 - (iii) such other period as may be agreed upon by the Parties in writing.
- (d) Where a specific provision of the Project Agreement requires the Independent Certifier to make a determination in fewer than 10 Business Days, the Parties shall agree on a time period for the submission of records and documents which shall not be more than 5 Business Days following the date that the Dispute was submitted to the Independent Certifier.

4.4 The Independent Certifier’s decision to issue or not to issue a Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial Completion Payment Commencement Date, and a Dispute in relation to the Substantial Completion Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 27. 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 27, provided however that Sections 5 and 6 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

5. Expert Determination

- 5.1 If, following the process referred to in Section 2 and 3 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6), any Dispute as to:
 - (a) whether a Liquid Market exists;
 - (b) whether amendments proposed by potentially Qualifying Tenders to the Project Agreement or other Project Documents are material;
 - (c) the Adjusted Highest Qualifying Tender Price;
 - (d) the determination of the Estimated Fair Value in accordance with Schedule 23 – Compensation on Termination of the Project Agreement, or

- (e) whether Project Co has achieved all necessary prerequisites, credits and points under the LEED Rating System in accordance with the specific requirements under the Project Agreement to achieve LEED Silver Rating,

has not been resolved within 10 Business Days after the date the Dispute was 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 of 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**”).

5.2 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; and
- (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 27 for qualifications and experience of the Expert.

5.3 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 Contracting Authority, Project Co, or any consultant, subconsultant or subcontractor of any of them.

5.4 Subject to the matters the Expert is authorized to determine pursuant to Section 5.1, 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.

5.5 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.
- 5.6 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 shall give reasons or a summary of reasons for the Expert's decision.
- 5.7 The Expert shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.
- 5.8 Each Party shall bear its own costs of the process for resolution of the Dispute by the Expert. In addition, the costs of the Expert shall be borne equally by the Parties.
- 5.9 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.

6. Adjudication

- 6.1 If, the Parties fail to resolve any Dispute through the process referred to in Section 2 and 3 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (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 4.2 or 5.1 or a Dispute referred to arbitration or litigation pursuant to Sections 4.4 or 5.9 (except as otherwise agreed to in writing by the Parties pursuant to Section 13.6), either Party may refer the Dispute to a single adjudicator selected in accordance with Section 6.2 (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) and shall:

- (a) be independent of and at arm's length to Project Co, Contracting Authority, the Lenders and any other person having an interest in the Project Operations or any of the Project Documents;
- (b) if the Dispute arises during the Project Term, be familiar with the construction, operation and management of rail transportation projects; and
- (c) be a person who has the qualifications and experience with respect to the particular issues in Dispute.

6.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council's *Model Adjudication Procedure: Fourth Edition* 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 the Project Co System Infrastructure and/or the New Third Party Infrastructure is operating in accordance with all relevant specifications and requirements set forth in the Project Agreement is on Project Co. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including 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, 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 27, 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 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 the Project 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 the Project Agreement. For greater certainty, the Independent Certifier's decision to issue or not to issue a Substantial Completion Certificate shall be final and binding solely in respect of determining the Substantial Completion Payment Commencement Date, and a Dispute in relation to the Substantial Completion Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 27;
- (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 Project Co to resolve a Dispute, those measures must be implemented by Project Co as soon as reasonably practical, without payment by Contracting Authority unless (i) the Adjudicator determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding; and
- (b) corrective measures are not required to be taken by Project Co to resolve a Dispute, Contracting Authority may, at its option, require corrective measures to be taken forthwith by Project Co, in which case those measures must be implemented by Project Co as soon as reasonably practical provided that Contracting Authority undertakes to pay Project Co for Direct Costs, plus reasonable overhead and profit incurred by Project Co as such costs are so incurred; provided that no such costs should exceed the amount Project Co is entitled to receive pursuant to Schedule 22 – Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to Contracting Authority's right to contest the determination made by the Adjudicator in a subsequent proceeding. Contracting Authority shall provide Project Co such reasonable extensions of time in respect of Project Co's obligations under this Agreement necessary to allow Project Co 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 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 or by the Adjudicator pursuant to Section 6 is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year;
- (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 4.4 provides that Sections 5 and 6 shall not apply to resolve such Dispute,

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, request that the Dispute be resolved by arbitration pursuant to Section 8 upon the written consent of the other Party. 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, the Adjudicator's decision 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, decision of the Adjudicator 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 Sections 5 or 6 apply 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 nor 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), and

(b) all other requirements set out in this Schedule 27 have been satisfied,

such Dispute may be referred to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and this Section.

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 27 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 27 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 27 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.
- 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 Contracting Authority, Project Co, 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 the Project Agreement, including 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 The Project Agreement, including this Schedule 27, 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, 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 4.4 provides that Sections 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 more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year; or
 - (b) if the Dispute is considered by Contracting Authority to involve material issues of public health or safety.

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, the Adjudicator'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 Adjudicator, 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 Sections 8.2 to 8.14; 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 Project Agreement Adjudication, Arbitration and Litigation

- 10.1 For all Disputes that arise prior to Substantial Completion, 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 Substantial Completion 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 Substantial Completion; 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 Substantial Completion 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 Substantial Completion.

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 (“**Project Agreement Arbitration**”) shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if Contracting Authority, Project Co 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 Project 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 Project 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 Project Agreement Arbitration proceeding and Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project 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 Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes

of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Project 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 Project 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 Project 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 Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

12. [Intentionally Deleted]

13. Miscellaneous

- 13.1 Project Co and Contracting Authority shall diligently carry out their respective obligations under the Project Agreement during the pendency of any Disputes, including 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 Project Co's rights in respect of the Dispute (including in respect of Delay Events, Compensation Events and Variations), Project Co shall proceed in accordance with the direction of Contracting Authority, and in the event the matter in dispute is determined in favour of Project Co, then, to the extent that such Dispute affects the Project Co System Infrastructure or the New Third Party Infrastructure, proceeding in accordance with Contracting Authority's position (i) prior to Substantial Completion shall, subject to and in accordance with Section 40 of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 41 of the Project Agreement, be treated as a Compensation Event, and (ii) following Substantial Completion shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. For greater certainty, in respect of any Dispute relating to the Works referred to in Section 4.2, 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.
- 13.2 Nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction where available pursuant to Applicable Law, if necessary to prevent irreparable harm to a Party.
- 13.3 The Parties shall indemnify each other in respect of any damages suffered or incurred 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 2 and 3 and on the amount of any award or judgment as follows:
- (a) for amounts payable by Project Co to Contracting Authority, Project Co shall indemnify Contracting Authority as provided for at Section 56.1(e) of the Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under the Project Agreement to Contracting Authority until the date of payment; or
 - (b) for amounts payable by Contracting Authority to Project Co, Contracting Authority shall indemnify Project Co as provided for at Section 56.2(c) of the Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Contracting Authority or, as applicable, any underpayment or non-payment by Contracting Authority from the date of any overpayment to Contracting Authority or, as applicable, from the date on which payment was due under the Project Agreement to Project Co until the date of payment.
- 13.4 Project Co shall ensure that any and all documents and other information in the possession or control of any Project Co Party that are available to Project Co 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 2 and 3, or by an expert, an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Contracting Authority and the Contracting Authority Representative.
- 13.5 Contracting Authority shall ensure that any and all documents and other information in the possession or control of any Contracting Authority Party that are available to Contracting Authority 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 2 and 3, or by an expert, an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.
- 13.6 The Parties can, by written agreement, on a Dispute by Dispute basis:
- (a) extend any or all timelines set out in this Schedule 27;

- (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 and 9;
- (c) agree to (i) resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 6 and Section 8, or (ii) agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the requirements of Section 6 and Section 9, or (iii) agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 8 and Section 9; and
- (d) agree to resolve a Dispute relating to the decision of an Expert by adjudication, arbitration or litigation, notwithstanding the provisions of Section 5.

SCHEDULE 28
REFINANCING**1. DEFINITIONS**

1.1 In this Schedule 28, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 28) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Distribution”** means, whether in cash or in kind, any:
- (i) dividend or other distribution in respect of the Equity Capital;
 - (ii) reduction of capital, redemption or purchase of shares or any other reorganization or variation to the Equity Capital;
 - (iii) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
 - (iv) the receipt of any other benefit which is not received in the ordinary course of business nor on reasonable commercial terms,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution shall be calculated.

- (b) **“Exempt Refinancing”** means:
- (i) any Refinancing that has the effect of replacing or extending any Mini-Perm Financing, provided that:
 - (A) Project Co shall assume any and all risks and benefits associated with such Refinancing without adjustment to the Monthly Service Payments or any other form of compensation to Project Co under the Project Agreement, including any risk that such Refinancing results in higher financing costs than the financing costs assumed by Project Co in its Financial Model as of the date of the Project Agreement for the Refinancing of any Mini-Perm Financing; and
 - (B) such Refinancing occurs on or before the Planned Mini-Perm Refinancing Date;
 - (ii) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;

- (iii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements by the Lenders that does not provide for a financial benefit to Project Co under those agreements;
 - (iv) any sale of Equity Capital or securitization of the existing rights or interests attaching to such Equity Capital, unless such sale or securitization involves increasing the Senior Debt Amount or the Junior Debt Amount, as applicable, or amending the Senior Debt Makewhole or the Junior Debt Makewhole, as applicable, on terms more favourable to Project Co than contained in the Lending Agreements;
 - (v) any Qualifying Bank Transaction;
 - (vi) any Rescue Refinancing;
 - (vii) any Refinancing that was approved by Contracting Authority prior to the execution of the Project Agreement and occurs during the first six months following the date of the Project Agreement;
 - (viii) any amendment, variation or supplement of any agreement approved by Contracting Authority as part of any Variation under the Project Agreement; or
 - (ix) any Permitted Borrowing.
- (c) **“Mandatory Refinancing”** means an Exempt Refinancing described in Section 1.1(b)(i).
- (d) **“Mini-Perm Financing”** means a financing facility under any Lending Agreement that, pursuant to the applicable Lending Agreement, is scheduled to be repaid in whole or in part from the proceeds of a new financing on or before the Planned Mini-Perm Refinancing Date.
- (e) **“Planned Mini-Perm Refinancing Date”** [Not Used.] This definition is not applicable as of the date of the Project Agreement and, accordingly, any references to “Planned Mini-Perm Refinancing Date” throughout the Project Agreement and any Ancillary Documents are not applicable as of the date of the Project Agreement.
- (f) **“Qualifying Bank”** means a lending institution that is:
- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
 - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls, either directly or through its affiliates, funds in excess of \$[REDACTED],

provided such institution is not a Restricted Person or a person whose standing or activities may compromise (i) Contracting Authority’s reputation or integrity, or (ii) the nature of

any of the public transit systems within the Region of Peel so as to affect public confidence in any of the public transit systems within such area or the Project.

- (g) **“Qualifying Bank Transaction”** means:
- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;
 - (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
 - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (h) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (i) **“Refinancing”** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
 - (ii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
 - (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
 - (iv) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co’s ability to carry out any of the foregoing provisions of this definition.
- (j) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to Contracting Authority, acting reasonably, prepared for the purpose of Section 2, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 28, and shall take into account:
- (i) cash flows for the entire remaining Project Term;
 - (ii) any changes in structure and funding since the date of the Project Agreement;

- (iii) the performance of the Project Operations to the date of the Refinancing;
 - (iv) macroeconomic assumptions; and
 - (v) all other relevant factors.
- (k) **“Refinancing Gain”** means an amount equal to the greater of zero and $(A - B)$, where:
- A = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing) to be made over the remaining term of the Project Agreement following the Refinancing.
- B = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing) to be made over the remaining term of the Project Agreement following the Refinancing.
- (l) **“Refinancing Notice”** has the meaning given in Section 2.9.
- (m) **“Rescue Refinancing”** means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of Contracting Authority, whether actual or potential.

2. REFINANCING

2.1 Project Co shall not carry out:

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of Contracting Authority, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered a Notice of such Refinancing to Contracting Authority before five (5) Business Days of such Refinancing, except that such Notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided for under a book-based system of a depository or pursuant to a trust indenture that comprises a portion of the Senior Debt Amount and/or Junior Debt Amount.

2.2 Contracting Authority may withhold its consent to any Qualifying Refinancing, in its sole discretion:

- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;

- (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or the Project Agreement; or
- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of Contracting Authority, whether actual or contingent, present or future, known or unknown.

2.3 Contracting Authority shall be entitled to receive:

- (a) a [REDACTED]% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED];
- (b) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of \$[REDACTED] and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED]; and
- (c) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing.

2.4 Project Co shall promptly provide Contracting Authority with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. Contracting Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from Contracting Authority, provide any information in relation to a proposed Refinancing as Contracting Authority may reasonably require. Project Co shall keep Contracting Authority informed as to any changes to the material terms of the Refinancing. Both Contracting Authority and Project Co shall at all times act in good faith with respect to any Refinancing.

2.5 Subject to Section 2.6, Contracting Authority shall have the right to elect to receive its share of any Refinancing Gain as:

- (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing; and/or
- (b) a reduction in the Monthly Service Payments over the remaining Project Term,

such that the total net present value, discounted at the Discount Rate, of the foregoing, calculated at the time immediately prior to the Refinancing, shall equal Contracting Authority's share of the Refinancing Gain.

- 2.6 Contracting Authority and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of Contracting Authority's share of the Refinancing Gain (taking into account how Contracting Authority has elected to receive its share of the Refinancing Gain under Section 2.5 and the profile of the Refinancing Gain). If the Parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of the Contracting Authority's share, the Dispute shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure. Both Contracting Authority and Project Co shall work together collaboratively to establish the rate setting process to complete the Qualifying Refinancing.
- 2.7 The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days of any Qualifying Refinancing, Project Co will reimburse Contracting Authority for all such reasonable out-of-pocket costs incurred by Contracting Authority. Project Co and Contracting Authority shall not be entitled to claim as out-of-pocket costs, any charge, cost, expense, fee or similar amount that is incurred by either Party in relation to the Refinancing outside of the ordinary course.
- 2.8 If Project Co must, at a future date, undertake a Mandatory Refinancing, then Contracting Authority may at any time request that Project Co provide to Contracting Authority full and complete details and information with respect to the Mandatory Refinancing and its plan for the Mandatory Refinancing, including in respect to all relevant assumptions regarding the Mandatory Refinancing set out in the Financial Model (the "**Refinancing Information**"). For clarity, if Project Co must, at a future date, undertake a Mandatory Refinancing, Contracting Authority must request Project Co to provide the Refinancing Information before it can issue a Refinancing Notice pursuant to Section 2.9. If Contracting Authority and Project Co mutually agree, acting reasonably, that based on the Refinancing Information, a Refinancing prior to the Mandatory Refinancing would not have a negative material financial impact on the Mandatory Refinancing, then Contracting Authority may provide Project Co with a Refinancing Notice pursuant to Section 2.9.
- 2.9 If Contracting Authority considers the funding terms generally available in the market to be more favourable than those reflected in the Lending Agreements, Contracting Authority may, by Notice in writing to Project Co (a "**Refinancing Notice**"), require Project Co to request potential funders to provide terms for a potential Refinancing.
- 2.10 The Refinancing Notice shall set out in reasonable detail the grounds upon which Contracting Authority believes such funding terms to be available. Project Co and Contracting Authority shall meet to discuss the Refinancing Notice within 20 Business Days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. Contracting Authority shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within 7 Business Days following the meeting.
- 2.11 If Contracting Authority serves a Refinancing Notice which is not withdrawn pursuant to Section 2.10, then Project Co shall:
- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;

- (b) use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that Project Co shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in Canada to that operated by Project Co, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7; and
 - (c) either:
 - (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to Contracting Authority (I) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of Contracting Authority that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in Section 2.11(b) and (II) initial drafts of any changes to the Project Agreement including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
 - (ii) if Project Co (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Lending Agreements in accordance with the requirements of Section 2.11(b), provide evidence to the reasonable satisfaction of Contracting Authority for such belief and evidence to the reasonable satisfaction of Contracting Authority that Project Co has complied with its obligations in Sections 2.11(a) and (b) above.
- 2.12 Following receipt of the information referred to in Section 2.11(c)(i), Contracting Authority shall, acting reasonably, either:
- (a) instruct Project Co to implement the proposed Refinancing; or
 - (b) instruct Project Co to discontinue the proposed Refinancing

provided that if Contracting Authority reasonably considers that the requirements of Sections 2.11(c)(i) or (ii) have not been satisfied, Contracting Authority may require Project Co to satisfy its obligations under Sections 2.11(c)(i) or (ii). If Project Co must, at a future date, undertake a Mandatory Refinancing, Contracting Authority shall not instruct Project Co to implement the proposed Refinancing unless both Contracting Authority and Project Co, acting reasonably, agree that such Refinancing will be likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7 and will not have a negative material financial impact on the Mandatory Refinancing.

- 2.13 If Contracting Authority instructs Project Co to implement the proposed Refinancing:

- (a) Project Co shall, as soon as reasonably practicable, use all reasonable endeavours to ensure that such proposed Refinancing is implemented;
- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and
- (c) the provisions of Sections 2.1 to 2.7 shall apply.

2.14 If:

- (a) Contracting Authority instructs Project Co to discontinue the potential Refinancing pursuant to Section 2.12(b); or
- (b) the requirements of Section 2.11(c)(ii) are satisfied,

then, Contracting Authority shall reimburse Project Co for the reasonable and proper professional costs incurred by Project Co in relation to the potential Refinancing, such costs to be paid to Project Co by Contracting Authority within 20 Business Days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by Project Co except insofar as (i) it can be demonstrated to the reasonable satisfaction of Contracting Authority that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (ii) Contracting Authority has, by prior written agreement, approved the use of such internal management resource.

- 2.15 Contracting Authority shall be entitled to issue a Refinancing Notice under Section 2.9 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Section 2.10 has been issued for the purpose of this Section 2.15.

SCHEDULE 29**CONSTRUCTION SAFETY****1. Safety Reporting Requirements**

- (a) Project Co shall immediately notify Contracting Authority by telephone if any of the following types of events occurs in respect of the Project:
- (i) any notification of emergency services (i.e. 911 is called);
 - (ii) any critical injury or death;
 - (iii) any notification or report to the Ministry of Labour, MOECP, or the Workplace Safety and Insurance Board;
 - (iv) any injury to a member of the public or to a Passenger;
 - (v) any violation of the Canadian Rail Operating Rules or Tactile Walking Surface Indicators;
 - (vi) any event with the potential to or that actually affects rail or bus operations;
 - (vii) any property damage (including to Metrolinx's property or to any other existing property, infrastructure, adjacent property, motor vehicles, and/or mobile equipment); and
 - (viii) any near miss with high potential for irreversible injury.
- (b) Initial written reports for incidents listed in Section 1(a) (including the identification of all root cause(s) and corrective action(s)) are to be submitted to the Contracting Authority Representative within one calendar day of the event with a final report submitted within three calendar days of the event. Each such report shall either be in a form satisfactory to Contracting Authority, in its sole discretion, or in a form provided by Contracting Authority to Project Co from time to time.

2. Monthly Reporting Requirements

- (a) Without limiting the requirements of the Project Agreement with respect to each Works Report, Project Co shall provide a written monthly summary to Contracting Authority within five Business Days of the last day of each month containing the information described in Section 1(m) of Schedule 33 – Works Report Requirements. Each such written monthly summary shall be in a form satisfactory to Contracting Authority, in its sole discretion, or in a form provided by Contracting Authority to Project Co from time to time.

3. Contractor Site Specific Safety Manual - General Requirements

3.1 The Contractor Site Specific Safety Manual shall, at a minimum:

- (a) comply in all respects with:

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Page 1

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- (i) all applicable requirements of the *Occupational Health and Safety Act* (Ontario), including all regulations thereto;
- (ii) industry best practices;
- (iii) all health and safety requirements set by Project Co and by the Construction Contractor with respect to the Project and the Site;
- (iv) all health and safety requirements of the Project Agreement; and
- (v) all Certificate of Recognition requirements.

4. Contractor Site Specific Safety Manual - Minimum Categories

The Contractor Site Specific Safety Manual shall, at a minimum, contain narratives addressing the categories and sub-categories as set out below.

| | |
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| 0.0 | <p>Overview and Scope</p> <p>The manual shall have an introduction that shall set out an overview and scope of the Project.</p> |
| 1.0 | <p>Health and Safety Policy and Goals</p> <p>The policy shall:</p> <ul style="list-style-type: none"> • refer to the safety goals and lifesaving rules of the Project and the culture of safety planned to be implemented by the Construction Contractor; • include a “statement of commitment” by an officer of the Construction Contractor, which must specifically refer to the manual itself and be executed by an officer of the Construction Contractor who has authority to bind the Construction Contractor; and • include a statement of commitment with respect to keeping Subcontractors responsible for matters related to health and safety. |
| 2.0 | <p>Safety Leadership</p> <p>The manual shall include Project Co’s and the Construction Contractor’s approach, actions and continuous improvement regarding the safety leadership of each of its employees and subcontracted workforces.</p> |
| 3.0 | <p>Project Health and Safety Objectives and Performance Measurement</p> <p>The manual shall describe the methodology for measuring health and safety performance, including key performance indicators to assess whether objectives are being met.</p> |
| 4.0 | <p>Roles and Responsibilities</p> <p>Describe the specific roles and responsibilities of the following persons in relation to meeting the health and safety objectives:</p> |

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|------------|---|
| | Project Co |
| | Project Director |
| | Construction Health and Safety Manager |
| | Construction Manager |
| | Safety Coordinator |
| | Joint Occupational Health and Safety Committee/Trades Committee |
| | Subcontractor |
| | Subcontractor Supervisor |
| | Workers |
| | Visitors |
| | External Parties |
| 5.0 | Subcontractor Health and Safety Management Plan Describe how Subcontractors will be managed. |
| 6.0 | Hazard Assessment, Analysis and Control |
| | Designated Substances and Hazardous Materials |
| | Hazard Identification |
| | Risk Assessment In addition to describing the risk assessment methodology, provide a project-specific health and safety risk register that details any unique safety requirements of the Project. |
| | Job Hazard Analysis Provide an analysis to detail a technique that focuses on job tasks as a way to identify hazards before they occur. It focuses on the relationship between the worker, the task, the tools and the work environment. It breaks down the job in smaller steps to examine potential hazards and potential preventative steps. |
| | Daily Hazard Identification and Control |
| | Safe Work Practices/Safe Job Procedures Describe the process to develop and implement safe work practices/safe job procedures to address the identification, assessment, control, prevention and communication of hazards specific to individual tasks or jobs. |

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| | Provide means to ensure employees understand and comply with safe work practices and safe job procedures through training, correction of unsafe performance and, if necessary, enforcement through a clearly communicated disciplinary system. |
| 7.0 | Company Rules - Rules of Conduct and Disciplinary Action Describe the company rules and the disciplinary actions to be taken in the case of health and safety infractions or non-compliance with established procedures. |
| | Drugs and Alcohol |
| | Workplace Violence and Harassment |
| | Disciplinary Action |
| | Worker Rights |
| 8.0 | Health and Safety Training and Competency Describe the training program to be implemented to ensure that all persons who will be entering and/or working on the site are appropriately trained. |
| | Project Specific Orientation |
| | Site Specific Orientation. Such narrative shall incorporate the requirements of Section 5.2 of this Schedule 29. |
| | Visitor/Short Duration Work Orientation |
| | Delivery Driver/ Supplier Orientation |
| | Worker Training to Specific Site Hazards , including Safe Work Practices and Safe Job Procedures. |
| | Personal Protective Equipment (“PPE”) . Such narrative shall incorporate the requirements of Section 5.1 of this Schedule 29. Identify the minimum PPE that will be required onsite, selection criteria of specialty PPE, and the use/maintenance of PPE. |
| | Worker/ Supervisor Competency Evaluation Describe how the competency of workers and supervisors will be identified, met and evaluated on an ongoing basis. |
| 9.0 | Meetings and Communication Plan Describe the frequency of meetings relating to health and safety, how meetings will be documented and how agreed outcomes will be communicated to the appropriate parties. |
| 10.0 | Workplace Inspections Describe the Construction Contractor’s strategy for implementing an inspection regime in relation to health and safety on the site. |

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| | Informal Inspections |
| | Formal Inspections |
| | Audits |
| | Inspection and Audit Schedule |
| | Inspection Follow-up/Corrective Action Plan |
| | Maintenance of Records |
| 11.0 | <p>Construction Emergency Response Plan</p> <p>Describe the policies and procedures pertaining to incident and emergency planning, response (including the safety of the workforce/public), mitigation and recovery.</p> <p>Project Co shall establish procedures to achieve, at a minimum, the following:</p> <ul style="list-style-type: none"> • maintain communication for the exchange of information between Project Co, Contracting Authority, the Municipalities and other involved agencies; • develop coordinated support through interaction with local, provincial and federal governmental entities, as well as other entities, for safe and efficient construction; • coordinate emergency response, traffic control, security and operational issues affecting construction of the Project, and associated system feeders and exits; and • update Emergency Service Providers regarding the status of construction of the Project, and associated system feeders and exits, to assure safe and timely response to Emergency events; at a minimum, this shall include off-site and on-site traffic routing changes, and changes to job site access, fire suppression system modifications and in-service availability of standpipes or fire suppression water supply, and changes in the Works that may create a greater likelihood of occurrence of a particular type of Emergency. |
| | Emergency Response Procedure |
| | Property, Equipment and Environmental Damage Procedure |
| | Emergency Evacuation Plan |
| | Emergency Contacts and Roles |
| | First Aid and CPR |
| | Drills and Exercises |

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| 12.0 | Incident Reporting and Investigations Procedure Describe the procedures for reporting incidents, performing proactive investigations intended to prevent future incidents, identifying root causes and implementing measures to prevent a reoccurrence. |
| 13.0 | Statistics and Records |
| | Maintain safety records to verify conformity to Project Co’s Contractor Site Specific Safety Manual requirements. |
| | Describe how the safety records shall be in electronic format, legible, electronically searchable, readily identifiable and retrievable, and available to Contracting Authority upon request. |
| | Provide Contracting Authority with the documents and other information described in Section 9.2(a)(x) of the Project Agreement. |
| 14.0 | Security Plan |
| | Provide a plan that details guidelines for implementing security on the Site. |
| | Provide a methodology for securing the site and restricting trespassers. |
| | Describe how Project Co shall comply with its obligation to take every reasonable precaution to protect the public’s health and safety during the execution of the Works. |
| 15.0 | Traffic Management and Control Plan |
| 16.0 | Continuous Improvement Plan |
| 17.0 | Others |

5. Metrolinx Specific Rail Right-of-Way Requirements

5.1 Personal Protective Equipment

- (a) Where work is performed within the limits of a Metrolinx rail right-of-way, Project Co shall ensure that all persons wear the following personal protective equipment:
 - (i) CSA-certified green patch safety boots, a minimum of 6” high with a 1/2” minimum defined heel. Boots shall be in good working order and tied to the top;
 - (ii) Class 1 CSA spectacles or safety lenses / frames with fixed side shields.
 - (iii) Class 2 (or higher) CSA Z96-02 compliant high visibility safety vest in fluorescent orange. The colour red is strictly prohibited;
 - (iv) Class E, Type II CSA or ANSI-approved hard hat;
 - (v) long pants;

- (vi) shirts with a minimum 4” sleeves; and
- (vii) any other PPE required for the hazards associated with the task and/or environment.

5.2 Training Requirements

- (a) All persons who are granted access to a Metrolinx rail right-of-way must be trained and current in GO-Safe Railway Orientation (available at www.gotransitcontractor.com).
- (b) All persons who operate high-rail equipment within a Metrolinx rail right-of-way must hold Metrolinx approved Canadian Railway Operating Rules and GO Transit Track Worker Safety Instructions.
- (c) The Construction Contractor shall maintain an up-to-date list of all such trained employees at the Site and ensure all such trained employees wear the sticker, issued upon successful completion of the course on a readily visible location on their hardhats, or carry the wallet card issued upon successful completion of the course, at all times when within the Metrolinx rail right-of-way.

6. Safety Stand Down Meeting

- (a) No later than 90 calendar days after Financial Close and once every 120 calendar days thereafter during the Construction Period, or on a date or at a frequency otherwise agreed between Project Co and Contracting Authority during the Construction Period, Project Co shall convene a safety meeting (the “**Safety Stand Down Meeting**”) with Contracting Authority that will be up to two hours in length and based on an agenda jointly developed by the Parties in accordance with this Section 6. Contracting Authority may, in its sole discretion, invite additional participants to any Safety Stand Down Meeting.
- (b) Project Co shall convene each Safety Stand Down Meeting at a location on the Metrolinx Lands, or at an alternate location approved by Contracting Authority, in its sole discretion.
- (c) Project Co shall provide at least 30 days’ Notice to the Contracting Authority Representative for each Safety Stand Down Meeting, which shall include the particulars for such meeting, including its location, date, time, number of attendees, etc. Upon receiving Notice of any such Safety Stand Down Meeting, Contracting Authority shall have the right to:
 - (i) request that one or more safety topics be presented at the Safety Stand Down meeting and may, in its sole discretion, choose to provide certain presentation materials to be used by Project Co in connection therewith; and
 - (ii) request the attendance of specific representatives of Project Co and any Project Co Party working at the Lands at such meeting and, if requested, Project Co shall use reasonable commercial efforts to ensure all such individuals attend.
- (d) Project Co shall prepare for and participate in, and shall cause all relevant Project Co Parties working at the Lands to prepare for and participate in, each Safety Stand Down Meeting, including:

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- (i) if such preparation for and participation in the Safety Stand Down Meeting requires Project Co or any Project Co Party to demobilize any part of the Construction Activities, delays the starting of any Works or causes or contributes to any other interruption or stoppage of the Works;
 - (ii) preparing and delivering presentations on any safety topics requested by Contracting Authority and, if and as applicable, delivering any presentation materials provided by Contracting Authority in connection therewith; and
 - (iv) preparing and delivering presentations on one or more safety topics if Contracting Authority has not requested that a particular safety topic be presented.
- (e) Project Co shall provide all labour and materials required for each Safety Stand Down Meeting, including all equipment, furnishings, presentation materials, etc.
- (f) Project Co acknowledges that it could experience a delay, interruption or stoppage of the Works as a result of each Safety Stand Down Meeting, and Project Co agrees that it shall not be eligible for a Delay Event, Compensation Event or any other relief or additional compensation under the Project Agreement as a result of any such meeting.
- (g) Within 5 Business Days after the Safety Stand Down Meeting, Project Co shall provide the written minutes and a summary of the meeting (the “**SSDM Summary Report**”) to Contracting Authority for review in accordance with Schedule 10 – Review Procedure. The SSDM Summary Report shall include:
- (i) the date of the meeting;
 - (ii) a list of all attendees at the meeting;
 - (iii) topics discussed at the meeting; and
 - (iv) a copy of any presentations delivered at or materials distributed as part of the Safety Stand Down Meeting in both native file formats and .pdf format.

SCHEDULE 30

INSURANCE TRUST AGREEMENT

THIS AGREEMENT is made as of the 17th day of October, 2019

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended (“**IO**”)

AND: METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48

(collectively, “**Contracting Authority**”)

AND:

[REDACTED]

(the “**Lenders’ Agent**”)

AND:

MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED]

(“**Project Co**”)

AND:

[REDACTED]

(the “**Account Trustee**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement.
- B. Contracting Authority, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. Contracting Authority, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

- D. IO, as Crown agent and Metrolinx, as Crown agency, intend to enter into this Insurance Trust Agreement in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of Contracting Authority pursuant to this Insurance Trust Agreement, save and except as provided for in this Insurance Trust 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

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) **“Account Trustee”** [REDACTED].
- (b) **“Bank”** [REDACTED].
- (c) **“Business Day”** has the meaning given in the Project Agreement.
- (d) **“Change of Authorization Event”** has the meaning given in Section 7(a).
- (e) **“Change of Authorization Notice”** has the meaning given in Section 7(b)(ii).
- (f) **“Contracting Authority”** has the meaning given in the Project Agreement.
- (g) **“Contracting Authority Event of Default”** has the meaning given in the Project Agreement.
- (h) **“Crown”** has the meaning given in the Project Agreement.
- (i) **“Default Notice”** means a written notice given by the Lenders’ Agent to the Account Trustee that an event of default under the Lending Agreements has occurred and is continuing.
- (j) **“Default Period”** means the period commencing on the date upon which the Account Trustee receives a Default Notice and ending on the date upon which the Account Trustee receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (k) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (l) **“Insurance Policies”** has the meaning given in Section 4(a).
- (m) **“Insurance Proceeds”** has the meaning given in Section 4(b).
- (n) **“Insurance Trust Account”** means [REDACTED].
- (o) **“Insurance Trust Agreement”** means this insurance trust agreement.
- (p) **“IO”** has the meaning given in the preamble.
- (q) **“Lenders”** has the meaning given in the Project Agreement.

- (r) **“Lenders’ Agent”** [REDACTED].
- (s) **“Lenders’ Direct Agreement”** means the lenders’ direct agreement made on or about the date hereof between Contracting Authority, Project Co and the Lenders’ Agent.
- (t) **“Lending Agreements”** has the meaning given in the Project Agreement.
- (u) **“New Third Party Infrastructure”** has the meaning given in the Project Agreement.
- (v) **“Order”** has the meaning given in Section 6(k).
- (w) **“Party”** means any of Contracting Authority, Project Co, the Lenders’ Agent or the Account Trustee, and **“Parties”** means all of Contracting Authority, Project Co, the Lenders’ Agent and the Account Trustee.
- (x) **“Project”** has the meaning given in the Project Agreement.
- (y) **“Project Agreement”** means the project agreement made on or about October 17, 2019 between Contracting Authority and Project Co.
- (z) **“Project Co”** means Mobilinx Hurontario General Partnership.
- (aa) **“Project Co System Infrastructure”** has the meaning given in the Project Agreement.
- (bb) **“Project Operations”** has the meaning given in the Project Agreement.
- (cc) **“Trust Property”** means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

2. INTERPRETATION

This Insurance Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) 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.

- (d) 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.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Insurance Trust Agreement shall bear their natural meaning.
- (g) References containing terms such as:
- (i) “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 this Insurance Trust Agreement taken as a whole; and
 - (ii) “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”.
- (h) In construing this Insurance Trust Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of this Insurance Trust 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.
- (i) Where this Insurance Trust 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.
- (j) Where this Insurance Trust 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.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account

Trustee for the benefit of Project Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders' Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of Contracting Authority.

- (b) The Account Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders' Agent, Contracting Authority, and Project Co agree that, if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account, such funds shall be directed, used or advanced only for one of the following purposes:
 - (i) the repair, reinstatement, restoration, rehabilitation or replacement of the Project Co System Infrastructure, New Third Party Infrastructure or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations in respect of which such Insurance Proceeds have been paid;
 - (ii) the completion of the Project; or
 - (iii) indemnification for any Contracting Authority loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co under delay in start-up, soft costs or business interruption insurance shall be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Project Operations.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if Contracting Authority is entitled to indemnification under the Insurance Policies in respect of any loss incurred by Contracting Authority, such related insurance proceeds are to be paid directly to Contracting Authority by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii). For greater certainty, it is understood and agreed that Contracting Authority shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

4. INSURANCE

- (a) Project Co shall deliver, or cause to be delivered, to the Account Trustee certified copies or originals of all property and asset related insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the "**Insurance Policies**"), and the Account Trustee shall hold the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.

- (b) The Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders' Agent or Contracting Authority (the "**Insurance Proceeds**") as follows:
- (i) subject to the last paragraph of Section 3(c), in the case of the all risks course of construction (builders' risk), boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
 - (A) if the Account Trustee has not received a Default Notice and:
 - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
 - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is equal to or greater than \$[REDACTED], to the Lenders' Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
 - (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders' Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as Contracting Authority may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and
 - (ii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to Contracting Authority, to be distributed to the parties entitled thereto.
- (c) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4(b)(ii) have been made, including any Insurance Proceeds held in the Insurance Trust Account:
- (i) if the Account Trustee has not received a Default Notice, to Project Co; and
 - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, Contracting Authority, may at any time or from time to time direct in writing.

5. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the

Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.

- (b) The Account Trustee hereby agrees to promptly provide to Contracting Authority all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as Contracting Authority may from time to time request in writing.

6. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, Contracting Authority or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, Contracting Authority or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).
- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this

Section 6(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.

- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).
- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(e):
 - (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
 - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including negligence in the handling of funds), willful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).

- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or Contracting Authority for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "**Order**"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, Contracting Authority and Project Co.
- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, Contracting Authority, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, Contracting Authority, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, Contracting Authority, to resolve such ambiguity or uncertainty.
- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee

has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by Contracting Authority shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from Contracting Authority.

- (o) Each of the Lenders' Agent and Contracting Authority shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or Contracting Authority which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable, pursuant to this Section 6(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable, pursuant to Section 6(o).

7. **LENDERS' AGENT AND CONTRACTING AUTHORITY'S RIGHTS TO DIRECT**

- (a) Until the termination of the Project Agreement in accordance with the Lenders' Direct Agreement and receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 23 - Compensation on Termination to the Project Agreement and all Insurance Proceeds to the extent that the value of such Insurance Proceeds was deducted from the amounts payable to Project Co by Contracting Authority (a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to Sections 3 and 4, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (b) Upon the occurrence of a Change of Authorization Event:
 - (i) the Lenders' Agent shall cease to be entitled, and Contracting Authority shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
 - (ii) the Lenders' Agent and Contracting Authority shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that Contracting Authority shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Account Trustee where a Contracting Authority Event of Default has occurred. Where a Contracting Authority Event of Default has occurred, upon

receipt by the Lenders’ Agent and Lenders of all amounts owing by Contracting Authority to the Lenders’ Agent and Lenders under the Lenders’ Direct Agreement, the Account Trustee shall release all amounts in the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.

8. TERMINATION

- (a) Subject to the provisions of Section 8(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
 - (i) the obligations of Project Co to the Lenders’ Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
 - (ii) the obligations of Project Co to Contracting Authority have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lender’s Agent, Contracting Authority, and Project Co have entered into a replacement insurance trust agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory to the Lenders’ Agent, the Lenders and Contracting Authority.

9. ASSIGNMENT

- (a) The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders’ Agent, Contracting Authority and Project Co.

10. NOTICES

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

If to Contracting Authority: **[REDACTED]**

If to Project Co: **[REDACTED]**

If to the Account Trustee: **[REDACTED]**

If to the Lenders' Agent: [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 10(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 10(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 10(e), 10(f) and 10(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 10.
- (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.

11. AMENDMENTS

- (a) This Insurance Trust 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 Insurance Trust Agreement.

12. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Insurance Trust 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.

13. RELATIONSHIP BETWEEN THE PARTIES

- (a) The Parties are independent contractors. This Insurance Trust Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Insurance Trust Agreement, of principal and agent.

14. ENTIRE AGREEMENT

- (a) Except where provided otherwise in this Insurance Trust Agreement, this Insurance Trust 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 Insurance Trust Agreement.

15. SEVERABILITY

- (a) Each provision of this Insurance Trust Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Insurance Trust 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 Insurance Trust Agreement. If any such provision of this Insurance Trust 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 Insurance Trust Agreement as near as possible to its original intent and effect.

16. ENUREMENT

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

17. GOVERNING LAW AND JURISDICTION

- (a) This Insurance Trust 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 Parties 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 Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Insurance Trust Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

18. CONTRACTING AUTHORITY DESIGNATE

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Insurance Trust Agreement and Project Co, the Lenders' Agent and the Account Trustee may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Lenders' Agent and the Account Trustee in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Lenders' Agent and the Account Trustee in writing of any designation hereunder. The rights and obligations of the parties to this Insurance Trust Agreement shall be in no way affected by reason of any such designation. Project Co, the Lenders' Agent and the Account Trustee acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 18.

19. 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 Insurance Trust Agreement.

20. LANGUAGE OF AGREEMENT

- (a) Each Party acknowledges having requested and being satisfied that this Insurance Trust 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 déclare satisfaite.

21. COUNTERPARTS

- (a) This Insurance Trust 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 Insurance Trust Agreement which was so faxed.

22. JOINT AND SEVERAL

- (a) IO, as Crown agent and Metrolinx, as Crown agency, shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Insurance Trust Agreement and for each covenant of the other under this Insurance Trust Agreement.

23. COPYRIGHT NOTICE

- (a) The Parties acknowledge that Queen’s Printer for Ontario is the exclusive owner of the copyright in the Project Agreement and this Insurance Trust Agreement.

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

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

By: _____

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

METROLINX

By: _____

Name: [REDACTED]

Title: [REDACTED]

By: _____

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation.

[REDACTED]

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the corporation.

MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED]

[REDACTED]

By: _____

Name: [REDACTED]

Title: [REDACTED]
By: _____
Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 31

PROJECT CO INFORMATION

[REDACTED]

**SCHEDULE 32
FINANCIAL MODEL EXTRACTS**

[REDACTED]

SCHEDULE 33
WORKS REPORT REQUIREMENTS

1. The Works Report shall include the following:
 - (a) an executive summary describing the general status of the Works;
 - (b) the Progress Works Schedule;
 - (c) the Works Schedule Report;
 - (d) a detailed status of the Works, including:
 - (i) a narrative detailing the progress of:
 - (A) the Project Co System Infrastructure, including:
 - (1) the Facilities;
 - (2) the Trackwork and Guideway;
 - (3) the Civil Structures;
 - (4) the Systems;
 - (5) the Revenue Vehicles; and
 - (6) the Hurontario OMSF; and
 - (B) all New Third Party Infrastructure;
 - (ii) a narrative detailing the progress of design and review;
 - (iii) a narrative on contemplated innovations, where applicable;
 - (iv) a narrative detailing the progress and status of and issues related to:
 - (A) communications and public engagement;
 - (B) traffic and transit management (including upcoming road closures);
 - (C) Utility Work;
 - (D) demolitions and removals;

- (E) safety, security, and emergency management;
- (F) property access and business management plan updates;
- (G) all Permits, Licences, and Approvals;
- (H) environmental monitoring and compliance; and
- (I) all Commissioning, including a narrative on:
 - (1) the test-track for the Revenue Vehicles;
 - (2) the Revenue Vehicles; and
 - (3) New Third Party Infrastructure and the status with all New Third Party Infrastructure owners;
- (e) plans for Works scheduled in the forthcoming reporting period;
- (f) goals for the next reporting period (such as progress on activities, resolution of issues);
- (g) progress photos;
- (h) outstanding technical and contractual decisions;
- (i) sustainability compliance status, including LEED Silver Rating progress reports for the Hurontario OMSF;
- (j) quality assurance and quality control, including:
 - (i) the status of the Design Quality Management Plan, Construction Quality Management Plan, Project Co Services Quality Management Plan, Environmental Quality Management Plan, Traffic Quality Management Plan and Project Schedules Quality Management Plan;
 - (ii) a table setting out and responding to items of Non-Conformance and deficiencies in ongoing Works as identified by Contracting Authority or Project Co or both;
 - (iii) the status of Design Certificates and Construction Certificates;
 - (iv) an update of quality control and quality assurance activities and personnel responsible;
 - (v) the monthly Quality Management System reports, Project Co Quality Audit Reports, Corrective and Preventive Actions Plans, and summary information from

- the Non-Conformance Tracking System (all as described in Schedule 11 - Quality Management); and
- (vi) the status of Internal Quality Audits and External Quality Audits;
 - (k) organization and staffing changes, deletions, and additions for Project Co and all Project Co Parties;
 - (l) the status of all Submittals pursuant to the requirements of the Project Agreement;
 - (m) health and safety, including:
 - (i) near miss;
 - (ii) high potential near miss;
 - (iii) untreated injury;
 - (iv) first aid;
 - (v) medical aid/health care;
 - (vi) lost time injury;
 - (vii) other critical injury (as defined by OHSA);
 - (viii) fatality;
 - (ix) injury to public;
 - (x) property damage;
 - (xi) operational impact;
 - (xii) environmental;
 - (xiii) lost time injury frequency;
 - (xiv) total hours worked; and
 - (xv) Ministry of Labour inspections, orders and charges;
 - (n) Subcontract status, including with respect to:
 - (i) consultants;

- (ii) Subcontracts awarded;
- (iii) tenders;
- (iv) small, minority-owned, women-owned, and disadvantaged business enterprises;
- (v) apprenticeships; and
- (vi) labour report (average workforce);
- (o) financial status, including:
 - (i) all requirements of Schedule 21 - Construction Period Payments;
 - (ii) progress and Variations status;
 - (iii) an insurance summary;
 - (iv) Construction Contractor default status;
 - (v) Current cash flow status for both actual and projected expenditures (capital cost components) from Financial Close, represented monthly, and excluding Variations;
 - (vi) a 12-month (minimum) financial forecast, including all Project Co costs; and
 - (vii) for each Category 1 Utility Company, a summary of Eligible Utilities Costs (both invoiced and paid amounts) and any Ineligible Cost Increase;
- (p) risk management, including:
 - (i) an updated risk register;
 - (ii) risk response plans requiring action from Contracting Authority;
 - (iii) claims;
 - (iv) liens;
 - (v) environmental issues;
 - (vi) labour;
 - (vii) market conditions;
 - (viii) outstanding disputes;

- (ix) safety and security, including a threat and vulnerability log;
 - (x) operational risks;
 - (xi) Stakeholder risks; and
 - (xii) other risks; and
- (q) a copy of each monthly report prepared by the Revenue Vehicle Manufacturer pursuant to the Revenue Vehicle Supply Contract.

SCHEDULE 34

CONTRACTING AUTHORITY PERMITS, LICENCES AND APPROVALS

- (a) The Contracting Authority Permits, Licences and Approvals for the Project are described in the table below.
- (b) For greater certainty, all Permits, Licences and Approvals not expressly described in the table below are the responsibility of Project Co under the Project Agreement.
- (c) Notwithstanding anything to the contrary in the Project Agreement, where “Contracting Authority” is required to obtain, enter into, maintain or renew a Contracting Authority Permit, Licence and Approval described in the table below, such Contracting Authority Permit, Licence and Approval may be obtained, entered into, maintained or renewed by either Metrolinx or IO or by both Metrolinx and IO, as determined by Contracting Authority, in its sole discretion.

| No. | Contracting Authority Permits, Licences and Approvals | Responsibility of Contracting Authority | Responsibility of Project Co |
|-----|--|---|---|
| 1. | Permission to construct, operate and maintain the Project Co System Infrastructure at the part of the Lands owned by CP Rail located at and adjacent to Hurontario Street in the City of Mississauga at approximately mile point 15.25 of CP Rail’s Galt Subdivision pursuant to a | <ul style="list-style-type: none"> (a) Contracting Authority shall obtain and enter into the CP Agreements to allow Project Co to perform the Project Operations. (b) Contracting Authority shall be responsible for paying all licence fees, if any, to CP Rail required under the CP Agreements (the “CP Licence Fees”). | Project Co shall perform all work and provide all information, documentation and administrative assistance required for Contracting Authority to obtain, enter into and administer the CP Agreements and, thereafter, Project Co shall perform and satisfy all obligations and satisfy all liabilities of Contracting Authority in respect of and relating to the Project thereunder, as if Project Co were Contracting Authority for the purposes of such agreement, save and except for the payment of the CP Licence Fees. |

| No. | Contracting Authority Permits, Licences and Approvals | Responsibility of Contracting Authority | Responsibility of Project Co |
|-----|---|---|---|
| | Construction Agreement and an Operating and Maintenance Agreement with CP Rail (together, the “CP Agreements”). | | |
| 2. | Pipeline Crossing Agreement for pipeline crossing at north side of the intersection of Hurontario Street and Highway 403. | Contracting Authority shall obtain and enter into a Pipeline Crossing Agreement with Enbridge Pipelines. | Project Co shall perform all work and provide all information, documentation and administrative assistance required for Contracting Authority to obtain and enter into such Pipeline Crossing Agreement and, thereafter, Project Co shall perform and satisfy all obligations and satisfy all liabilities of Contracting Authority in respect of and relating to the Project thereunder as if Project Co were Contracting Authority for the purposes of such agreement. |
| 3. | Pipeline Crossing Agreement for pipeline crossing at north side of the intersection of Hurontario Street and Highway 403. | Contracting Authority shall obtain and enter into a Pipeline Crossing Agreement with Sun Canadian Pipe Line | Project Co shall perform all work and provide all information, documentation and administrative assistance required for Contracting Authority to obtain and enter into such Pipeline Crossing Agreement and, thereafter, Project Co shall perform and satisfy all obligations and satisfy all liabilities of Contracting Authority in respect of and relating to the Project thereunder as if Project Co were Contracting Authority for the purposes of such agreement. |
| 4. | Pipeline Crossing Agreement for pipeline crossing at north side of the intersection of | Contracting Authority shall enter into a Pipeline Crossing Agreement with Imperial Oil. | Project Co shall perform all work and provide all information, documentation and administrative assistance required for Contracting Authority to obtain and enter into |

| No. | Contracting Authority Permits, Licences and Approvals | Responsibility of Contracting Authority | Responsibility of Project Co |
|-----|--|--|--|
| | Hurontario Street and Highway 403. | | such Pipeline Crossing Agreement and, thereafter, Project Co shall perform and satisfy all obligations and satisfy all liabilities of Contracting Authority in respect of and relating to the Project thereunder as if Project Co were Contracting Authority for the purposes of such agreement. |
| 5. | Pipeline Crossing Agreement for pipeline crossing at the intersection of Hurontario Street and Harbon Road. | Contracting Authority shall enter into a Pipeline Crossing Agreement with Trans Northern Pipelines. | Project Co shall perform all work and provide all information, documentation and administrative assistance required for Contracting Authority to obtain and enter into such Pipeline Crossing Agreement and, thereafter, Project Co shall perform and satisfy all obligations and satisfy all liabilities of Contracting Authority in respect of and relating to the Project thereunder as if Project Co were Contracting Authority for the purposes of such agreement. |
| 6. | Permission to modify Existing Third Party Infrastructure and to construct, maintain and operate the Project Co System Infrastructure at the part of the Lands located at the 407 ETR Road Allowance at Highway 407 ETR pursuant to an agreement with 407 ETR (the “ 407 ETR Agreement ”). | <p>(a) Contracting Authority shall obtain and enter into the 407 ETR Agreement to allow Project Co to perform the Project Operations.</p> <p>(b) Contracting Authority shall be responsible for paying (i) all fees owing to 407 ETR resulting from 407 ETR exercising its review rights in respect of the Works, as set out in Section 5 of the 407 ETR Agreement; and (ii) the work permit fees set out in Section 9.3 of the 407 ETR Agreement (collectively, the “407 ETR</p> | (e) Project Co shall perform all work and provide all information, documentation and administrative assistance required for Contracting Authority to obtain and enter into the 407 ETR Agreement and, thereafter, Project Co shall perform and satisfy all obligations and satisfy all liabilities of Contracting Authority in respect of and relating to the Project thereunder (including, for greater certainty, the payment of any and all liquidated damages to 407 ETR pursuant to the 407 ETR Agreement), as if Project Co were Contracting Authority for the purposes of such agreement, save and except for |

| No. | Contracting Authority Permits, Licences and Approvals | Responsibility of Contracting Authority | Responsibility of Project Co |
|-----|---|---|---|
| | | <p>Agreement Fees”).</p> <p>(c) Contracting Authority shall be responsible for all costs and expenses incurred by 407 ETR under the 407 ETR Agreement for performing the 407 ETR Gantry Work (as such term is defined in Schedule 15 – Output Specifications) in respect of and for up to four new gantries and electronic toll installations on ramps affected by the Works and the associated removal of up to four existing gantries (collectively, the “Four Gantry 407 ETR Work”).</p> <p>(d) In the event that Project Co arranges with 407 ETR for 407 ETR to perform 407 ETR Gantry Work under the 407 ETR Agreement in respect of greater than four new gantries and electronic toll installations on ramps affected by the Works and the associated removal of greater than four existing gantries (“Additional 407 ETR Gantry Work”), then, without prejudice to Section 6(f) of this row, Contracting Authority shall be responsible for paying 407 ETR for such 407 ETR Gantry Work</p> | <p>(i) the payment of the 407 ETR Agreement Fees, and (ii) the costs and expenses incurred by 407 ETR in respect of the Four Gantry 407 ETR Work.</p> <p>(f) In the event that Project Co arranges with 407 ETR for 407 ETR to perform any Additional 407 ETR Gantry Work under the 407 ETR Agreement, then Project Co shall, within 30 days of its receipt of a request in writing from Contracting Authority, reimburse Contracting Authority for all costs and expenses incurred by Contracting Authority under the 407 ETR Agreement in respect of such Additional 407 ETR Gantry Work.</p> |

| No. | Contracting Authority Permits, Licences and Approvals | Responsibility of Contracting Authority | Responsibility of Project Co |
|-----|---|--|--|
| | | pursuant to the 407 ETR Agreement. | |
| 7. | Offers to Connect (“OTC”) | <p>(a) Contracting Authority shall enter into all OTC agreements with Alectra Utilities Corporation required for Project Co to perform the Project Operations.</p> <p>(b) Contracting Authority shall be responsible for paying:</p> <p>(i) for each location listed in Table 6.2-1 of Part 1 of Schedule 15-2 – Design and Construction Requirements, costs and fees for:</p> <p>(A) OTC Design;</p> <p>(B) supply and installation of meter; and</p> <p>(C) inspection, testing, commissioning and energizing;</p> <p>(ii) for each location listed in Table 6.2-2 of Part 1 of Schedule 15-2 – Design</p> | Project Co shall obtain all OTC agreements that are required for Project Co to perform the Project Operations, perform all work and provide all information, documentation and administrative assistance required for Contracting Authority to enter into such OTC agreements, and perform and satisfy all obligations and satisfy all liabilities of Contracting Authority thereunder as if Project Co were Contracting Authority for the purposes of such agreements, save and except for the payment of the OTC Fees. For greater certainty, Project Co shall also comply with the requirements of Article 6 of Part 1 of Schedule 15-2 – Design and Construction Requirements. |

| No. | Contracting Authority Permits, Licences and Approvals | Responsibility of Contracting Authority | Responsibility of Project Co |
|-----|---|---|------------------------------|
| | | <p>and Construction Requirements, costs and fees for:</p> <ul style="list-style-type: none"> (A) OTC Design; (B) supply and install of meter; (C) programming and commissioning of Alectra Utilities switchgear; and (D) inspection, testing, commissioning and energizing; and <p>(iii) for each location listed in Table 6.2-3 of Part 1 of Schedule 15-2 – Design and Construction Requirements, all costs and fees,</p> <p>in each case, that are the responsibility of the “customer” and payable to Alectra Utilities Corporation under the OTC agreements with Alectra Utilities Corporation, (collectively, the “OTC Fees”).</p> | |

| No. | Contracting Authority Permits, Licences and Approvals | Responsibility of Contracting Authority | Responsibility of Project Co |
|-----|--|---|---|
| 8. | Provincial Secondary Land Use Program Agreement to construct within the Hydro One Networks right-of-way | Contracting Authority shall obtain and enter into agreement(s) with Hydro One Networks that may be required for Project Co to perform the Works. | Project Co shall perform all work and provide all information, documentation and administrative assistance required for Contracting Authority to obtain and enter into such agreement(s) and, thereafter, Project Co shall perform and satisfy all obligations and satisfy all liabilities of Contracting Authority in respect of and relating to the Project thereunder as if Project Co were Contracting Authority for the purposes of such agreement(s). |
| 9. | Provincial Secondary Land Use Program Agreement to occupy and operate the Project Co System Infrastructure within the Hydro One right-of-way | Contracting Authority shall obtain and enter into agreement(s) with Hydro One Networks to permit the operation and maintenance of the Project Co System Infrastructure in perpetuity. | Project Co shall perform all work and provide all information, documentation and administrative assistance required for Contracting Authority to obtain and enter into such agreement(s) and, thereafter, Project Co shall perform and satisfy all obligations and satisfy all liabilities of Contracting Authority in respect of and relating to the Project thereunder as if Project Co were Contracting Authority for the purposes of such agreement(s). |

**SCHEDULE 35
LANDS****PART A – DEFINITIONS AND INTERPRETATION**

- (a) In this Schedule 35, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 35) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“407 ETR Road Allowance”** means the lands in respect of the Highway 407 ETR interchange with Hurontario Street owned by the Province and leased to 407 ETR, the extent of which is indicated in Appendix A4 to this Schedule 35;
 - (ii) **“Construction Period Lands”** means the portion of the Lands designated as “Construction Period” in the column marked “Construction Period or Project Term” in the table in Part B of this Schedule 35;
 - (iii) **“Lands”** means, collectively, the Metrolinx Lands and the Third Party Lands (including, for clarity, all buildings, structures, installations, fixtures, services and any other such improvements thereon and therein);
 - (iv) **“Metrolinx Easement Lands”** means the lands located within the Public Road Allowance and within the MOI Lands at Highway 403 representing the required location for the Project Co System Infrastructure as set out in Schedule 15 – Output Specifications;
 - (v) **“Metrolinx Lands”** means, collectively, the lands owned or to be acquired by Metrolinx or lands in respect of which Metrolinx has acquired or will acquire certain rights, all as set out in the table in Part B of this Schedule 35, and, for clarity, (A) includes the Metrolinx Easement Lands and the Municipal Reserve, and (B) excludes the Third Party Lands;
 - (vi) **“MOI Lands at Highway 403”** means the portions of the Metrolinx Lands set out in property sketches 43R-21439, 43R-13615 and 43R-39081 and in [REDACTED] of Part B of this Schedule 35 – Lands;
 - (vii) **“MTO Road Allowance”** means, collectively, the lands owned by the Province (or to which the Province has acquired or will acquire rights) in respect of:
 - (A) the Queen Elizabeth Way interchange with Hurontario Street, the extent of which is indicated in Appendix A1 to this Schedule 35;
 - (B) the Highway 403 interchange with Hurontario Street, the extent of which is indicated in Appendix A2 to this Schedule 35; and
 - (C) the Highway 401 interchange with Hurontario Street, the extent of which is indicated in Appendix A3 to this Schedule 35;

- (viii) “**Municipal Reserve**” means the lands owned by the City of Mississauga, the City of Brampton and the Region of Peel outside and adjacent to the Municipal Road Allowance that are identified as “Municipal Reserve” in Part B of this Schedule 35;
- (ix) “**Municipal Road Allowance**” means, collectively, the municipal streets and rights of way owned by the City of Mississauga, the City of Brampton or the Region of Peel, as the case may be, (or to which any such entity has acquired or will acquire rights) commonly known as:
- (A) Hurontario Street, and any municipal streets or rights of way intersecting Hurontario Street, approximately from Park Street to Steeles Avenue;
 - (B) Main Street, and any municipal streets or rights of way intersecting Main Street, approximately from Steeles Avenue to Bartley Bull Parkway;
 - (C) Rathburn Road, and any municipal streets or rights of way intersecting Rathburn Road, approximately from Duke of York Boulevard to Hurontario Street;
 - (D) Topflight Drive, and any municipal streets or rights of way intersecting Topflight Drive, approximately from Edwards Boulevard to Hurontario Street;
 - (E) Kennedy Road, and any municipal streets or rights of way intersecting Kennedy Road, approximately from Highway 407 ETR to Derry Road;
 - (F) Vesta Drive, approximately from Oriole Avenue to Sandham Road; and
 - (G) Sandham Road, approximately from Vesta Drive to Mona Road;
- (x) “**New Municipal Road Allowance**” means the Municipal Road Allowance in addition to all properties for which the “Purpose” described in the table in Part B of this Schedule 35 is “Road Widening”, “Bus Shelter”, “Road Widening & Bus Shelter” or “New Mary Fix Creek At Eaglewood Structure”;
- (xi) “**Operational Term Lands**” means the portion of the Lands designated as “Project Term” in the column marked “Construction Period or Project Term” in the table in Part B of this Schedule 35;
- (xii) “**Public Road Allowance**” means, collectively, (A) the 407 ETR Road Allowance, (B) MTO Road Allowance, and (C) the Municipal Road Allowance;
- (xiii) “**Reference Plan**” has the meaning given in Schedule 15 – Output Specifications; and
- (xiv) “**Third Party Lands**” means the Public Road Allowance other than the Metrolinx Easement Lands.
- (b) For the purposes of this Schedule 35:

- (i) Construction Period Lands are available for use and access by Project Co, subject to Project Co’s obligations with respect to Permits, Licenses and Approvals and the terms and conditions of the Project Agreement, for the Construction Activities from the date provided as the “Commencement Date” until the earlier of (A) the end of the period in the column marked “Duration” and (B) Final Completion. For clarity, the Construction Period Lands will be available to Project Co as of the Commencement Date, but the term of the temporary easement will not commence until Project Co provides notice of commencement in accordance with the easement agreement. Project Co shall have no access to Construction Period Lands following Final Completion.

- (ii) For those Construction Period Lands where the length of the period in the column marked “Duration” is less than the length of the Construction Period, the property will be available to Project Co as of the Commencement Date, but availability for use and access by Project Co will not commence until:
 - (A) Project Co provides notice of commencement in accordance with the easement agreement for that property provided by Contracting Authority; or
 - (B) if no easement agreement for that property has been provided by Contracting Authority, 120 days after Project Co provides notice of commencement to Contracting Authority.

- (iii) Pursuant to this Schedule 35, for certain Metrolinx Lands, Metrolinx will enter into easement, licence, or similar agreement(s) after Financial Close. Metrolinx intends to enter into such agreement(s) on substantively the same terms and conditions as the existing easement, licence or similar agreements that have been entered into by Metrolinx and that are provided as Background Information prior to Financial Close or are currently contemplated in the “Restrictions and Requirements” column of Part B (the “**Standard Agreements**”). If, after Financial Close,
 - (A) Metrolinx enters into one or more easement, licence or similar agreement(s) in respect of the Metrolinx Lands; or
 - (B) Metrolinx acquires Metrolinx Land that is subject to any easement, licence or similar agreement(s),

and such agreement(s) have substantively the same terms and conditions as the Standard Agreements, such agreement(s) shall be treated, for the purposes of Section 15 of the Project Agreement and for the purpose of Schedule 16 – Encumbrances, as though Project Co had knowledge of such agreements prior to Financial Close. For clarity, this Section (b)(iii) of Part A shall not apply in circumstances where Metrolinx enters into an easement, licence, or similar agreement after Financial Close on different terms and conditions from the Standard Agreement if such differences cause a delay to Project Co in performing the Project Operations, create additional obligations or liabilities for Project Co, or cause an increase in cost to Project Co.

- (iv) Operational Term Lands are available for use and access by Project Co, subject to Project Co's obligations with respect to Permits, Licenses and Approvals and the terms and conditions of the Project Agreement, for Project Operations from the date provided as the "Commencement Date" until the earlier of:
 - (A) the end of the period in the column marked "Duration"; and
 - (B) the Termination Date.
- (v) Subject to Project Co's obligations with respect to the Permits, Licenses and Approvals and the other applicable terms and conditions of the Project Agreement, (A) Project Co's access to and use of the Metrolinx Lands for the purposes of the Project Operations are subject to the restrictions, qualifications, requirements and other provisions contained in the applicable grant, Schedule 16 - Encumbrances and the column marked "Restrictions and Requirements" set out in the table in Part B of this Schedule 35, and (B) Project Co shall only use each of the lands comprising the Metrolinx Lands for the applicable purpose(s) described in the column marked "Purpose" set out in the table in Part B of this Schedule 35.
- (vi) The information provided in the column marked "Address" in the table in Part B of this Schedule 35 is provided for information only. The information provided in the column marked "PIN" takes precedence over address information in the identification of exact locations of various properties.

PART B – METROLINX LANDS

[REDACTED]

SCHEDULE 36

[INTENTIONALLY DELETED]

SCHEDULE 37

INTELLECTUAL PROPERTY

1. INTERPRETATION

1.1 Definitions: In this Schedule 37, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 37) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Contracting Authority Intellectual Property”** means:
- (i) Intellectual Property that is Owned, created, developed or acquired by Contracting Authority or any Contracting Authority Personnel:
 - (A) prior to the Project Term; or
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not Project Co Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property;
 - (ii) the Developed Intellectual Property, excluding any Developed Intellectual Property that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Project Co;
 - (iii) all Operational and Maintenance Data;
 - (iv) in addition to the Operational and Maintenance Data set out in item (iii) above, any other Project Data that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Contracting Authority; and
 - (v) subject to Section 51.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, Contracting Authority or any Subcontractor alone, jointly with each other or with any other person;

and which is used by Contracting Authority, or required to be used by Project Co or a Subcontractor, in the performance of their respective obligations in respect of the Project or under the Project Agreement.

- (b) **“Contracting Authority Personnel”** means persons acting on behalf of Contracting Authority or employed, engaged or retained by Contracting Authority in connection with the performance of Contracting Authority’s obligations in connection with the Project, including Contracting Authority’s consultants, contractors and subcontractors and the employees, officers, directors, volunteers and agents of Contracting Authority and its direct and indirect consultants, contractors and subcontractors, excluding Project Co and any Subcontractor and their respective Personnel.

- (c) **“Contracting Authority Supplied Third Party Intellectual Property”** means Intellectual Property Owned by a person other than Contracting Authority, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by Contracting Authority to Project Co under the Project Agreement for the purpose of performing the Project Operations and the Project, including any Background Information.
- (d) **“Contracting Authority Trade-Marks”** means the Trade-Marks Owned by Contracting Authority.
- (e) **“Copyleft Licence”** means any licence that requires, as a condition of use, modification and/or distribution of Copyleft Materials, that such Copyleft Materials, or other software or content incorporated into, derived from, used, or distributed with such Copyleft Materials: (i) in the case of software, be made available or distributed in a form other than binary (e.g., source code form), (ii) be licensed for the purpose of preparing derivative works, (iii) be licensed under terms that allow the products or portions thereof or interfaces therefor to be reverse engineered, reverse assembled or disassembled (other than by operation of law), or (iv) be redistributable at no license fee. Copyleft licences include the GNU General Public License, the GNU Lesser General Public License, the Mozilla Public License, the Common Development and Distribution License, the Eclipse Public License, and all Creative Commons “sharealike” licenses.
- (f) **“Copyleft Materials”** means any software or content subject to a Copyleft Licence.
- (g) **“Deliverable”** means any Intellectual Property: (i) required to be supplied or delivered by Project Co to Contracting Authority within the Project Scope, including Equipment, Project Software, Project Data and all other deliverable requirements specified in Schedule 10 – Review Procedures; or (ii) supplied or delivered by Project Co to Contracting Authority pursuant to the Project Agreement.
- (h) **“Delivered”** means, with respect to any Intellectual Property, that such Intellectual Property is:
- (i) a Deliverable;
 - (ii) incorporated, embedded or otherwise included in any Deliverable, the HLRT System or any part of the work delivered as part of the Project Operations;
 - (iii) necessary for the undertaking, completion and performance of the Project Operations or any Equivalent Activity; or
 - (iv) necessary for the Use by Contracting Authority or a subsequent Licensee of any Deliverable, the HLRT System, or any part of the work delivered as part of the Project Operations or any Intellectual Property in accordance with the rights granted to Contracting Authority hereunder;
- or that the Use of such Intellectual Property for any of the purposes set out in clause (iii) or (iv) above would infringe the Intellectual Property rights of any Person.
- (i) **“Developed Intellectual Property”** means Intellectual Property that is:

- (i) created or developed, or Ownership of which is acquired, by Project Co, any Subcontractor or any Project Co Personnel, or Subcontractor Personnel, whether alone or together with each other or any other person, during the Project Term and within the Project Scope;
- (ii) created, developed or Ownership of which is acquired for the purposes of the Project, the Project Operations or the HLRT System; and
- (iii) created or designed based on functional, design and performance specifications provided by Contracting Authority, or Contracting Authority Personnel, or Contracting Authority Parties;

and, for greater certainty, Developed Intellectual Property does not include any Project Co Intellectual Property used to develop or create the Developed Intellectual Property.

- (j) **“Embedded Software”** means the Project Co Embedded Software, Subcontractor Embedded Software and Third Party Embedded Software.
- (k) **“Equipment”** means all electrical and mechanical equipment, machinery, computer hardware and systems comprising or used in the HLRT System.
- (l) **“Equivalent Activity”** means any activity, undertaking or operation relating to the HLRT System done by Contracting Authority, any permitted assignee of Contracting Authority pursuant to Section 59.2 of the Project Agreement and/or any other person acting on behalf of or under the authority of Contracting Authority, which activity, undertaking or operation if done by Project Co would be within the Project Scope, including the Project Operations.
- (m) **“Escrow Agent”** means a recognized provider of escrow services selected by Project Co and approved by Contracting Authority and having a location within the Province of Ontario with whom the Escrow Materials will be deposited in accordance with Section 3.11.
- (n) **“Escrow Agreement”** means an escrow agreement that meets the requirements of Section 3.11 and pursuant to which Escrow Materials are held by the Escrow Agent and Contracting Authority is designated as a beneficiary party.
- (o) **“Escrow Materials”** means:
 - (i) with respect to Software, the Source Materials for that Software; and
 - (ii) with respect to Embedded Software, the Source Materials for that Embedded Software.
- (p) **“Escrow Provider”** means:
 - (i) Project Co in respect of the Project Co Licensed Software;
 - (ii) the applicable Subcontractor in respect of any Subcontractor Licensed Software;
 - (iii) the applicable third party licensor in respect of any Third Party Licensed Software;

- (iv) Project Co in respect of the Project Co Embedded Software;
- (v) the applicable Subcontractor in respect of any Subcontractor Embedded Software; and
- (vi) the applicable third party licensor in respect of any Third Party Embedded Software.
- (q) **“Expanded Purposes”** means (i) the Permitted Purposes; and (b) for any other purpose of Metrolinx.
- (r) **“Licence”** means a non-exclusive license or sub-license, as applicable, granting the rights and subject to the restrictions and limitations set out in this Schedule 37.
- (s) **“Licensed Intellectual Property”** means, with respect to any Licence, the Intellectual Property that is within the scope of that Licence as provided for in this Schedule 37.
- (t) **“Licensee”** means, in respect of any Licence granted or required to be granted by Project Co pursuant to this Schedule 37, Contracting Authority or any permitted assignee under Section 59.2 of the Project Agreement that is the holder of that Licence at the relevant time.
- (u) **“Licensor”** means Project Co in respect of the Project Co Licenced Software, the applicable Subcontractor in respect of any Subcontractor Licenced Software, or the applicable third party licensor in respect of any Third Party Licensed Software.
- (v) **“Limited Modification Rights”** in respect of a Software or an Embedded Software, means the right to configure, customize or modify such Software or Embedded Software, without access to the Source Materials thereto, in order to have complete and unrestricted access to, or otherwise Use, all the functionalities within such Software or Embedded Software that is licensed to Contracting Authority under this Schedule 37.
- (w) **“Modification”** means all corrections, modifications, changes, enhancements, improvements, supplements, customizations or derivative works, and includes the Limited Modification Rights, and **“Modify”** means to make a Modification.
- (x) **“Open Source Licence”** means any licence meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar licence, including any licence approved by the Open Source Initiative, or any Creative Commons Licence. For the avoidance of doubt, Open Source Licences include Copyleft Licences.
- (y) **“Open Source Materials”** means any software or content subject to an Open Source Licence.
- (z) **“Operational and Maintenance Data”** means the data, logs and recordings created or generated during the operation and maintenance of the HLRT, whether stored in a data warehouse, Revenue Vehicle or any other location, including all CCTV recordings, voice recordings (PA, radio, telephone, intercom), SCADA logs, S&TCS logs, IAC logs, Revenue Vehicle logs, PVIS messages and other logs and reports related to the operation and maintenance of the HLRT.

- (aa) **“Ownership”** means, in respect of any Intellectual Property, ownership of all right, title and interest in and to that Intellectual Property and **“Own”**, **“Owned”** and **“Owner”** shall have corresponding meanings.
- (bb) **“Permitted Purposes”** means:
- (i) during the Project Term, performance of Contracting Authority’s obligations and the exercise of Contracting Authority’s rights under the Project Agreement and any other agreements relating to the Project;
 - (ii) during the Project Term, Contracting Authority’s participation in Project Operations and any activity, undertaking or operation within the Project Scope, including its participation in the design, construction, operation, maintenance, repair, correction and renovation of the HLRT System;
 - (iii) during the Project Term, any activity of Contracting Authority contemplated pursuant to Section 37.4 or Section 48.7 of the Project Agreement;
 - (iv) after the Project Term, any Equivalent Activity;
 - (v) both during and after the Project Term, the use, integration and interoperation of the HLRT System with:
 - (A) any existing or other transit projects undertaken by or on behalf of Contracting Authority or interfacing with Contracting Authority projects, including any Integrated System Extension; and
 - (B) any existing or after-acquired systems, software, technology or equipment related to the use, operation, maintenance, repair, correction, renovation of the HLRT System and any Integrated System Extension;but, for clarity, not any system that is not the HLRT System or an Integrated System Extension;
 - (vi) both during and after the Project Term, the integration and interoperation of the HLRT System with any existing or other transit projects undertaken by or on behalf of Contracting Authority or interfacing with Contracting Authority projects;
 - (vii) both during and after the Project Term, and so long as the Licensee is Contracting Authority or other Governmental Authority:
 - (A) the provision of governmental services and the conduct of operations and activities provided in connection or otherwise associated with the HLRT System and any Integrated System Extension and the Lands by Contracting Authority or any Governmental Authority or any emergency service provider; and
 - (B) the development of transportation standards, policies and procedures.

- (cc) **“Personnel”** means (i) in reference to Project Co, the Project Co Personnel, (ii) in reference to Contracting Authority, Contracting Authority Personnel, and (iii) in reference to any Subcontractor, such Subcontractor’s Personnel.
- (dd) **“Project Co Embedded Software”** means computer software that is Owned by Project Co and that:
- (i) is included, embedded or otherwise incorporated in Equipment;
 - (ii) is not licensed separately and apart from that Equipment; and
 - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (ee) **“Project Co Intellectual Property”** means:
- (i) Intellectual Property that is Owned, created, developed or acquired by Project Co or any Project Co Personnel:
 - (A) prior to the Project Term; or
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not Contracting Authority Intellectual Property, Contracting Authority Supplied Third Party Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property;
 - (ii) the Project Co Licensed Software;
 - (iii) the Project Co Embedded Software;
 - (iv) Project Co’s Technical Information;
 - (v) the Project Intellectual Property;
 - (vi) the Project Data, excluding: (A) all Operational and Maintenance Data; and (B) any other Project Data that are specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Contracting Authority;
 - (vii) any Developed Intellectual Property that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Project Co; and
 - (viii) Subject to Section 51.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, Contracting Authority, Contracting Authority Parties, or any Subcontractor alone, jointly with each other or with any other person.

- (ff) **“Project Co Licensed Software”** means any computer software that is Owned by Project Co, is not Project Co Embedded Software and is delivered, supplied or otherwise provided by Project Co under the Project Agreement as or as part of any Deliverable.
- (gg) **“Project Co Personnel”** means persons acting on behalf of Project Co or employed, engaged or retained by Project Co in connection with the performance of Project Co’s obligations under the Project Agreement, including Project Co’s consultants, contractors and Subcontractors and the employees, officers, directors, volunteers and agents of Project Co and its direct and indirect consultants, contractors and Subcontractors.
- (hh) **“Project Data”** means:
- (i) all Design Data;
 - (ii) all drawings, reports, documents, plans, formulae, calculations and other data prepared by Project Co relating to the performance of the Project Co Services;
 - (iii) all Operational and Maintenance Data; and
 - (iv) any other materials, documents and/or data prepared by or on behalf of Project Co or Subcontractors in relation to the Project Operations, the HLRT System or the Project Agreement, excluding the Jointly Developed Materials, the Background Information and any Developed Intellectual Property.
- (ii) **“Project Intellectual Property”** means Intellectual Property that is created or developed, or Ownership of which is acquired, by Project Co, any Subcontractor or any Project Co Personnel or Subcontractor Personnel, whether alone or together with each other or any other person, during the Project Term and within the Project Scope, and which is created, developed or acquired for the purposes of the Project or the HLRT System, but excluding Project Software, Embedded Software, Project Data, Developed Intellectual Property and Technical Information.
- (jj) **“Project Scope”** means the scope of the Project, including the performance of all Project Operations, as defined by the terms of the Project Agreement.
- (kk) **“Project Software”** or **“Software”** means any Project Co Licensed Software, Subcontractor Licensed Software and Third Party Licensed Software, but does not include Embedded Software.
- (ll) **“Software Maintenance and Support”** means, with respect to any Software, the software maintenance and support services for that Software that form part of the Project Co Services or that are provided separately under a software maintenance and support agreement with the licensor of that Software.
- (mm) **“Software Tools”** means, with respect to any Software or Embedded Software, any routines, compilers, bootstraps, analyzers, monitors, toolkits and other software tools used by the licensor of such Software or Embedded Software in connection with the programming, compiling, maintenance, debugging, analysis, configuration, customization, verification or monitoring of such Software or Embedded Software.

- (nn) **“Source Materials”** means:
- (A) a complete source code version of the Software or Embedded Software, in machine-readable form which, when compiled, will produce the executable version of the Software or Embedded Software and in human-readable form with annotations in the English language or such other language as is acceptable to Contracting Authority, acting reasonably, in both cases on a storage medium suitable for long term archival storage;
 - (B) a complete copy, in English or such other language as is acceptable to Contracting Authority, acting reasonably, in both electronic and paper form, suitable for long term archival storage, and appropriately labelled to describe the contents thereof, of all applicable documentation and other explanatory materials, including programmer’s notes, technical or otherwise, for the Software or Embedded Software as may be required for a person other than the licensor of the Software or Embedded Software, using a competent computer programmer possessing ordinary skills and experience, to further develop, maintain and operate the Software or Embedded Software without further recourse to the licensor, which will include, to the extent such items have been or are created for such Software or Embedded Software, general flow charts, input and output layouts, field descriptions, volumes and sort sequence, data dictionary, file layouts, processing requirements and calculation formulae, circuit diagrams and the details of all algorithms and which shall be deemed to include those materials, as revised from time to time; and
 - (C) all Software Tools for such Software or Embedded Software, to the extent not previously delivered with the Software or Embedded Software.
- (oo) **“Subcontractor Embedded Software”** means computer software that is Owned by a Subcontractor and that:
- (i) is included, embedded or otherwise incorporated in Equipment;
 - (ii) is not licensed separately and apart from that Equipment; and
 - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (pp) **“Subcontractor Intellectual Property”** means, with respect to each Subcontractor:
- (i) Intellectual Property that is Owned, created, developed or acquired by that Subcontractor:
 - (A) prior to the Project Term; or
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not Contracting Authority Intellectual Property, Contracting Authority Supplied

Third Party Intellectual Property, Project Co Intellectual Property or Third Party Intellectual Property;

- (ii) the Subcontractor Licensed Software;
 - (iii) the Subcontractor Embedded Software;
 - (iv) the Subcontractor's Technical Information; and
 - (v) subject to Section 51.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, Contracting Authority, Contracting Authority Parties, or any Subcontractor alone, jointly with each other or with any other person.
- (qq) **“Subcontractor Licensed Software”** means any computer software that is Owned by a Subcontractor, is not Subcontractor Embedded Software and is delivered, supplied or otherwise provided by the Subcontractor under the Project Agreement, the Subcontract as or as part of any Deliverable.
- (rr) **“Subcontractor Personnel”** means, with respect to any Subcontractor, persons acting on behalf of that Subcontractor or employed, engaged or retained by that Subcontractor in connection with the performance of that Subcontractor's obligations under the Project Agreement or the Subcontract, including the Subcontractor's consultants, contractors and subcontractors and the employees, officers, directors, volunteers and agents of the Subcontractor and its direct and indirect consultants, contractors and subcontractors.
- (ss) **“System Architecture and Look and Feel”** means any work product, including any Intellectual Property therein, Owned, created, developed, acquired or licensed whether by Project Co or any Subcontractor in respect of any aspect of the architecture or look and feel of the HLRT System, including without limitation all designs, design details, drawings, specifications, prototypes, documentation, works and all instruments of architectural service that relate to the design identity, look and feel of any aspect of the architectural and landscape design whether in respect of the stations, stops, landscape and urban design elements, furniture, fit and finish, or any other aspect of the HLRT System.
- (tt) **“Technical Information”** means technical information relating to any Equipment supplied or Intellectual Property licensed under the Project Agreement, including software documentation, user and operating manuals, maintenance and repair manuals, parts lists and other materials relevant to the use, operation, maintenance or repair of such Equipment or Intellectual Property.
- (uu) **“Third Party Embedded Software”** means computer software that is not Owned by Contracting Authority, Project Co or a Subcontractor and that:
- (i) is included, embedded or otherwise incorporated in Equipment;
 - (ii) is not licensed separately and apart from that Equipment; and

- (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (vv) **“Third Party Intellectual Property”** means Intellectual Property Owned by a person other than Contracting Authority, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by Project Co or a Subcontractor under the Project Agreement as or as part of any Deliverable, including Third Party Licensed Software and Third Party Embedded Software.
- (ww) **“Third Party Licensed Software”** means any computer software that is not Owned by Contracting Authority, Project Co or a Subcontractor, is not Third Party Embedded Software and is delivered, supplied or otherwise provided by Project Co or a Subcontractor under the Project Agreement as or as part of any Deliverable.
- (xx) **“Trade-Mark Licence Agreement”** means the trademark licence agreement entered into between Project Co and Contracting Authority providing for the license by Contracting Authority of Contracting Authority Trade-Marks to Project Co, being substantially in the form of Appendix A attached to this Schedule 37.
- (yy) **“Use”** means, with respect to any Intellectual Property, to do any and all things with that Intellectual Property that the Owner of that Intellectual Property could do, including to load, transmit, access, execute, use, disclose, store, display, copy, adapt, translate, incorporate into other materials, practice, make and have made, but specifically excluding the right to Modify and subject to any limitations in the provision of this Schedule 37 pursuant to which a Licence is granted.

2. OWNERSHIP

2.1 Project Co Intellectual Property: Project Co shall be and remain the sole and exclusive Owner of the Project Co Intellectual Property. For certainty, nothing in this Schedule 37 shall transfer to Project Co any Ownership of, or grant to Project Co any right in respect of, Contracting Authority Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Project Co Intellectual Property, except for the Licence granted under Section 3.1.

2.2 Contracting Authority Intellectual Property: The Contracting Authority shall be and remain the sole and exclusive Owner of Contracting Authority Intellectual Property. For certainty, nothing in this Schedule 37 shall transfer to Contracting Authority any Ownership of, or grant to Contracting Authority any right in respect of, the Project Co Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Contracting Authority Intellectual Property, except for the Licence granted under Section 3.2.

For greater clarity and without limiting Contracting Authority’s Ownership rights, Project Co acknowledges and agrees that Contracting Authority shall be entitled to Use and Modify the Developed Intellectual Property (other than any Developed Intellectual Property that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by

Project Co) in any manner and for any purpose whatsoever, including without limitation in connection with the Expanded Purposes.

- 2.3 Subcontractor Intellectual Property:** As between Contracting Authority and Project Co, but subject to any agreement to the contrary between Project Co and any Subcontractor, each Subcontractor shall be and remain the sole and exclusive Owner of its Subcontractor Intellectual Property.
- 2.4 Contracting Authority Supplied Third Party Intellectual Property:** As between Contracting Authority and Project Co, but subject to any agreement to the contrary between Contracting Authority and the Owner of any Contracting Authority Supplied Third Party Intellectual Property, the Owner of any Contracting Authority Supplied Third Party Intellectual Property shall be and remain the sole and exclusive Owner of any Contracting Authority Supplied Third Party Intellectual Property. For certainty, nothing in this Schedule 37 shall transfer to Project Co or any Subcontractor any Ownership of, or grant to Project Co or any Subcontractor any right in respect of, Contracting Authority Supplied Third Party Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Project Co Intellectual Property or any Contracting Authority Intellectual Property or any Subcontractor Intellectual Property, except for the Licence granted under Section 3.1.

2.5 Assignments

- (a) If, notwithstanding Section 2.1, 2.2, 2.3 or 2.4 or Section 51.4 of the Project Agreement, either party (the “**Assignor**”) retains, acquires or owns any right, title or interest in or to any Intellectual Property that is to be Owned by another person (the “**Assignee**”) pursuant to Section 2.1, 2.2, 2.3 or 2.4 or Section 51.4 of the Project Agreement as applicable, (the “**Assigned Intellectual Property**”), then the Assignor will assign, and for no further consideration and without any further act or formality does hereby irrevocably assign, to the Assignee all of the Assignor’s worldwide right, title and interest in and to the Assigned Intellectual Property free and clear of all liens, claims, charges or encumbrances, but subject to any Licences granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 37.
- (b) If and to the extent that the assignment pursuant to Subsection 2.5(a) is not effective on the date hereof or on any future date, either generally or pursuant to the laws of any jurisdiction, then any and all right, title and interest in and to the Assigned Intellectual Property that is retained, acquired or owned by the Assignor (collectively, the “**Trust Rights**”), will be held by the Assignor in trust for the exclusive benefit and use of the Assignee, except for any Licences granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 37, and the Assignor will execute and deliver to the Assignee such transfers, assignments, documents and instruments as may be necessary to transfer and assign to the Assignee the Trust Rights, free and clear of all liens, claims, charges or encumbrances, promptly upon receipt thereof from the Assignee, and will otherwise cooperate with the Assignee to give effect to, record and register the Assignee’s ownership of the Trust Rights.
- (c) Project Co will include in each Subcontract provisions equivalent to Subsections 2.5(a) or 2.5(b) with respect to: (i) Contracting Authority Intellectual Property, Jointly Developed Materials, Developed Intellectual Property, Project Data and any Modifications thereto, and shall enforce

those provisions against each Subcontractor to the extent necessary to ensure that Contracting Authority remains at all times the sole and exclusive Owner of all such property; and (ii) the Contracting Authority Supplied Third Party Intellectual Property and any Modifications thereto, and shall enforce those provisions against each Subcontractor to the extent necessary to ensure that the Licensor remains at all times the sole and exclusive Owner of all such property.

2.6 Personnel: Contracting Authority and Project Co shall, and Project Co shall include in each Subcontract an obligation of each Subcontractor to, ensure that their respective Personnel shall:

- (a) by duly executed written agreement or by operation of law, irrevocably and unconditionally sell, assign and transfer to that party all right, title and interest that its Personnel may have in or to any and all Intellectual Property referred to in this Schedule 37 and all Modifications thereto, such that agreements as to Ownership of Intellectual Property pursuant to Sections 2.1, 2.2, 2.3 or 2.4 and Section 51.4 of the Project Agreement and the assignment by that party pursuant to Section 2.5 include all right, title and interest of its Personnel; and
- (b) by duly executed written agreement, irrevocably waive all non-transferable rights, including moral rights, that they have or may have in any Intellectual Property assigned by such Personnel pursuant to Subsection 2.6(a) in favour of the assignee and its successors, assigns and licensees.

3. LICENCES

3.1 Licence by Contracting Authority to Project Co

- (a) Subject to Subsection 3.1(d), Contracting Authority hereby grants to Project Co:
 - (i) a royalty free, fully paid-up, limited Licence to Use and Modify Contracting Authority Intellectual Property for the sole purpose of and only to the extent necessary for the performance by Project Co of the Project Scope and its obligations under the Project Agreement;
 - (ii) a limited Licence to Use Contracting Authority Supplied Third Party Intellectual Property for the sole purpose of and only to the extent necessary for the performance by Project Co of the Project Scope and its obligations under the Project Agreement.
- (b) Subject to Subsection 3.1(d), Project Co may sublicense its rights under the Licence granted in Subsection 3.1(a) to any Subcontractor for the sole purpose of and only to the extent necessary for the performance by that Subcontractor of its obligations under its Subcontract.
- (c) Except as provided in Subsection 3.1(b), Project Co may not transfer, assign, sublicense or otherwise dispose of the Licence granted under Subsection 3.1(a) without the prior written consent of Contracting Authority, which consent may be given or refused by Contracting Authority in its absolute and unfettered discretion.
- (d) The Licence of any Contracting Authority Supplied Third Party Intellectual Property pursuant to Subsection 3.1(a) shall be subject to the terms and conditions of the license agreement between Contracting Authority and the licensor of Contracting Authority Supplied Third Party Intellectual Property. The Contracting Authority will provide to Project Co a copy of any such third party

license agreement (which may be redacted as to financial and other terms not relevant to use of Contracting Authority Supplied Third Party Intellectual Property by Project Co and Subcontractors), or where prohibited from doing so by obligations of confidentiality to the third party licensor, a summary of the obligations, limitations and restrictions applicable to use of Contracting Authority Supplied Third Party Intellectual Property by Project Co and Subcontractors. Project Co will comply, and will require any Subcontractor to comply, with the terms and conditions of such third party license agreement (as set out in the copy of the third party license agreement or summary thereof provided by Contracting Authority to Project Co) to the extent applicable to Project Co and any Subcontractor in the performance of their respective obligations under the Project Agreement and any Subcontract. If requested by Contracting Authority, Project Co will, and will require any Subcontractor to, execute and deliver to Contracting Authority and the third party licensor an agreement that includes reasonable terms for the protection of the confidentiality of Contracting Authority Supplied Third Party Intellectual Property and an acknowledgement of the third party licensor's ownership thereof, unless Project Co disputes such ownership.

(e) **[INTENTIONALLY DELETED]**

(f) The Licence granted to Project Co under: Subsection 3.1(a)(i), and any sublicense granted by Project Co to a Subcontractor thereunder, will terminate upon the expiry or termination of Project Co's services and other obligations under the Project Agreement; Subsections 3.1(a)(ii) and any sublicense granted by Project Co to a Subcontractor thereunder, will terminate upon the earlier of: (A) expiry or termination of Project Co's services and other obligations under the Project Agreement; and (B) the termination of the contract in respect of the applicable Contracting Authority Supplied Third Party Intellectual Property or Contracting Authority's licence or sublicense rights thereunder.

(g) The Licences granted to Project Co under Section 3 do not include licences to any Contracting Authority Trade-Marks. The use of any Contracting Authority Trade-Marks shall be governed by the terms of the Trade-Mark Licence Agreement.

3.2 Licence by Project Co to Contracting Authority

(a) Project Co hereby grants to Contracting Authority a Licence to:

- (i) Use and Modify the Project Co Intellectual Property (excluding Project Co Licensed Software and Project Co Embedded Software) that is Delivered and the Subcontractor Intellectual Property (excluding the Subcontractor Licensed Software and the Subcontractor Embedded Software) that is Delivered;
- (ii) Use, and have Limited Modification Rights to, the Project Co Licensed Software that is Delivered and the Subcontractor Licensed Software that is Delivered and only in respect of the modules that are Delivered; and
- (iii) Use, and have Limited Modification Rights to, the Project Co Embedded Software and the Subcontractor Embedded Software as part of and for the Use of the Equipment in which such software is included, embedded or otherwise incorporated;

for the Permitted Purposes. Subject to Section 3.11, the Licences granted pursuant to this Section 3.2 in respect of Project Software and Embedded Software apply to only object code versions thereof and not the source code materials for any such Project Software or Embedded Software.

In addition and notwithstanding any other provision of this Schedule 37, Project Co hereby grants to Contracting Authority a Licence to Use and Modify any System Architecture and Look and Feel that is not owned by Contracting Authority pursuant to this Schedule 37, for the Expanded Purposes.

- (b) The Licence granted pursuant to this Section 3.2 will be irrevocable (except as provided in Subsection 3.2(d)), perpetual, royalty free, fully paid-up (upon payment of the fees specified in the Project Agreement for the Deliverable which consists of or incorporates the Licensed Intellectual Property in respect of which the Licence is granted), and permit Use by Contracting Authority on an enterprise basis without restriction or limitation as to users (whether by number, identity or otherwise), location, capacity, authorized system or otherwise, as part of or in connection with the HLRT System, or in the case of the System Architecture and Look and Feel, in connection with the Expanded Purposes.
- (c) The Licence granted pursuant to this Section 3.2 may be transferred, assigned, sublicensed and otherwise disposed of by Contracting Authority subject to and in accordance with Section 59.2 of the Project Agreement, provided that the Licence in respect of Project Co Embedded Software and Subcontractor Embedded Software may only be transferred together with the Equipment in which such software is included, embedded or otherwise incorporated.
- (d) The Licence granted pursuant to this Section 3.2 may not be terminated except in the event of the failure of the Licensee to pay the applicable fees as provided for in the Project Agreement for the specific Deliverable which consists of or incorporates the Licensed Intellectual Property, and such failure is not remedied by the Licensee within sixty (60) days after notice by Project Co to the Licensee demanding that such failure be remedied, provided that any such termination shall apply only to the Licensed Intellectual Property to which such failure applied and not to any other Licensed Intellectual Property. Except as specifically provided in this Subsection 3.2(d), Project Co shall not be entitled to terminate or rescind the Licence granted under this Section 3.2, and if the Licensee commits any other breach of or default under this Schedule 37 or the Project Agreement, whether material or not and whether that breach or default is or is not capable of being remedied, Project Co's rights and remedies in respect of that breach or default shall be limited to such rights and remedies other than termination or rescission of the Licence granted under this Section 3.2 as may exist at law or in equity, it being acknowledged by Project Co that except as provided in this Subsection 3.2(d) the Licence granted under this Section 3.2 is perpetual and irrevocable. No breach of or default under this Schedule 37 by Contracting Authority shall constitute a repudiation of the Licence granted under this Section 3.2 by Contracting Authority.
- (e) The Licensee may provide and disclose the Licensed Intellectual Property to any employee, contractor, subcontractor, consultant, service provider, outsourcer or other person retained by the Licensee in connection with the Permitted Purposes, except in respect of the System Architecture and Look and Feel in connection with the Expanded Purposes, and any such employee,

contractor, subcontractor, service provider, outsourcer or other person may exercise all rights to Use and Modify the Licensed Intellectual Property as may be granted by the Licensee to such person within the scope of the Licence granted by Project Co to the Licensee pursuant to this Schedule 37, provided that the Licensee shall be responsible for anything done or failed to be done by any employee, contractor, subcontractor, service provider, outsourcer or other person to whom the Licensee provides and discloses the Licensed Intellectual Property, including a breach by any such person of Contracting Authority's obligations of confidentiality in respect of any Confidential Information that is or is part of Licensed Intellectual Property.

- (f) The Licensee may Use Project Software that is licensed pursuant to this Section 3.2 in multiple environments or instances, including for training, development, testing, staging, and disaster recovery and in a live, production or operating environment.
- (g) The Licensee may make copies of the Licensed Intellectual Property as may be reasonably necessary for Use and Modification of the Licensed Intellectual Property in accordance with the Licence granted pursuant to this Section 3.2 or otherwise this Schedule 37. All such copies shall be Owned by Owner of the original Licensed Intellectual Property and licensed to the Licensee pursuant to this Section 3.2. Except as permitted by this Schedule 37, the Licensee will not copy, Modify, disassemble, reverse engineer, decompile, translate or otherwise obtain or create the source code for any Project Co Intellectual Property, Project Co Licensed Software, Project Co Embedded Software, Subcontractor Intellectual Property, Subcontractor Licensed Software or Subcontractor Embedded Software.
- (h) The Licensee will not remove from any Licensed Intellectual Property any markings or notices with respect to the ownership thereof, copyright therein or the confidentiality thereof.
- (i) Where Contracting Authority has the right to Modify any Licensed Intellectual Property, Project Co shall ensure that all authors of such Licensed Intellectual Property have waived all moral rights that such authors may have therein in favour of Contracting Authority and its successors, assigns and licensees.

3.3 Licences with Subcontractors

- (a) Project Co will be responsible to obtain from each Subcontractor the right to grant the Licence under Section 3.2 in respect of the Subcontractor Intellectual Property.
- (b) Project Co will be responsible to obtain from each Subcontractor the right to Use and Modify the Subcontractor Intellectual Property to the extent necessary for Project Co to perform its obligations under the Project Agreement, on such terms as are not in breach of or conflict with the Project Agreement.
- (c) Project Co will be responsible to grant to each Subcontractor the right to Use and Modify Contracting Authority Intellectual Property and Project Co Intellectual Property to the extent necessary for each Subcontractor to perform its obligations under its Subcontract, on such terms as are not in breach of or conflict with the Project Agreement.

- 3.4 Third Party Intellectual Property:** Project Co will not, and will not permit any Project Co Personnel, Subcontractor or Subcontractor Personnel to, incorporate, embed or otherwise include in the HLRT System or any Deliverable any Third Party Intellectual Property unless:
- (a) for Third Party Intellectual Property other than Third Party Embedded Software, such Third Party Intellectual Property is provided by the Owner thereof pursuant to a license agreement that:
 - (i) grants to the Licensee rights equivalent to or better than the rights granted under the Licence in Section 3.2, including being assignable in accordance with Subsection 3.2(c), and, where the Third Party Intellectual Property is software or includes software, provides for the maintenance and support of that software on terms acceptable to Contracting Authority; or
 - (ii) has been approved by Contracting Authority in writing, which approval may be given or refused by Contracting Authority in its absolute and unfettered discretion;and such license agreement, if not entered into with Contracting Authority directly, has been assigned or is freely assignable to Contracting Authority;
 - (b) for Third Party Embedded Software, either (i) such Third Party Embedded Software is embedded in Equipment and is not provided by the Owner thereof pursuant to a license agreement, but may be used by Contracting Authority or any subsequent owner of the machine or equipment as part of and for the intended purposes of such machine or equipment upon the purchase thereof, or (ii) such Third Party Embedded Software is subject to a license agreement that complies with Subsection 3.4(a).
 - (c) If Project Co, Project Co Personnel, Subcontractor or Subcontractor Personnel incorporates, embeds or includes any Third Party Intellectual Property in the HLRT System or any Deliverable other than in compliance with this Section 3.4, then in addition to any other rights and remedies Contracting Authority may have against Project Co, Project Co will at its sole cost and expense take all necessary steps to comply with this Section 3.4 or, if Project Co is unable to do so, to remove such Third Party Intellectual Property and replace it with Project Co Intellectual Property that provides the same functionality and performance as such Third Party Intellectual Property and which will operate within the HLRT System without any degradation thereof or adverse effect thereon, and which will be included in the Project Co Intellectual Property for the purposes of the Licence granted pursuant to Section 3.2.
- 3.5 Non-Assertion:** Project Co agrees not to assert, and to cause its Subcontractors not to assert, any Intellectual Property right against Contracting Authority or any Licensee that would have the effect of diminishing the rights granted to Contracting Authority or any Licensee hereunder. Without limiting the generality of the foregoing, Project Co will not sue, and will cause its Subcontractors not to sue, Contracting Authority or any Licensee on the basis that any Equivalent Activity or the Ownership or Use of the HLRT System or any Deliverable within the scope of the Permitted Purposes infringes any Intellectual Property right of Project Co or any Subcontractor.
- 3.6 Deliveries:** Project Co will deliver to Contracting Authority all Licensed Intellectual Property at the times specified in the Project Agreement, or where no time is specified, on or before the Final

Completion Date or the Termination Date, whichever is first to occur. The media on which Project Software is delivered and tangible copies or embodiments of any Licensed Intellectual Property other than Project Software and will be the property of Contracting Authority, notwithstanding Project Co's, a Subcontractor's or a third party's Ownership of the Licensed Intellectual Property. If any Licensed Intellectual Property requires software in order to Use that Licensed Intellectual Property, Project Co will ensure that such software will be commercially available to Contracting Authority at a reasonable license fee, or if such software is not commercially available, Project Co will at its cost provide such software and a license therefor to Contracting Authority and Contracting Authority Parties on terms and conditions that do not result in any impairment of Contracting Authority's Use of the Licensed Intellectual Property in accordance with the Licence therefor.

- 3.7 Pass Through Obligations:** Project Co is responsible to include in all contracts with Project Co Personnel and in all Subcontracts with Subcontractors such terms and conditions as may be necessary for Project Co to grant, or obtain for Contracting Authority, the Ownership, Licences, rights and benefits provided for in this Schedule 37.
- 3.8 Conflicting Software Licences:** All software referenced in this Schedule 37 will be licensed in accordance with this Schedule 37, and any form of software license agreement used or provided by a licensor in association with any such software will be of no force or effect and will not be binding on Contracting Authority or any other Licensee, even if by its terms such software license agreement is stated to be accepted by the installation or use of the software, and regardless of any acceptance of such software license agreement that is required in order to install or use the software.
- 3.9 Trade-Marks and Names:** Except as expressly set forth: (a) in the Trade-Mark Licence Agreement; (b) the Project Agreement; or (c) otherwise in a writing executed by each of Contracting Authority and Project Co, neither Party shall use any Trade-Marks owned by the other Party, or use the names or any identifying logos or otherwise of the other Party in any advertising or permit them so to be used.
- 3.10 Open Source.** Project Co shall not, and shall cause the Subcontractor not to, incorporate, embed or include any Open Source Materials in any Deliverables, Contracting Authority Intellectual Property or Contracting Authority Supplied Third Party Intellectual Property without the prior written consent of Contracting Authority.
- 3.11 Escrow Agreements**
- (a) If requested by Contracting Authority (which for the purposes of this Section 3.11 includes any permitted assignee under Section 59.2 of the Project Agreement), at any time during the Project Term, Project Co will, or will require the applicable Subcontractor or third party licensor to, enter into an Escrow Agreement for any Software or Embedded Software (an “**Escrowed Deliverable**”) on terms that comply with this Section 3.11, or amend its existing Escrow Agreement for such Software or Embedded Software to comply with this Section 3.11, and add Contracting Authority as a beneficiary under the Escrow Agreement.

- (b) The Escrow Provider will deposit with the Escrow Agent the Escrow Materials for the Escrowed Deliverable and all Modifications thereto provided by the Escrow Provider to Contracting Authority as part of the Project Operations, Software Maintenance and Support (if purchased by or on behalf of Contracting Authority) or any other services performed by the Escrow Provider for Contracting Authority, and in the case of Software or the Embedded Software, the Escrow Provider will update the Escrow Materials to conform to the then-current version of the Software in use by Contracting Authority including all Modification thereto made for the benefit of Contracting Authority.
- (c) Contracting Authority will have the right, on reasonable notice to the Escrow Provider and the Escrow Agent, to verify that the Escrow Materials conform to the Escrowed Deliverable supplied to and in use by Contracting Authority to which the Escrow Materials relate. In addition, Contracting Authority may purchase such additional verification services as may be offered by the Escrow Agent and the Escrow Provider will cooperate with Contracting Authority and the Escrow Agent in the performance of those verification services.
- (d) The Contracting Authority will have the right to obtain from the Escrow Agent a copy of the Escrow Materials upon any of the following events:
- (i) the Escrow Provider is bankrupt;
 - (ii) a trustee, receiver, manager, receiver-manager, custodian or Person having similar authority is appointed for the Escrow Provider or its business and assets and is not released or removed within 30 days after the appointment;
 - (iii) the Escrow Provider seeks protection from its creditors or undertakes any reorganization for the purpose of obtaining relief from its creditors;
 - (iv) the Escrow Provider ceases to carry on business; or
 - (v) in the case of Software, if Contracting Authority is purchasing Software Maintenance and Support for the Software in respect of which the Escrow Materials have been deposited, if the Escrow Provider has given Contracting Authority or any of its representatives notice that it will no longer provide Software Maintenance and Support or if the Escrow Provider defaults in the performance of Software Maintenance and Support and does not remedy that default within thirty (30) days after receipt of notice from Contracting Authority demanding that the Escrow Provider do so.
- (e) Project Co shall ensure that the Escrow Agreement: (i) requires the Escrow Agent to release the Escrow Materials to Contracting Authority if any of the events listed in Section 3.11(d) occur; (ii) does not contain any provision placing any obligation on Contracting Authority, including without limitation, any indemnity obligation; and (iii) complies with and does not contradict any provision of this Section 3.11. Where this Section 3.11 places an obligation on the Escrow Agent, Project Co shall cause the Escrow Agent to comply with all such obligations.
- (f) Project Co hereby grants, and Project Co shall ensure that all Escrow Providers grant to Contracting Authority as of the date the applicable Software or the applicable Embedded Software is used in connection with the Project Scope, a Licence to:

- (i) Use the Escrow Materials to enable Contracting Authority to Use the Escrowed Deliverable to which the Escrow Materials relate for the Permitted Purposes, and where the Escrowed Deliverable is or contains Licensed Intellectual Property in accordance with the Licence applicable thereto;
 - (ii) make Modifications to the Escrow Materials notwithstanding any contradictory term or condition in the Licence applicable to the Escrowed Materials which Modifications are only used for the Permitted Purposes or the Expanded Purposes, as applicable, and are subject to confidentiality obligations under Subsection 3.11(f)(v);
 - (iii) recompile versions of the Software or Embedded Software from the Escrow Materials, which recompiled versions shall be deemed to form part of the Software or Embedded Software and be subject to the terms hereof;
 - (iv) make only those copies of the Escrow Materials that Contracting Authority reasonably requires for the purposes set out in Subsections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii); and
 - (v) disclose the Escrow Materials, or any part thereof, only to agents, employees or contractors of Contracting Authority as reasonably required for the purposes set out in Subsections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii), provided that such agents, employees and contractors are bound by obligations of confidentiality in respect of any Escrow Materials disclosed to them, the breach of which shall constitute a breach by Contracting Authority of its obligations of confidentiality in respect of the Escrow Materials.
- (g) The Licence granted pursuant to Subsection 3.11(f) will:
- (i) where the Escrow Provider is Project Co or a Subcontractor, form part of the Licence granted pursuant to Section 3.2; or
 - (ii) where the Escrow Provider is a third party, form part of the license granted by such third party to Contracting Authority;
- and in either case remain in effect for so long as such licence remains in effect.
- (h) Except where Contracting Authority (i) terminates the Escrow Agreement, (ii) has a renewal right and fails to renew the Escrow Agreement, or (iii) fails to make payments as set out in Section 3.11(i), the Escrow Provider will not terminate or fail to renew the Escrow Agreement without entering into a new Escrow Agreement with a replacement escrow agent on terms and conditions substantially the same as the Escrow Agreement and this Section 3.11.
- (i) The Contracting Authority will pay all fees charged by the Escrow Agent in association with the deposit and maintenance of the Escrow Materials by the Escrow Agent under the Escrow Agreement for the benefit of Contracting Authority. The Escrow Provider shall have no responsibility or liability arising from any failure of Contracting Authority to pay fees when due in order to maintain the Escrow Materials with the Escrow Agent.
- (j) If Contracting Authority receives the Escrow Materials, then as between Contracting Authority and Project Co and notwithstanding any other provision of the Project Agreement, Contracting

Authority will own all Modifications to the Escrow Materials made by or for Contracting Authority and all Intellectual Property in such Modifications.

3.12 Modifications: Notwithstanding the granting of any licence pursuant to this Schedule 37, where Contracting Authority has made any Modification to the Project Co Intellectual Property or the Subcontractor Intellectual Property other than (a) a Modification made by or on behalf of Project Co or a Subcontractor or otherwise authorized by Project Co or any Subcontractor, or (b) a Modification made through the Limited Modification Rights,

then,

- (i) any warranty provided by Project Co under the Project Agreement shall not apply solely in respect of such Modification;
- (ii) Project Co and the Subcontractors shall not be liable in respect of any Direct Losses arising in connection with such Modifications where such Modifications are the direct cause of such Direct Losses, and the Direct Losses would not have occurred but for the Modifications; and
- (iii) the indemnity obligations of Project Co set out in Section 56.1(g) of the Project Agreement shall not apply in respect of any such Modifications where the Modifications are the direct cause of such Direct Losses, and the Direct Losses would not have occurred but for the Modifications.

Appendix A

Form of Trade-Mark Licence Agreement

TRADE-MARK LICENCE AGREEMENT

THIS TRADE-MARK LICENCE AGREEMENT, effective as of [DATE] (the “**Agreement**”), is between [Contracting Authority] (the “**Licensor**”), and [●] (the “**Licensee**”), and Licensor and Licensee are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

1. Licensor and Licensee are parties to a Project Agreement dated [DATE] (the “**Project Agreement**”);
2. Capitalized terms used but not defined herein have the meanings assigned to them in the Project Agreement and Schedule 37 thereto;
3. Licensor owns the trade-marks shown on Exhibit A (the “**Marks**”);
4. Licensee proposes to use the Marks in [Ontario] (the “**Territory**”) for the Limited Purpose set forth below; and
5. Subject to the terms and conditions set forth herein, Licensor is willing to grant to Licensee, and Licensee is willing to accept, a non-exclusive license to use the Marks pursuant to the terms of this Agreement.

NOW THEREFORE in consideration of the covenants contained herein, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Grant:** Licensor grants to Licensee, and Licensee accepts, a limited, non-transferable, non-exclusive, royalty-free right and license to use the Marks in the Territory for the sole purpose of and only to the extent necessary for the performance by Licensee of the Project Scope and its obligations under the Project Agreement (the “**Limited Purpose**”).
2. **No Right to Sublicense:** Licensee acknowledges and agrees that it does not have the right to sublicense the use of the Marks to any party without the express written consent of Licensor.
3. **Ownership:** Licensee acknowledges Licensor’s ownership of the Marks, and agrees that its use of the Marks shall enure to Licensor’s benefit.
4. **Licensee Covenants:** Licensee acknowledges that Licensor is the owner of all rights in the Marks, and, except as otherwise expressly permitted by this Agreement, Licensee shall not at any time do or suffer to be done any act or thing that will in any way impair the rights of Licensor in

and to the Marks. Nothing in this Agreement grants, nor shall Licensee acquire, any right, title or interest in or to the Marks or any goodwill associated with the Marks, other than those rights expressly granted hereunder. Licensee shall affix to all materials that contain or bear one or more of the Marks such legends and notices as Licensor may reasonably require. At Licensor's request, Licensee shall publish a public notice in the following form, or in any other form prescribed by Licensor from time to time, in appropriate publications addressed to the general public: "[MARK] is a trade-mark owned by [LICENSOR] used under license by [LICENSEE]". Licensee undertakes to comply with all relevant laws and regulations pertaining to trade-marks and marking requirements. Licensee shall execute all documents and provide all assistance reasonably required by Licensor to apply for, obtain and maintain registrations for the Marks, and to enforce rights in, and defend any proceedings brought against applications or registrations for, the Marks.

5. **Restrictions On Use:** Notwithstanding anything contained in this Agreement or otherwise, Licensee shall use the Marks only in accordance with the design, description and/or appearance of the Marks as shown on Exhibit A. Licensee may not change or modify the Marks nor join the mark with any other words or designs. Licensee agrees to abide by any reasonable guidelines provided by Licensor from time to time in connection with the use of the Marks.
6. **Quality Standards and Control:** Licensee agrees that use of the Marks by Licensee in association with any products or services (the "**Products**" and "**Services**") will meet or surpass the standards set by Licensor and conveyed to Licensee from time to time for the character and quality of such Products and Services.
7. **Inspection:** At the request of the Licensor, the Licensee shall provide to Licensor for Licensor's review, comment and approval samples of the any Products and sample copies of materials associated with the Products or Services or used to advertise/promote the Products or Services.
8. **Breach of License:** Licensor may notify the Licensee if it objects to any proposed or actual use of the Marks if in Licensor's sole judgment (acting reasonably) Licensor believes that the Marks is being used or proposed to be used in a manner that erodes the goodwill associated with the Marks or otherwise reduces the value of the Marks. If Licensee is so notified, the Parties shall attempt to settle any dispute and Licensee shall, if directed by Licensor to do so, cease using or cease from using the Marks until the time such dispute has been settled between the Parties or otherwise finally determined.
9. **Infringement:** Licensee shall promptly notify Licensor upon becoming aware of any infringement or dilution of the Marks and shall cooperate fully with Licensor to stop such infringement or dilution. Licensor, in its sole discretion, will take any action that it deems necessary to protect the validity of the Marks, and Licensee hereby waives any rights that it may have pursuant to Section 50(3) of the *Trade-marks Act*.
10. **Indemnification:** Licensor does not assume any liability to Licensee, or third parties, for Licensee's goods or services, including the Products and Services, and Licensee shall defend, indemnify and hold harmless Licensor and its affiliates, successors and assigns, and their respective officers, directors, employees, agents, lawyers and representatives from and against any and all claims, causes of action, suits, damages, losses, liabilities, costs and expenses

(including, but not limited to, reasonable lawyer fees and expenses), which may be sustained or suffered as a result of any such third party claims or arising from a breach of this Agreement by Licensee including, without limitation, any act or omission, which causes or is alleged to cause harm or a violation of any of the rights of any third party.

11. **Breach/Use Outside Limited Purpose:** In the event that Licensee breaches any of the terms of this Agreement, including use of the Marks outside the Limited Purpose or Territory as determined by Licensor in its sole discretion, but acting reasonably, Licensor shall have the option to terminate this Agreement immediately, and if so terminated, all subsequent use by Licensee will be unauthorized and subject to legal action. Upon the termination of this Agreement for any reason, all rights in the Marks granted to Licensee hereunder shall automatically revert to Licensor, Licensee shall have no further rights in the Marks, and Licensee shall immediately change its use of the Marks to uses that do not consist of or include the Marks or any words similar to the Marks. In the event of an unauthorized use of the Marks by Licensee, Licensee consents to the immediate entry of a court injunction preventing Licensee's further use of the Marks.
12. **Termination:** This licence granted to Licensee will terminate upon the expiry or termination of Licensee's services and other obligations under the Project Agreement.
13. **No Agency:** The Parties hereto are independent contractors with respect to each other, and nothing herein shall create any association, partnership, joint venture or agency relationship between them.
14. **Assignment:** Licensee may not convey, sublicense, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of this Agreement without the prior written consent of Licensor, which consent may be unreasonably withheld.
15. **Headings:** The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.
16. **Notices:** All notices, requests, demands and other communications made in connection with this Agreement shall be made in the manner set out in the Project Agreement.
17. **Entire Agreement:** This Agreement constitutes the entire agreement between Licensor and Licensee with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral, written, express or implied, between Licensor and Licensee.
18. **No Waiver:**
 - (a) No waiver made or given by a Party under or in connection with this 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 Party. 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.
19. **Successors:** This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.
20. **Severability:** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this 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 Agreement. If any such provision of this 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 Agreement as near as possible to its original intent and effect.
21. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province 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. Each of the Parties attorn to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
22. **Counterparts:** The Project 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 the Project Agreement which was so faxed.

[Remainder of page intentionally blank – Next page is the signature page.]

IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the date set forth above.

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

Per:

Name:

Title:

I/We have authority to bind the corporation.

METROLINX

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation.

[LICENSOR]

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation.

EXHIBIT A

Trade-marks

[Note: To be completed once trade-marks identified.]

SCHEDULE 38

APPRENTICESHIP DECLARATION

[insert date]

Metrolinx recognizes the desirability of providing benefits for the communities in which its major light rail transit (LRT) infrastructure investment is occurring, including employment, training, apprenticeship, local supplier and social procurement opportunities, where possible, as affirmed by the Metrolinx Board of Directors on September 10, 2013 and set out in the Metrolinx Community Benefits Framework between the Peel Community Benefits Network (PCBN) and Metrolinx, which was provided to Project Co during the request for proposals in-market period for the Project.

The guiding principles set out in the Framework document include:

- **Inclusive**: offering a range of employment, training and apprenticeship opportunities for historically disadvantaged communities and equity seeking groups, as well as encouraging the provision of goods and services from local suppliers and social enterprises;
- **Accessible**: ensuring that information about employment, training, apprenticeship, and procurement opportunities are made readily available to residents, businesses and social enterprises;
- **Transparent**: making the community benefits plan in the final agreement with Mobilinx Hurontario General Partnership (“**Project Co**”) public and publishing quarterly reports on progress; and
- **Collaborative**: by working together with community, labour, business, government and other stakeholders to share information, resources and learnings to maximize the impact of the program.

As part of the Project, Project Co is required to prepare an apprenticeship plan (the “**Apprenticeship Plan**”) under the Project Agreement for the Hurontario Light Rail Transit Project (the “**Project**”) in which it proposes a strategy for achieving the apprenticeship goals that also takes into account the fact that Project Co is a consortium comprised of [**• corporate entities**][**Note: amend as required**] with existing complex labour obligations that must be respected and is also subject to applicable laws that must be complied with.

The Apprenticeship Plan defines an apprentice as “someone who is registered with the Ontario Ministry of Training, Colleges and Universities (MTCU) and the Ontario College of Trades, and has signed a Contract of Apprenticeship with a union or employer”.

The Apprenticeship Plan outlines an approach that could:

- maximize the number of apprenticeships for the trades that are required to construct and maintain the Hurontario transit system; to create good paying, skilled jobs that provide strong future employment potential; and, to meet the labour needs of Project Co and its subcontractors and the needs of future construction projects;

- contribute to a coordinated, streamlined process for entering the construction trades by promoting the use of existing trade union training programs and the newly created “Construction Pathway” for careers in the trades for youth at-risk, historically disadvantaged and equity seeking groups;
- facilitate communication and coordination, and build relationships among the Peel Community Benefits Network; and
- track and report annually on Apprenticeship Plan results, including the number of apprentices that are employed on the Project, including those who start their apprenticeships on the Project.

The Apprenticeship Plan is an approach by which Project Co shall fulfill its obligations under the Project Agreement regarding apprenticeship opportunities by itself directly providing such opportunities and/or by requiring its subcontractors to do so.

Metrolinx, Infrastructure Ontario, Project Co, and the Peel Community Benefits Network aspire to achieving a goal of employing apprentices or journeypersons from historically disadvantaged communities and equity seeking groups to perform 10% of all trade or craft working hours, on a trade by trade basis, required to construct the Project. The parties believe that this goal is a worthwhile outcome to work towards and that achieving this goal depends on the cooperation, collaboration and active involvement of government, business, labour and community partners. Most importantly, the parties recognize that achieving the goal is dependent on trade unions, pre-apprenticeship programs and other organizations that prepare apprentices, ensuring that there is a readily available supply of qualified apprentices and journeypersons from historically disadvantaged communities and equity seeking groups.

Project Co’s progress will be tracked quarterly and reported annually. Reflecting the shared accountability for achieving the 10% hiring target, the parties agree to form a working group chaired jointly by the Ministry of Training, Colleges and Universities (MTCU), Metrolinx and Project Co and include other stakeholders as appropriate. The working group will establish a Terms of Reference, including roles and responsibilities of members, and develop a monitoring and evaluation plan for the hiring targets identified in this declaration. The group will meet within two months of signing the declaration and agree to specific definitions of target populations, and establish the tracking, monitoring and reporting mechanisms for the target hiring of apprentices and journeypersons. The working group will commit to collectively resolving issues that may arise related to the supply and hiring of candidates from the target populations, and other issues that may arise related to the principles and aspirations identified in this declaration.

This declaration does not vary, amend, supplement, restate or otherwise modify the Project Agreement for the Project.

This declaration is applicable only to the Project and shall not be applied to other projects and not be construed as a precedent.

This declaration may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties hereto shall constitute a full, original and binding agreement for all purposes. Signatures by Project Co must be original, but for all other parties, counterparts may be executed in original or faxed form, provided that any party providing its signature in faxed form shall promptly forward to Metrolinx an original signed copy of this Apprenticeship Declaration which was so faxed.

[Remainder of this page intentionally left blank.]

Signatories to this Apprenticeship Declaration:

**MOBILINX HURONTARIO GENERAL
PARTNERSHIP, [REDACTED]**

[REDACTED]

By: _____

Name: [REDACTED]

Title: [REDACTED]

By: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

METROLINX

Per: _____

Name: [●]

Title: [●]

Per: _____

Name: [●]

Title: [●]

I/We have authority to bind the corporation.

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

Per: _____
Name: [●]
Title: [●]

I have authority to bind the corporation.

THE PEEL COMMUNITY BENEFITS NETWORK

Per: _____
Name: [●]
Title: [●]

Per: _____
Name: [●]
Title: [●]

I/We have authority to bind the corporation.

**THE MINISTRY OF TRAINING, COLLEGES
AND UNIVERSITIES**

Per: _____
Name: [●]
Title: [●]

Per: _____
Name: [●]
Title: [●]

I/We have authority to bind the corporation.

**SCHEDULE 39
SYSTEM EXTENSION****ARTICLE 1
DEFINITIONS****1.1 Definitions**

- (a) In this Schedule 39, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 39) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Contracting Authority Extension Requirements”** means the proposal delivered by Contracting Authority pursuant to Section 2.2(c).
 - (ii) **“Extension Contractor”** means a person or persons engaged by Contracting Authority to perform any part of a System Extension, which person may or may not be Project Co.
 - (iii) **“Extension Notice Response”** means the response delivered by the Project Co pursuant to Section 2.2(b).
 - (iv) **“Extension Permits, Licences and Approvals”** means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations needed to complete a System Extension described in Contracting Authority Extension Requirements in accordance with Applicable Law.
 - (v) **“Extension Services”** means the operation, maintenance and other work to be performed and services to be provided in respect of a System Extension, including those set out in Contracting Authority Extension Requirements.
 - (vi) **“Extension Work”** means the design, construction, installation, testing, commissioning and completion of a System Extension, including rectification of any Extension Work Minor Deficiencies, and any other activities required to enable or facilitate the commencement of the Extension Services.
 - (vii) **“Extension Work Minor Deficiencies”** means any defects, deficiencies and items of outstanding work which would not materially impair Contracting Authority’s use and enjoyment of the System Extension.
 - (viii) **“Integrated System Extension”** means the development, testing, commissioning and certification (including safety recertification in order to satisfy the Safety Management Plan) of additional facilities, infrastructure, electrical and mechanical equipment, computer hardware and systems, including communication and control systems, in order to connect with the System such that the Vehicles and all other components of the light rail transit system, as

extended by the Integrated System Extension, function together using contiguous track works and an integrated service.

- (ix) “**Minimum Projected Operations Resiliency Ratio**” means, as of the date of the Project Agreement, [REDACTED]%, which, for greater certainty, is calculated on a pre-tax basis.
- (x) “**Minimum Projected Senior DSCR**” means, as of the date of the Project Agreement, [REDACTED]x, which, for greater certainty, is calculated on a pre-tax basis.
- (xi) “**New System Extension Variation Equity Capital**” has the meaning given in Section 4.1(a)(iii)(D).
- (xii) “**Non-Integrated System Extension**” means the development, testing, commissioning and certification (including safety recertification in order to satisfy any safety and security management plan in place for the System) of additional facilities, infrastructure, electrical and mechanical equipment, computer hardware and systems, including communication and control systems, in order to form a transit system that connects with the System at a single interchange point such that the Vehicles and other components of the System do not form part of a coherent integrated system with the extended transit system.
- (xiii) “**Notice of Extension**” means the notice delivered by Contracting Authority pursuant to Section 2.2(a).
- (xiv) “**Project Co Extension Proposal**” means the proposal delivered by Project Co pursuant to Section 2.2(d).
- (xv) “**Projected Operations Resiliency Ratio**” has the meaning given in the Financial Model.
- (xvi) “**Projected Senior DSCR**” has the meaning given in the Common Terms and Intercreditor Agreement.
- (xvii) “**Reciprocal Agreement**” means the agreement to be executed in the event of a Non-Integrated System Extension as described in further detail in Section 3.1(e).
- (xviii) “**System**” means, for the purposes of this Schedule 39 only, the Metrolinx light rail system.
- (xix) “**System Extension**” means either an Integrated System Extension or a Non-Integrated System Extension.
- (xx) “**System Extension Financial Model**” means a comprehensive and detailed financial model, which shall be an updated version of the most recent version of Financial Model approved by Contracting Authority under the Project Agreement and suitable for the purposes for which it will be used in this Schedule 39.

- (xxi) “**System Extension Lenders’ Consent**” has the meaning given in Section 4.3(a)(i).
- (xxii) “**System Extension Variation**” has the meaning given in Section 4.1(a).
- (xxiii) “**System Extension Variation Funding**” has the meaning given in Section 4.1(b)(i).

ARTICLE 2 SYSTEM EXTENSION

2.1 System Extension

- (a) Contracting Authority and Project Co acknowledge that Contracting Authority may, in its sole discretion, elect to pursue one or more System Extensions during the Project Term.
- (b) Contracting Authority may pursue any System Extension through one or more Extension Contractors, through a negotiated agreement with Project Co in accordance with this Schedule 39, or a combination of both. In the event Contracting Authority elects to engage an Extension Contractor(s), Contracting Authority may decide which persons are eligible for consideration, and such persons may or may not include Project Co or any of the Project Co Parties, in Contracting Authority’s sole discretion, and Contracting Authority may use any form of competitive procurement or other method of retaining an Extension Contractor(s) that Contracting Authority in its sole discretion decides. If Contracting Authority elects to negotiate an agreement with Project Co, the Parties shall follow the process set out in Section 2.2. Project Co acknowledges and agrees that Contracting Authority’s decisions pursuant to this Section 2.1 are subject to approval by the Contracting Authority’s boards of directors and, in some circumstances, the Province, and shall be subject to Applicable Law.
- (c) Contracting Authority may, in its sole discretion, elect to implement all or part of a System Extension by way of a Variation in which case Section 39 of the Project Agreement, the provisions of Schedule 22 – Variation Procedure and the provisions of Article 4 shall apply in respect of such System Extension.
- (d) Contracting Authority may, in its sole discretion, elect to procure or negotiate, as the case may be, the performance of Extension Work, and/or Extension Services in respect of a System Extension through consolidated or separate procurements or negotiations.
- (e) For clarity, Contracting Authority may pursue a System Extension at any time or times pursuant to any of the alternatives set out in this Section 2.1, in its sole discretion. In the event Contracting Authority has elected to pursue a System Extension in accordance with this Section 2.1, Contracting Authority may, at any time prior to entering into a binding agreement in respect of the System Extension, in its sole discretion, elect to cease pursuing the System Extension under the chosen alternative and pursue the same System Extension under a different alternative process.

2.2 Negotiation between Contracting Authority and Project Co of Extension Work and/or Extension Services

- (a) If Contracting Authority notifies Project Co that it wishes to negotiate with Project Co to perform any or all of the Extension Work and/or Extension Services, Contracting Authority shall provide Project Co with a Notice of Extension which will include information respecting the project, including:
- (i) a description of the scope of the Extension Work and/or the Extension Services, as applicable;
 - (ii) preliminary “term sheet level” output specifications for the Extension Work and/or the Extension Services, as applicable, including: details with respect to alignment, number of stations, length of track (in kilometres), modelling results and performance expectations with respect to the System Extension, as-builts for existing System infrastructure and utilities, condition reports, results of environmental assessments, development plans, Stakeholder engagement information, electrical and mechanical requirements specific to the System Extension, location and Contracting Authority requirements of any operations, maintenance and storage facilities, and
 - (iii) a preliminary schedule and required timelines for completion of the Extension Work and/or the Extension Services, as applicable.

For clarity, Contracting Authority may, in its sole discretion, issue a Notice of Extension in respect of any one of or all of Extension Work, and/or Extension Services.

- (b) No later than 30 days after the date of receipt of the Notice of Extension, Project Co shall deliver to Contracting Authority its Extension Notice Response advising Contracting Authority whether or not Project Co desires to proceed to the next stage of negotiation with Contracting Authority in respect of the System Extension. In the event Project Co desires to proceed, Project Co shall, no later than 60 days after the delivery of its Extension Notice Response, deliver to Contracting Authority a preliminary cost estimate and schedule for the Extension Work and/or the Extension Services, as applicable.
- (c) If Contracting Authority elects, in its sole discretion, to continue to consider Project Co for the Extension Work and/or the Extension Services, as applicable, Contracting Authority shall, no later than 120 days after the date of receipt of Project Co’s Extension Notice Response, deliver its Contracting Authority Extension Requirements. Contracting Authority Extension Requirements (which shall be non-binding on Contracting Authority) shall include:
- (i) a draft heads of terms agreement for the Extension Work and/or the Extension Services, as applicable;
 - (ii) draft output specifications and commissioning processes for the System Extension;
 - (iii) draft “term sheet level” parameters of the payment mechanism to be used in respect of the Extension Work and/or the Extension Services; and

- (iv) guidelines with respect to the structure of construction or permanent financing to be secured by Project Co.
- (d) No later than 150 days after the date of Project Co's receipt of Contracting Authority Extension Requirements, Project Co shall deliver to Contracting Authority the Project Co Extension Proposal which shall be non-binding on Project Co. The Project Co Extension Proposal shall include:
 - (i) a detailed cost estimate and construction schedule in respect of the Extension Work and/or the Extension Services, as applicable;
 - (ii) a detailed description of any impact the Extension Work and/or the Extension Services, as applicable, would have on Project Co's activities under the Project Agreement, including, if applicable, any schedule impact on the provision of the System, the public and third party infrastructure and completion of the Works;
 - (iii) a detailed description of any impact on expected usage of utilities for the current Contract Year and subsequent Contract Years;
 - (iv) any contemplated amendments to the Project Agreement to coordinate the Extension Work and/or the Extension Services, as applicable, with Project Co's obligations in respect of the Project Operations;
 - (v) the expected Direct Costs of Project Co and each subcontractor of Project Co that will be incurred in respect of the Extension Work and/or the Extension Services, as applicable, including:
 - (A) any capital expenditure that will be incurred; and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
 - (vi) preliminary terms of the financing structure specified in Contracting Authority Extension Requirements;
 - (vii) Project Co's confirmation that the projected internal rate of return on any equity capital required in respect of the Extension Work and/or the Extension Services, as applicable, will be the Base Case Equity IRR;
 - (viii) Project Co's preliminary indication of the potential increase or decrease, if any, of the Monthly Service Payments, with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the Extension Work and/or the Extension Services, as applicable; and
 - (ix) any Extension Permits, Licences and Approvals that must be obtained or any Permits, Licences and Approvals amended for the Extension Work and/or the Extension Services, as applicable, to be implemented;

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

- (e) In preparing the Project Co Extension Proposal, Project Co shall include sufficient information to demonstrate to Contracting Authority's satisfaction, acting reasonably, that:
- (i) Project Co has used or has obliged each subcontractor (or will oblige any subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders to minimize costs in respect of the System Extension;
 - (ii) except as otherwise set out herein, all costs of Project Co and each Subcontractor are limited to Direct Costs;
 - (iii) Project Co and any subcontractor shall charge only the margins for overhead and profit as set out in Appendix B to Schedule 22 – Variation Procedure (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co or any subcontractor is calculated on any other margin under the Project Agreement of Project Co or any subcontractor), and no other margins or mark ups;
 - (iv) the margins for overheads and profit as set out in Appendix B to Schedule 22 – Variation Procedure as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by any subcontractors;
 - (v) all costs of completing the Extension Work and/or the Extension Services, as applicable, including Capital Expenditures, reflect labour rates applying in the open market to providers of services similar to those required for the Extension Work and/or the Extension Services, as applicable;
 - (vi) Project Co has mitigated or will mitigate the impact of the Extension Work and/or the Extension Services, as applicable, including on the Project Works Schedules, the performance of the activities within the Project Operations, the expected usage of utilities, and the Direct Costs to be incurred; and
 - (vii) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required in respect of the Extension Work and/or the Extension Services, as applicable, and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to Contracting Authority, including using commercially reasonable efforts to mitigate such costs.
- (f) Subject to Section 2.2(g), as soon as practicable after the receipt of the Project Co Extension Proposal, Contracting Authority and Project Co shall, in good faith and acting reasonably, negotiate the terms of the binding agreement for the performance of the

Extension Work and/or Extension Services, as applicable, as well as any necessary amendments to the Project Agreement and any relevant project documents, based on the contents of Contracting Authority Extension Requirements and the Project Co Extension Proposal.

- (g) Notwithstanding anything contained in this Schedule 39, except as may be the subject matter of a competitive procurement process, no agreement relating to the subject matter of this Schedule 39 shall be effective unless entered into in writing by each of the Parties and the entering into of same shall be subject to each Party's sole discretion. Either Party may, in their sole discretion, elect to cease negotiations at any time in the process set out in this Section 2.2 prior to the signing of such written agreement.

ARTICLE 3 PROJECT CO COOPERATION

3.1 Project Co Cooperation with Contracting Authority and Interface with an Extension Contractor

- (a) In the event Contracting Authority pursues all or any part of a System Extension with any one or more Extension Contractors, Project Co shall, within a reasonable period of time, use commercially reasonable efforts to provide such assistance to Contracting Authority as Contracting Authority may request, acting reasonably. Such assistance shall include:
- (i) providing to Contracting Authority such information which Contracting Authority may reasonably require concerning the System and the public and third party infrastructure or the operations, maintenance and rehabilitation of the System and the public and third party infrastructure necessary for the purposes of Contracting Authority procuring or entering into (or considering procuring or entering into) contracts for design, construction, and/or operations, and/or maintenance of any System Extension and in particular (but without limitation to) for the purposes of compiling and making available any information memorandum, invitation to tender, technical specifications, draft contract or other document connected with such purposes;
 - (ii) the development of technical specifications in respect to the Extension Work and the Extension Services, as applicable, and the evaluation of designs proposed by prospective Extension Contractors to ensure compatibility with the Hurontario OMSF, electrical and mechanical equipment, Vehicles already supplied, and other items as specified by Contracting Authority;
 - (iii) permitting Contracting Authority access to relevant information respecting the System, electrical and mechanical equipment and Vehicles already supplied, and other items as specified by Contracting Authority;
 - (iv) advising Contracting Authority on potential modifications to the Extension Work and the Extension Services, as applicable, that could result in cost savings or other benefits to Contracting Authority (if Project Co identifies any cost savings to the Project Co Services or the Extension Services, such savings shall be shared

equally by Contracting Authority and Project Co by way of an adjustment to the Monthly Service Payments);

- (v) the development of an interface protocol between Contracting Authority, Project Co and the Extension Contractors;
- (vi) liaising with Extension Contractors (or any of their consultants and advisors) who are performing any aspect of the design, construction, maintenance or operation of any System Extension, as applicable, in accordance with the reasonable requests of Contracting Authority or any Extension Contractors; and
- (vii) subject to the prior reasonable notice and reasonable requirements of Project Co with regard to health and safety, co-operate and co-ordinate with any Extension Contractor (and any of their consultants and advisors) who has been given access by Contracting Authority to those parts of the System and public and/or third party infrastructure to which access is required for the efficient carrying out of such design, construction, maintenance or operation of any System Extension by the Extension Contractor.

Contracting Authority and Project Co's obligations under this Section 3.1(a) shall be subject to and in accordance with Schedule 37 – Intellectual Property.

- (b) Contracting Authority shall pay Project Co reasonable consulting fees in respect of the assistance Project Co provides pursuant to this Section 3.1. Such consulting fees shall be paid within 30 days of receipt of an invoice from Project Co. Each Project Co invoice shall set out in reasonable detail, the nature of assistance provided in the invoice period, the personnel involved and the time committed by Project Co personnel in respect of such assistance.
- (c) As soon as practicable after Contracting Authority provides notice to Project Co that Contracting Authority has reached a binding agreement with an Extension Contractor, Contracting Authority and Project Co shall meet with the Extension Contractor(s) and, in good faith and acting reasonably, negotiate and execute an interface agreement and/or construction procedures agreement to govern matters relating to the coordination of Project Co's activities in respect of the Project Operations and the Extension Contractor's activities relating to the Extension Work and/or the Extension Services, as applicable. Contracting Authority shall also include, in its agreement with any Extension Contractor, an obligation on the Extension Contractor to negotiate with Contracting Authority and Project Co the terms of the interface agreement and/or construction procedures agreement in good faith and acting reasonably.
- (d) In the event of an Integrated System Extension, the agreement to be negotiated between Contracting Authority, Project Co and each Extension Contractor pursuant to Section 3.1(c) shall include provisions related to:
 - (i) the rights and obligations of Contracting Authority, Project Co and the Extension Contractor in respect of the physical linking, testing and commissioning, safety and system certification of the System, public and third party infrastructure and

- the Integrated System Extension operations on the System at the same time as Project Co;
- (ii) commissioning requirements with respect to additional Vehicles that are required as a result of the Integrated System Extension and the extended lines;
 - (iii) a protocol with respect to the testing of the entire System and Integrated System Extension to ensure integration and ability for the operation of the entire line as contemplated in the Output Specifications and the final output specifications developed in respect of the Integrated System Extension;
 - (iv) provision for the sharing of the Hurontario OMSF if Contracting Authority so requires in which case Project Co shall be entitled to a reasonable fee as negotiated between the parties in good faith and acting reasonably;
- (e) In the event of a Non-Integrated System Extension, Contracting Authority, Project Co and the Extension Contractors shall execute a reciprocal agreement in a form to be agreed to between the parties acting reasonably and negotiating in good faith (the “**Reciprocal Agreement**”). The Reciprocal Agreement shall govern the rights of the parties in respect of the station, infrastructure or other location on the System which has an interchange point with the Non-Integrated System Extension and shall govern matters such as:
- (i) reciprocal easements or other rights-of-access;
 - (ii) appropriate cost sharing arrangements;
 - (iii) sharing of information;
 - (iv) decision making process regarding matters affecting the interchange between the System and the Non-Integrated System Extension; and
 - (v) mutual repair obligations of structural or other elements in common between the System, the public and third party infrastructure and the Non-Integrated System Extension.
- (f) This Article 3 is without prejudice to Contracting Authority’s ability to instruct a Variation in accordance with Schedule 22 – Variation Procedure.

ARTICLE 4 SYSTEM EXTENSION VARIATION

4.1 Additional System Extension Variation Requirements

- (a) In the event that Contracting Authority elects to implement all or part of a System Extension by way of a Variation pursuant to Section 2.1(c) (a “**System Extension Variation**”):
- (i) Contracting Authority shall, as soon as practicable and as a courtesy to Project Co only, provide Notice to Project Co of Contracting Authority’s intention to

deliver to Project Co a Variation Enquiry in respect of such System Extension Variation. For greater certainty, following the provision of such Notice, Contracting Authority shall not have any obligation or liability under this Project Agreement to deliver such Variation Enquiry;

- (ii) notwithstanding the provisions of Schedule 22 – Variation Procedure:
 - (A) the 15 Business Day time period in Section 1.4(a) of Schedule 22 – Variation Procedure shall be 150 days;
 - (B) the 15 Business Day time period in Section 1.6(d) of Schedule 22 – Variation Procedure shall be 60 Business Days or such longer period as the Parties agree, acting reasonably;
 - (C) the 10 Business Day time period in Section 1.6(f) of Schedule 22 – Variation Procedure shall be 20 Business Days or such longer period as the Parties agree, acting reasonably; and
 - (D) Section 1.9(a) of Schedule 22 – Variation Procedure shall apply such that prior to the Substantial Completion Date, Contracting Authority may require that Project Co seek financing from a source other than the Lenders; and
- (iii) without prejudice or limitation to any provision of Schedule 22 – Variation Procedure (including, for clarity, any provision of Section 1.5(a) of Schedule 22 – Variation Procedure), the following additional requirements must be satisfied prior to Contracting Authority and Project Co agreeing to an Estimate regarding such System Extension pursuant to Section 1.6(d) of Schedule 22 – Variation Procedure or otherwise agreeing to such Variation:
 - (A) as part of the Variation, Contracting Authority shall, subject to and in accordance with Sections 4.1(b) to 4.1(f) (inclusive), agree to provide Project Co any System Extension Variation Funding for the purpose of maintaining:
 - (1) the Projected Senior DSCR in the System Extension Financial Model for each relevant period during the remainder of the Project Term at a level that is no less than the Minimum Projected Senior DSCR set out in the most recent version of the Financial Model approved by Contracting Authority under the Project Agreement;
 - (2) the Projected Operations Resiliency Ratio in the System Extension Financial Model for each relevant period during the remainder of the Project Term at a level that is no less than the Minimum Projected Operations Resiliency Ratio set out in the most recent version of the Financial Model approved by Contracting Authority under the Project Agreement;

- (3) the Projected Senior DSCR in the System Extension Financial Model for each relevant period during the remainder of the Project Term at a level that is up to, but no more than, the corresponding Projected Senior DSCR set out in the most recent version of the Financial Model approved by Contracting Authority under the Project Agreement; and
 - (4) the Projected Operations Resiliency Ratio in the System Extension Financial Model for each relevant period during the remainder of the Project Term at a level that is up to, but no more than, the corresponding Projected Operations Resiliency Ratio set out in the most recent version of the Financial Model approved by Contracting Authority under the Project Agreement;
- (B) the System Extension Variation shall not result in a downgrade, qualification or withdrawal of a rating or application of any negative outlook by a rating agency on any of the then current ratings of Project Co's Senior Debt Amount provided by any of the rating agencies described in the Lending Agreements;
- (C) at the time the System Extension Variation is contemplated, the Parties are of the reasonable opinion that the System Extension Variation shall not result in a material adverse change to the risk profile of the Project (which would include, for clarity, any System Extension Variation that requires an extension to the Senior Credit Facility Maturity Date (as defined in the Common Terms and Intercreditor Agreement)), provided that Project Co shall be informed by the reasonable opinion of the Lenders' Consultant in arriving at Project Co's opinion; and
- (D) unless otherwise agreed by the Parties, if any new or additional financing will be required by Project Co to implement the System Extension Variation, then, in addition to the requirements of Section 1.6(a)(vii)(B) of Schedule 22 – Variation Procedure, at Contracting Authority's request, Project Co shall exert commercially reasonable efforts to obtain one or more offers in respect of such financing, including, if required by Contracting Authority, an offer of new or additional equity capital as part of such financing ("**New System Extension Variation Equity Capital**"), which offers shall, subject to Sections 4.1(d) to 4.1(f) (inclusive), be on terms and conditions reasonably satisfactory to Project Co and Contracting Authority.
- (b) Unless and until a Variation Enquiry in respect of a System Extension Variation is withdrawn by Contracting Authority pursuant to Schedule 22 – Variation Procedure, Contracting Authority and Project Co shall, in good faith and acting reasonably and without any unreasonable delay, work diligently and cooperatively to:
- (i) subject to Section 4.1(c), determine and agree to the amount of, and the other terms and conditions pursuant to which, Contracting Authority shall provide any

necessary funding to Project Co in order to satisfy the requirements of Section 4.1(a)(iii)(A), which shall be paid by Contracting Authority to Project Co by way of adjustments to the Annual Service Payment – Capital Portion payable pursuant to Schedule 20 – Payment Mechanism (such adjustments being based on the most recent version of the Financial Model approved by Contracting Authority under the Project Agreement) (“**System Extension Variation Funding**”). Notwithstanding anything to the contrary in this Schedule 39, Contracting Authority shall have no obligation or liability to provide, in whole or in part, any System Extension Variation Funding in the event that Project Co does not obtain any New System Extension Variation Equity Capital in respect of the System Extension Variation; and

- (ii) ensure that the proposed terms of the System Extension Variation satisfy the requirements of Sections 4.1(a)(iii)(B) to 4.1(a)(iii)(D) (inclusive).
- (c) If any System Extension Variation Funding is required pursuant to Section 4.1(a)(iii)(A):
 - (i) Project Co shall (A) demonstrate, to the satisfaction of Contracting Authority, that such funding is no greater than the minimum amount required to satisfy Section 4.1(a)(iii)(A), including by using the optimization procedures in the draft System Extension Financial Model, and (B) provide reasonably detailed calculations in support thereof to Contracting Authority; and
 - (ii) for greater certainty, no such funding shall be in duplication of any amounts paid or to be paid by Contracting Authority pursuant Schedule 22 – Variation Procedure as a result of or in connection with the System Extension Variation.
- (d) Notwithstanding Section 1.6(a)(viii) of Schedule 22 – Variation Procedure, in the event that New System Extension Variation Equity Capital is required by Contracting Authority pursuant to Section 4.1(a)(iii)(D), then, prior to Contracting Authority and Project Co agreeing to an Estimate regarding such System Extension pursuant to Section 1.6(d) of Schedule 22 – Variation Procedure or otherwise agreeing to such Variation, Project Co shall exert reasonable commercial efforts to obtain an offer for the New System Extension Variation Equity Capital from the Equity Provider and other potential equity providers at a projected rate of return such that all equity capital for the Project (including such New System Extension Variation Equity Capital) in the proposed System Extension Financial Model will be equal to or less than the Base Case Equity IRR.
- (e) If Project Co fails to obtain an offer for New System Extension Variation Equity Capital in accordance with Section 4.1(d) and can demonstrate to the reasonable satisfaction of Contracting Authority that (i) it has exerted the reasonable commercial efforts described in Section 4.1(d), and, unless otherwise agreed by Contracting Authority, in its sole discretion, (ii) market conditions have materially changed since Financial Close (including as a result of changes in benchmark interest rates since Financial Close) such that, based on the projected internal rate of return of analogous market transactions (including any relevant secondary market transactions) in and around the time of the System Extension Variation, the projected internal rate of return for New System

Extension Variation Equity Capital is greater than the Base Case Equity IRR, then, in Contracting Authority's sole discretion, Contracting Authority may direct Project Co to exert reasonable commercial efforts to obtain an offer for New System Extension Variation Equity Capital at a projected internal rate of return greater than the Base Case Equity IRR, which (A) shall be subject to the approval of Contracting Authority, in its sole discretion, and (B) shall require Project Co to provide evidence to the reasonable satisfaction of Contracting Authority that any increase in the projected internal rate of return for such New System Extension Variation Equity Capital above the Base Case Equity IRR is consistent with changes in benchmark interest rates since Financial Close.

- (f) If Project Co fails to obtain an offer for New System Extension Variation Equity Capital
- (i) in accordance with Section 4.1(d) and the Parties do not proceed in accordance with Section 4.1(e); or
 - (ii) in accordance with Section 4.1(d), the Parties proceed in accordance with Section 4.1(e), and Project Co does not obtain an offer for New System Extension Variation Equity Capital in accordance with Section 4.1(e) (including as a result of, in accordance with Section 4.1(e), Project Co failing to satisfy Section 4.1(e)(i) or Section 4.1(e)(ii), Contracting Authority not directing Project Co to obtain such offer for New System Extension Variation Equity Capital or Contracting Authority not approving such offer for New System Extension Variation Equity Capital),

then Contracting Authority shall no longer require Project Co to obtain New System Extension Variation Equity Capital in connection with the System Extension Variation, and, in such an event, Contracting Authority and Project Co (both Parties working diligently and cooperatively and acting reasonably, in good faith and without any unreasonable delay) shall exert commercially reasonable efforts to identify and agree upon an alternative funding approach(s), amounts, terms and conditions pursuant to which Contracting Authority shall provide Project Co as part of the Variation Confirmation any necessary funding other than System Extension Variation Funding for Project Co to maintain the ratios described in Section 4.1(a)(iii)(A).

4.2 System Extension Financial Model and System Extension Variation Information

- (a) As soon as practicable following Contracting Authority's delivery of the Variation Enquiry in respect of the System Extension Variation but by no later than the date that is the later of (i) the date of the Parties agreement to any System Extension Variation Funding pursuant to Section 4.1(b) or any alternative funding pursuant to Section 4.1(f) and (ii) the date Project Co delivers an Estimate regarding the System Extension Variation, Project Co shall provide Contracting Authority a copy of the proposed System Extension Financial Model, which shall be subject to the approval of Contracting Authority. For greater certainty, the System Extension Financial Model shall replace the Financial Model following Project Co's obtainment of such approval and on the date the Variation Confirmation in respect of the System Extension becomes effective pursuant to Schedule 22 – Variation Procedure, and, from and after such date during the remainder of

the Project Term, the System Extension Financial Model shall, for the purposes of the Project Agreement, be the Financial Model.

- (b) In the event that Project Co proposes to introduce into the proposed System Extension Financial Model a new item or procedure (including any new optimization procedure) that was not included in the most recent version of Financial Model approved by Contracting Authority under the Project Agreement, then Project Co shall propose such change to Contracting Authority and Contracting Authority may, in its sole discretion, accept or reject the proposed change.
- (c) Contracting Authority shall, prior to the date the Variation Confirmation in respect of the System Extension Variation becomes effective pursuant to Schedule 22 – Variation Procedure, have unrestricted rights of audit over the System Extension Financial Model and any documentation used by Project Co in connection with the System Extension Variation. Project Co shall promptly, and, in any event, within 5 Business Days of receiving written request from Contracting Authority, provide any information in relation to the proposed System Extension Financial Model or such documentation as Contracting Authority may reasonably require.

4.3 Failure to Obtain Lenders' Consent

- (a) In the event that:
 - (i) a System Extension Variation requires the consent or approval of the Lenders under the Lending Agreements, including, for greater certainty, the approval or consent of the Lenders to any amendment, supplement or other modification to the Project Agreement or to the Project Documents required as a consequence of the Variation, (the “**System Extension Lenders’ Consent**”);
 - (ii) no Project Co Event of Default, Contracting Authority Event of Default or Enforcement Event (as defined in the Lenders’ Direct Agreement) has occurred and is continuing;
 - (iii) the requirements of Schedule 22 – Variation Procedure, Section 4.1(a) and Sections 4.1(d) to 4.1(f) (inclusive) have been satisfied in respect of such Variation (other than the obtainment by Project Co of the System Extension Lenders’ Consent); and
 - (iv) Contracting Authority has approved the System Extension Financial Model pursuant to Section 4.2(a),

then, notwithstanding anything to the contrary in Schedule 22 – Variation Procedure, Project Co shall have 180 calendar days (or such longer period of time agreed by the Parties) from the later of (A) the date the Estimate in respect of the System Extension Variation was either agreed to by Contracting Authority and Project Co or (B) the date any Dispute in respect thereof was determined in accordance with Schedule 27 – Dispute Resolution Procedure, which may be conditional upon the obtainment by Project Co of the System Extension Lenders’ Consent or a waiver from the Lenders of the requirement

for the System Extension Lenders' Consent under the Lending Agreements, in order for Project Co to complete either the obtainment of the System Extension Lenders' Consent or a waiver from the Lenders of the requirement for the System Extension Lenders' Consent under the Lending Agreements.

- (b) Subject to Section 4.3(c), in the event that Project Co fails to obtain from all Lenders the System Extension Lenders' Consent or a waiver of the requirement for the System Extension Lenders' Consent under the Lending Agreements by the expiry of the period set out in Section 4.3(a), then, upon the delivery of Notice to Project Co and without prejudice or limitation to any other rights or remedies of Contracting Authority under the Project Agreement, Contracting Authority shall, in its sole discretion, be permitted to pay to Project Co amounts necessary to, and to cause Project Co to, (A) prepay in full, without any penalty, "make whole" or other payments, fees, costs or expenses, (I) the outstanding principal amount of debt funded by each of the Lenders that refused to or otherwise failed to provide a consent or approval as part of the System Extension Lenders' Consent under the Lending Agreements on or prior to the date of such Notice (collectively, the "**Prepaid Lenders**"), and (II) all interest accrued thereon at that time, and (B) cause the cancellation in full under the Lending Agreements of each of the Prepaid Lenders' remaining funding commitments under the Lending Agreements. If Contracting Authority exercises its rights under this Section 4.3(b), Project Co shall cause each of the Prepaid Lenders to release Project Co from all liabilities and obligations under the Lending Agreements and waive all rights against Project Co under the Lending Agreements immediately upon the receipt of its prepayment of outstanding principal and interest. Notwithstanding the foregoing, Contracting Authority shall not be permitted to exercise its rights under this Section 4.3(b) unless Contracting Authority agrees with Project Co to provide funds to Project Co in amounts equal to and at the same time and in the same manner as the outstanding commitment under the Lending Agreements which each of the Prepaid Lenders would have otherwise been obligated to fund to Project Co under the Lending Agreements but for such prepayment and cancellation. Project Co acknowledges and agrees that in the event that Contracting Authority exercises its rights under this Section 4.3(b), any amount so paid by Contracting Authority to Project Co pursuant hereto shall only be used by Project Co for the purposes set forth in this Section 4.3(b). Without prejudice or limitation to any other provision of this Section 4.3(b), if Contracting Authority exercises its rights under this Section 4.3(b), Contracting Authority, Project Co and the remaining Lenders, each party acting reasonably and without any unreasonable delay, will enter into a co-funding agreement to implement the intent of this Section 4.3(b) on reasonable commercial terms.
- (c) Before proceeding under Section 4.3(b), Contracting Authority will require that Project Co determine (I) the identity of each of the Prepaid Lenders and (II) the aggregate prepayment amount determined in accordance with Section 4.3(b), and provide such information to Contracting Authority in writing. Contracting Authority may then, in its sole discretion, determine not to proceed under Section 4.3(b), and, in such an event, upon Notice to Project Co, Contracting Authority may, in its sole discretion and without prejudice or limitation to any other rights or remedies of Contracting Authority under the Project Agreement, proceed to either:

- (i) if the System Extension Variation shall be implemented prior to the Substantial Completion Date, notwithstanding anything to the contrary in the Project Agreement (including, for clarity, in Schedule 22 – Variation Procedure), remove the Project Co Services scope of work from the Project and the Project Agreement by way of a Variation, while allowing for the completion of the Works under the Project Agreement. For greater certainty, nothing in this Section 4.3(c)(i) shall prejudice or limit Section 1.1(xiv) of Appendix A of Schedule 22 – Variation Procedure; or
- (ii) if the System Extension Variation shall be implemented after the Substantial Completion Date, following the date Contracting Authority pays the Substantial Completion Payment to Project Co in accordance with Section 34.1(b) of the Project Agreement, terminate the Project Agreement by written Notice to Project Co having immediate effect and, in such an event, Contracting Authority shall be obligated to pay to Project Co an amount equal to the compensation Project Co would be entitled to receive pursuant to and in accordance with Schedule 23 – Compensation on Termination if Contracting Authority were to terminate the Project Agreement as a result of a Project Co Event of Default pursuant to Section 45 of the Project Agreement, save and except that, notwithstanding anything to the contrary in Schedule 23 – Compensation on Termination of the Project Agreement, such compensation shall include amounts which, if paid on the Termination Date, are necessary for Project Co to pay (A) the Lenders an amount equal to the outstanding principal amount of debt funded by the Lenders under the Lending Agreements on or prior to such date together with all interest accrued thereon at that time but without any penalty, “make whole” or other payments, fees, costs or expenses, and (B) the Equity Provider an amount equal to the Equity Capital as at Financial Close advanced to Project Co in cash on or prior to the Termination Date less all dividends and other Distributions paid on or made in respect of such Equity Capital on or before the Termination Date (where such amount is negative it shall be deemed instead to be zero). Project Co acknowledges and agrees that in the event that Contracting Authority exercises its rights under this Section 4.3(c)(ii), any amounts described in Section 4.3(c)(ii)(A) and 4.3(c)(ii)(B) so paid by Contracting Authority to Project Co shall only be used by Project Co for the purposes set out in Section 4.3(c)(ii)(A) and Section 4.3(c)(ii)(B).
- (d) In the event that a System Extension Variation requires a System Extension Lenders’ Consent, the Parties agree that, notwithstanding anything to the contrary in Schedule 22 – Variation Procedure (including, for greater certainty, Section 1.8(a) and Section 1.8(c) of Schedule 22 – Variation Procedure), Contracting Authority shall not be required to issue a Variation Confirmation in respect of the System Extension Variation or be deemed to have withdrawn such Variation until the date that is 30 Business Days following the date that it receives and delivers Notice to Project Co that it is satisfied, in its sole discretion, with the System Extension Lenders’ Consent or the waiver from the Lenders of the requirement for the System Extension Lenders’ Consent under the Lending Agreements. For greater certainty, this Section 4.3(d) is without prejudice or limitation to Contracting Authority’s right to withdraw the System Extension Variation at any time pursuant to and in accordance with Schedule 22 – Variation Procedure.

- (e) Project Co represents, warrants and agrees that (i) the provisions of this Article 4 are permitted by and are fully reflected in the Lending Agreements, and (ii) this Article 4 has been acknowledged in writing by the parties to the Lending Agreements within the Lending Agreements.

SCHEDULE 40

PROPERTY ACCESS MATTERS

1. DEFINITIONS

In this Schedule 40, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 40) shall have the meaning given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 “**Actual Property Access Closure Costs**” or “**APACC**” means the total cost of all Actual Property Access Closures for a Property Access Area in respect of a given calendar month, which total cost shall be calculated by multiplying the number of Actual Property Access Closures for the applicable Property Access Area by the applicable Unit Cost.
- 1.2 “**Actual Property Access Closures**” or “**APAC**” means all actual Property Access Closures that occur in a given calendar month for a Property Access Area.
- 1.3 “**Aggregate Actual Property Access Closures**” or “**AAPAC**” means all Actual Property Access Closures for a Property Access Area from Financial Close to Substantial Completion, as set out in the final Property Access Closure Analysis Report.
- 1.4 “**Aggregate Actual Property Access Closures Cost**” or “**AAPACC**” means the sum of all Actual Property Access Closure Costs for a Property Access Area from Financial Close to Substantial Completion, as set out in the final Property Access Closure Analysis Report.
- 1.5 “**Aggregate Target Property Access Closures**” or “**ATPAC**” means the total target Property Access Closures for a Property Access Area from Financial Close to Substantial Completion, which:
- (a) are set out in the Property Access Closure Target Letter; and
 - (b) shall include and account for all requirements of Part 5 of Schedule 15-2– Design and Construction Requirements, as well as Schedule 35 - Lands.
- 1.6 “**Aggregate Target Property Access Closures Cost**” or “**ATPACC**” means the total cost of all target Property Access Closures for a Property Access Area from Financial Close to Substantial Completion, as set out in the Property Access Closure Target Letter.
- 1.7 “**Door Closure**” means:
- (a) the closure of pedestrian access to a building door; or
 - (b) any of the following circumstances in which business operations associated with a building are disrupted:
 - (i) circumstances in which the Works are taking place within 1.5 metres of a building door;

- (ii) Utility shutdowns as a result of the Works that preclude the delivery of Utilities to a building; and
- (iii) circumstances in which pedestrian ingress and egress cannot be provided to a building,

provided that such closure or disruption is as a result of the Works, and provided that such closure or disruption takes place for more than four cumulative hours within any eight hour duration in any day or for more than eight cumulative hours in any day.

1.8 “**Driveway Closure**” means:

- (a) for a property zoned for commercial use:
 - (i) where the width of a driveway as of Financial Close is less than 3.75 metres, a reduction of the width of that driveway to less than the width of that driveway as of Financial Close; or
 - (ii) where the width of a driveway as of Financial Close is greater than or equal to 3.75 metres:
 - (A) a reduction of the width of that driveway to less than 3.75 metres;
 - (B) where the width of a driveway as of Financial Close is less than 7.50 metres, a reduction of the width of that driveway to less than the width of that driveway as of Financial Close, unless Project Co provides, at all times during the duration of the reduction, traffic control persons at the location of that driveway; or
 - (C) where the width of a driveway as of Financial Close is greater than or equal to 7.50 metres, a reduction of the width of that driveway to less than 7.50 metres, unless Project Co provides, at all times during the duration of the reduction, traffic control persons at the location of that driveway; or
- (b) for a property zoned for residential use:
 - (i) where the width of a driveway as of Financial Close is less than 3.0 metres, a reduction of the width of that driveway to less than the width of that driveway as of Financial Close; or
 - (ii) where the width of a driveway as of Financial Close is greater than or equal to 3.0 metres:
 - (A) a reduction of the width of that driveway to less than 3.0 metres;
 - (B) where the width of a driveway as of Financial Close is less than 6.0 metres, a reduction of the width of that driveway to less than the width of that driveway as of Financial Close, unless Project Co provides, at all times

during the duration of the reduction, traffic control persons at the location of that driveway; or

- (C) where the width of a driveway as of Financial Close is greater than or equal to 6.0 metres, a reduction of the width of that driveway to less than 6.0 metres, unless Project Co provides, at all times during the duration of the reduction, traffic control persons at the location of that driveway;

provided that, in each case, such reduction is as a result of the Works and takes place for more than four cumulative hours within any eight hour duration in any day or for more than eight cumulative hours in any day.

1.9 “**Permanent Closure**” means:

- (a) Door Closure of the front door of the building at 3161 Hurontario Street; and
- (b) Driveway Closure of the south driveway at 99 Rathburn Road West.

1.10 “**Property Access Area**” means the defined portions of the Site where Works are to be undertaken in which the Unit Costs are to be applied for any Property Access Closure as identified in Appendix A. The Property Access Areas are delineated as follows:

- (a) Property Access Area 1 – Hurontario Street south of Park Street (southern limit of the Works) to North Service Road;
- (b) Property Access Area 2 – Hurontario Street from North Service Road to Matthews Gate;
- (c) Property Access Area 3:
 - (i) Hurontario Street from Matthews Gate to Kingsbridge Garden Circle/Elia Avenue; and
 - (ii) Rathburn Road from Duke of York Boulevard to Shipp Drive/Sherwood Towne Boulevard;
- (d) Property Access Area 4 – Hurontario Street from Kingsbridge Garden Circle/Elia Avenue to Britannia Road;
- (e) Property Access Area 5 - Hurontario Street from Britannia Road to Mississauga/Brampton city boundary; and
- (f) Property Access Area 6 – Hurontario Street from the Mississauga/Brampton city boundary to north of Bartley Bull Parkway (north limit of Works).

1.11 “**Property Access Closure**” means a Door Closure, Driveway Closure, or Sidewalk Closure, as applicable, as contemplated in Appendix A, but excludes:

- (a) any Permanent Closure;

- (b) a Door Closure or Driveway Closure for which there is a Property Access Closure Agreement in full force and effect between the parties thereto; and
 - (c) any Door Closure, Driveway Closure or Sidewalk Closure that is solely the result of a Utility Company carrying out self-performed work that must be carried out by that Utility Company as part of the Works.
- 1.12 **“Property Access Closure Adjustment” or “PACA”** means the amount calculated pursuant to Section 5 and, for clarity, adjusted in accordance with Section 5.5.
- 1.13 **“Property Access Closure Agreement”** means an executed and delivered agreement between Project Co or a Project Co Party and the owner(s) or tenant(s) of a property located in a Property Access Area in respect of Project Co or such Project Co Party, as part of the Works, providing alternative access or other mitigating measures to such owner(s) or tenant(s) in respect of a Door Closure or a Driveway Closure. For the purposes of this Schedule 40, “Property Access Closure Agreement” includes all amendments, other modifications and supplements to, restatements of and any termination of such agreement.
- 1.14 **“Property Access Closure Analysis Report”** has the meaning given to it in Section 2.1.
- 1.15 **“Property Access Closure Measurement and Verification Plan” or “PACMVP”** has the meaning given to in Section 3.3.
- 1.16 **“Property Access Closure Target Letter”** means the letter attached to Appendix C.
- 1.17 **“Property Access Matters Review Meeting”** has the meaning given in Section 3.6.
- 1.18 **“Sidewalk Closure”** means the closure of a sidewalk for more than four cumulative hours within any eight hour duration in any day or for more than eight cumulative hours in any day as a result of the Works, except that a closure of a sidewalk shall not constitute a “Sidewalk Closure” if Project Co provides, at all times during the duration of the closure, a continuous passage for pedestrians by means of an accessible temporary or permanent sidewalk of a width not less than 1.5 metres along:
- (a) at least one side of the roadway for segments of the roadway set out in Table 1.16-1; or
 - (b) both sides of the roadway for the segments of the roadway not set out in Table 1.16-1.

Table 1.16-1 – Roadway Segments with Sidewalk Allowed on One Side

| Road segment | Requirements |
|--|---|
| Hurontario Street from Park Street to Queensway | Maintain sidewalk access on east side |
| Hurontario Street from Fairview Road to Matthews Gate | Maintain sidewalk access on at least one side |
| Hurontario Street from Robert Speck Parkway to Kingsbridge Garden Circle | Maintain sidewalk access on at least one side |

| | |
|--|---|
| Hurontario Street from Bristol Road to Milverton Drive/Watline Avenue | Maintain sidewalk access on east side |
| Hurontario Street from Milverton Drive/Watline Avenue to Sir Lou Drive | Maintain sidewalk access on at least one side |
| Rathburn Road | Maintain sidewalk access on north side |

1.19 “Unit Cost” for each Property Access Closure, means the price for each Door Closure, Driveway Closure or Sidewalk Closure as set out in Appendix A. The unit costs are per day.

2. CONTENT AND FORMAT OF THE PROPERTY ACCESS CLOSURE ANALYSIS REPORT

2.1 Project Co shall, on a monthly basis starting at Financial Close, monitor its Property Access Closures at each Property Access Area and provide a report of such Property Access Closures to Contracting Authority (each, a “Property Access Closure Analysis Report”) pursuant to and in accordance with this Section 2.1. Project Co shall classify and quantify all Property Access Closures in each Property Access Closure Analysis Report in accordance with this Schedule 40.

2.2 The Property Access Closure Analysis Report shall, at a minimum, include the following information:

- (a) using the template provided in Appendix B, a summary of Actual Property Access Closures and Actual Property Access Closure Costs for each Property Access Area, on a Property Access Area by Property Access Area basis, for the previous calendar month, indicating, for each Door Closure, Driveway Closure or Sidewalk Closure:
 - (i) the location (indicating Property Access Area); and
 - (ii) the time, date, and duration;
- (b) a projection of anticipated Property Access Closures for each Property Access Area for each month from the then current calendar month until the anticipated Substantial Completion Date, along with trends and potential risks associated with the anticipated Property Access Closures;
- (c) accurate and precise data in support of the items described in Sections 2.2(a) and 2.2(b);
- (d) for each Property Access Area, a calculation of:
 - (i) the sum of all APACC from Financial Close up to and including the previous calendar month; and
 - (ii) the variance between the amount described in Section 2.2(d)(i) and the cost of all projected Property Access Closures from Financial Close up to and including the previous calendar month, as set out in the Property Access Closure Target Letter;

- (e) for each Property Access Area, a calculation of:
 - (i) the sum of all anticipated APACC from the then current calendar month to the anticipated Substantial Completion Date based on the projected Property Access Closures described in Section 2.2(b); and
 - (ii) the variance between the amount described in Section 2.2(e)(i) and the cost of all anticipated Property Access Closures from the then current calendar month to the anticipated Substantial Completion Date, as set out in the Property Access Closure Target Letter;
 - (f) Project Co's projected estimate of the AAPACC and the Property Access Closure Adjustment;
 - (g) a corrective action plan if there is a forecasted exceedance of Project Co's projected estimate of the AAPACC from the ATPACC by greater than [REDACTED]% for any Property Access Area;
 - (h) the progress of, and any planned adjustments to, any corrective action plan that was in place from any previous Property Access Closure Analysis Reports;
 - (i) the measurement and verification of Property Access Closures in accordance with the Property Access Closure Measurement and Verification Plan;
 - (j) summary tables from all previous Property Access Closure Analysis Reports delivered by Project Co to Contracting Authority; and
 - (k) a full copy of each Property Access Closure Agreement (in un-redacted form) executed and delivered by the parties thereto in the previous month (including, for clarity, any amendment, other modification or supplement to, or restatement or termination of such agreement).
- 2.3 Subject to Section 2.4, Project Co shall prepare and deliver to Contracting Authority a Property Access Closure Analysis Report in respect of each calendar month.
- 2.4 Each Property Access Closure Analysis Report shall be delivered by Project Co to Contracting Authority in accordance with Schedule 10 – Review Procedure within five Business Days after the end of the calendar month that is the subject of the Property Access Closure Analysis Report. Notwithstanding the foregoing, the final Property Access Closure Analysis Report shall be (a) prepared and delivered by Project Co to Contracting Authority 20 Business Days before the anticipated Substantial Completion Date, and (b) updated pursuant to Section 5.5.
- 3. PROCEDURES FOR DETERMINING AND REPORTING PROPERTY ACCESS CLOSURES AND PROPERTY ACCESS CLOSURE ADJUSTMENTS**
- 3.1 Contracting Authority will assess Project Co the cost of Property Access Closures based on the total Property Access Closures that occur per day on a per Property Access Area basis. The cost of Property Access Closures for each Property Access Area shall be included in the calculation of the Property Access Closure Adjustment.

- 3.2 The AAPACC and ATPACC for each Property Access Area shall be used to calculate the Property Access Closure Adjustment. The Property Access Closure Target Letter shall not be amended, altered or adjusted except by the process described in Section 4.
- 3.3 No later than 90 days prior to the first Property Access Closure, Project Co shall submit to Contracting Authority, in accordance with Schedule 10 – Review Procedure, a plan describing how Project Co will track all of its Property Access Closures on a monthly basis for each Property Access Area, how Project Co will evaluate its performance on Property Access Closure progress, and the verification process through which Contracting Authority and each of the Cities may audit Project Co’s Property Access Closure performance (the “**Property Access Closure Measurement and Verification Plan**” or “**PACMVP**”). Project Co shall ensure that all subsequent Property Access Closure Analysis Reports are consistent with the Property Access Closure Measurement and Verification Plan.
- 3.4 The PACMVP shall, at a minimum, include the following information:
- (a) a narrative clearly describing the methodology to be used to minimize the number and duration of Property Access Closures;
 - (b) clearly identified objectives and targets;
 - (c) identification of the communication methods, protocols and timing by which notification to property owners of Property Access Closures will be made;
 - (d) an anticipated schedule of Property Access Closures organized by Property Access Area;
 - (e) the methods by which Project Co will measure Property Access Closure duration;
 - (f) the methods by which Project Co will compare planned and actual performance in meeting Property Access Closure targets; and
 - (g) the method by which Property Access Closure records will be recorded, preserved and made available to Contracting Authority for the purposes of verification.
- 3.5 Project Co shall not initiate or proceed with initiation or implementation of Property Access Closures prior to submission and review of the PACMVP by Contracting Authority in accordance with Schedule 10 – Review Procedure.
- 3.6 No later than five Business Days following the submission of each Property Access Closure Analysis Report (or as otherwise agreed to between the Parties), Project Co and Contracting Authority shall convene a review meeting (the “**Property Access Matters Review Meeting**”) to be attended by the Project Co Representative and other relevant Project Co representatives (including the Communications and Public Engagement Lead described in Schedule 9 – Key Individuals) and the Contracting Authority Representative. At the Property Access Matters Review Meeting, Project Co shall present the Property Access Closure Analysis Report to Contracting Authority, and Contracting Authority and Project Co shall discuss the Property Access Closure Analysis Report and the AAPAC for the preceding period.

- 3.7 Project Co shall assist the Contracting Authority Representative by providing information with respect to Property Access Closures and access to the Property Access Closure records, and by other means as may reasonably be required to confirm the information in the Property Access Closure Analysis Report.
- 3.8 For the purpose of this Schedule 40, Property Access Closures shall be measured on a per day basis. Project Co shall ensure that at no time shall any Property Access Closure persist for more than 15 consecutive days, or more than a combined total of 30 days over the course of the Construction Period. Any two Property Access Closures with less than 10 days between closures shall be deemed to be consecutive for the purposes of this Section 3.8. For clarity, if Project Co allows a Property Access Closure to persist for more than 15 consecutive days, or for more than a combined total of 30 days in contravention of this Section 3.8, Project Co shall continue to incur Actual Property Access Closure Costs for such Property Access Closures in accordance with this Schedule 40.
- 3.9 For clarity, the provisions of this Schedule 40 (including the provisions related to calculating the AAPAC and determining the PACA) shall apply to all Property Access Closures, notwithstanding the occurrence of a Lane Closure that is permitted or contemplated in Part 7 of Schedule 15-2 – Design and Construction Requirements or Schedule 7 – Mobility Matters, and notwithstanding that a Lane Closure may be proximate or adjacent to a Property Access Closure.

4. PROCESS FOR AMENDING THE AGGREGATE TARGET PROPERTY ACCESS CLOSURE

- 4.1 In all cases, adjustments or corrections to the ATPAC must be consistent with the principles outlined in the PACMVP.
- 4.2 Project Co and Contracting Authority shall, acting reasonably, agree to make any adjustments or corrections to the APACC, ATPACC, AAPAC and AAPACC for any Property Access Area, but only in the event of changes implemented due to an amendment of the Project Agreement or a Variation that would cause Property Access Closure changes.
- 4.3 The Party requesting an amendment to the ATPAC for a Property Access Area in accordance with Section 4.2 shall initiate a Variation in accordance with Schedule 22 – Variation Procedure. Where required, an amended PACMVP shall also be prepared and include a detailed analysis of the impacts to area businesses and residents, including an analysis of revised Property Access Closure requirements. The amended PACMVP shall include a recommendation regarding amendments to the ATPAC. Both Contracting Authority and Project Co shall agree to the amended ATPAC no later than 20 Business Days following receipt of such analysis. If there is no agreement within a further 10 Business Days, then either Party may refer the matter to the Dispute Resolution Procedure.

5. CALCULATION OF PROPERTY ACCESS CLOSURE ADJUSTMENT

- 5.1 For the purpose of preparing the Property Access Closure Target Letter, the Aggregate Target Property Access Closures Cost shall be calculated for each Property Access Area as follows:
- (a) Target Door Closures cost

$$\sum_{i=1}^r [P_i * D_{Ti}]$$

Where *i* is the building door in question; *r* is the number of building doors affected by the construction in the Property Access Area; *P_i* is the Unit Cost for building door *i*; and *D_{Ti}* is the target number of days that building door *i* will be closed.

Plus

- (b) Target Driveway Closures cost

$$\sum_{j=1}^s [W_j * D_{Tj}]$$

Where *j* is the driveway in question; *s* is the number of driveways affected by the construction in the Property Access Area; *W_j* is the Unit Cost of driveway *j*; and *D_{Tj}* is the target number of days that driveway *j* will be closed.

Plus

- (c) Target Sidewalk Closures cost

$$\sum_{k=1}^t [B_k * D_{Tk}]$$

Where *k* is the sidewalk location in question; *t* is the number of sidewalk locations affected by the construction in the Property Access Area; *B_k* is the Unit Cost for sidewalk *k* and *D_{Tk}* is the total target number of days that the sidewalk *k* will be closed.

5.2 For the purpose of preparing the Property Access Closure Analysis Report, the Aggregate Actual Property Access Closures Cost shall be calculated for each Property Access Area as follows:

- (a) Actual Door Closures cost

$$\sum_{i=1}^r [P_i * D_{Ai}]$$

Where *i* is the building door in question; *r* is the number of building doors affected by the construction in the Property Access Area; *P_i* is the Unit Cost for building door *i*; and *D_{Ai}* is the actual number of days that building door *i* was closed.

Plus

- (b) Actual Driveway Closures cost

$$\sum_{j=1}^s [W_j * D_{Aj}]$$

Where *j* is the driveway in question; *s* is the number of driveways affected by the construction in the Property Access Area; *W_j* is the Unit Cost of driveway *j*; and *D_{Aj}* is the actual number of days that driveway *j* is closed.

Plus

- (c) Actual Sidewalk Closures cost

$$\sum_{k=1}^t [B_k * D_{Ak}]$$

Where *k* is the sidewalk location in question; *t* is the number of sidewalk locations affected by the construction in the Property Access Area; *B_k* is the Unit Cost for sidewalk *k*; and *D_{ak}* is the actual number of days that the sidewalk was closed.

5.3 Within two Business Days following the final determination of the AAPACC for each Property Access Area as set out in the final Property Access Closure Analysis Report, Project Co shall calculate the Property Access Closure Adjustment as follows:

- (a) if $AAPACC > 1.10 \times ATPACC$ for a Property Access Area, then the portion of the Property Access Closure Adjustment in respect of such Property Access Area shall be calculated as follows:

$$PACA_i = (AAPACC_i - 1.10 \times ATPACC_i); \text{ where } i = \text{Property Access Area}$$

- (b) if $AAPACC \leq 1.10 \times ATPACC$ for a Property Access Area, then the portion of the Property Access Closure Adjustment in respect of such Property Access Area shall be zero; and
- (c) the Property Access Closure Adjustment shall be calculated as follows:

$$PACA = \sum_{i=0}^6 PACA_i, \text{ where } i = \text{Property Access Area}$$

5.4 Before the expiry of the two Business Day period set out in Section 5.3, Project Co shall provide Notice to Contracting Authority setting out the Property Access Closure Adjustment and the details supporting its calculation for Contracting Authority’s review, comment and confirmation. Project Co shall promptly provide Contracting Authority with any other supporting information in respect of Project Co’s calculation and adjustment of the Property Access Closure Adjustment that Contracting Authority may reasonably request.

5.5 On the Substantial Completion Date, Project Co shall provide (a) Notice to Contracting Authority setting out any adjustment to the Property Access Closure Adjustment required as a result of any Property Access Closures that occurred between the date of the submission of the final Property Access Closure Analysis Report pursuant to Section 2.4 and the Substantial Completion Date and the details supporting the calculation of such adjustment for Contracting Authority’s review,

comment and confirmation, and (b) an updated final Property Access Closure Analysis Report that includes and reflects such Property Access Closures.

5.6 The Property Access Closure Adjustment shall be shown as a separate item within the invoice for the Substantial Completion Payment provided by Project Co to Contracting Authority under the Project Agreement.

5.7 For greater certainty,

(a) Contracting Authority shall deduct the amount of the Property Access Closure Adjustment, as reviewed and confirmed by Contracting Authority, from the Substantial Completion Payment pursuant to Section 34.1(b) of the Project Agreement; and

(b) the Property Access Closure Adjustment deduction from the Substantial Completion Payment shall not be subject to the limitations set out in Section 57.4 of the Project Agreement.

5.8 For the purposes of calculating the Property Access Closure Adjustment in accordance with this Schedule 40, the Parties shall have regard to Sections 40.2(k) and 44.2(e) of the Project Agreement.

6. APPLICATION

6.1 The Property Access Closure requirements of this Schedule 40 will no longer be in effect once Substantial Completion has been achieved.

7. PROPERTY ACCESS CLOSURE AGREEMENTS

7.1 Without limitation or prejudice to any of Contracting Authority's rights under the Project Agreement whatsoever (including, for greater certainty, under Section 56.1 of the Project Agreement) and subject to Section 7.2, Project Co may, at its risk, cost and expense, enter into or cause a Project Co Party to enter into Property Access Closure Agreements with owners and tenants of properties within Property Access Areas who are affected by Door Closures or Driveway Closures.

7.2 Project Co shall ensure that no Property Access Closure Agreement contains confidentiality provisions that would inhibit or prevent such agreement's full and un-redacted disclosure to Contracting Authority pursuant to Section 2.2(k).

Appendix A

Unit Costs for Property Access Closures

1.0 Where a Property Access Closure address or a Unit Cost for a Property Access Closure has not been provided in this Appendix A, Project Co may submit a request to Contracting Authority to perform a Property Access Closure at that address. Contracting Authority may, in its sole discretion, permit the Property Access Closure and, if permitted, provide the Unit Cost. Project Co shall not perform a Property Access Closure at an address for which Contracting Authority has not provided a Unit Cost pursuant to this Appendix A.

| Property Access Area 1 – As set out in Section 1.10 of this Schedule 40 | | | |
|--|---------------------------------|-------------------------------------|-------------------------------------|
| Address | Unit Cost - Door Closure | Unit Cost - Driveway Closure | Unit Cost - Sidewalk Closure |
| No Property Access Closure addresses in Property Access Area 1 have been identified by Contracting Authority | See Note 1 below | See Note 1 below | See Note 1 below |

| Property Access Area 2 – As set out in Section 1.10 of this Schedule 40 | | | |
|--|---------------------------------|-------------------------------------|-------------------------------------|
| Address | Unit Cost - Door Closure | Unit Cost - Driveway Closure | Unit Cost - Sidewalk Closure |
| 2090 Hurontario Street | \$(REDACTED) | See Note 1 below | See Note 1 below |

| Property Access Area 3 – As set out in Section 1.10 of this Schedule 40 | | | |
|--|---------------------------------|-------------------------------------|-------------------------------------|
| Address | Unit Cost - Door Closure | Unit Cost - Driveway Closure | Unit Cost - Sidewalk Closure |
| No Property Access Closure addresses in Property Access Area 3 have been identified by Contracting Authority | See Note 1 below | See Note 1 below | See Note 1 below |

| Property Access Area 4 – As set out in Section 1.10 of this Schedule 40 | | | |
|--|---------------------------------|-------------------------------------|-------------------------------------|
| Address | Unit Cost - Door Closure | Unit Cost - Driveway Closure | Unit Cost - Sidewalk Closure |
| No Property Access Closure addresses in Property Access Area 4 have been identified by Contracting Authority | See Note 1 below | See Note 1 below | See Note 1 below |

| Property Access Area 5 – As set out in Section 1.10 of this Schedule 40 | | | |
|--|--|--|--|
|--|--|--|--|

| Address | Unit Cost - Door Closure | Unit Cost - Driveway Closure | Unit Cost - Sidewalk Closure |
|--|--------------------------|------------------------------|------------------------------|
| No Property Access Closure addresses in Property Access Area 5 have been identified by Contracting Authority | See Note 1 below | See Note 1 below | See Note 1 below |

| Property Access Area 6 – As set out in Section 1.10 of this Schedule 40 | | | |
|--|--------------------------|------------------------------|------------------------------|
| Address | Unit Cost - Door Closure | Unit Cost - Driveway Closure | Unit Cost - Sidewalk Closure |
| No Property Access Closure addresses in Property Access Area 6 have been identified by Contracting Authority | See Note 1 below | See Note 1 below | See Note 1 below |

Note 1: For all cells where no Unit Cost has been provided, refer to Section 1.0 of this Appendix A.

Appendix B

Property Access Closure Analysis Report Submittal Requirements

| Total Property Access Closure Summary | Target Property Access Closure | | | | Actual Property Access Closures | | | | Percent Variance (calculated between viii and iv) | Property Access Closure Adjustment |
|---------------------------------------|--|--|--|-------------------|--|--|--|-------------------|---|------------------------------------|
| | Cost of Target Door Closures for Monthly Period (calculated based on formula in Section 5.1) | Cost of Target Driveway Closures Monthly Period (calculated based on formula in Section 5.1) | Cost of Target Sidewalk Closures for Monthly Period (calculated based on formula in Section 5.1) | Total Target Cost | Cost of Actual Door Closures for Monthly Period (calculated based on formula in Section 5.2) | Cost of Actual Driveway Closures for Monthly Period (calculated based on formula in Section 5.2) | Cost of Actual Sidewalk Closures for Monthly Period (calculated based on formula in Section 5.2) | Total Actual Cost | | |
| | i | ii | iii | iv | v | vi | vii | viii | ix | x |
| Property Access Area 1 | | | | | | | | | | |
| Property Access Area 2 | | | | | | | | | | |
| Property Access Area 3 | | | | | | | | | | |
| Property Access Area 4 | | | | | | | | | | |
| Property Access Area 5 | | | | | | | | | | |
| Property Access Area 6 | | | | | | | | | | |

Appendix C

Property Access Closure Target Letter

[REDACTED]

SCHEDULE 41

[INTENTIONALLY DELETED]

SCHEDULE 42**RAIL CORRIDOR ACCESS AND FLAGGING****1. INTERPRETATION AND DEFINITIONS****1.1 Schedule Documents**

- (a) This Schedule 42 consists of the main body of this Schedule 42 and the following three Appendices:
- (i) Appendix A – Rail Corridor Access Permit Approvals Process;
 - (ii) Appendix B – Implementation of Track Protection and Flagging; and
 - (iii) Appendix C – Flagging Request Form.

1.2 Definitions

In this Schedule 42, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 42) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Canadian Railway Operating Rules**” means the Transport Canada Canadian Railway Operating Rules, as amended from time to time.
- (b) “**Category of Access**” has the meaning given in Section 3.1(a).
- (c) “**Detailed Construction Work Plan**” has the meaning given in Section 5.4(d).
- (d) “**Emergency Rail Situation**” means a derailment, accident, collision or other situation arising that causes an immediate and serious threat or danger to the public, Contracting Authority employees, or Project Co employees, or that causes an immediate and serious threat to Metrolinx’s railway operations.
- (e) “**GO Transit Track Standards**” means GO Transit Track Standards RC-0506-02TRK.
- (f) “**Major Track Closure**” has the meaning given in Section 3.1(a)(iv).
- (g) “**Major Track Closure Permit**” has the meaning given in Section 5.4(a).
- (h) “**Metrolinx Track Worker Safety Instructions**” means the Track Worker Safety Instructions developed from Metrolinx, as amended from time to time.

- (i) “**Minor Track Closure**” has the meaning given in Section 3.1(a)(iii).
- (j) “**Minor Track Closure Permit**” has the meaning given in Section 5.3(a).
- (k) “**Rail Corridor Access**” means entry onto the Rail Corridor, or areas adjacent to the Rail Corridor, for the purposes of carrying out the Project, which, in accordance with the Canadian Railway Operating Rules and the Metrolinx Track Worker Safety Instructions require approval by Metrolinx and track protection.
- (l) “**Rail Corridor Access Permit**” has the meaning given in Section 3.3(a).
- (m) “**Rail Corridor Access Permit Approvals Process**” has the meaning given in Section 3.3(b).
- (n) “**Rail Corridor Access Plan**” has the meaning given in Section 3.2(a).
- (o) “**Rail Corridor Handover Protocol**” means the GO Transit Rail Corridor Infrastructure Handover Protocol prepared by Metrolinx and as amended from time to time, provided that Project Co shall be required to fulfill all of the requirements assigned to the Capital Program Group in the Rail Corridor Infrastructure Handover Protocol including those listed under “Capital Program Group General Responsibilities”, as if they were written as “Project Co’s General Responsibilities.”
- (p) “**Railway Operations and Maintenance**” means the operation of an active railway, including the passage of both freight and passenger trains, and the maintenance activities being carried out on the Rail Corridor.
- (q) “**Temporary Construction Crossing**” means a temporary construction put in place to allow Project Co’s equipment or vehicles to cross the track.
- (r) “**Track Closure**” means a Minor Track Closure or a Major Track Closure, or both.
- (s) “**Track Protection Access**” has the meaning given in Section 3.1(a)(ii).
- (t) “**Track Protection Access Permit**” has the meaning given in Section 5.2(a).
- (u) “**Track Protection Barrier Access**” has the meaning given in Section 3.1(a)(i).
- (v) “**Track Protection Barrier Access Permit**” has the meaning given in Section 5.1(a).
- (w) “**Track Protection Confirmation**” has the meaning given in Section 3.4(a).

2. ACCESSING THE RAIL CORRIDOR

2.1 Basic Rules

- (a) Project Co acknowledges that,
- (i) certain portions of the Works must be carried out on or adjacent to railway tracks that are operational for both passenger and freight trains; and
 - (ii) in circumstances where Project Co's performance of the Works requires Rail Corridor Access, those Works will be affected by Railway Operations and Maintenance and Project Co will experience repeated stoppages when performing the Works on or adjacent to the Rail Corridor.
- (b) Project Co acknowledges that the schedules for freight and passenger trains change from time to time and that Project Co will be required to plan, design and organize its construction means and methodologies around passenger and freight train schedules in effect at the time the Works are carried out in the Rail Corridor. Project Co shall plan, design and organize its construction means and methodologies
- (i) to anticipate Railway Operations and Maintenance based on the applicable current train schedules posted as part of the Background Information and the applicable future train schedules; and
 - (ii) to ensure that safe and uninterrupted Railway Operations and Maintenance always takes priority over performance of the Works, subject only to permitted Minor Track Closures and permitted Major Track Closures.
- For clarity, Project Co shall not be eligible for a Delay Event or a Compensation Event arising from a change in the schedule for either passenger or freight trains in the Rail Corridor.
- (c) Project Co shall not engage in a Rail Corridor Access without the prior consent of Metrolinx. For clarity, constructing or accessing a Temporary Construction Crossing is a Rail Corridor Access and is not permitted without the prior consent of Metrolinx.
- (d) Project Co acknowledges and agrees that Contracting Authority will not authorize the commencement of the performance of any Works on or adjacent to the Rail Corridor, and Project Co shall not perform any Works on or adjacent to the Rail Corridor, unless and until
- (i) Project Co's Rail Corridor Access Plan has been reviewed by Contracting Authority in accordance with Schedule 10 – Review Procedure and Project Co has completed its applications, in accordance with this Schedule 42, for entry into the Rail Corridor;
 - (ii) Project Co has applied for and received a Rail Corridor Access Permit for the applicable Works; and
 - (iii) Project Co has applied for and received a Track Protection Confirmation for the applicable Rail Corridor Access.

3. RAIL CORRIDOR ACCESS PLANNING AND PERMITS

3.1 Rail Corridor Categories of Access

- (a) For the purpose of granting Rail Corridor Access to Project Co, Metrolinx will, in its sole discretion, categorize Rail Corridor access by Project Co into the following categories of access (each a “**Category of Access**”):
- (i) access that will be permitted because of the establishment of a concrete or other type of barrier (each a “**Track Protection Barrier Access**”);
 - (ii) access, within the distances prescribed in the Metrolinx Track Worker Safety Instructions for Works, that will be permitted because the access will not interfere with the passage of trains in the Rail Corridor and Project Co will be able to vacate the Rail Corridor in sufficient time to avoid a Train Delay, (each a “**Track Protection Access**”);
 - (iii) access that requires closure of the Rail Corridor for a period of less than eight hours (each a “**Minor Track Closure**”); and
 - (iv) access that requires closure of the Rail Corridor for a period of eight hours or more (each a “**Major Track Closure**”).
- (b) Metrolinx may reject an application for a Rail Corridor Access Permit for a Major Track Closure, if Metrolinx is of the opinion, acting reasonably, that the applicable Works can be performed with the use of one or more Minor Track Closures instead of with the use of a Major Track Closure. Project Co shall not be eligible for a Delay Event or a Compensation Event as a result of any delays to the Works arising from Metrolinx’s rejection of such application.
- (c) Metrolinx’s permission to enter the Rail Corridor must be sought, and received, by Project Co in three steps, as follows:
- (i) Step 1 – Project Co’s submission of a Rail Corridor Access Plan, and review by Contracting Authority of that Rail Corridor Access Plan, in accordance with Section 3.2;
 - (ii) Step 2 – Project Co’s application for its Rail Corridor Access Permits, and the granting of permits by Contracting Authority, in accordance with Section 3.3; and
 - (iii) Step 3 – Final approval by Contracting Authority that Project Co is permitted Rail Corridor Access, in accordance with Section 3.4.

3.2 Rail Corridor Access Plan

-
- (a) No later than the deadline set out in Appendix A to this Schedule 42, Project Co shall submit its rail corridor access plan to Contracting Authority for review by Contracting Authority in accordance with Schedule 10 – Review Procedure (the “**Rail Corridor Access Plan**”).
- (b) Project Co’s Rail Corridor Access Plan shall include the identification of each proposed Rail Corridor Access, including:
- (i) the type and scope of work to be carried out for each Rail Corridor Access;
 - (ii) the duration of the Rail Corridor Access;
 - (iii) the location and access point of the applicable Works;
 - (iv) the Category of Access that Project Co believes will be required for each Rail Corridor Access;
 - (v) a projection of the estimated flagging resources required for each Rail Corridor Access; and
 - (vi) the proposed approximate date and time for each Rail Corridor Access.
- (c) At the time Contracting Authority reviews Project Co’s Rail Corridor Access Plan, Contracting Authority will confirm the matters set out in Sections 3.2(b)(i), 3.2(b)(ii), and 3.2(b)(iii), and will confirm the Category of Access proposed by Project Co in accordance with Section 3.2(b)(iv) for each of Project Co’s proposed Rail Corridor Accesses. Contracting Authority will not confirm the actual date or time for each Rail Corridor Access at the time of its review of the Rail Corridor Access Plan. Metrolinx will convene a meeting with Project Co to discuss Project Co’s Rail Corridor Access Plan.

3.3 Rail Corridor Access Permits

- (a) Prior to carrying out any Works on or adjacent to the Rail Corridor, Project Co shall apply to Metrolinx for an access permit to enter the Rail Corridor and carry out a specified scope of Works (each a “**Rail Corridor Access Permit**”).
- (b) After Metrolinx’s review of the Rail Corridor Access Plan is completed and Project Co has finalized its Rail Corridor Access Plan, Project Co shall apply for a Rail Corridor Access Permit from Metrolinx for each Rail Corridor Access that Project Co requires. Project Co shall submit each permit application for Rail Corridor Access in accordance with the submission requirements set out in this Schedule 42 and in accordance with the deadlines set out in the Rail Corridor Access Permit approvals process (the “**Rail Corridor Access Permit Approvals Process**”) set out in Appendix A to this Schedule 42. Project Co’s applications for Rail Corridor Access Permits must be consistent with the Rail Corridor Access Plan as reviewed by Metrolinx. For

clarity, Project Co must apply for a Rail Corridor Access Permit to construct and use each Temporary Construction Crossing.

- (c) Metrolinx shall review each of Project Co's applications for a Rail Corridor Access Permit in accordance with this Schedule 42 and Metrolinx shall issue each Rail Corridor Access Permit for a specific type and/or scope of the Works, for a specific Category of Access, with such Works to be done on an approximate date(s) and time(s), and for a specific duration.
- (d) Metrolinx may, in its sole discretion, grant a Rail Corridor Access Permit for a single entry into the Rail Corridor or for multiple entries into the Rail Corridor over an extended period of time, each depending on the scope of the Works to be completed under the applicable Rail Corridor Access Permit.
- (e) Project Co acknowledges and agrees that the granting of a Rail Corridor Access Permit by Metrolinx does not, by itself, authorize Project Co to carry out the Works in the Rail Corridor and is subject to Project Co receiving a Track Protection Confirmation in accordance with Section 3.4.
- (f) Project Co shall ensure that appropriate Rail Corridor Access Permits are completed and on the Site prior to performing any Works requiring a Rail Corridor Access Permit.

3.4 Track Protection Confirmation

- (a) In accordance with the deadlines set out in Appendix A to this Schedule 42, and prior to the performance of Works under a Rail Corridor Access Permit, Project Co shall request a confirmation that Metrolinx is satisfied that track protection as required by the Canadian Railway Operating Rules and the Metrolinx Track Worker Safety Instructions, in respect of the Rail Corridor Access Permit that is the subject of the confirmation, is in place for the applicable Rail Corridor Access Permit (each a, "**Track Protection Confirmation**").
- (b) After the granting of the first Track Protection Confirmation by Metrolinx, on a weekly basis Project Co shall
 - (i) submit a three week projection of all anticipated requests for Track Protection Confirmations; and
 - (ii) submit all applications for Track Protection Confirmations for the next week in accordance with Appendix A to this Schedule 42.

4. SPECIAL RULES FOR TRACK CLOSURES

4.1 Special Rules for Minor Track Closures

- (a) Metrolinx will apply the following rules when considering whether to grant a Rail Corridor Access Permit for a Minor Track Closure:
 - (i) a Minor Track Closure will be permitted during a period of regular train service commencing at 21:00 on a calendar day and ending at 01:00 on the immediately following calendar day, only if rail traffic can be diverted around the Minor Track Closure by keeping one or more tracks open to permit rail traffic to pass through the Minor Track Closure;
 - (ii) a Minor Track Closure will be permitted, including the closure of all tracks, during the period of regular train service commencing at 01:00 on a calendar day and ending at 05:00 on the same calendar day, provided that:
 - (A) during this period, Project Co shall permit a limited amount of restricted speed rail traffic through the Minor Track Closure;
 - (B) Metrolinx shall provide Project Co with a minimum of seven days prior Notice for any day in which it expects it will require more than an aggregate of 60 minutes of time for rail traffic during the 01:00 to 05:00 period;
 - (C) the Parties will cooperate and act reasonably to facilitate the Works while maintaining essential rail traffic to proceed through the Rail Corridor; and
 - (D) if the nature of the Works does not require the closure of all tracks during this 01:00 to 05:00 period, Project Co shall keep one or more tracks open to permit rail traffic to pass through the Minor Track Closure; and
 - (iii) Metrolinx will not accept the applicable portion of the Rail Corridor back into service unless Project Co can demonstrate, to the satisfaction of Metrolinx, that any affected track in that portion of the Rail Corridor is passable by trains in accordance with the Rail Corridor Handover Protocol.

4.2 Special Rules for Requesting and Planning Major Track Closures

- (a) Metrolinx will apply the following rules when considering whether to grant a Rail Corridor Access Permit for a Major Track Closure:
 - (i) Project Co will be permitted to construct track connections to existing Mainline Tracks only during a Major Track Closure;
 - (ii) Project Co shall schedule all Major Track Closures to occur on the weekend between the hours of 21:00 Friday and 04:00 Monday;

- (iii) Project Co may request up to an additional 24 hours of duration for weekend Major Track Closures that occur during a holiday long weekend, subject to prior approval by Metrolinx;
- (iv) For the period between December 1st and March 31st of any year, Project Co shall not plan or schedule a Major Track Closure to carry out Works that require open cuts under the tracks or the removal and replacement of tracks, unless Project Co obtains the prior consent of Metrolinx; and
- (v) Project Co shall not plan Major Track Closures for the certain weekends specified by Metrolinx that relate to public events that impact Railway Operations and Maintenance on the Rail Corridor. For the information of Project Co, weekends that would currently be excluded from Major Track Closure are:
 - (A) Toronto Blue Jays Home Opener weekend;
 - (B) Victoria Day weekend;
 - (C) Caribbean Carnival weekend;
 - (D) Canada Day weekend;
 - (E) Pride Parade weekend;
 - (F) Honda Indy weekend;
 - (G) Canadian National Exhibition weekends;
 - (H) Nuit Blanche weekend;
 - (I) Thanksgiving (Canada) weekend;
 - (J) Toronto Santa Clause Parade weekend; and
 - (K) New Year's Eve weekend.

5. RAIL CORRIDOR ACCESS PERMIT REQUIREMENTS

5.1 Track Protection Barrier Access Permit Requirements

- (a) For each application for a Rail Corridor Access Permit for Track Protection Barrier Access (each, a "**Track Protection Barrier Access Permit**") Project Co shall submit, for review and approval by Metrolinx and in accordance with the deadlines set out in Appendix A to this Schedule 42,

- (i) task-specific risk assessments for the installation of railway-approved temporary barriers, enclosures or platforms to,
 - (A) separate off track equipment and workers from live track; and
 - (B) prevent equipment from entering the track clearance envelope; or prevent debris from falling to the track.
- (b) Subject to Section 5.1(c), Metrolinx shall review each of Project Co's applications for a Track Protection Barrier Access Permit in accordance with the deadlines set out in Appendix A to this Schedule 42.
- (c) Metrolinx may, in its sole discretion, conduct its own task-specific risk assessment in respect of any application for a Track Protection Barrier Access Permit if Metrolinx is not satisfied with Project Co's task-specific risk assessment. Metrolinx shall perform its task-specific risk assessment in accordance with the deadlines set out in Appendix A to this Schedule 42. In the event that Metrolinx conducts its own task-specific risk assessment in accordance with this Section 5.1(c), Project Co shall confirm its acceptance of Metrolinx's task-specific risk assessment in accordance with the deadlines set out in Appendix A to this Schedule 42.

5.2 Track Protection Access Permit Requirements

- (a) For each application for a Rail Corridor Access Permit for Track Protection Access (each, a "**Track Protection Access Permit**") Project Co shall submit, for review and approval by Metrolinx and in accordance with the deadlines set out in Appendix A to this Schedule 42, a task-specific method statement including,
 - (i) type and scope of the Works;
 - (ii) location of the Works with reference to the nearest rail;
 - (iii) access location for the Works;
 - (iv) equipment to be used to perform the Works;
 - (v) workforce and required training;
 - (vi) proposed date, time and duration of the Works;
 - (vii) contingency plan for the Works that sets out how Project Co plans to deal with unexpected events and still meet its obligation to vacate the Rail Corridor to avoid delaying trains; and
 - (viii) emergency procedures that Project Co proposes to apply to the Rail Corridor Access.

- (b) Metrolinx shall review each of Project Co's applications for a Track Protection Access Permit in accordance with the deadlines set out in Appendix A to this Schedule 42.
- (c) Metrolinx may, in its sole discretion, conduct its own task-specific risk assessment in respect of any application for a Track Protection Access Permit if Metrolinx is not satisfied with Project Co's task-specific risk assessment. Metrolinx shall perform its task-specific risk assessment in accordance with the deadlines set out in Appendix A to this Schedule 42. In the event that Metrolinx conducts its own task-specific risk assessment in accordance with this Section 5.2(c) Project Co shall confirm its acceptance of Metrolinx's task-specific risk assessment in accordance with the deadlines set out in Appendix A to this Schedule 42.

5.3 Minor Track Closure Permit Requirements

- (a) For each application for a Rail Corridor Access Permit for a Minor Track Closure (each, a "**Minor Track Closure Permit**") Project Co shall submit, for review and approval by Metrolinx and in accordance with the deadlines set out in Appendix A to this Schedule 42, a task-specific method statement including,
 - (i) type and scope of the Works;
 - (ii) location of the Works with reference to the nearest rail;
 - (iii) access location for the Works;
 - (iv) equipment to be used to perform the Works;
 - (v) workforce and required training;
 - (vi) proposed date, time and duration of the Works;
 - (vii) contingency plan for the Works that sets out how Project Co plans to deal with unexpected events and still meet its obligation to vacate the Rail Corridor on or before the permitted time for the Minor Track Closure;
 - (viii) emergency procedures that Project Co proposes to apply to the Rail Corridor Access; and
 - (ix) Project Co's proposed plan for ensuring that the track and track infrastructure is put back into service in accordance with the Rail Corridor Handover Protocol including details of methods and personnel to be used.
- (b) Metrolinx shall review each of Project Co's applications for a Minor Track Closure Permit in accordance with the deadlines set out in Appendix A to this Schedule 42.

- (c) Metrolinx may, in its sole discretion, conduct its own task-specific risk assessment in respect of any application for a Minor Track Closure Permit if Metrolinx is not satisfied with Project Co's task-specific risk assessment. Metrolinx shall perform its task-specific risk assessment in accordance with the deadlines set out in Appendix A to this Schedule 42. In the event that Metrolinx conducts its own task-specific risk assessment in accordance with this Section 5.3(c), Project Co shall confirm its acceptance of Metrolinx's task-specific risk assessment in accordance with the deadlines set out in Appendix A to this Schedule 42.

5.4 Major Track Closure Permit Requirements

- (a) For each application for a Rail Corridor Access Permit for a Major Track Closure (each, a "**Major Track Closure Permit**") Project Co shall submit, for review and approval by Metrolinx and in accordance with the deadlines set out in Appendix A to this Schedule 42, a task-specific method statement, including
- (i) type and scope of the Works;
 - (ii) location of the Works with reference to the nearest rail;
 - (iii) access location for the Works;
 - (iv) equipment to be used to perform the Works;
 - (v) workforce and required training;
 - (vi) proposed date, time and duration of the Works;
 - (vii) contingency plan for the Works that sets out how Project Co plans to deal with unexpected events and still meet its obligation to vacate the Rail Corridor on or before the permitted time for the Major Track Closure;
 - (viii) emergency procedures that Project Co proposes to apply to the Rail Corridor Access;
 - (ix) a detailed list of required adjustments to rail service on the applicable Rail Corridor;
 - (x) a description of the background of planned Works and the reason why the performance of the Works is required; and
 - (xi) an explanation of the timing of the performance of the Works and why the performance of the Works is necessary on the weekend.
- (b) In respect of each application for a Major Track Closure Permit, Project Co shall, in accordance with the deadlines set out in Appendix A to this Schedule 42, organize a meeting with Metrolinx

and Project Co's Key Individuals and significant personnel responsible for the applicable Major Track Closure to review,

- (i) all activities to be executed during the applicable Major Track Closure;
 - (ii) the construction methodology and equipment to be used by Project Co;
 - (iii) whether all materials at the storage site are on hand and discuss loading and unloading procedures; and
 - (iv) all safety compliance procedures.
- (c) Metrolinx may, in its sole discretion, conduct its own task-specific risk assessment in respect of any application for a Major Track Closure Permit if Metrolinx is not satisfied with Project Co's task-specific risk assessment. Metrolinx shall perform its task-specific risk assessment in accordance with the deadlines set out in Appendix A to this Schedule 42. In the event that Metrolinx conducts its own task-specific risk assessment in accordance with this Section 5.4(c), Project Co shall confirm its acceptance of Metrolinx's task-specific risk assessment in accordance with the deadlines set out in Appendix A to this Schedule 42.
- (d) In respect of each application for a Major Track Closure Permit, Project Co shall, in accordance with the deadlines set out in Appendix A to this Schedule 42, submit a detailed construction work plan (each, a "**Detailed Construction Work Plan**") that includes,
- (i) a schedule of the performance of the applicable Works that is divided into hourly increments;
 - (ii) list of resources to be used by Project Co, including
 - (A) names of workers;
 - (B) trade of each work crew carrying out the Works; and
 - (C) the length of each shift, the number of shifts per crew and the crew leaders;
 - (iii) details of Project Co's work cycle, including
 - (A) the number of workers in each crew and the number of crews; and
 - (B) the name of the leader of each crew and his or her experience in related work;
 - (iv) a description of the equipment to be used by Project Co including,
 - (A) a list of all equipment on Site during each Major Track Closure;

- (B) a detailed description of methods and equipment to be used in handling materials; and
 - (C) a list of standby equipment;
 - (v) a description of all potential impacts of Project Co’s Works, including
 - (A) service impacts to Railway Operations and Maintenance;
 - (B) impacts to residents;
 - (C) expected durations of the performance of the Works; and
 - (D) whether performance of the Works at night is required;
 - (vi) a description of the methods and personnel used to verify, document and meet the requirements of the Rail Corridor Handover Protocol;
 - (vii) a description of the Works required to be performed in advance and in support of the Major Track Closure, including documentation supporting the scheduling and completion of these Works;
 - (viii) all other information that will demonstrate to Metrolinx that Project Co understands the Works to be performed and has the expertise to execute the Works; and
 - (ix) an identification of any other information that is relevant to the Works.
- (e) Metrolinx shall review each of Project Co’s applications for a Major Track Closure Permit and its Detailed Construction Work Plan in accordance with the deadlines set out in Appendix A to this Schedule 42.
- (f) Project Co shall organize and have all Key Individuals executing the Works attend a meeting with Contracting Authority to:
- (i) review all the activities to be executed during that specific track closure;
 - (ii) review the methodology and equipment to be used;
 - (iii) conduct an audit to verify that all materials at the storage site are on hand and discuss loading and unloading procedures;
 - (iv) discuss with all participants the expected progress; and
 - (v) review all safety compliance procedures.

6. RAIL CORRIDOR CLOSURE PREPARATION AND COMPLETION

6.1 Rail Corridor Closure Preparations

- (a) If Project Co is granted a Minor Track Closure Permit or a Major Track Closure Permit
- (i) Project Co shall perform advance preparatory work to minimize the duration of all Track Closures and to ensure the completion of the applicable Works, including the completion of the Rail Corridor Handover Protocol, within the allotted time for the Track Closure; and
 - (ii) Project Co shall carry out preparations for a Track Closure in accordance with the GO Transit Track Standards and Schedule 15 – Output Specifications. At least 24 hours prior to a scheduled Track Closure, Project Co shall have all resources and equipment in place to carry out the Works for the applicable Track Closure. If, in the opinion of Contracting Authority,
 - (A) Project Co does not have all resources and equipment in place in accordance with its Detailed Construction Work Plan; or
 - (B) Project Co has not completed all necessary preparatory Works to ensure to ensure the completion of the applicable Works, including the completion of the Rail Corridor Handover Protocol, within the allotted time permitted for the Track Closure,

Contracting Authority may cancel and re-schedule the Track Closure and Project Co shall not be eligible for a Delay Event or a Compensation Event arising from such cancellation.

6.2 Rail Corridor Closure Inspections, Handover, and Completion

- (a) Prior to the completion of the Track Closure, and within the allotted time permitted for the Track Closure, Project Co shall inspect the Works, complete the Rail Corridor Handover Protocol and shall certify to Metrolinx that the applicable Rail Corridor meets the requirements of the GO Transit Track Standards and Schedule 15 – Output Specifications.

7. RAIL CORRIDOR CONDITION AND CONSTRUCTION REQUIREMENTS

7.1 Maintaining the Condition of the Rail Corridor and Construction Requirements

- (a) Project Co shall provide continued safe movement of rail traffic in the Rail Corridor in accordance with the GO Transit Track Standards and Schedule 15 – Output Specifications.

8. DELAY AND CANCELLATION OF RAIL CORRIDOR ACCESS AND RAIL CORRIDOR ACCESS PERMITS**8.1 Consequences of Delay or Cancellation of Rail Corridor Access**

- (a) Project Co acknowledges and agrees that unforeseen events can result in the cancellation or delay of a Rail Corridor Access for which a Rail Corridor Access Permit and Track Protection Confirmation has been granted. In the event of such a deferral or cancellation, the following rules shall apply:
- (i) If a Rail Corridor Access Permit related to a Track Protection Barrier Access or Track Protection Access is delayed or cancelled,
 - (A) if the delay or cancellation is for less than 25 per cent of the total planned duration for Rail Corridor Access under the applicable Track Protection Confirmation (measured from the date and time set out in the Track Protection Confirmation), Project Co shall not be eligible for a Delay Event, a Compensation Event or any other compensation of any kind whatsoever arising from the delay; and
 - (B) if the delay or cancellation is equal to or exceeds 25 per cent of the total planned duration for Rail Corridor Access under the applicable Track Protection Confirmation (measured from the date and time set out in the Track Protection Confirmation), then such delay or cancellation shall be, subject to and in accordance with Section 40 of the Project Agreement, treated as a Delay Event and, subject to and in accordance with Section 41 of the Project Agreement, be treated as a Compensation Event;
 - (ii) If a Rail Corridor Access Permit related to a Minor Track Closure is delayed or cancelled,
 - (A) if the delay or cancellation is for less than 25 per cent of the total planned duration for Minor Track Closure under the applicable Rail Corridor Access Permit or Track Protection Confirmation (measured from the date and time set out in the Track Protection Confirmation), Project Co shall not be eligible for a Delay Event, a Compensation Event or any other compensation of any kind whatsoever arising from the delay or cancellation; and
 - (B) if the delay or cancellation is equal to or exceeds 25 per cent of the total planned duration for Rail Corridor Access under the applicable Rail Corridor Access Permit or Track Protection Confirmation (measured from the date and time set out in the Track Protection Confirmation), then such delay or cancellation shall be, subject to and in accordance with Section 40 of the Project Agreement, treated as a Delay Event and, subject to and in accordance with Section 41 of the Project Agreement, be treated as a Compensation Event; and

- (iii) If a Rail Corridor Access Permit or Track Protection Confirmation related to a Major Track Closure is delayed or cancelled, then such delay or cancellation shall be, subject to and in accordance with Section 40 of the Project Agreement, treated as a Delay Event and, subject to and in accordance with Section 41 of the Project Agreement, be treated as a Compensation Event.

9. IMPLEMENTING TRACK PROTECTION AND FLAGGING REQUIREMENTS

9.1 General Obligations for Implementation of Track Protection and Flagging

- (a) Project Co shall ensure that performance of the Works within the Rail Corridor, including, for clarity, all flagging requirements, is compliant with Canadian Railway Operating Rules, Metrolinx Track Worker Safety Instructions and the Rail Corridor Access Permit granted by Metrolinx.
- (b) Project Co shall implement track protection, including all flagging requirements, during a Rail Corridor Access in accordance with Appendix B to this Schedule 42 and at Contracting Authority's cost and expense.
- (c) Project Co shall use flagging services in an economical and efficient manner. In the event that Project Co fails to use flagging services in an economical and efficient manner, Contracting Authority may, in its sole discretion, require Project Co to pay all flagging costs and expenses in excess of the flagging services that ought to have been used.
- (d) Project Co shall pay all costs and expenses for scheduled flagging services that Project Co fails to use. Project Co is not permitted to schedule flagging services to be used on a standby basis.

10. RAIL CORRIDOR SAFETY

10.1 General

- (a) During Project Co's performance of Works in the Rail Corridor, Project Co shall adhere to, and shall cause all relevant Project Co Parties to adhere to, the Canadian Railway Operating Rules, the Metrolinx Track Worker Safety Instructions, the Rail Corridor Access Permit granted by Metrolinx, and, for greater certainty, the requirements set out in Schedule 29 – Construction Safety.
- (b) If, during Project Co's performance of Works in the Rail Corridor, an Emergency Rail Situation arises, Metrolinx may direct that Project Co and all Project Co Parties exit from the Rail Corridor for such period of time as is necessary for Metrolinx, acting reasonably, to remedy the Emergency Rail Situation. Provided the Emergency Rail Situation did not arise as a result of an act or omission of Project Co or any Project Co Party, then any delay in the Works or any additional costs in respect of the Works due to an evacuation or shutdown pursuant to this

Section 10.1(b) shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event.

10.2 Reporting Requirements

- (a) Project Co shall report to Contracting Authority all incidents that occur on site in accordance with the following table:

| Incident | Notification |
|--|--|
| Critical Injury or Death | Immediately via telephone to Contracting Authority |
| Injury to a Member of the Public | Immediately via telephone to Contracting Authority |
| MOL Notifiable | Immediately via telephone to Contracting Authority |
| TSSA Notifiable | Immediately via telephone to Contracting Authority |
| Spills or other Environmental Incidents | Immediately via telephone to Contracting Authority |
| Non-Critical Injuries, Near Misses or Occupational Illnesses | Include in Works Report |
| Hazardous Agent Potential Overexposure Incident | Include in Works Report |

- (b) Project Co shall provide monthly summaries to Contracting Authority containing the information specified in Schedule 33 – Works Report Requirements.
- (c) Project Co shall supply a complete investigation report for all incidents within 10 working days after the incident.
- (d) Project Co shall ensure that all correspondence related to MOL or MOE visits are included in the monthly summary provided in the Works Report.
- (e) When requested, Project Co shall furnish copies of any Rail Corridor safety related documentation requested.

APPENDIX A TO SCHEDULE 42

RAIL CORRIDOR ACCESS PERMIT APPROVALS PROCESS

Obligation to Comply with the Rail Corridor Access Permit Approvals Process

- (a) Contracting Authority and Project Co shall comply with the deadlines in the table entitled “Rail Corridor Access Permit Approvals Process” that follows:

| Party | Action | Deadline |
|--------------|---|--|
| Project Co | Submit Rail Corridor Access Plan | No later than 180 Business Days prior to the planned date of the first Rail Corridor Access required by Project Co |
| Project Co | Submit application for a Track Protection Barrier Access Permit | No later than 40 Business Days prior to the desired date for the applicable Track Protection Barrier Access Permit |
| Project Co | Submit application for a Track Protection Access Permit | No later than 42 Business Days prior to the desired date for the applicable Track Protection Access Permit |
| Project Co | Submit application for a Minor Track Closure Permit | No later than 80 Business Days prior to the desired date for the applicable Minor Track Closure |
| Project Co | Submit application for a Major Track Closure Permit | No later than 160 Business Days prior to the desired date for the applicable Major Track Closure |
| Project Co | Conduct Major Track Closure meeting in accordance with Section 5.4(b) | No later than 60 Business Days prior to the desired date for the applicable Major Track Closure |
| Project Co | Submit Detailed Construction Work Plan for a Major Track Closure Permit | No later than 40 Business Days prior to the desired date for the applicable Major Track Closure |

| Party | Action | Deadline |
|-----------------------|---|--|
| Project Co | Application for Track Protection Confirmation | First application for Track Protection Confirmation shall be submitted no later than 20 Business Days prior to the planned date for the applicable Rail Corridor Access. Subsequent applications for Track Protection Confirmation shall be submitted weekly on each Monday for the next week. |
| Project Co | Confirm acceptance of Metrolinx’s task-specific risk assessment in accordance with Section 5.1(c), 5.2(c), 5.3(c) or 5.4(c) | No later than 21 Business Days after Project Co’s receipt of the Metrolinx task-specific risk assessment. |
| Contracting Authority | Review Rail Corridor Access Plan | In accordance with the deadlines set out in Schedule 10 – Review Procedure |
| Metrolinx | Review Project Co’s application for a Track Protection Barrier Access Permit | No later than 20 Business Days after Metrolinx’s receipt of the application for a Track Protection Barrier Access Permit |
| Metrolinx | Review Project Co’s application for a Track Protection Access Permit | No later than 10 Business Days after Metrolinx’s receipt of the application for a Track Protection Access Permit |
| Metrolinx | Review Project Co’s application for a Minor Track Closure Permit | No later than 20 Business Days after Metrolinx’s receipt of the application for a Minor Track Closure Permit |
| Metrolinx | Review Project Co’s application for a Major Track Closure Permit and its Detailed Construction Work Plan | No later than 20 Business Days after Metrolinx’s receipt of the application for a Major Track Closure Permit |

| Party | Action | Deadline |
|-----------|--|--|
| Metrolinx | Review Project Co’s application for a Track Protection Confirmation | For the first Track Protection Confirmation, no later than 10 Business Days after Metrolinx’s receipt of the application for a Track Protection Confirmation. For subsequent Track Protection Confirmations, on the Friday before the following week of work. |
| Metrolinx | Provide or deny Track Protection Confirmation to Project Co | On the Friday before the following week of work |
| Metrolinx | Complete Metrolinx task-specific risk assessment in accordance with Section 5.1(c), 5.2(c), 5.3(c) or 5.4(c) | No later than 40 Business Days after Metrolinx’s receipt of Project Co’s application for access to the Rail Corridor |

APPENDIX B TO SCHEDULE 42**IMPLEMENTATION OF TRACK PROTECTION AND FLAGGING**

- (a) Contracting Authority shall determine, in its sole discretion, whether Project Co will be obliged to have flagging protection for a Rail Corridor Access, having regard to the Canadian Railway Operating Rules and the Metrolinx Track Worker Safety Instructions.
- (b) Project Co shall perform the Works in the Rail Corridor, and shall carry out all Rail Corridor Access, in accordance with the instructions of the flag persons and in accordance with the Canadian Railway Operating Rules and the Metrolinx Track Worker Safety Instructions.
- (c) Project Co shall use the form set out in Appendix C – Flagging Request Form for all requests for flagging services and shall reference its applicable Rail Corridor Access Permit in the flagging request form. Metrolinx will not arrange flagging services for Project Co unless a Rail Corridor Access Permit has been granted by Metrolinx.
- (d) Project Co shall not carry out a Rail Corridor Access unless and until a required flag person is present.
- (e) During a Rail Corridor Access by Project Co, Project Co shall have a responsible person present in reasonable proximity to the Rail Corridor, and at all times during a Rail Corridor Access, to whom the Contracting Authority will issue instructions regarding performance of the Works within the Rail Corridor.
- (f) Project Co shall supply each flag person with a Kenwood TK3302 or approved equivalent portable two-way radio for communication with the responsible person(s) referred to in Section (e) of this Appendix B and shall ensure that all radios provided to flag persons communicate on the same frequency.
- (g) Project Co shall adhere to the Canadian Railway Operating Rules and the Metrolinx Track Worker Safety Instructions when working on or adjacent to the Rail Corridor. If Project Co fails to adhere to the Canadian Railway Operating Rules, the Metrolinx Track Worker Safety Instructions, or the instructions of a flag person during a Rail Corridor Access, Contracting Authority may, in its sole discretion, require Project Co to vacate the Rail Corridor under terms and conditions to be determined by Contracting Authority. If Project Co is required to vacate the Rail Corridor in accordance with this Section (g) of this Appendix B, Project Co shall not be eligible for a Delay Event or Compensation Event arising from the requirement to vacate the Rail Corridor.
- (h) Project Co shall submit the requests for flagging protection in accordance with the deadlines set out in Appendix A to this Schedule 42. Project Co shall provide a minimum of 48 hours' notice for any cancellations of or changes to the scheduled or approved flagging protection; and

- (i) Project Co shall comply with the radio communications protocol for crossing of the tracks as defined by Contracting Authority and their flag person. Project Co shall ensure that there is no crossing of the tracks by vehicles or workers without first advising and obtaining permission from the flagman using radio communication devices.

APPENDIX C TO SCHEDULE 42

FLAGGING REQUEST FORM

See attached.

SCHEDULE 43**REVENUE VEHICLES****1. DEFINITIONS**

In this Schedule 43, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 43) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 “**Revenue Vehicle Acceptance Testing**” means Revenue Vehicle acceptance testing conducted in accordance with the Project Agreement, including Schedule 14 – Commissioning and Schedule 15 – Output Specifications. For clarity, Revenue Vehicle Acceptance Testing includes all acceptance tests set out in Schedule 15 – Output Specifications.

2. PROJECT CO OBLIGATIONS

- 2.1 As part of the performance of the Project Operations, Project Co shall:
- (a) design, engineer, construct and manufacture the Revenue Vehicles and the Revenue Vehicle Equipment in accordance with the Output Specifications;
 - (b) commission, supply, provide and deliver the Revenue Vehicles, the Revenue Vehicle Equipment and the other Revenue Vehicle Deliverables for the Project in accordance with Schedule 14 – Commissioning and the Output Specifications;
 - (c) be responsible for conducting and completing all testing (including Revenue Vehicle Acceptance Testing) and commissioning activities in respect of the Revenue Vehicles and the Revenue Vehicle Equipment, such testing and activities being carried out in accordance with Schedule 14 – Commissioning and the Output Specifications;
 - (d) carry out all integration activities of or associated with the integration of the Revenue Vehicles and the Revenue Vehicle Equipment into and with the other elements of the Project Co System Infrastructure in accordance with Schedule 14 – Commissioning and the Output Specifications;
 - (e) ensure that the other elements of the Project Co System Infrastructure fully integrate with the Revenue Vehicles (including the Train Control System and Communications Equipment) and the Revenue Vehicle Equipment in accordance with Schedule 14 – Commissioning and the Output Specifications;
 - (f) operate, maintain and rehabilitate the Revenue Vehicles and the Revenue Vehicle Equipment;
 - (g) provide for the proper storage of the Revenue Vehicles, the Revenue Vehicle Equipment and the other Revenue Vehicle Deliverables. Project Co agrees that it shall not store or

direct any Project Co Party to store the Revenue Vehicles in a location other than the Hurontario OMSF, except with the prior written consent of the Contracting Authority, which consent may be withheld at the Contracting Authority's sole discretion;

- (h) be responsible for the supply of all Spares needed for the on-going maintenance and operation of the Revenue Vehicles;
- (i) be responsible for the supply of all of the Special Tools and the Bench Test Equipment that may be needed for the on-going maintenance and operation of the Revenue Vehicles, including the replacement of any of the Special Tools or any of the Bench Test Equipment, as required; and
- (j) provide the operations, maintenance and engineering training associated with the Revenue Vehicles and the Revenue Vehicle Equipment as set forth in the Output Specifications.

3. REVENUE VEHICLE SUPPLY CONTRACT

- 3.1 Project Co shall cause the Construction Contractor to enter into the Revenue Vehicle Supply Contract with the Revenue Vehicle Manufacturer on the date of the Project Agreement.

4. REVENUE VEHICLE WARRANTIES

- 4.1 With regard to the warranties in respect of or relating to the subject Revenue Vehicle Deliverable, Project Co shall ensure that:
- (a) the Revenue Vehicle Manufacturer represents and warrants to Construction Contractor that on the date of Acceptance of each Revenue Vehicle Deliverable:
 - (i) it shall have the right to sell the relevant Revenue Vehicle Deliverable;
 - (ii) each such Revenue Vehicle Deliverable will be sold free of all charges and encumbrances (whether monetary or not); and
 - (iii) each such Revenue Vehicle Deliverable will be transferred free of all rights exercisable by any third parties;
 - (b) subject to the limitations and conditions set out in the Revenue Vehicle Supply Contract, and save in respect of any conditions endorsed on an Acceptance Certificate, that the Revenue Vehicle Manufacturer warrants that, at the time of its Acceptance and for the relevant Warranty Period, each Revenue Vehicle, and at the time of its Delivery each of the other Revenue Vehicle Deliverables (including in each case all installed systems, accessories, equipment and parts) will:
 - (i) conform to the Revenue Vehicle Supply Contract and Good Industry Practice;

- (ii) be free from defects in material and workmanship including process of manufacture and all installation work;
- (iii) be free from defects in design, including selection of:
 - (A) materials; and
 - (B) process of manufacture and installation workin view of the state of the art and Good Industry Practice at the time of design;
- (iv) comply with the requirements of:
 - (A) all Applicable Law and Authority Requirements; and
 - (B) any Governmental Authority;
- (v) in the case of each Revenue Vehicle and Spare, each shall be free from latent defects in existence on the date of Acceptance of a Revenue Vehicle or the date of Acceptance of a Spare, as the case may be, but not discoverable during the Warranty Period applicable to that Revenue Vehicle or Spare, as the case may be, for a period of fifteen (15) years, in the case of a Revenue Vehicle, after Acceptance of the last Revenue Vehicle to be Accepted in accordance with this Revenue Vehicle Supply Contract, and in the case of a Spare, after Acceptance of the applicable Spare; and
- (vi) in the case of Special Tools (with respect to item (A) of this Section 4.1(b)(vi) only), Spares and Warranty Spares:
 - (A) conform with any agreed modifications made to the Revenue Vehicles from time to time in accordance with this Revenue Vehicle Supply Contract; and
 - (B) be in a condition suitable for installation on the Revenue Vehicle by a maintainer, in accordance with the Manuals and Good Industry Practice;
- (vii) in the case of Key Components (other than car body shells), be free from defects;
- (viii) in the case of car body shells, be free from corrosion,

in the case of Section 4.1(b)(i), (ii), (iii), (iv), (vi), (vii) and (viii), for the applicable Warranty Period or Endemic/Epidemic Protection Period, as the case may be, and, in the case of Section 4.1(b)(v), for the period specified in that said Section 4.1(b)(v);

-
- (c) that the Revenue Vehicle Manufacturer warrants that the Required Documents will each be:
 - (i) accurate in all material respects;
 - (ii) in accordance with Good Industry Practice;
 - (iii) in accordance with the relevant provisions of the Output Specifications;
 - (iv) revised, updated and reissued regularly as reasonably required by Construction Contractor from time to time to take account of any changes or modifications made to the Revenue Vehicles from time to time (pursuant to the provisions of the Revenue Vehicle Supply Contract) and to take account of Good Industry Practice from time to time;

 - (d) that the warranties given by the Revenue Vehicle Manufacturer in respect of the Revenue Vehicles Deliverables shall survive Delivery and Acceptance of each Revenue Vehicle and Delivery of each other Revenue Vehicle Deliverable, subject to the limitations and conditions set out in the Revenue Vehicle Supply Contract, and that all warranties given by the Revenue Vehicle Manufacturer to Construction Contractor in the Revenue Vehicle Supply Contract shall be assignable by Construction Contractor to Metrolinx;

 - (e) that the Revenue Vehicle Manufacturer shall be liable to remedy all defects and non-compliance that are the subject of a Warranty Claim pursuant to and in accordance with the Revenue Vehicle Supply Contract, save and except and to the extent that, such defect or non-compliance has arisen as a result of:
 - (i) equipment or materials supplied by Construction Contractor;
 - (ii) normal wear and tear, but only to the extent that such wear and tear results from the appropriate and intended use of the Revenue Vehicle Deliverable over its expected operational life;
 - (iii) vandalism; and
 - (iv) a failure by Construction Contractor, the Operator, or any of their respective contractors or sub-contractors to operate or maintain the Revenue Vehicles:
 - (A) in compliance with the Manuals (provided that such defect or non-compliance has arisen as a direct result of the failure to comply with the Manuals);
 - (B) in conformity with Applicable Law; or
 - (C) in a good and workmanlike manner;

 - (f) that each Warranty Period shall commence:

- (i) in the case of each Revenue Vehicle and each item of Revenue Vehicle Equipment, on the date of its Acceptance;
 - (ii) in the case of each Replacement Part on the date it is fitted to the applicable Revenue Vehicle;
 - (iii) in the case of each Key Component on the date of Acceptance of the Revenue Vehicle to which such Key Component forms part; and
 - (iv) in the case of corrosion protection of the car body shells of the Revenue Vehicles, on the date of Acceptance of that Revenue Vehicle;
- (g) that for all parts, Warranty Spares and items of equipment installed on any Revenue Vehicle Deliverable (where such Revenue Vehicle Deliverable has already been Delivered to (or as applicable Accepted by) Construction Contractor) as part of the carrying out of any work carried out in accordance with the Revenue Vehicle Supply Contract or any Replacement Parts:
- (i) title thereto shall pass to Metrolinx at no extra charge as from the time of such installation; and
 - (ii) risk of loss or damage or destruction therefor shall pass to Construction Contractor at no extra charge as from the time of such installation;
- (h) that the Revenue Vehicle Manufacturer maintains, for the applicable Warranty Period, such quantity of spares (the “**Warranty Spares**”) which, in the Revenue Vehicle Manufacturer’s reasonable determination is sufficient to enable it to provide (at no cost to Construction Contractor) warranty parts replacement as soon as reasonably practicable in circumstances in which the Revenue Vehicle Manufacturer, acting reasonably, determines that such replacement (rather than repair) is necessary in order for Construction Contractor to comply with its warranty obligations under and in accordance with the Revenue Vehicle Supply Contract.
- 4.2 Project Co shall:
- (a) collect, manage and store all data and information required in respect of the Revenue Vehicle Warranties; and
 - (b) identify and manage all of the Revenue Vehicle Warranties and all related claims and work, on behalf of Contracting Authority,
- after
- (i) in respect of Revenue Vehicles, delivery of the Bill of Sale to Contracting Authority in respect of the applicable Revenue Vehicle; and

- (ii) in respect of any other Revenue Vehicle Deliverable, the date of Delivery thereof,

including, in each case:

- (A) acting as a single point of contract for the Revenue Vehicle Manufacturer in connection with all Revenue Vehicle Warranties;
- (B) administration, coordination, management and enforcement of all Revenue Vehicle Warranties;
- (C) monitoring and inspecting the Revenue Vehicles on an ongoing basis and immediately (and no later than two Business Days after the occurrence) reporting to Contracting Authority all Revenue Vehicles claims available and/or being pursued; and
- (D) submitting monthly reports to Contracting Authority showing the performance of Revenue Vehicles against the Revenue Vehicle Warranties, claims, historic trends, forecasts and commentary, in accordance with the procedural requirements set out in Schedule 10 – Review Procedure.

4.3 With respect to the warranties in respect of or relating to the subject Revenue Vehicle Deliverable, to the extent permissible by Applicable Law, liability for any other warranties that would otherwise be implied by Applicable Law is expressly excluded, including but not limited to any implied warranties of merchantability or any implied warranties relating to fitness for a particular purpose.

5. TITLE WITH RESPECT TO THE REVENUE VEHICLE DELIVERABLES

- 5.1 Title to each Revenue Vehicle Deliverable, but not the risk of loss or damage or destruction thereto, shall pass to Metrolinx upon Acceptance.
- 5.2 Project Co shall deliver to Contracting Authority a bill of sale (or like instrument) issued by the Revenue Vehicle Manufacturer to and in favour of Metrolinx for each Revenue Vehicle, in form and content satisfactory to Contracting Authority (each a “**Bill of Sale**”), on the date of issuance of each Acceptance Certificate for such Revenue Vehicle, in which the Revenue Vehicle Manufacturer:
- (a) represents and warrants that:
 - (i) Metrolinx is, at the time of Acceptance, rightfully and absolutely entitled to such Revenue Vehicle;
 - (ii) the Revenue Vehicle Manufacturer at the time of Acceptance of such Revenue Vehicle, has good right, title and authority to grant, bargain, sell, assign, transfer, convey and set over to Metrolinx such Revenue Vehicle; and

- (iii) Metrolinx shall, immediately on the execution and delivery of such Bill of Sale, have possession of and peaceably and quietly have, hold, possess and enjoy such Revenue Vehicle, free and clear of all encumbrances, to and for its own use and benefit without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by the Revenue Vehicle Manufacturer or any person whomsoever and with good title thereto, free and clear and absolutely released and discharged from and against all former and other bargains, sales, gifts, grants, mortgages, pledges, security interests, adverse claims, liens, charges and encumbrances of any nature or kind whatsoever;
- (b) grants, bargains, sells, assigns, transfers, conveys and sets over to Metrolinx absolutely, all of the Revenue Vehicle Manufacturer's right, title and interest in and to such Revenue Vehicle, subject to the provisions of Part 2 Section 51 of the Revenue Vehicle Supply Contract; and
- (c) covenants and agrees with Metrolinx that the Revenue Vehicle Manufacturer will from time to time and at all times at its expense, on every reasonable request of Metrolinx make, do and execute or cause and procure to be made, done and executed all further acts, deeds or assurances as may be reasonably required by Metrolinx (including conducting all lien searches requested by Metrolinx), whether for more effectually and completely vesting in Metrolinx such Revenue Vehicle in accordance with the terms of each such Bill of Sale or for the purpose of registration or otherwise.

5.3 Project Co shall provide Contracting Authority:

- (a) concurrent with the delivery to Metrolinx of the Bill of Sale for the applicable Revenue Vehicle, a copy of the Preliminary Acceptance Certificate and the Acceptance Certificate for such Revenue Vehicle;
- (b) the Canadian Content Certificate in respect of such Revenue Vehicle; and
- (c) access to and copies of all Required Documents in respect of such Revenue Vehicle.

5.4 Each Canadian Content Certificate delivered by Project Co to Contracting Authority pursuant to Section 5.3(a) shall:

- (a) demonstrate that the subject Revenue Vehicle meets the Canadian Content Requirements;
- (b) include any necessary or desirable back-up information reasonably necessary to support the contents thereof and to address the requirements of the Canadian Content Policy;
- (c) be true and correct; and
- (d) be in form and content satisfactory to Contracting Authority.

5.5 At the request of Metrolinx, Project Co shall deliver a bill of sale (or like instruments) from the Revenue Vehicle Manufacturer for any Revenue Vehicle Equipment or any

other Revenue Vehicle Deliverable, such bill of sale to be in form and content satisfactory to Metrolinx and consistent with the provisions of Section 5.2, including, for certainty, with regard to the representations, warranties, covenants and agreements to be provided by Revenue Vehicle Manufacturer as set forth therein.

5.6 For clarity, Acceptance of any Revenue Vehicle Deliverable is made pursuant to the Revenue Vehicle Supply Contract, and such Acceptance shall not:

- (a) constitute any form of acceptance of the Works; and/or
- (b) be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Project Agreement in respect of or in relation to such Revenue Vehicle Deliverable, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Project Agreement in respect of or in relation to such Revenue Vehicle Deliverable which have not been performed.

6. RISK OF LOSS

6.1 Project Co shall assume all responsibility for the risk of loss or damage or destruction of, to or in respect of any Revenue Vehicle Deliverable notwithstanding that title to such Revenue Vehicle Deliverable passes to Metrolinx pursuant to a bill of sale (or like instrument) may have been issued in respect of such Revenue Vehicle Deliverable.

SCHEDULE 44

FORM OF REVENUE VEHICLE SUPPLY CONTRACT

[Please see the attached documents]

HURONTARIO LIGHT RAIL TRANSIT PROJECT

REVENUE VEHICLE SUPPLY CONTRACT

PART 1

ARTICLES OF AGREEMENT

Confidential – Economic Interests of Ontario

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MT DOCS 19727286v2

TABLE OF CONTENTS

1. THIS REVENUE VEHICLE SUPPLY CONTRACT.....1

2. OBLIGATIONS OF THE PARTIES.....2

3. THE CONSTRUCTION CONTRACT.....4

4. EQUIVALENT PROJECT RELIEF6

5. PROJECT CO-RELATED PROCEEDINGS.....15

6. DELAY.....17

7. SUPPLIER WARRANTIES AND WARRANTY CLAIMS.....20

8. LIMITATIONS ON LIABILITY27

9. PERFORMANCE SECURITY28

10. CONTRACT PRICE PAYMENT28

11. MISCELLANEOUS28

THIS REVENUE VEHICLE SUPPLY CONTRACT is dated as of the 17th day of October, 2019.

BETWEEN:

[REDACTED] (the “**Construction Contractor**”)

AND:

ALSTOM TRANSPORT CANADA INC., a corporation incorporated under the laws of Canada, (“**Alstom**”)

WHEREAS:

- A. Mobilinx Hurontario General Partnership, [REDACTED] (“**Project Co**”) has entered into an agreement (the “**Project Agreement**”) with Ontario Infrastructure and Lands Corporation, as Crown agent and Metrolinx (collectively, “**Contracting Authority**”) to design, build, finance, operate, maintain and rehabilitate a new light rapid transit system in the Region of Peel which includes approximately 18 kilometers of new semi-exclusive at grade guideway within the Hurontario Street right-of-way from the Port Credit GO Station in the City of Mississauga to the Brampton Gateway Terminal in the City of Brampton, as further described in the Project Agreement.
- B. Project Co has entered into an agreement (the “**Construction Contract**”) with Construction Contractor to perform the CC Activities in accordance with the terms of the Construction Contract.
- C. Construction Contractor wishes to contract with Alstom to perform the Vehicle Supplier Activities in accordance with the terms of this Revenue Vehicle Supply Contract.

NOW IT IS HEREBY AGREED as follows:

1. THIS REVENUE VEHICLE SUPPLY CONTRACT

1.1 This Revenue Vehicle Supply Contract comprises:

- (a) this Part 1 – Articles of Agreement (referred to as “**Part 1**”);
- (b) Part 2 – Conditions of Contract (referred to as “**Part 2**”); and
- (c) the Attachments listed in Part 2 Section 1.1(b).

-
- 1.2 Capitalized term and expression used in this Revenue Vehicle Supply Contract (whether in Part 1, Part 2 or the Attachments) shall have the meaning given to them in Attachment 1 – Definitions and Interpretations.
- 1.3 Each of the Parties acknowledges and agrees that this Revenue Vehicle Supply Contract represents an agreement negotiated, settled, executed and delivered by and between the Parties. Each of the Parties further acknowledges and agrees that it shall not be entitled to and shall not, and shall ensure no CC Party or Alstom Party, as applicable shall, make any claim against Contracting Authority or any Province Person (whether in contract, tort or otherwise) including any claim for damages, or for extension of time or for additional payments under the Project Agreement, on the grounds, directly or indirectly, that this Revenue Vehicle Supply Contract is based on a form of agreement attached as a schedule to the Project Agreement.

2. OBLIGATIONS OF THE PARTIES

- 2.1 Alstom shall:
- (a) carry out and perform the Vehicle Supplier Activities in accordance with, and subject to the provisions of, this Revenue Vehicle Supply Contract; and
 - (b) be liable for the acts and omissions of all Alstom Parties in the performance of the Vehicle Supplier Activities, and shall not be relieved of any liability or obligation under this Revenue Vehicle Supply Contract by the appointment or engagement of any Alstom Party.
- 2.2 Construction Contractor shall be liable for the acts and omissions of all CC Parties.
- 2.3 Alstom further covenants to Construction Contractor that the Revenue Vehicles shall comply with the Output Specifications.
- 2.4 Alstom shall have no obligation:
- (a) to finance or procure the financing of the CC Activities, except for providing, or procuring the provision of, the security detailed in Part 1 Section 9 and any working capital required by Alstom;
 - (b) to compensate or indemnify Construction Contractor for any loss in respect of debt service costs, except as otherwise specifically provided in this Revenue Vehicle Supply Contract;
 - (c) to obtain any Permits, Licenses and Approvals which are not VSC Permits, Licenses and Approvals;

- (d) in respect of Construction Contractor's administrative obligations;
- (e) to procure or maintain any insurances other than as expressly set out to be Alstom's obligation in Attachment 25 – Insurance;
- (f) to perform any obligation that is expressly stated to be the obligation of Construction Contractor under this Revenue Vehicle Supply Contract.

The obligations referred to in this Part 1 Section 2.4 are referred to in this Revenue Vehicle Supply Contract as the “**Excluded Obligations**”.

- 2.5 Construction Contractor shall pay Alstom at the times and in the manner specified in Part 1 Section 10.
- 2.6 Construction Contractor shall perform all of its obligations under this Revenue Vehicle Supply Contract. Construction Contractor shall perform all of its obligations under the Interface Agreement and the Construction Contract except to the extent that any failure to do so would not reasonably be expected to adversely affect Alstom's rights, or the performance of its obligations under this Revenue Vehicle Supply Contract, and shall at all times have regard to and take account of the obligations of Alstom under this Revenue Vehicle Supply Contract in the carrying out of Construction Contractor's obligations and the exercise of Construction Contractor's rights under the Interface Agreement and the Construction Contract. Construction Contractor shall use commercially reasonable best efforts to enforce its rights under the Construction Contract and, where such rights relate to the Vehicle Supplier Activities, shall do so in consultation with Alstom, provided that:
- (a) where this Revenue Vehicle Supply Contract includes specific provisions for the exercise or enforcement of rights under the Construction Contract (including, without limitation, the provisions of this Part 1 relating to Equivalent Project Relief), the specific provisions shall apply and this Part 1 Section 2.6 shall not apply; and
 - (b) nothing in this Revenue Vehicle Supply Contract shall be construed as a guarantee by Construction Contractor of the performance by Project Co of any of its obligations under the Construction Contract.
- 2.7 Unless otherwise specifically provided for in this Revenue Vehicle Supply Contract, Construction Contractor shall not make or agree to make any amendment to the Construction Contract which would reasonably be expected to adversely affect Alstom's rights or the performance of its obligations under this Revenue Vehicle Supply Contract without the prior written consent of Alstom, such consent not to be unreasonably withheld or delayed. For greater certainty, if there is a Variation initiated by Contracting Authority

under the Project Agreement, the Construction Contract and this Revenue Vehicle Supply Contract, as applicable, shall be amended to the extent necessary to comply therewith, without prejudice to Alstom's right to claim Equivalent Project Relief in respect thereof. Construction Contractor shall promptly provide Alstom with all proposed amendments to the Construction Contract related to the Vehicle Supplier Activities.

- 2.8 Each of the Construction Contractor Members shall be jointly and severally liable for any and all of the liabilities and obligations of Construction Contractor under or pursuant to this Revenue Vehicle Supply Contract.

3. THE CONSTRUCTION CONTRACT

- 3.1 Notwithstanding the provisions of Part 2 Section 1.2, in the event of any conflict between the provisions of Part 1 Sections 3.2 through 3.5, inclusive, and any specific provision of Part 2, the applicable provisions of Part 2 shall govern.
- 3.2 Where in this Revenue Vehicle Supply Contract any matter is stated to be required to be notified to or submitted to Project Co or any other third party, or is stated to be subject to the consent or approval of Project Co or any other third party (or any equivalent procedure), then, to the extent that such matter relates to the performance of the Vehicle Supplier Activities, Alstom shall not proceed with such matter until the relevant notification, consent or approval has been given or Construction Contractor is otherwise entitled to proceed, and Alstom has received notice of such notification, consent, approval or other authorization.
- 3.3 Where, under this Revenue Vehicle Supply Contract, Alstom is required to consult with, or obtain the consent or agreement of, Construction Contractor, each Party shall, in respect of such consultation or request for consent or agreement, act in a timely manner under the circumstances, including the nature and urgency of the subject matter, and so as to ensure that the other Party has a reasonable amount of time in which to consider the outcome of the consultation or the request for consent or agreement and to respond before any relevant deadline in this Revenue Vehicle Supply Contract or the Construction Contract.
- 3.4 Construction Contractor will forward to Alstom any notice, request, claim or other communication that it receives that relates to the carrying out of the Vehicle Supplier Activities or which may impact the ability of Alstom to perform its obligations or exercise its rights under this Revenue Vehicle Supply Contract, without undue delay, and in any case within 2 Business Days of receipt by Construction Contractor (except where a different period is specified in Part 2 or in any Attachment or where required to allow Alstom to comply with its obligations or enforce its rights under this Revenue Vehicle Supply Contract).

- 3.5 If any notice, information, consent, claim, request, response, submission or other communication (a “**Communication**”) is required or permitted under the terms of this Revenue Vehicle Supply Contract to be given or made by Alstom directly to Project Co, Contracting Authority or any other third party, except as otherwise set out in this Revenue Vehicle Supply Contract, Alstom shall provide a copy of the same to Construction Contractor and use commercially reasonable efforts to provide such copy to Construction Contractor not less than 2 Business Days prior to giving or making the Communication to Project Co, Contracting Authority or such third party. If any Communication is required or permitted under the terms of this Revenue Vehicle Supply Contract to be given or made by Alstom to Construction Contractor, in respect of which a corresponding Communication must be given by Construction Contractor to Project Co or Contracting Authority or any other third party under the Construction Contract, Alstom shall:
- (a) for Communications to Project Co and to third parties (other than Contracting Authority), provide such Communication not less than 3 Business Days prior to the time by which Construction Contractor is required under the Construction Contract to submit the same, unless otherwise agreed in writing by Construction Contractor, acting reasonably, or as specifically set out in this Revenue Vehicle Supply Contract; or
 - (b) for Communications to Contracting Authority, provide such Communication not less than 5 Business Days prior to the time by which Project Co is required under the Project Agreement to submit the same, unless otherwise agreed in writing by Construction Contractor, acting reasonably, or as specifically set out in this Revenue Vehicle Supply Contract; or
 - (c) upon written request from Construction Contractor, submit the Communication directly to Project Co, Contracting Authority or other third party.
- 3.6 Alstom shall (in addition to any other specific requirements related to the provision of information and documentation in this Revenue Vehicle Supply Contract) promptly provide or make available to Construction Contractor all information and documentation relating to the Vehicle Supplier Activities (other than information and documentation which Alstom has advised Construction Contractor is subject to legal privilege):
- (a) which it receives from any Governmental Authority, Contracting Authority, any Contracting Authority Party, any provincial entity or agency, utility company, railway company or Project Co; and
 - (b) which Construction Contractor may request from time to time, acting reasonably.

4. EQUIVALENT PROJECT RELIEF

- 4.1 To the extent any entitlement of Construction Contractor under the Construction Contract is related to the Vehicle Supplier Activities or the rights or obligations of Alstom under this Revenue Vehicle Supply Contract, whether or not reflected in this Revenue Vehicle Supply Contract as an entitlement of Alstom, Alstom shall be entitled to receive the benefit of such entitlement (to the extent available to, and to the extent received by, Construction Contractor from Project Co) in accordance with and subject to the provisions of this Part 1 Section 4 including, without limitation, the benefit of:
- (a) any indemnification, compensation, damages or other additional payment of any kind (including payment made by way of set-off or counterclaim) to the extent Construction Contractor is entitled to indemnification, compensation, damages or other additional payment of any kind under the Construction Contract;
 - (b) any other relief (including, without limitation, any extension of time) from the performance of its obligations under, or from termination of, this Revenue Vehicle Supply Contract to the extent Construction Contractor is entitled to be relieved from performance of equivalent obligations under, or from termination of, the Construction Contract;
 - (c) any entitlement of Alstom under this Revenue Vehicle Supply Contract in respect of which any provision of this Revenue Vehicle Supply Contract states that:
 - (i) this Part 1 Section 4 or the provisions generally relating to Equivalent Project Relief is or are to apply; or
 - (ii) Alstom may make an Equivalent Claim or issue an Equivalent Claim Notice (as defined in Part 1 Sections 4.3 and 4.2 respectively);
 - (d) any certificate, consent or approval granted under this Revenue Vehicle Supply Contract, the Construction Contract or any other agreement, statute, bylaw or regulation in regard to any matter relating to the Vehicle Supplier Activities, including any entitlement of Construction Contractor to request or apply for such certificate, consent or approval from Project Co, or any other person under this Revenue Vehicle Supply Contract or the Construction Contract;
 - (e) any Variation Confirmation or Variation Directive issued by Project Co pursuant to Attachment 22 – Variation Procedure to the Construction Contract to the extent applicable to the Vehicle Supplier Activities; and
 - (f) any event or circumstance set forth in Sections 38.2, 38.3, 40, 41, 43 and 44 of the Project Agreement.

Construction Contractor's entitlement under the Construction Contract in respect of the matters referred to in this Part 1 Section 4.1 is referred to in this Revenue Vehicle Supply Contract as "**Equivalent Project Relief**". Where any entitlement or right (or asserted entitlement or right) of Alstom under this Revenue Vehicle Supply Contract, or any entitlement or right under the Construction Contract which is acknowledged and agreed to by Alstom under this Revenue Vehicle Supply Contract, corresponds to an entitlement or right which Construction Contractor has or may assert under the Construction Contract then, whether or not there is any express reference to Equivalent Project Relief in Part 2 in relation to any such entitlement or right, Alstom's entitlement and rights under this Revenue Vehicle Supply Contract shall be subject to this Part 1 Section 4.

- 4.2 If an event or circumstance occurs which gives rise to an entitlement on the part of Alstom to claim or receive the benefit of any Equivalent Project Relief, Alstom may, upon the occurrence of such event or circumstance, give notice (an "**Equivalent Claim Notice**") of the same to Construction Contractor. Such Equivalent Claim Notice shall include details of the relevant event or circumstance, having regard to the formal requirements set out in this Revenue Vehicle Supply Contract, and such supporting documentation and information as Construction Contractor may reasonably require.
- 4.3 Alstom shall give the relevant Equivalent Claim Notice to Construction Contractor as soon as reasonably practicable after it becomes aware of the fact that an event or circumstance gives rise to a claim for Equivalent Project Relief (an "**Equivalent Claim**") (having regard to any time limit for submission of such Equivalent Claim by Construction Contractor to Project Co under the Construction Contract as disclosed by Construction Contractor to Alstom).
- 4.4 If Alstom gives an Equivalent Claim Notice to Construction Contractor, then, subject always to the provisions of Part 1 Section 4.13:
- (a) unless Construction Contractor elects not to submit the Equivalent Claim and informs Alstom of such decision in accordance with Part 1 Section 4.4(c)(ii), 4.4(c)(iii) or 4.4(c)(iv), Construction Contractor shall, promptly (having regard to the timeframe required for the determination under such sections and the time limitations set out in the Construction Contract) following receipt of such notice, submit to Project Co an Equivalent Claim reflecting Alstom's Equivalent Claim Notice;
 - (b) Alstom shall provide such additional details and/or information as may be reasonably requested by Construction Contractor, by Project Co or by Contracting Authority through Construction Contractor in relation to the Equivalent Claim;
 - (c) Construction Contractor shall, at its option, take one of the following actions:

- (i) diligently pursue the Equivalent Claim with Project Co, and in this regard Alstom shall: (A) provide all assistance which Construction Contractor, acting reasonably, considers necessary to substantiate any Equivalent Claim, including the collection of information and details relating to the relevant Equivalent Claim and the making available of personnel to assist Construction Contractor in the pursuit of the Equivalent Claim; and (B) keep Construction Contractor informed at all times (including providing copies of any documentation reasonably requested) of any matter relevant to the pursuit of the Equivalent Claim of which Alstom becomes aware;
- (ii) elect not to pursue the relevant Equivalent Claim with Project Co, in which case Construction Contractor shall, within 5 Business Days of receipt of the Equivalent Claim Notice (or such other reasonable period, having regard to any time limit for submission of such Equivalent Claim by Construction Contractor to Project Co under the Construction Contract), notify Alstom in writing that it has elected not to pursue such Equivalent Claim, and Alstom shall be authorized to pursue the Equivalent Claim with Project Co in the name of Construction Contractor, provided that Alstom shall: (A) keep Construction Contractor informed at all times (including providing copies of any documentation reasonably requested) of the progress and outcome of such Equivalent Claim; and (B) comply with all applicable provisions of the Construction Contract;
- (iii) within 10 Business Days of receipt of an Equivalent Claim Notice (or, if Construction Contractor reasonably requests further information with respect to the Equivalent Claim, within 10 Business Days of receipt by Construction Contractor of such further information, or, in each case, such other reasonable period having regard to any time limit for submission of such Equivalent Claim by Construction Contractor to Project Co under the Construction Contract) inform Alstom that, in its view, acting reasonably, it does not consider that the event(s) or circumstance(s) referred to in the Equivalent Claim Notice gives or give rise to any entitlement on the part of Alstom to claim or receive the benefit of any Equivalent Project Relief under Part 1 Section 4.1, provided that, if Alstom does not agree with Construction Contractor, such matter shall be referred to the VSC Dispute Resolution Procedure and if it is determined pursuant to the VSC Dispute Resolution Procedure that the event(s) or circumstance(s) give or gave rise to any such entitlement, then Construction Contractor shall proceed with the Equivalent Claim failing which the provisions of Part 1 Section 4.13 shall apply, provided further that Construction Contractor shall in any event provide such notice to Project Co as may be required to preserve

Construction Contractor's right to make a claim for Equivalent Project Relief under the Construction Contract; or

- (iv) only in respect of Equivalent Claims that do not exceed \$[REDACTED], inform Alstom that Construction Contractor does not wish to pursue such Equivalent Claim, but that Alstom shall be entitled to recover from Construction Contractor the full benefit of the Equivalent Project Relief pursuant to the provisions of Part 1 Section 4.13, provided that the aggregate value of such Equivalent Claims shall not exceed \$[REDACTED];
- (d) if Construction Contractor elects to pursue the Equivalent Claim pursuant to Part 1 Section 4.4(c)(i):
- (i) Alstom and relevant Alstom Parties shall be entitled (unless Contracting Authority object), and may be required by Construction Contractor, to attend and fully participate in any meetings between Project Co and Construction Contractor at which the Equivalent Claim is to be discussed and Alstom may, at its sole cost and expense, appoint counsel for such purpose;
 - (ii) Construction Contractor shall consult with Alstom and use commercially reasonable efforts to agree with Alstom with respect to the appointment of counsel (other than counsel appointed by Alstom pursuant to Part 1 Section 4.4(d)(i)) and other third party advisors, provided that Construction Contractor shall have sole discretion in such appointment after reasonable consultation;
 - (iii) Construction Contractor shall diligently prosecute such Equivalent Claim. Subject to any applicable legal privilege, Construction Contractor shall keep Alstom informed at all times as to the status of such Equivalent Claim, including by directly copying Alstom on all correspondence sent by Construction Contractor to Project Co and to any third party advisors engaged with respect to such Equivalent Claim (redacted to the extent information contained therein is not relevant to such Equivalent Claim) and requesting that Project Co and such third party advisors directly copy Alstom on any responses to Construction Contractor (redacted if necessary as aforesaid) (failing which Construction Contractor shall immediately forward any such correspondence to Alstom); and
 - (iv) Construction Contractor shall not be entitled to settle any Equivalent Claim, or waive any contractual right to an Equivalent Claim without the prior written consent of Alstom, and, if Alstom unreasonably withholds its

consent to settlement of an Equivalent Claim or waiver of a contractual right to an Equivalent Claim, so that Construction Contractor is required to continue to pursue such Equivalent Claim, then, Alstom shall be liable for and shall indemnify and hold harmless Construction Contractor from and against the value to Construction Contractor of any lost settlement or agreement previously available to Construction Contractor, and agreed to or offered by Project Co, should the pursuit of such Equivalent Claim prove unsuccessful, provided always that Construction Contractor shall not be entitled to double recovery and provided further that Alstom shall be entitled to receive (in addition to the actual amount claimed and received by Construction Contractor in respect of such Equivalent Claim) any amount in excess of such lost settlement or agreement previously available to Construction Contractor, and agreed to by Project Co, and which would have been payable to Alstom pursuant to this Part 1 Section 4, should the pursuit of such Equivalent Claim prove successful;

- (e) if Construction Contractor authorizes Alstom to pursue the Equivalent Claim pursuant to Part 1 Section 4.4(c)(ii):
- (i) Construction Contractor shall be entitled, to attend any meetings between Project Co and Alstom at which the Equivalent Claim is to be discussed and Construction Contractor may, at its sole cost and expense, appoint counsel for such purpose; and
 - (ii) Alstom shall not be entitled to settle any Equivalent Claim or waive any contractual right under the Construction Contract if such settlement or waiver would adversely affect any right of Construction Contractor, without the prior written consent of Construction Contractor, which consent shall not be unreasonably withheld, and, if Construction Contractor withholds its consent to settlement of an Equivalent Claim or waiver of a contractual right to an Equivalent Claim, so that Alstom is required to continue to pursue such Equivalent Claim, Construction Contractor shall be liable for and shall indemnify and hold harmless Alstom from and against the value to Alstom of any lost settlement or agreement previously available to Alstom, and agreed to or offered by Project Co, and which would have been payable to Alstom pursuant to Part 1 Section 4, should the pursuit of such Equivalent Claim prove unsuccessful or result in a reduced recovery for Alstom, provided always that Alstom shall not be entitled to double recovery and provided further that Construction Contractor shall be entitled to receive (in addition to the actual amount claimed and received by Construction Contractor in respect of such Equivalent Claim) any amount in excess of such lost settlement or agreement previously available to Construction

Contractor, and agreed to by Project Co, and which would have been payable to Construction Contractor pursuant to this Part 1 Section 4, should the pursuit of such Equivalent Claim prove successful; and

(f) [INTENTIONALLY DELETED].

4.5 Alstom shall be entitled to the benefit of any Equivalent Project Relief to the extent that Construction Contractor is or becomes entitled under the Construction Contract as provided in Part 1 Sections 4.1 and 4.6, but in any event to no greater extent than Construction Contractor's entitlement under the Construction Contract determined pursuant to either:

- (a) an agreement between Construction Contractor and Project Co effected in accordance with Part 1 Section 4.4(c)(iv) and subject to the provisions of Part 1 Section 4.6; or
- (b) a determination made pursuant to the CC Dispute Resolution Procedure which is binding upon Construction Contractor and Project Co after all appeals (if any) have been exhausted.

4.6 Subject to Part 1 Section 4.13, Alstom shall not be entitled to receive any entitlement or benefit in respect of any Equivalent Project Relief under this Part 1 Section 4 (including without limitation any payment or other compensation) until it has been agreed or conclusively determined that Construction Contractor has received such entitlement or benefit from Project Co (provided, for certainty, that nothing contained in this Section 4.6 shall affect the obligations of Construction Contractor set forth in Part 1 Section 4.8(c)). In addition, Alstom's entitlement to the benefit of any Equivalent Project Relief under this Part 1 Section 4 shall:

- (a) where the agreement or determination referred to in Part 1 Section 4.5 expressly separately identifies the amount, nature or extent of Construction Contractor's entitlement attributable to Alstom or the Vehicle Supplier Activities, be the amount, nature or extent so identified; or
- (b) where the agreement or determination referred to in Part 1 Section 4.5 does not separately identify the amount, nature or extent of Construction Contractor's entitlement attributable to Alstom or the Vehicle Supplier Activities, be a fair and reasonable proportion of Construction Contractor's entitlement, it being acknowledged between Construction Contractor and Alstom that the Party bearing the risks and costs associated with an entitlement shall be entitled to the benefit arising therefrom in proportion to such risks and costs.

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- 4.7 If the parties are unable to agree, pursuant to Part 1 Section 4.6(b) on what is a fair and reasonable proportion of such entitlement within 21 days of a written request by either Party to agree on the same, either Party may refer the matter to the VSC Dispute Resolution Procedure.
- 4.8 Following agreement or determination of the entitlement of Alstom under Part 1 Section 4.6 or 4.7, as the case may be:
- (a) where such entitlement consists of relief from performance of obligations, Alstom shall be relieved from the performance of its obligations under this Revenue Vehicle Supply Contract to the extent of such entitlement;
 - (b) where such entitlement consists of an extension of time, Alstom shall be entitled to a corresponding extension of time under this Revenue Vehicle Supply Contract; and
 - (c) where such entitlement consists of a positive adjustment to payments due to Construction Contractor under the Construction Contract or the payment of a lump sum by Project Co to Construction Contractor, as the case may be, Construction Contractor shall pay to Alstom the amount of such entitlement promptly, and in any event no later than 5 Business Days, after receipt of the corresponding payment from Project Co (and in accordance with the provisions of Part 1 Section 4.6). Construction Contractor shall not pay Alstom for such entitlement other than on a lump sum or progress basis as the work is performed, without the prior consent of Alstom, such consent not to be unreasonably withheld or delayed. In the event Construction Contractor fails to pay Alstom any amount owing by Construction Contractor to Alstom pursuant to this Part 1 Section 4.8(c) following receipt of such amounts from Project Co, all of Alstom's rights and remedies hereunder shall be available to Alstom, including the right to suspend performance of the Vehicle Supplier Activities pursuant to Part 2 Section 46.1.
- 4.9 Pending the determination, agreement or resolution of Alstom's entitlement to Equivalent Project Relief, Alstom shall continue to perform its obligations under this Revenue Vehicle Supply Contract and shall take no steps to enforce any right under this Revenue Vehicle Supply Contract whether by set-off against sums otherwise payable to Construction Contractor, by commencing proceedings of any kind, by counterclaiming in any proceedings or otherwise howsoever, to the extent that, pursuant to the terms of this Revenue Vehicle Supply Contract, such right depends upon or is related to the relevant agreement or determination of Equivalent Project Relief. Notwithstanding the foregoing, the parties agree that nothing contained in this Part 1 Section 4.9 will preclude Alstom from commencing legal proceedings in the Courts of Ontario if such proceedings are necessary to preserve any applicable limitation period.

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- 4.10 Following the determination, agreement or resolution of Alstom's entitlement to the benefit of any Equivalent Project Relief, Alstom shall be conclusively deemed to have waived any rights under or in connection with this Revenue Vehicle Supply Contract in excess of those arising from such determination, agreement or resolution, except insofar as such rights arise from or as a result of any Construction Contractor Act. Accordingly, except as provided in the preceding sentence, Alstom shall not take any steps, under the VSC Dispute Resolution Procedure or otherwise, to argue that any entitlement of Alstom under Part 1 Section 4.1 should be resolved other than by reference to the resolution of Alstom's entitlement to the benefit of any Equivalent Project Relief and Alstom hereby waives any right to do so.
- 4.11 If, in relation to any Equivalent Project Relief, Construction Contractor fails to comply with its obligations under this Revenue Vehicle Supply Contract and as a consequence of such failure the entitlement of Alstom is likely to be reduced or lost, then, unless and only to the extent such failure was caused by any act or omission by Alstom or any Alstom Party, Alstom may give notice to Construction Contractor specifying the failure and the likely reduction in or loss of the entitlement of Alstom and requiring Construction Contractor to remedy the relevant failure.
- 4.12 If Construction Contractor fails:
- (a) to remedy such failure within 15 Business Days of the date of receipt of notice pursuant to Part 1 Section 4.11;
 - (b) to provide Alstom with proposals for remedying such failure which are acceptable to Alstom, acting reasonably, within 15 Business Days of the date of receipt of notice pursuant to Part 1 Section 4.11; or
 - (c) to fulfil the terms of an acceptable proposal provided to Alstom in accordance with Part 1 Section 4.12(b),

Alstom may serve a further notice upon Construction Contractor that Alstom is no longer bound by the provisions of Part 1 Sections 4.4 to 4.10 in relation to the entitlement concerned.

- 4.13 If:
- (a) the provisions of Part 1 Sections 4.4 to 4.10 are not applied in accordance with Part 1 Section 4.12;
 - (b) Construction Contractor has elected not to proceed with an Equivalent Claim pursuant to Part 1 Section 4.4(c)(iii) and continues not to proceed with an

Equivalent Claim despite a subsequent determination pursuant to the VSC Dispute Resolution Procedure that Construction Contractor should not have so elected; or

- (c) Construction Contractor has elected not to proceed with an Equivalent Claim pursuant to Part 1 Section 4.4(c)(iv),

then Alstom shall be entitled to recover from Construction Contractor the full benefit of the Equivalent Project Relief it would have been entitled to claim as if Construction Contractor had complied in full with its obligations under this Part 1 Section 4 and as if Construction Contractor had succeeded in obtaining the full entitlement from Project Co under the Construction Contract. Alstom shall, except where this Part 1 Section 4.13 applies but Alstom does not make full recovery of the amounts contemplated by this Part 1 Section 4.13, have no right or recourse whatsoever directly to Project Co and shall bring no claim whatsoever against Project Co in respect of the benefit of such entitlement and its rights and remedies in respect of such entitlement shall be limited to the right to recover from Construction Contractor under this Part 1 Section 4.13. Where this Part 1 Section 4.13 applies but Alstom does not make full recovery of the amounts contemplated by this Part 1 Section 4.13, Alstom shall be authorized, in respect of all or any part of the amounts not so recovered from Construction Contractor, to pursue the subject Equivalent Claim with Project Co in the name of Construction Contractor as contemplated pursuant to Part 1 Section 4.4(c)(ii). If the parties are unable to agree upon the nature or amount of such entitlement within 15 Business Days of a written request by either Party to agree on the same, either Party may refer the matter to the VSC Dispute Resolution Procedure.

- 4.14 Subject to Part 1 Section 4.15, the provisions of this Part 1 Section 4 set out the sole and exclusive rights and remedies of Alstom in relation to the entitlements referred to in Part 1 Section 4.1 and Alstom shall not be entitled to any other right or remedy of any kind whatsoever (whether in contract, tort, breach of statutory duty or under any other theory of law or equity) in respect of the same.
- 4.15 The provisions of Part 1 Sections 4.1 to 4.14, inclusive, are without prejudice to the rights and remedies available to Alstom in respect of any Construction Contractor Act.
- 4.16 Each Party shall bear and discharge on a current basis its own costs and expenses incurred in complying with this Part 1 Section 4, including, without limitation, any out of pocket expenses of such Party's own personnel and including, without limitation, costs and expenses of Project Co or other persons where Alstom or Construction Contractor becomes liable to pay the same, except to the extent that the Equivalent Claim arises from any Construction Contractor Act (including, without limitation, the failure to obtain Alstom's written consent as required hereunder), provided that the Parties shall consult with one another prior to engaging external advisors in relation to compliance with this Part 1 Section 4.

5. PROJECT CO-RELATED PROCEEDINGS

- 5.1 This Part 1 Section 5 applies where Project Co asserts or exercises any right against Construction Contractor under or in connection with the Construction Contract, in regard to any matter in respect of which Construction Contractor asserts or exercises a right against Alstom under or in connection with this Revenue Vehicle Supply Contract, or to the extent that such right is related to the Vehicle Supplier Activities or to the rights or obligations of Alstom under this Revenue Vehicle Supply Contract, including, without limitation, reductions in or deductions from payments under the Construction Contract, claims for indemnification and claims for damages for breach of such agreement (an assertion or exercise of such rights by Project Co being referred to in this Part 1 Section 5 as a “**Project Co Claim**”).
- 5.2 If a Project Co Claim is made:
- (a) Construction Contractor shall promptly notify Alstom of such Project Co Claim and, if requested by Alstom, challenge and defend the Project Co Claim under and in accordance with the Construction Contract and in accordance with Alstom’s reasonable directions;
 - (b) Alstom shall prepare and each of Alstom and Construction Contractor shall agree on a protocol for challenge to, and/or defence of, any Project Co Claim, which shall conform to the principles set out in this Part 1 Section 5.2 and shall comply with and be consistent with the provisions of the Construction Contract and Alstom and Construction Contractor will follow and observe any protocol so agreed;
 - (c) Construction Contractor and Alstom shall agree on any proposal to make any compromise or admission in relation to any Project Co Claim, and Construction Contractor shall not make any such compromise or admission without first obtaining written consent from Alstom, and if Alstom unreasonably withholds or delays its consent to any compromise or admission in respect of a Project Co Claim, so that Construction Contractor is required to continue to defend or challenge such Project Co Claim, then Alstom shall be liable for and shall indemnify and hold harmless Construction Contractor from and against the value to Construction Contractor of any lost compromise or agreement previously available to Construction Contractor plus additional costs and expenses incurred by Construction Contractor should the defence or challenge to the Project Co Claim prove unsuccessful, provided always that Construction Contractor shall not be entitled to double recovery;
 - (d) where Alstom challenges or defends any Project Co Claim pursuant to the provisions of Part 1 Section 5.2(g), Alstom shall consult with Construction

Contractor regarding any proposal to make any compromise or admission in relation to any Project Co Claim, and shall not make any such compromise or admission without first obtaining written consent from Construction Contractor and, if Construction Contractor unreasonably withholds or delays its consent to any compromise or admission in respect of a Project Co Claim, so that Alstom is required to continue to defend or challenge such Project Co Claim, then Construction Contractor shall be liable for and shall indemnify and hold harmless Alstom from and against the value to Alstom of any lost compromise or agreement previously available to Alstom plus additional costs and expenses incurred by Alstom should the defence or challenge to the Project Co Claim prove unsuccessful, provided always that Alstom shall not be entitled to double recovery;

- (e) subject to any applicable legal privilege, Construction Contractor and Alstom shall keep each other informed as to the progress of the relevant Project Co Claim and shall provide each other with copies of all the documents relating thereto;
- (f) subject to any applicable legal privilege, Alstom shall, and shall cause each Alstom Party to, provide Construction Contractor with such information as is in the control or possession of Alstom or an Alstom Party and as Construction Contractor may reasonably require to defend the Project Co Claim, including, without limitation, providing information and making available relevant personnel (and if Construction Contractor permits Alstom to challenge or defend a Project Co Claim on its behalf pursuant to Part 1 Section 5.2(g), subject to any applicable legal privilege, Construction Contractor shall, and shall cause Construction Contractor Parties to, provide such information and make available relevant personnel to Alstom);
- (g) notwithstanding anything else in this Part 1 Section 5.2, Construction Contractor may, on terms to be mutually agreed, permit Alstom to challenge or defend a Project Co Claim for and on behalf of and in the name of Construction Contractor; and
- (h) in the event that Construction Contractor has failed to diligently challenge or defend a Project Co Claim that relates solely to the Vehicle Supplier Activities, Alstom may, in its sole discretion, challenge or defend such Project Co Claim for and on behalf of and in the name of Construction Contractor (as if Construction Contractor had permitted Alstom to challenge or defend such claim pursuant to Section 5.2(g)), taking into account the interests of Construction Contractor provided that in the event Construction Contractor disputes whether it has failed to diligently challenge or defend such Project Co Claim Alstom shall not be permitted to challenge or defend such Project Co Claim until a determination has been made in respect

thereof pursuant to the VSC Dispute Resolution Procedure (or the Parties have otherwise agreed).

- 5.3 Subject to Construction Contractor being in compliance with its obligations under Part 1 Section 5.2 and without prejudice to any right of appeal, any determination or agreement made or reached under the Construction Contract as to the amount, nature and extent of Construction Contractor's liability in relation to any Project Co Claim shall be binding on Alstom. For greater certainty, where such liability consists of a negative adjustment to payments due to Construction Contractor under the Construction Contract or the payment of a lump sum by Construction Contractor to Project Co, as the case may be, Alstom shall pay to Construction Contractor Alstom's proportion of such liability promptly and, in any event, no later than 3 Business Days prior to the date upon which such amounts are due to be paid by Construction Contractor to Project Co under the Construction Contract.
- 5.4 Alstom shall bear and discharge on a current basis, and shall indemnify Construction Contractor against all Direct Losses reasonably and properly incurred by Construction Contractor in complying with Part 1 Article 5, not including the costs of Construction Contractor's own personnel (but including, without limitation, any out of pocket expenses of such personnel and including, without limitation, costs and expenses of Project Co or other persons where the Construction Contractor or Project Co becomes liable to pay the same) arising from operation of Part 1 Article 5, except to the extent that:
- (a) they arise from any Construction Contractor Act;
 - (b) Construction Contractor recovers such costs from Project Co; or
 - (c) the benefit of an Equivalent Claim or the liability for a Project Co Claim will be shared by the parties, in which case each party shall bear the related costs and expenses in proportion to the benefit received or its fault.

6. DELAY

- 6.1 Subject to Part 1 Section 6.2, Part 1 Section 6.4, Part 1 Section 6.6 and Part 1 Section 8.1, if an LD Event occurs, as of and from the occurrence of such LD Event, Vehicle Delay Liquidated Damages in respect of such LD Event shall become due and payable by Alstom to Construction Contractor and shall accrue as follows:

Vehicle Delay Liquidated Damages

[REDACTED]

- 6.2 Construction Contractor and Alstom agree that Vehicle Delay Liquidated Damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that

Construction Contractor will suffer as a result of Alstom failing to achieve the applicable event referred to in the description of the LD Events, by the relevant date, and which Alstom agrees with Construction Contractor that it would be difficult or impossible to quantify upon the happening of such event. Alstom acknowledges and agrees that Vehicle Delay Liquidated Damages in respect of an LD Event shall be payable in addition to, and not instead of, Vehicle Delay Liquidated Damages payable in respect of any other LD Event. Alstom agrees with Construction Contractor that Vehicle Delay Liquidated Damages shall be payable whether or not Construction Contractor mitigates damages, and that Construction Contractor shall not have any obligation to mitigate any such damages. Alstom agrees with Construction Contractor that Alstom has taken into account such Vehicle Delay Liquidated Damages in its pricing of its compensation hereunder, that such Vehicle Delay Liquidated Damages are integral to the provisions of this Revenue Vehicle Supply Contract, and that Construction Contractor has relied on such Vehicle Delay Liquidated Damages in entering into this Revenue Vehicle Supply Contract. Without prejudice to Alstom's obligations under this Revenue Vehicle Supply Contract, Vehicle Delay Liquidated Damages shall be the only damages payable by Alstom in respect of the LD Events and are in lieu of any damages that may be claimed by Construction Contractor for the LD Events.

- 6.3 Vehicle Delay Liquidated Damages shall accrue daily and shall be payable monthly on the third to last Business Day of each month during which they are incurred and shall be the only damages payable by Alstom in respect of an LD Event and are the sole and exclusive remedy of Construction Contractor in respect thereof.

For greater certainty, no Vehicle Delay Liquidated Damages shall be payable by Alstom pursuant to this Part 1 Section 6.3, to the extent such failure is caused by a Construction Contractor Act and Alstom is entitled to an extension of time pursuant to Part 1 Section 6.6.

- 6.4 If Alstom becomes aware of any Construction Contractor Act which is likely to prevent it from meeting an Expected Delivery Date and/or the Expected Revenue Service Commencement Date, it shall notify Construction Contractor as soon as reasonably practicable after it becomes aware of the same (but no later than 7 Business Days after becoming aware) and the Parties will, within 5 days of such notification, meet and seek to agree in good faith the extent, and the period of time, to which the relevant event is reasonably likely to prevent Alstom from meeting such Expected Delivery Date (the "**Interim Agreement**"). As soon as reasonably practicable after the impact of the Construction Contractor Act can be determined with reasonable certainty the Parties will again meet and seek to agree in good faith the extent, and the period of time, to which the relevant Construction Contractor Act actually delayed the achievement of the Expected Delivery Date or the Expected Revenue Service Commencement Date, as applicable, (the "**Final Agreement**"). Any dispute as to the anticipated or actual extent or length of delay will be referred to the VSC Dispute Resolution Procedure. Alstom shall be entitled to claim

as against Construction Contractor any Direct Losses arising from any such delay caused by such Construction Contractor Act to the extent Alstom's Direct Losses are not otherwise compensated or are not mitigated by any payments made by Construction Contractor to Alstom pursuant to Part 1 Section 6.6.

- 6.5 The Expected Delivery Date and/or the Expected Revenue Service Commencement Date shall be amended on an interim basis as a result of the relevant Construction Contractor Act in accordance with the Interim Agreement, or as determined pursuant to the VSC Dispute Resolution Procedure. Where the actual impact of the Construction Contractor Act varies from the extension agreed in the Interim Agreement, or determined pursuant to the VSC Dispute Resolution Procedure, then as soon as reasonably practicable after the impact of the Construction Contractor Act can be determined with reasonable certainty, the applicable Expected Delivery Date and/or the Expected Revenue Service Commencement Date shall be finally adjusted as a result of the relevant Construction Contractor Act in accordance with the Final Agreement, or as determined pursuant to the VSC Dispute Resolution Procedure. To the extent that there is any dispute as to extent of the impact to the applicable Expected Delivery Date and/or the Expected Revenue Service Commencement Date attributable to any Construction Contractor Act, Alstom will be entitled to relief for the undisputed portion of such impact, with the balance to be determined in accordance with the VSC Dispute Resolution Procedure.
- 6.6 If Alstom is entitled to an extension of time under Part 1 Section 6.4 beyond the corresponding dates in the Construction Contract, Construction Contractor shall, acting reasonably, either excuse (whether in whole or in part) Alstom from its obligation to pay Vehicle Delay Liquidated Damages in respect of the relevant delay or require Alstom to accelerate the Vehicle Supplier Activities, to the extent that it is reasonably practicable, in order to meet the Expected Delivery Date and/or the Expected Revenue Service Commencement Date (as it was prior to the extension pursuant to Part 1 Section 6.4). Upon request from Construction Contractor, Alstom shall in a timely manner provide its best estimate of the damages, costs and expenses of such acceleration. If Construction Contractor elects to accelerate the Vehicle Supplier Activities pursuant to this Part 1 Section 6.6, it shall provide evidence to the reasonable satisfaction of Alstom that Construction Contractor has the financial resources to cover the obligations of Alstom under such estimate and shall pay to Alstom an amount equivalent to the damages, costs and expenses of Alstom of accelerating the Vehicle Supplier Activities in accordance with this Part 1 Section 6.6, such payment to be made as the relevant damages, costs or expenses in respect of the acceleration are incurred, in accordance with a schedule of additional payments to be agreed upon by the Parties, acting reasonably.
- 6.7 Where Construction Contractor receives payment from Project Co under the Construction Contract or proceeds from any delay in startup insurance policy arising from an event which does not entitle Alstom to an extension of time under this Revenue Vehicle Supply

Contract or relief from payment of Vehicle Delay Liquidated Damages, Alstom's liability to pay Vehicle Delay Liquidated Damages will be reduced to the extent of Construction Contractor's receipt of such payment from Project Co or insurance proceeds (but not to the extent of any deductible payable in respect of the relevant period of delay) where such proceeds cover the same period of delay. If the payments from Project Co or insurance proceeds are not received until after the point in time at which Alstom has paid out Vehicle Delay Liquidated Damages, Construction Contractor shall be liable for and reimburse Alstom to the extent of an amount equivalent to the payment or insurance proceeds received by Construction Contractor promptly after receipt of the same. Construction Contractor shall diligently pursue all entitlements under such insurance policies. For the avoidance of doubt, this Section 6.7 does not diminish Alstom's rights to Equivalent Project Relief in relation to payments from Project Co under the Construction Contract or proceeds from any delay in startup insurance policies.

7. SUPPLIER WARRANTIES AND WARRANTY CLAIMS

7.1 Alstom represents and warrants to Construction Contractor that on the date of Acceptance of each Revenue Vehicle Deliverable:

- (a) it shall have the right to sell the relevant Revenue Vehicle Deliverable;
- (b) each such Revenue Vehicle Deliverable will be sold free of all charges and encumbrances (whether monetary or not); and
- (c) each such Revenue Vehicle Deliverable will be transferred free of all rights exercisable by any third parties.

7.2 Subject to the limitations and conditions set out in Part 1 Section 7, and save in respect of any conditions endorsed on an Acceptance Certificate, Alstom warrants that, at the time of its Acceptance and for the relevant Warranty Period, each Revenue Vehicle, and at the time of its Delivery each of the other Revenue Vehicle Deliverables (including in each case all installed systems, accessories, equipment and parts) will:

- (a) conform to this Revenue Vehicle Supply Contract and Good Industry Practice;
- (b) be free from defects in material and workmanship including process of manufacture and all installation work;
- (c) be free from defects in design, including selection of:
 - (i) materials; and
 - (ii) process of manufacture and installation work;

in view of the state of the art and Good Industry Practice at the time of design;

- (d) comply with the requirements of:
 - (i) all Applicable Law and Authority Requirements; and
 - (ii) any Governmental Authority;and will have received all Consents which Alstom is, in accordance with Part 2 Section 9.4, responsible for obtaining;
- (e) in the case of each Revenue Vehicle and Spare, each shall be free from latent defects in existence on the date of Acceptance of a Revenue Vehicle or the date of Acceptance of a Spare, as the case may be, but not discoverable during the Warranty Period applicable to that Revenue Vehicle or Spare, as the case may be, for a period of [REDACTED] years, in the case of a Revenue Vehicle, after Acceptance of the last Revenue Vehicle to be Accepted in accordance with this Revenue Vehicle Supply Contract, and in the case of a Spare, after Acceptance of the applicable Spare; and
- (f) in the case of Special Tools (with respect to item (i) of this Part 1 Section 7.2(f) only), Spares and Warranty Spares:
 - (i) conform with any agreed modifications made to the Revenue Vehicles from time to time in accordance with this Revenue Vehicle Supply Contract; and
 - (ii) be in a condition suitable for installation on the Revenue Vehicle by a maintainer, in accordance with the Manuals and Good Industry Practice;
- (g) in the case of Key Components (other than car body shells), be free from defects;
- (h) in the case of car body shells, be free from corrosion,

in the case of Part 1 Section 7.2(a), (b), (c), (d), (f), (g) and (h), for the applicable Warranty Period or Endemic/Epidemic Protection Period, as the case may be, and, in the case of Part 1 Section 7.2(e), for the period specified in that said Section 7.2(e).

7.3 Alstom warrants that the Required Documents will each be:

- (a) accurate in all material respects;
- (b) in accordance with Good Industry Practice;

- (c) in accordance with the relevant provisions of Attachment 10 – Review Procedure;
 - (d) revised, updated and reissued regularly as reasonably required by Construction Contractor from time to time to take account of any changes or modifications made to the Revenue Vehicles from time to time (pursuant to the provisions of Part 1 Section 7, Part 2 Section 39 or as otherwise agreed between the Parties) and to take account of Good Industry Practice from time to time.
- 7.4 The warranties given by Alstom in Part 1 Section 7 shall survive Delivery and Acceptance of each Revenue Vehicle and Delivery of each other Revenue Vehicle Deliverable and the payment of the applicable Purchase Price, subject to the limitations and conditions set out in this Revenue Vehicle Supply Contract. All warranties given by Alstom to Construction Contractor in this Part 1 Section 7 and elsewhere in this Revenue Vehicle Supply Contract shall be assignable by Construction Contractor to Contracting Authority or any Contracting Authority Party.
- Construction Contractor shall provide notice to Alstom of the assignment by Construction Contractor to Contracting Authority or any Contracting Authority Party, as applicable, of any warranty given by Alstom to Construction Contractor in this Part 1 Section 7 or elsewhere in this Revenue Vehicle Supply Contract. Construction Contractor shall be entitled to appoint or authorize the Service Provider to administer and/or manage, for and on behalf of Construction Contractor, all or any Warranty Claims. Upon written notice being given by Construction Contractor to Alstom identifying the Service Provider in this regard, Alstom shall be entitled to disclose in confidence to the Service Provider Confidential Information to enable such person to administer and/or manage Warranty Claims for and on behalf of Construction Contractor. Notwithstanding that Construction Contractor may have so appointed or authorized the Service Provider to administer and/or manage all or any Warranty Claims, such person shall have no authority to act for or on behalf of Construction Contractor for the purposes of notifications and/or decisions under this Revenue Vehicle Supply Contract, and, for certainty, shall have no power to resolve disputes relating to warranties given by Alstom to Construction Contractor in this Revenue Vehicle Supply Contract. Construction Contractor shall be liable for any acts or omissions of the Service Provider in its capacity as administrator of all or any Warranty Claims.
- 7.5 To the extent permissible by Applicable Law, liability for any other warranties that would otherwise be implied by Applicable Law is expressly excluded, including but not limited to any implied warranties of merchantability or any implied warranties relating to fitness for a particular purpose.
- 7.6 Alstom shall be liable to remedy all defects and non-compliance that are the subject of a Warranty Claim pursuant to and in accordance with the provisions of Part 1 Section 7, save and except and to the extent that, such defect or non-compliance has arisen as a result of:

-
- (a) equipment or materials supplied by Construction Contractor;
 - (b) normal wear and tear, but only to the extent that such wear and tear results from the appropriate and intended use of the Revenue Vehicle Deliverable over its expected operational life;
 - (c) vandalism; and
 - (d) a failure by Construction Contractor, the Operator, or any of their respective contractors or sub-contractors to operate or maintain the Revenue Vehicles:
 - (i) in compliance with the Manuals (provided that such defect or non-compliance has arisen as a direct result of the failure to comply with the Manuals);
 - (ii) in conformity with Applicable Law; or
 - (iii) in a good and workmanlike manner.
- 7.7 The Warranty Periods are defined in Attachment 1 – Definitions and Interpretations and, for certainty, each shall commence:
- (a) in the case of each Revenue Vehicle and each item of Revenue Vehicle Equipment, on the date of its Acceptance;
 - (b) in the case of each Replacement Part on the date it is fitted to the applicable Revenue Vehicle;
 - (c) in the case of each Key Component on the date of Acceptance of the Revenue Vehicle to which such Key Component forms part; and
 - (d) in the case of corrosion protection of the car body shells of the Revenue Vehicles, on the date of Acceptance of that Revenue Vehicle.
- 7.8 Any Warranty Claim shall be notified in writing to Alstom’s Project Manager as soon as reasonably practicable after: (a) the relevant defect becomes apparent to Construction Contractor’s Project Manager; or (b) the Construction Contractor’s Project Manager is notified of the relevant defect by Project Co.
- 7.9 As soon as practicable, and in any event:
- (a) in the case of conditions endorsed on an Acceptance Certificate issued in accordance herewith, within a period of 6 months from the date of such Acceptance

Certificate, or such shorter period as the Construction Contractor's Project Manager may specify in the relevant Acceptance Certificate; and

- (b) in the case of any other Warranty Claims, within a period of 3 days (or such other period as the Parties may agree) from the notification of the Warranty Claim,

Alstom shall:

- (i) in the case of Warranty Claims, remedy the relevant defect or non-compliance (including such disassembly and reassembly as necessary to make such repair or replacement); and
- (ii) in the case of conditions endorsed on an Acceptance Certificate issued in accordance herewith, carry out all such work, and complete all such tests as are required to satisfy the conditions so endorsed; and
- (iii) in each such case, submit to the Construction Contractor's Project Manager satisfactory evidence of the remedying of such defects or, as the case may be, the completion of such work and tests, as are required in accordance with sub-clause (i) or (as appropriate) sub-clause (ii) above,

provided that, in the case of Part 1 Section 7.9(b)(i), if Alstom is unable to remedy the relevant defect or non-compliance within the period specified in Part 1 Section 7.9(b), Alstom shall not be in breach of Part 1 Section 7.9(b)(i) if and to the extent that Alstom:

- (aa) provides to Construction Contractor, within that period, a remedial plan setting out the precise steps which it plans to take to remedy the relevant defect or non-compliance;
- (bb) obtains the prior written approval of the Construction Contractor's Project Manager to the terms of that remedial plan;
- (cc) implements such approved remedial plan in accordance with its terms; and
- (dd) provides written updates to the Construction Contractor's Project Manager as to Alstom's progress against such agreed remedial plan, at least once per week thereafter.

7.10 If, during the Endemic/Epidemic Protection Period, Construction Contractor, acting reasonably and following consultation with Alstom, notifies Alstom's Project Manager that an Epidemic Defect or an Endemic Defect has occurred, Alstom shall (in addition to its

other obligations under this Revenue Vehicle Supply Contract, including under Part 1 Section 7.9):

- (a) as soon as reasonably practicable take all necessary steps to rectify such defect and ensure that it is eliminated from all of the Revenue Vehicle Deliverables (including (for the avoidance of doubt) those already Delivered and/or in relation to which an Acceptance Certificate has already been issued);
- (b) pending completion of such rectification, take all necessary steps to enable such Revenue Vehicle Deliverables to continue to be used in (or in connection with) the provision of Revenue Service; and
- (c) if completion of such rectification is likely to take 20 Business Days or more to complete, Alstom shall, as soon as reasonably practicable (and in any event within 10 Business Days after receipt of the notification of the Epidemic Defect or Endemic Defect), submit to the Construction Contractor's Project Manager a draft schedule for the rectification to be carried out as soon as is practicable.

7.11 For all parts, Warranty Spares and items of equipment installed on any Revenue Vehicle Deliverable (where such Revenue Vehicle Deliverable has already been Delivered to (or as applicable Accepted by) Construction Contractor) as part of the carrying out of any work carried out in accordance with Part 1 Section 7 or any Replacement Parts:

- (a) title thereto shall pass to Metrolinx at no extra charge as from the time of such installation; and
- (b) risk of loss or damage or destruction therefor shall pass to Construction Contractor at no extra charge as from the time of such installation.

7.12 If and to the extent that Alstom refuses or fails to continue to remedy any defect or complete any outstanding tests or other obligation under this Revenue Vehicle Supply Contract in accordance with this Part 1 Section 7, to Construction Contractor's reasonable satisfaction within the timescale specified therein then:

- (a) Construction Contractor may, subject to giving Alstom 7 Business Days' written notice of its intention to do so, carry out or procure the remedying of such defect or the completion of any such outstanding works or obligations, at Alstom's expense;
- (b) in carrying out or procuring any Vehicle Supplier Activities in accordance with Part 1 Section 7.12(a), Construction Contractor shall ensure compliance with the conditions of the supplier warranties, provided that copies thereof are provided to Construction Contractor by Alstom within 10 Business Days of receipt by Alstom of notice provided in accordance with this Part 1 Section 7.12(a);

-
- (c) Alstom shall give Construction Contractor any and all reasonable assistance required by Construction Contractor during the taking of such measures; and
 - (d) Alstom shall indemnify Construction Contractor on demand against the necessary costs of such measures to Construction Contractor and shall pay Construction Contractor within 15 Business Days of Construction Contractor submitting to Alstom a statement of such costs together with reasonable evidence thereof.
- 7.13 Alstom shall maintain, for the applicable Warranty Period, such quantity of spares (the “**Warranty Spares**”) which, in Alstom’s reasonable determination is sufficient to enable it to provide (at no cost to Construction Contractor) warranty parts replacement as soon as reasonably practicable in circumstances in which Alstom, acting reasonably, determines that such replacement (rather than repair) is necessary in order for Alstom to comply with its warranty obligations under and in accordance with this Part 1 Section 7.
- 7.14 Subject to the limitations set forth in Part 1 Section 7.15, if following the expiry of the 24 month period after Acceptance of the last LRV to be Accepted in accordance with this Revenue Vehicle Supply Contract, the Reliability Target has not been met on or before the date being the date of the expiry of such 24 month period, Alstom shall, at its sole cost and expense, either:
- (a) redesign and replace the defective LRVs, or part thereof; or
 - (b) upon notification to and following consultation with and consent from Construction Contractor, take such other reasonable remedial action as required to meet the Reliability Target.
- 7.15 Alstom shall not be liable to remedy non-compliance with the Reliability Target pursuant to Part 1 Section 7.14 to the extent that such non-compliance has arisen as a result of:
- (a) equipment or materials supplied by Construction Contractor; or
 - (b) a failure by Construction Contractor, the Service Provider or any of their respective contractors or subcontractors of any tier to operate or maintain the LRVs:
 - (i) in compliance with the Manuals (provided that such non-compliance has arisen as a direct result of the failure to comply with the Manuals);
 - (ii) in conformity with Applicable Law; or
 - (iii) in a good and workmanlike manner.

8. LIMITATIONS ON LIABILITY

- 8.1 Subject to Part 1 Section 8.3, the aggregate liability of Alstom to Construction Contractor in relation to Vehicle Delay Liquidated Damages will be limited to an amount equal to **[REDACTED]**% of the Aggregate LRV Purchase Price (the “**Vehicle Delay Liquidated Damages Subcap**”). For greater certainty the Vehicle Delay Liquidated Damages Subcap is a subset of the Vehicle Supplier Liability Cap referred to in Part 1 Section 8.2.
- 8.2 Subject to Part 1 Section 8.3, the maximum aggregate liability of Alstom under this Revenue Vehicle Supply Contract, including on termination, for default, breach, liability under any other legal theory, any Vehicle Delay Liquidated Damages, indemnity obligations or otherwise in connection with the Vehicle Supplier Activities (inclusive of liability under Part 1 Section 8.1), shall be limited to an amount equal to **[REDACTED]**% of the Aggregate LRV Purchase Price (the “**Vehicle Supplier Liability Cap**”). For greater certainty, all insurance deductibles paid by Alstom with respect to the Insurance Policies shall count towards Alstom’s maximum aggregate liability.
- 8.3 **[REDACTED]**.
- 8.4 Save as expressly set forth in the indemnification provided by Alstom pursuant to Part 2 Section 56.1 and in respect of Vehicle Delay Liquidated Damages but not otherwise, notwithstanding anything contrary in this Revenue Vehicle Supply Contract, all indirect, consequential, punitive, loss of profit, reputational or exemplary damages (collectively, “**Indirect Losses**”) are mutually waived under this Revenue Vehicle Supply Contract.
- 8.5 Notwithstanding anything to the contrary in this Revenue Vehicle Supply Contract, neither Party may bring any action against the other Party in any way arising out of, or relating directly or indirectly to, this Revenue Vehicle Supply Contract, including, without limitation, any action in any way arising out of, or relating directly or indirectly to, any breach of contract or negligence in the performance of its obligations or of any indemnity obligation under this Revenue Vehicle Supply Contract after the expiry of the time periods established in the *Limitations Act, 2002* (Ontario).
- 8.6 The Parties acknowledge and agree that the provisions of Part 2 Section 49 in respect of liability of Alstom to Construction Contractor for Direct Losses will at all time be subject to the terms of this Part 1 Section 8 and the limitations of liability and the Vehicle Supplier Liability Cap.
- 8.7 For certainty, a Direct Loss suffered by Construction Contractor:
- (a) **[REDACTED]**; and

- (b) does not include any damage, loss or liability representing a deduction made by Project Co under the Service Contract that represents a corresponding Deduction made by Contracting Authority under the Project Agreement (such damage, loss or liability being an Indirect Loss).

9. PERFORMANCE SECURITY

9.1 [REDACTED]

10. CONTRACT PRICE PAYMENT

- 10.1 The contract price is \$[REDACTED], exclusive of HST but inclusive of all other applicable Taxes (the “**Contract Price**”).
- 10.2 Save whereas expressly contemplated otherwise in this Revenue Vehicle Supply Contract, the Contract Price and any other amounts payable under this Revenue Vehicle Supply Contract shall be paid in accordance with the provisions of Attachment 20 – Contract Price and Payment
- 10.3 Construction Contractor shall pay each Milestone Payment as directed in writing within 30 days of receipt by Construction Contractor of Alstom's undisputed invoice for the same except and to the extent that Construction Contractor disputes in good faith its liability to pay all or any portion of such invoice and notifies Alstom in writing of the basis of its claim not to be liable to make such payment, with the understanding that any undisputed amount of a given invoice shall be paid within the time period set forth above.
- 10.4 To the extent that Construction Contractor intends to reduce a Milestone Payment by the amount of any holdback that Construction Contractor believes is required to withhold under the Construction Act, then no later than 30 Business Days prior to the date on which such Milestone Payment is to be paid to Alstom, Construction Contractor shall provide written notice to Alstom in this regard, which written notice shall state Construction Contractor's intention to reduce such Milestone Payment by a holdback pursuant to the Construction Act, the amount of such holdback retained by Construction Contractor and a legal opinion supporting such belief of Construction Contractor. Alstom reserves the right to dispute the applicability of the Construction Act to or regarding a particular matter under or pursuant to this Revenue Vehicle Supply Contract and to pursue court costs and legal fees as prevailing party.

11. MISCELLANEOUS

- 11.1 Without limiting and in addition to all other obligations to mitigate required of the Parties under this Revenue Vehicle Supply Contract, or at law or in equity, in all cases where a Party is entitled to receive from the other Party (including, without limitation, in the case

of Alstom, pursuant to the provisions relating to Equivalent Project Relief but specifically excluding in respect of Alstom's obligation to pay any Vehicle Delay Liquidated Damages) any compensation, losses or an extension of time or other relief, the Party so entitled will use all reasonable efforts and all due diligence to mitigate and reduce the amount required to be paid by the other Party and the length of the extension of time or the extent of other relief.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS whereof this Revenue Vehicle Supply Contract has been executed by the Parties and delivered on the date first stated above.

ALSTOM TRANSPORT CANADA INC.

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

[REDACTED]

[REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

HURONTARIO LIGHT RAIL TRANSIT PROJECT

REVENUE VEHICLE SUPPLY CONTRACT

PART 2

CONDITIONS OF CONTRACT

Confidential – Economic Interests of Ontario

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MT DOCS 19727287v2

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION 1

 1.1 Definitions and Interpretation 1

 1.2 Conflict of Terms 3

 1.3 Conflict of Documents 5

 1.4 Contracting Authority Rights Against Alstom 5

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE 6

 2.1 Effective Date 6

 2.2 [NOT USED] 6

 2.3 Financial Close 6

 2.4 [NOT USED] 7

3. SCOPE OF REVENUE VEHICLE SUPPLY CONTRACT 7

 3.1 Scope of Revenue Vehicle Supply Contract 7

4. BUSINESS OPPORTUNITIES, ADVERTISING AND PLANNED CLOSURE EVENTS 7

 4.1 Business Opportunities 7

 4.2 [NOT USED] 8

5. REPRESENTATIONS AND WARRANTIES 8

 5.1 Alstom Representations and Warranties 8

 5.2 Construction Contractor Representations and Warranties 10

6. BACKGROUND INFORMATION 11

 6.1 No Liability 11

 6.2 No Warranty 12

 6.3 No Claims 12

 6.4 Technical Reports 13

7. [NOT USED] 13

 7.1 Vehicle Supplier Project Documents 13

 7.2 [NOT USED] 13

 7.3 [NOT USED] 13

 7.4 [NOT USED] 14

8. CONTRACTING AUTHORITY’S RESPONSIBILITIES 14

 8.1 General 14

 8.2 Contracting Authority Permits, Licences and Approvals 14

9. ALSTOM RESPONSIBILITIES 15

 9.1 [NOT USED] 15

MT DOCS 19727287v2

| | | |
|------|--|----|
| 9.2 | General | 15 |
| 9.3 | Alstom Parties | 17 |
| 9.4 | VSC Permits, Licences and Approvals | 17 |
| 9.5 | Safety and Security..... | 19 |
| 9.6 | [NOT USED]..... | 19 |
| 9.7 | Protest and Trespass | 20 |
| 9.8 | [NOT USED]..... | 20 |
| 9.9 | [NOT USED]..... | 20 |
| 9.10 | System Extension | 21 |
| 9.11 | [Intentionally Deleted] | 21 |
| 9.12 | [NOT USED]..... | 21 |
| 9.13 | Tracking System..... | 21 |
| 10. | REPRESENTATIVES..... | 21 |
| 10.1 | The Construction Contractor and the VSC Representative | 22 |
| 10.2 | The VSC Representative | 22 |
| 10.3 | Communications to Representatives | 23 |
| 10.4 | Key VSC Individuals..... | 23 |
| 11. | WORKS COMMITTEE | 24 |
| 11.1 | Establishment | 24 |
| 11.2 | [NOT USED]..... | 24 |
| 11.3 | [NOT USED]..... | 24 |
| 11.4 | [NOT USED]..... | 24 |
| 11.5 | [NOT USED]..... | 24 |
| 11.6 | Proceeding at Risk..... | 25 |
| 12. | [NOT USED] | 26 |
| 12.1 | [NOT USED]..... | 26 |
| 12.2 | [NOT USED]..... | 26 |
| 12.3 | [NOT USED]..... | 27 |
| 12.4 | [NOT USED]..... | 27 |
| 13. | QUALITY MANAGEMENT..... | 27 |
| 14. | ACCESS TO THE LANDS AND REVENUE VEHICLES..... | 27 |
| 14.1 | Access to Lands and Revenue Vehicles | 27 |
| 14.2 | Non-exclusive Licence to Metrolinx Lands / Development of Lands..... | 29 |
| 14.3 | [NOT USED]..... | 29 |
| 14.4 | No Interest in Land, Facilities or Infrastructure | 30 |
| 14.5 | Non-Disturbance Agreement..... | 30 |
| 14.6 | [NOT USED]..... | 30 |
| 14.7 | Changes to Lands | 30 |

| | | |
|-------|---|----|
| 15. | ENCUMBRANCES..... | 30 |
| 15.1 | Alstom Shall Perform Obligations Under Encumbrances..... | 30 |
| 15.2 | No Encumbrances..... | 31 |
| 15.3 | <i>Construction Act</i> (Ontario)..... | 32 |
| 16. | SITE CONDITION..... | 33 |
| 16.1 | Acceptance of Site Condition..... | 33 |
| 16.2 | Contamination..... | 35 |
| 16.3 | Items of Geological, Historical Heritage or Archaeological Interest or Value..... | 36 |
| 16.4 | Species-at-Risk..... | 38 |
| 16.5 | Defects – Major Existing Third Party Infrastructure..... | 39 |
| 16.6 | [NOT USED]..... | 39 |
| 17. | GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS..... | 39 |
| 17.1 | Governmental, Railway and Utility Company Fees..... | 39 |
| 18. | CHANGE IN STANDARDS..... | 40 |
| 19. | COORDINATION AND NO DISRUPTION..... | 40 |
| 20. | DESIGN AND CONSTRUCTION OBLIGATIONS..... | 42 |
| 20.1 | Overall Responsibility..... | 42 |
| 20.2 | Completion of Revenue Vehicle Deliverables..... | 42 |
| 20.3 | Development of Design..... | 42 |
| 20.4 | [NOT USED]..... | 43 |
| 20.5 | [NOT USED]..... | 43 |
| 20.6 | [NOT USED]..... | 43 |
| 20.7 | [NOT USED]..... | 43 |
| 20.8 | General Construction Obligations..... | 43 |
| 20.9 | [NOT USED]..... | 44 |
| 20.10 | [NOT USED]..... | 44 |
| 20.11 | [Intentionally Deleted]..... | 44 |
| 20.12 | [NOT USED]..... | 44 |
| 20.13 | [NOT USED]..... | 45 |
| 20.14 | Apprenticeship Plan and Program..... | 45 |
| 20.15 | Community Benefits and Liaison Plan..... | 45 |
| 20.16 | [NOT USED]..... | 45 |
| 21. | ACCESS AND MONITORING..... | 46 |
| 21.1 | Access for Province Persons..... | 46 |
| 21.2 | Increased Monitoring..... | 46 |
| 21.3 | Right to Uncover..... | 47 |
| 21.4 | No Relief from Obligations..... | 47 |
| 21.5 | [NOT USED]..... | 48 |
| 21.6 | Public Use..... | 48 |

MT DOCS 19727287v2

22. VEHICLE DELIVERY SCHEDULE AND VEHICLE SUPPLIER ACTIVITIES REPORT 48

 22.1 Completion of Vehicle Supplier Activities 48

 22.2 Vehicle Delivery Schedule 49

 22.3 Failure to Maintain Vehicle Delivery Schedule 49

 22.4 Vehicle Supplier Activities Report..... 51

23. LEED, ENERGY AND ENVIRONMENTAL REQUIREMENTS 51

 23.1 Environmental Management / Contamination and Hazardous Substances 51

 23.2 [NOT USED]..... 51

 23.3 [NOT USED]..... 51

 23.4 [NOT USED]..... 51

 23.5 [NOT USED]..... 51

 23.6 [NOT USED]..... 51

 23.7 [NOT USED]..... 51

24. [NOT USED] 52

 24.1 [NOT USED]..... 52

 24.2 [NOT USED]..... 52

 24.3 [NOT USED]..... 52

 24.4 [NOT USED]..... 52

 24.5 [NOT USED]..... 52

 24.6 [NOT USED]..... 52

 24.7 [NOT USED]..... 52

25. COMMISSIONING AND COMPLETION..... 52

 25.1 Commissioning Activities 52

 25.2 [NOT USED]..... 53

 25.3 [NOT USED]..... 53

 25.4 [Intentionally Deleted] 53

 25.5 Contracting Authority Commissioning 53

 25.6 [NOT USED]..... 54

 25.7 [NOT USED]..... 54

 25.8 [NOT USED]..... 54

 25.9 [NOT USED]..... 55

 25.9A [NOT USED]..... 55

 25.10 [NOT USED]..... 55

 25.11 Effect of Certificates/Use 55

 25.12 [NOT USED]..... 55

 25.13 [NOT USED]..... 55

 25.14 [Intentionally Deleted] 56

 25.15 [NOT USED]..... 56

 25.16 [NOT USED]..... 56

MT DOCS 19727287v2

26. [NOT USED] 56

 26.1 [NOT USED]..... 56

 26.2 [NOT USED]..... 57

 26.3 [NOT USED]..... 57

 26.4 [NOT USED]..... 57

 26.5 [NOT USED]..... 57

 26.6 [NOT USED]..... 57

 26.7 [NOT USED]..... 57

 26.8 [NOT USED]..... 57

 26.9 [NOT USED]..... 57

 26.10 [NOT USED]..... 57

 26.11 [NOT USED]..... 57

27. [INTENTIONALLY DELETED] 58

28. HUMAN RESOURCES 58

 28.1 Admittance of Personnel 58

 28.2 Confirmation of Action 58

 28.3 Finality as to Admission..... 58

 28.4 Staff Competency 58

 28.5 Employee Training 59

 28.6 [NOT USED]..... 59

 28.7 Disciplinary Action 59

 28.8 Human Resources Policies 59

 28.9 Management Organizations..... 60

 28.10 Governmental Authority..... 60

29. GOODS, EQUIPMENT, CONSUMABLES AND MATERIALS..... 60

 29.1 Standards 60

 29.2 Stocks 60

30. DAMAGE AND DESTRUCTION..... 60

 30.1 Protection of Works and Property and Reinstatement Work 60

 30.2 [NOT USED]..... 61

 30.3 [NOT USED]..... 61

31. [NOT USED] 61

 31.1 [NOT USED]..... 61

 31.2 [NOT USED]..... 62

 31.3 [NOT USED]..... 62

 31.4 [NOT USED]..... 62

 31.5 [NOT USED]..... 62

| | | |
|-------|--|----|
| 32. | PROJECT CO'S REMEDIAL RIGHTS..... | 62 |
| 32.1 | Exercise of Remedial Rights | 62 |
| 32.2 | Emergency..... | 63 |
| 32.3 | Rectification | 63 |
| 32.4 | Costs and Expenses | 63 |
| 32.5 | Reimbursement Events..... | 63 |
| 32.6 | Reimbursement if Improper Exercise of Rights..... | 63 |
| 33. | VEHICLES | 63 |
| 34. | PAYMENT | 64 |
| 34.1 | [NOT USED]..... | 64 |
| 34.2 | [NOT USED]..... | 64 |
| 34.3 | [NOT USED]..... | 64 |
| 34.4 | [NOT USED]..... | 64 |
| 34.5 | [NOT USED]..... | 64 |
| 34.6 | [NOT USED]..... | 64 |
| 34.7 | [NOT USED]..... | 65 |
| 34.8 | [NOT USED]..... | 65 |
| 34.9 | [NOT USED]..... | 65 |
| 34.10 | [NOT USED]..... | 65 |
| 34.11 | Manner of Payment | 65 |
| 34.12 | Set-Off..... | 66 |
| 34.13 | Effect of Payment..... | 66 |
| 34.14 | Audit of Performance and Payment | 66 |
| 34.15 | No Other Entitlement | 67 |
| 35. | TAXES..... | 67 |
| 35.1 | Taxes | 68 |
| 35.2 | Changes in Scope of Taxation..... | 68 |
| 35.3 | Information and Assistance Provided by Construction Contractor | 68 |
| 35.4 | Information and Assistance Provided by Construction Contractor | 69 |
| 35.5 | Residency – <i>Income Tax Act</i> (Canada)..... | 69 |
| 35.6 | Taxes – General..... | 69 |
| 35.7 | Taxes – Indemnity | 70 |
| 36. | [NOT USED]..... | 71 |
| 36.1 | [NOT USED]..... | 71 |
| 36.2 | [NOT USED]..... | 71 |
| 37. | RECORDS, INFORMATION AND AUDIT | 71 |
| 37.1 | Records Provisions | 71 |
| 37.2 | Information and General Audit Rights | 71 |
| 37.3 | [NOT USED]..... | 73 |

MT DOCS 19727287v2

| | | |
|--------|--|----|
| 37.4 | Right to Disclose Intellectual Property..... | 73 |
| 37.4A. | Additional Provisions re Records..... | 74 |
| 38. | CHANGES IN LAW | 74 |
| 38.1 | Performance after Change in Law | 74 |
| 38.2 | Works Change in Law | 74 |
| 38.3 | Relevant Change in Law | 74 |
| 38.4 | VSC Change in Law | 75 |
| 39. | VARIATIONS | 77 |
| 39.1 | VSC Variation Procedure | 77 |
| 39.2 | [NOT USED]..... | 77 |
| 40. | DELAY EVENTS..... | 78 |
| 40.1 | Definition | 78 |
| 40.2 | Consequences of a Delay Event | 82 |
| 40.3 | Mitigation | 85 |
| 41. | COMPENSATION EVENTS..... | 85 |
| 41.1 | Definition | 85 |
| 41.2 | Consequences of a Compensation Event..... | 85 |
| 41.3 | Mitigation | 86 |
| 41.4 | Insured Exposure..... | 86 |
| 41.5 | [Intentionally Deleted] | 87 |
| 41.6 | Special Compensation Regarding Category 1 Utility Companies..... | 87 |
| 41.7 | [NOT USED]..... | 87 |
| 42. | [NOT USED] | 87 |
| 42.1 | [NOT USED]..... | 87 |
| 42.2 | [NOT USED]..... | 87 |
| 42.3 | [NOT USED]..... | 87 |
| 42.4 | [NOT USED]..... | 87 |
| 43. | RELIEF EVENTS..... | 87 |
| 43.1 | Definition | 87 |
| 43.2 | Consequences of a Relief Event | 88 |
| 43.3 | Mitigation and Process | 89 |
| 43.4 | Insured Exposure..... | 89 |
| 44. | FORCE MAJEURE | 90 |
| 44.1 | Definition | 90 |
| 44.2 | Consequences of Force Majeure | 90 |
| 44.3 | Mitigation and Process | 91 |
| 44.4 | Insured Exposure..... | 92 |

MT DOCS 19727287v2

| | | |
|------|--|-----|
| 44.5 | Modifications..... | 92 |
| 45. | ALSTOM DEFAULT..... | 92 |
| 45.1 | Alstom Events of Default..... | 92 |
| 45.2 | Notification of Occurrence..... | 97 |
| 45.3 | Right to Termination..... | 97 |
| 45.4 | Remedy Provisions..... | 97 |
| 45.5 | Additional Remedy Provisions..... | 99 |
| 45.6 | Construction Contractor’s Costs..... | 101 |
| 45.7 | No other Rights to Terminate..... | 101 |
| 45.8 | Rights and Obligations Upon Termination..... | 101 |
| 46. | CONSTRUCTION CONTRACTOR’S DEFAULT..... | 103 |
| 46.1 | CC Events of Default..... | 103 |
| 46.2 | [NOT USED]..... | 105 |
| 46.3 | Alstom’s Costs..... | 106 |
| 46.4 | No Other Rights to Terminate..... | 106 |
| 47. | RELIEF EVENT AND NON-DEFAULT TERMINATION..... | 106 |
| 47.1 | Termination for Relief Event..... | 106 |
| 47.2 | Termination for Force Majeure..... | 106 |
| 47.3 | Termination for Convenience..... | 106 |
| 47.4 | [NOT USED]..... | 107 |
| 47.5 | Termination upon Termination of the Construction Contract..... | 107 |
| 48. | EFFECT OF TERMINATION AND TRANSITIONAL ARRANGEMENTS..... | 107 |
| 48.1 | Termination..... | 107 |
| 48.2 | Continued Effect - No Waiver..... | 107 |
| 48.3 | [NOT USED]..... | 107 |
| 48.4 | [NOT USED]..... | 107 |
| 48.5 | Ownership of Information..... | 108 |
| 48.6 | Provision in VSC Subcontracts..... | 108 |
| 48.7 | Transitional Arrangements..... | 108 |
| 48.8 | Termination upon Aforesaid Transfer..... | 109 |
| 48.9 | Survival..... | 109 |
| 49. | COMPENSATION ON TERMINATION..... | 109 |
| 49.1 | Compensation on Termination..... | 109 |
| 49.2 | Full and Final Settlement..... | 110 |
| 50. | [NOT USED]..... | 111 |
| 50.1 | [NOT USED]..... | 111 |

| | | |
|------|---|-----|
| 51. | INTELLECTUAL PROPERTY | 111 |
| 51.1 | Intellectual Property (General)..... | 111 |
| 51.2 | Licence to Use..... | 111 |
| 51.3 | Sublicense Rights | 112 |
| 51.4 | Copyright..... | 112 |
| 51.5 | Updates..... | 113 |
| 51.6 | Other Intellectual Property Provisions | 113 |
| 52. | CONFIDENTIALITY/COMMUNICATIONS | 114 |
| 52.1 | Disclosure..... | 114 |
| 52.2 | Redaction..... | 114 |
| 52.3 | Disclosure to Government..... | 114 |
| 52.4 | <i>Freedom of Information and Protection of Privacy Act (Ontario)</i> | 115 |
| 52.5 | Use and Disclosure of Confidential Information..... | 115 |
| 52.6 | Exceptions | 116 |
| 52.7 | Survival of Confidentiality..... | 117 |
| 52.8 | Communication and Public Engagement Protocol..... | 117 |
| 52.9 | Confidentiality of Intellectual Property..... | 117 |
| 53. | PERSONAL INFORMATION..... | 118 |
| 53.1 | General | 118 |
| 53.2 | Protection of Personal Information | 118 |
| 53.3 | Personal Information | 119 |
| 54. | INSURANCE..... | 120 |
| 54.1 | General Requirements | 120 |
| 54.2 | No Relief from Liabilities and Obligations | 120 |
| 55. | [NOT USED]..... | 120 |
| 56. | INDEMNITIES..... | 120 |
| 56.1 | Alstom Indemnities to Construction Contractor..... | 120 |
| 56.2 | Construction Contractor Indemnities to Alstom..... | 122 |
| 56.3 | Conduct of Claims..... | 123 |
| 56.4 | Mitigation - Indemnity Claims | 125 |
| 57. | LIMITS ON LIABILITY..... | 126 |
| 57.1 | [NOT USED]..... | 126 |
| 57.2 | [NOT USED]..... | 126 |
| 57.3 | Sole Remedy..... | 126 |
| 57.4 | [NOT USED]..... | 126 |
| 57.5 | [NOT USED]..... | 126 |

58. DISPUTE RESOLUTION PROCEDURE 127

59. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL 127

 59.1 Alstom Assignment 127

 59.2 Construction Contractor Assignment 127

 59.3 Subcontractors 128

 59.4 Changes in Ownership and Control 128

 59.5 Contracting Authority’s Due Diligence 130

 59.6 [NOT USED] 130

60. PROHIBITED ACTS 130

 60.1 Definition 130

 60.2 Remedies 132

 60.3 Permitted Payments 133

 60.4 Notification 133

 60.5 Replacement of Alstom Party 133

61. NOTICES 133

 61.1 Notices to Parties 133

 61.2 Notices to Representatives 134

 61.3 Facsimile 134

 61.4 Change of Address 135

 61.5 Deemed Receipt of Notices 135

 61.6 Service on Construction Contractor 135

62. EMERGENCY MATTERS 136

 62.1 Emergency 136

63. CONTRACTING AUTHORITY’S DESIGNATE 136

 63.1 Right to Designate 136

64. GENERAL 136

 64.1 Amendments 136

 64.2 Waiver 136

 64.3 Relationship Between the Parties 137

 64.4 General Duty to Mitigate 137

 64.5 Actual Knowledge 138

 64.6 Entire Agreement 138

 64.7 No Reliance 138

 64.8 Severability 138

 64.9 Enurement 138

 64.10 Governing Law and Jurisdiction 139

 64.11 Cumulative Remedies 139

 64.12 Further Assurance 139

MT DOCS 19727287v2

| | | |
|-------|--|-----|
| 64.13 | Costs | 139 |
| 64.14 | Language of Agreement | 139 |
| 64.15 | Proof of Authority | 140 |
| 64.16 | Counterparts | 140 |
| 64.17 | Province Persons as Third Party Beneficiaries..... | 140 |
| 64.18 | [NOT USED]..... | 140 |

ATTACHMENTS

| Attachment No. | Description |
|----------------|---|
| Attachment 1 | - Definitions and Interpretation |
| Attachment 2 | - VSC Completion Documents |
| Attachment 3 | - [NOT USED] |
| Attachment 4 | - Lenders' Vehicle Supplier Direct Agreement |
| Attachment 5 | - Alstom Direct Agreement |
| Attachment 6 | - [NOT USED] |
| Attachment 7 | - [NOT USED] |
| Attachment 8 | - [NOT USED] |
| Attachment 9 | - Key VSC Individuals |
| Attachment 10 | - Review Procedure |
| Attachment 11 | - Quality Management |
| Attachment 12 | - [NOT USED] |
| Attachment 13 | - [NOT USED] |
| Attachment 14 | - Vehicle Testing and Commissioning |
| Attachment 15 | - Output Specifications |
| Attachment 16 | - [NOT USED] |
| Attachment 17 | - Environmental Obligations |
| Attachment 18 | - [NOT USED] |
| Attachment 19 | - [NOT USED] |
| Attachment 20 | - Contract Price and Payment |
| Attachment 21 | - [NOT USED] |
| Attachment 22 | - VSC Variation Procedure |
| Attachment 23 | - [NOT USED] |
| Attachment 24 | - [NOT USED] |
| Attachment 25 | - Insurance |
| Attachment 26 | - Record Provisions |
| Attachment 27 | - VSC Dispute Resolution Procedure |
| Attachment 28 | - [NOT USED] |
| Attachment 29 | - [NOT USED] |
| Attachment 30 | - [NOT USED] |
| Attachment 31 | - [NOT USED] |
| Attachment 32 | - [NOT USED] |
| Attachment 33 | - Vehicle Supplier Activities Report Requirements |

MT DOCS 19727287v2

| | | |
|---------------|---|----------------------------------|
| Attachment 34 | - | [NOT USED] |
| Attachment 35 | - | [NOT USED] |
| Attachment 36 | - | [Intentionally Deleted] |
| Attachment 37 | - | [NOT USED] |
| Attachment 38 | - | [NOT USED] |
| Attachment 39 | - | System Extension |
| Attachment 40 | - | [NOT USED] |
| Attachment 41 | - | [NOT USED] |
| Attachment 42 | - | [NOT USED] |
| Attachment 43 | - | Revenue Vehicles |
| Attachment 44 | - | Form of Vehicle Supply Guarantee |
| Attachment 45 | - | Form of Letters of Credit |
| Attachment 46 | - | Alstom Key Parties |

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

- (a) This Revenue Vehicle Supply Contract shall be interpreted in accordance with Attachment 1 – Definitions and Interpretation. Except as expressly defined in Attachment 1 – Definitions and Interpretation or elsewhere in this Revenue Vehicle Supply Contract, capitalized terms and expressions used in this Revenue Vehicle Supply Contract shall have the meanings given to them in the Project Agreement or the Construction Contract, as applicable, and (i) where a term is defined in both the Project Agreement and the Construction Contract, the definition in Project Agreement shall govern; and (ii) where a term is defined in both the Project Agreement and this Revenue Vehicle Supply Contract, or in both in the Construction Contract and this Revenue Vehicle Supply Contract, the definition in this Revenue Vehicle Supply Contract shall govern.
- (b) This Revenue Vehicle Supply Contract is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Revenue Vehicle Supply Contract.

| Attachment No. | Description |
|----------------|--|
| Attachment 1 | - Definitions and Interpretation |
| Attachment 2 | - VSC Completion Documents |
| Attachment 3 | - [NOT USED] |
| Attachment 4 | - Lenders’ Vehicle Supplier Direct Agreement |
| Attachment 5 | - Alstom Direct Agreement |
| Attachment 6 | - [NOT USED] |
| Attachment 7 | - [NOT USED] |
| Attachment 8 | - [NOT USED] |
| Attachment 9 | - Key VSC Individuals |
| Attachment 10 | - Review Procedure |
| Attachment 11 | - Quality Management |
| Attachment 12 | - [NOT USED] |
| Attachment 13 | - [NOT USED] |
| Attachment 14 | - Vehicle Testing and Commissioning |
| Attachment 15 | - Output Specifications |
| Attachment 16 | - [NOT USED] |
| Attachment 17 | - Environmental Obligations |
| Attachment 18 | - [NOT USED] |
| Attachment 19 | - [NOT USED] |
| Attachment 20 | - Contract Price and Payment |
| Attachment 21 | - [NOT USED] |
| Attachment 22 | - VSC Variation Procedure |
| Attachment 23 | - [NOT USED] |
| Attachment 24 | - [NOT USED] |
| Attachment 25 | - Insurance |

| | | |
|---------------|---|---|
| Attachment 26 | - | Record Provisions |
| Attachment 27 | - | VSC Dispute Resolution Procedure |
| Attachment 28 | - | [NOT USED] |
| Attachment 29 | - | [NOT USED] |
| Attachment 30 | - | [NOT USED] |
| Attachment 31 | - | [NOT USED] |
| Attachment 32 | - | [NOT USED] |
| Attachment 33 | - | Vehicle Supplier Activities Report Requirements |
| Attachment 34 | - | [NOT USED] |
| Attachment 35 | - | [NOT USED] |
| Attachment 36 | - | [Intentionally Deleted] |
| Attachment 37 | - | [NOT USED] |
| Attachment 38 | - | [NOT USED] |
| Attachment 39 | - | System Extension |
| Attachment 40 | - | [NOT USED] |
| Attachment 41 | - | [NOT USED] |
| Attachment 42 | - | [NOT USED] |
| Attachment 43 | - | Revenue Vehicles |
| Attachment 44 | - | Form of Vehicle Supply Guarantee |
| Attachment 45 | - | Form of Letters of Credit |
| Attachment 46 | - | Alstom Key Parties |

- (c) The documents comprising this Revenue Vehicle Supply Contract 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 ambiguities, conflicts or inconsistencies, in which case Part 2 Section 1.2 shall apply.
- (d) [NOT USED]
- (e) Alstom acknowledges and agrees to Section 1.1(e) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (f) Unless it is specifically provided that a determination, consent, approval or satisfaction is in the sole discretion of Construction Contractor, no determination, consent, approval or satisfaction of Construction Contractor or the Construction Contractor Representative shall be unreasonably withheld or delayed, it being acknowledged by Alstom that Construction Contractor shall be deemed to be acting reasonably in withholding or delaying any consent, approval or satisfaction if Project Co or the Contracting Authority are withholding or delaying such consent, approval or satisfaction under similar circumstances pursuant to the corresponding provisions of the Construction Contract or the Project Agreement. Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Alstom, no consent, approval or satisfaction of Alstom or the VSC Representative shall be unreasonably withheld or delayed.

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Revenue Vehicle Supply Contract, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
- (i) the provisions of amendments in writing to this Revenue Vehicle Supply Contract signed by the Parties and VSC Variation Confirmations shall govern and take precedence only over those specific provisions of this Revenue Vehicle Supply Contract 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, except that with respect to any Revenue Vehicle Deliverable, the standard of safety, reliability, durability, performance or services applicable thereto set forth in the Output Specifications shall take precedence;
 - (iii) Part 1 Section 4 (Equivalent Project Relief);
 - (iv) the body of this Revenue Vehicle Supply Contract (Part 1)
 - (v) the body of this Revenue Vehicle Supply Contract (Part 2);
 - (vi) Attachment 1 - Definitions and Interpretation;
 - (vii) [NOT USED];
 - (viii) [NOT USED];
 - (ix) Attachment 27 - VSC Dispute Resolution Procedure;
 - (x) [NOT USED];
 - (xi) [NOT USED];
 - (xii) [NOT USED];
 - (xiii) Attachment 20 - Contract Price and Payment;
 - (xiv) Attachment 15 - Output Specifications;
 - (xv) Attachment 17 - Environmental Obligations;
 - (xvi) Attachment 25 - Insurance;

MT DOCS 19727287v2

-
- (xvii) Attachment 22 - VSC Variation Procedure;
 - (xviii) Attachment 10 - Review Procedure;
 - (xix) Attachment 14 - Commissioning;
 - (xx) Attachment 11 - Quality Management;
 - (xxi) [NOT USED];
 - (xxii) [NOT USED];
 - (xxiii) Attachment 26 - Record Provisions;
 - (xxiv) [NOT USED];
 - (xxv) the other Attachment in the order in which they are listed in Part 2 Section 1.1(b); and
 - (xxvi) [NOT USED].
- (b) Subject to Part 2 Section 1.2(a), 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 Vehicle Supplier Activities, the provision that applies to the specific part of the Vehicle Supplier Activities shall govern for that specific part of the Vehicle Supplier Activities.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Part 2 Section 1.2, then Alstom or Construction Contractor, upon discovery of same, shall immediately give Notice to the Construction Contractor Representative. The Construction Contractor Representative shall, within 13 Business Days after such Notice, make a determination of which provision governs and give Notice of such determination, in writing, to Alstom.
- (d) Construction Contractor and Alstom shall comply with the determination of the Construction Contractor Representative pursuant to this Part 2 Section 1.2 unless Alstom disputes the decision of the Construction Contractor Representative in which event such VSC Dispute may be referred for resolution in accordance with Attachment 27 – VSC Dispute Resolution Procedure, provided that to the extent that:
- (i) a determination is made by the Contracting Authority Representative pursuant to the Project Agreement or pursuant to the Dispute Resolution Procedure in respect of a conflict under the Project Agreement; or
 - (ii) a determination is made by the Project Co Representative pursuant to the Construction Contract or pursuant to the Dispute Resolution Procedure in respect of a conflict under the Construction Contract

MT DOCS 19727287v2

any such determination shall be binding upon the Parties in respect of a conflict between the corresponding provisions in this Revenue Vehicle Supply Contract. The provisions of Part 1 relating to Equivalent Project Relief shall apply with respect to any right of the Construction Contractor under the Construction Contract to dispute any determination by the Project Co Representative pursuant to the Construction Contract or any right of Project Co under the Project Agreement to dispute any determination by the Contracting Authority Representative pursuant to the Project Agreement.

- (e) For greater certainty, the Output Specifications shall not be amended or modified by the application of Part 2 Section 1.2(a)(ii).

1.3 Conflict of Documents

- (a) Subject to Part 1 Section 3.1, in the event of any ambiguity, conflict or inconsistency between the provisions of Part 1 of this Revenue Vehicle Supply Contract and Part 2 of this Revenue Vehicle Supply Contract, the provisions of Part 1 shall prevail to the extent of such ambiguity, conflict or inconsistency.

1.4 Contracting Authority Rights Against Alstom

- (a) Alstom acknowledges and agrees that where:
- (i) Contracting Authority has a right against Project Co in the Project Agreement that relates to or is in respect of the Vehicle Supplier Activities and Project Co has a corresponding right against Construction Contractor in the Construction Contract and Construction Contractor has a further corresponding right against Alstom under this Revenue Vehicle Supply Contract; and/or
 - (ii) this Revenue Vehicle Supply Contract specified that Contracting Authority has certain rights against Alstom; and/or
 - (iii) Alstom is required to perform certain obligations and/or take certain actions in response to the exercise of certain rights by Contracting Authority against Project Co that relate to or are in respect of the Vehicle Supplier Activities ,

then:

- (A) in the case of Part 2 Section 1.4(a)(i), rather than taking action directly against Alstom in accordance with the Revenue Vehicle Supply Contract, Contracting Authority may direct Project Co to direct Construction Contractor to take required actions against Alstom pursuant to the Revenue Vehicle Supply Contract (and Construction Contractor in taking any such action shall notify Alstom that it has been directed to do so by Contracting Authority); and/or

- (B) in the case of Part 2 Section 1.4(a)(ii), rather than Alstom performing such obligations or taking such actions for the direct benefit of Contracting Authority pursuant to the Revenue Vehicle Supply Contract, Alstom shall, at the direction of Contracting Authority, perform such obligation or take such action for the benefit of Construction Contractor for the ultimate benefit of Contracting Authority pursuant to the Revenue Vehicle Supply Contract

1.5 Joint and Several Liability

- (a) Each of the Construction Contractor Members shall be jointly and severally liable for any and all of the liabilities and obligations of Construction Contractor under or pursuant to this Revenue Vehicle Supply Contract.

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) Except as set forth in Part 2 Section 2.1(b), the provisions of Part 1 and Part 2 of this Revenue Vehicle Supply Contract will come into effect only on Financial Close. The provisions of this Revenue Vehicle Supply Contract will terminate on the VSC Termination Date.
- (b) The provisions of Part 2 Section 2.3 will come into effect on Commercial Close.

2.2 [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]
- (c) [NOT USED]
- (d) [NOT USED]

2.3 Financial Close

- (a) No later than 35 days prior to the Financial Close Target Date, Alstom will deliver to Construction Contractor drafts of all documents referred to in Section 1 of Attachment 2 – VSC Completion Documents. No later than 35 days prior to the Financial Close Target Date, Construction Contractor will deliver to Alstom drafts of all documents referred to in Section 2 of Attachment 2 – VSC Completion Documents.
- (b) On or before the date of this Revenue Vehicle Supply Contract:
 - (i) Alstom shall deliver to Construction Contractor the documents referred to in Section 1 of Attachment 2 – VSC Completion Documents; and

MT DOCS 19727287v2

(ii) Construction Contractor shall deliver to Alstom the documents referred to in Section 2 of Attachment 2 – VSC Completion Documents.

(c) [REDACTED].

(d) [NOT USED]

2.4 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

3. SCOPE OF REVENUE VEHICLE SUPPLY CONTRACT

3.1 Scope of Revenue Vehicle Supply Contract

(a) Alstom shall perform the Vehicle Supplier Activities in accordance with and subject to the provisions of this Revenue Vehicle Supply Contract.

(b) Alstom shall exercise its rights and perform its obligations at its own cost and risk without recourse to Construction Contractor, except as otherwise provided in this Revenue Vehicle Supply Contract.

4. BUSINESS OPPORTUNITIES, ADVERTISING AND PLANNED CLOSURE EVENTS

4.1 Business Opportunities

(a) Alstom acknowledges the provisions of Section 4.1 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

(b) For clarity, to the extent that the development of a Business Opportunity materially adversely interferes with Alstom’s ability to perform the Vehicle Supplier Activities, such development shall, subject to and in accordance with Attachment 22 – VSC Variation Procedure, result in a VSC Variation.

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

(f) [NOT USED]

MT DOCS 19727287v2

4.2 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

5. REPRESENTATIONS AND WARRANTIES**5.1 Alstom Representations and Warranties**

- (a) Alstom represents and warrants to Construction Contractor that as of Financial Close:
- (i) Alstom is a corporation incorporated and validly existing under the laws of Canada, is in good standing with Industry Canada with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Revenue Vehicle Supply Contract and to perform its obligations hereunder;
 - (ii) Alstom and the Alstom Parties, collectively, have extensive experience and are knowledgeable in the design, construction, manufacture, supply and delivery of light rail vehicles, similar to the Revenue Vehicle Deliverables in scale, scope, type and complexity and have the required ability, experience, skill and capacity to perform the Vehicle Supplier Activities in a timely and professional manner as set out in this Revenue Vehicle Supply Contract;
 - (iii) Alstom has the requisite power, authority and capacity to execute, deliver and perform this Revenue Vehicle Supply Contract, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Revenue Vehicle Supply Contract to be done, executed, delivered or performed;
 - (iv) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Alstom in a manner that would impair or limit its ability to perform the obligations of Alstom under this Revenue Vehicle Supply Contract;
 - (v) this Revenue Vehicle Supply Contract has been duly authorized, executed, and delivered by Alstom and constitutes a legal, valid, and binding obligation of Alstom, enforceable against Alstom 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

MT DOCS 19727287v2

- (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;
- (vi) the execution, delivery, and performance by Alstom of this Revenue Vehicle Supply Contract 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;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, 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) no VSC Event of Default has occurred and is continuing;
- (viii) [NOT USED]
- (ix) there are no actions, suits, proceedings, or investigations pending or threatened against Alstom or, to Alstom's knowledge, any Alstom 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 Alstom or in any impairment of its ability to perform its obligations under this Revenue Vehicle Supply Contract, and Alstom has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (x) Alstom has conducted its own investigations and has carefully reviewed the whole of this Revenue Vehicle Supply Contract, and all other documents made available to Alstom by or on behalf of Construction Contractor and Contracting Authority relating to or in respect of the Vehicle Supplier Activities and, to Alstom's knowledge, nothing contained herein or therein inhibits or prevents Alstom from completing or performing the Vehicle Supplier Activities in accordance with this Revenue Vehicle Supply Contract in a good and safe manner so as to achieve and satisfy the requirements of this Revenue Vehicle Supply Contract;
- (xi) Alstom is able to meet its obligations as they generally become due;
- (xii) Alstom is registered under Division V of Part IX of the *Excise Tax Act* (Canada);
- (xiii) the Expected Delivery Dates are realistic dates and are achievable by Alstom performing the Vehicle Supplier Activities in accordance with this Revenue Vehicle Supply Contract;

MT DOCS 19727287v2

- (xiv) Alstom is not a Non-Resident;
- (xv) no Restricted Person has Direct or Indirect Power or Control over Alstom or any person or group persons who, either individually or collectively, have Direct or Indirect Power or Control of Alstom, in relation to the decisions, management, actions or policies of Alstom or in relation to the Vehicle Supplier Activities;
- (xvi) to the knowledge of Alstom, no Restricted Person has directly or indirectly, an Economic Interest in Alstom or the Project; and
- (xvii) [NOT USED].

5.2 Construction Contractor Representations and Warranties

- (a) Construction Contractor represents and warrants to Alstom, on a several basis, that as of Commercial Close:
 - (i) Construction Contractor is [REDACTED], and has all requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Revenue Vehicle Supply Contract;
 - (ii) Construction Contractor has the requisite power, authority and capacity to execute and deliver this Revenue Vehicle Supply Contract;
 - (iii) Construction Contractor has the requisite power, authority and capacity to perform its obligations under this Revenue Vehicle Supply Contract and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Revenue Vehicle Supply Contract to be done, executed, delivered or performed;
 - (iv) Construction Contractor has obtained all necessary approvals to enter into this Revenue Vehicle Supply Contract;
 - (v) this Revenue Vehicle Supply Contract has been duly authorized, executed, and delivered by Construction Contractor and constitutes a legal, valid, and binding obligation of Construction Contractor, enforceable against Construction Contractor 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;
 - (vi) the execution, delivery, and performance by Construction Contractor of this Revenue Vehicle Supply Contract does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating, formation or organizational documents, including any bylaw;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding to which it is a part or by which it or any of its properties or assets is bound or affected;
 - (vii) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Construction Contractor in a manner that would impair or limit its ability to perform the obligations of Construction Contractor under this Revenue Vehicle Supply Contract;
 - (viii) no CC Event of Default has occurred and is continuing;
 - (ix) there are no actions, suits, proceedings, or investigations pending or threatened against Construction Contractor or, to Construction Contractor's knowledge, any CC 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 Construction Contractor or in any impairment of its ability to perform its obligations under this Revenue Vehicle Supply Contract, and Construction Contractor has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment; and
 - (x) Construction Contractor is able to meet its obligations as they generally become due.
- (b) Subject to Equivalent Project Relief, Construction Contractor acknowledges the provision of Section 5.2(b)(vii) of the Project Agreement and Alstom shall be afforded the benefit of such provisions as if it was Construction Contractor.

6. BACKGROUND INFORMATION

6.1 No Liability

MT DOCS 19727287v2

- (a) Except as expressly provided in Part 2 Sections 6.4, 16.1, 16.2, 16.3, 16.4, 16.5 and 16.6 none of Construction Contractor, any CC Party, Project Co, any Project Co Party, Contracting Authority nor any Province Person shall be liable to Alstom or any Alstom Party for, and Alstom or any Alstom Party shall not seek to recover from Construction Contractor, any CC Party, Project Co, any Project Co Party, Contracting Authority nor any Province Person, 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 or the VSC Background Information by, or on behalf of, Alstom or any Alstom Party.

6.2 No Warranty

- (a) Except as expressly provided in Part 2 Sections 6.4, 16.1, 16.2, 16.3, 16.4, 16.5 and 16.6:
- (i) none of Construction Contractor, any CC Party, Project Co, any Project Co Party, Contracting Authority nor any Province Person gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), none of Construction Contractor, any CC Party, Project Co, any Project Co Party, Contracting Authority nor any Province Person warrants that the Background Information represents all of the information in its possession or control (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Revenue Vehicle Supply Contract) relevant or material to or in connection with the Project or the obligations of Alstom under this Revenue Vehicle Supply Contract; and
- (ii) none of Construction Contractor, any CC Party, Project Co nor any Province Person shall be liable to Alstom or any Alstom Party in respect of any failure, whether before, on or after the execution and delivery of this Revenue Vehicle Supply Contract:
- (A) to disclose or make available to Alstom or any Alstom Party any information, documents or data except as required under this Revenue Vehicle Supply Contract;
- (B) to review or update the Background Information; or
- (C) to inform Alstom or any Alstom Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

6.3 No Claims

- (a) Alstom 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 Revenue Vehicle Supply Contract, satisfied

MT DOCS 19727287v2

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 Part 2 Sections 6.4, 16.1, 16.2, 16.3, 16.4, 16.5 and 16.6, it shall not be entitled to and shall not, and shall ensure that no Alstom Party shall, make any claim against Construction Contractor, any CC Party, Project Co, any Project Co Party, Contracting Authority or any Province Person (whether in contract, tort or otherwise), including any claim in damages, for extensions of time or for additional payments under this Revenue Vehicle Supply Contract 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 Alstom be relieved from any of its obligations under this Revenue Vehicle Supply Contract on any such grounds.

6.4 Technical Reports

- (a) Alstom acknowledges the provisions of Section 6.4 of the Project Agreement. If Construction Contractor is entitled to a Variation pursuant to Section 6.4 of the Construction Contract (as a result of a corresponding Variation pursuant to Section 6.4 of the Project Agreement) in connection with the Vehicle Supplier Activities, Alstom shall be entitled to relief to the extent available pursuant to the provisions of Part 1 relating to Equivalent Project Relief.

(b) [NOT USED]

7. [NOT USED]

7.1 Vehicle Supplier Project Documents

- (a) Alstom shall perform its obligations under, and observe all of the provisions of, each of the Vehicle Supplier Project Documents, so as to ensure that other parties to such Vehicle Supplier Project Documents shall not be entitled to terminate same.

(b) [NOT USED]

7.2 [NOT USED]

(a) [NOT USED]

7.3 [NOT USED]

(a) [NOT USED]

MT DOCS 19727287v2

7.4 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

8. CONTRACTING AUTHORITY'S RESPONSIBILITIES**8.1 General**

(a) Alstom acknowledges the provisions of Section 8.1(a) of the Project Agreement (and Project Co's obligations pursuant to the corresponding provisions under the Construction Contract) in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

(b) Alstom acknowledges the provisions of Section 8.1(b) of the Project Agreement (and Project Co's obligations pursuant to the corresponding provisions under the Construction Contract) in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

(c) Alstom acknowledges the provisions of Section 8.1(c) of the Project Agreement, and agrees that nothing in the Project Agreement, the Construction Contract or this Revenue Vehicle Supply Contract shall in any way fetter the right, authority and discretion of Contracting Authority or any Province Person in fulfilling its statutory or other functions under Applicable Law, and Alstom understands and agrees that nothing in the Project Agreement, the Construction Contract or this Revenue Vehicle Supply Contract shall preclude IO's board of directors or Metrolinx's board of directors (or any respective designate appointed pursuant to Section 63.1 of the Project Agreement) from performing, discharging or exercising its duties, responsibilities, and powers under Applicable Law. Alstom further agrees that, subject to Section 39.1(b), it shall comply, and shall cause all relevant Alstom Parties to comply, with all written directions issued by or on behalf of IO's board of directors and Metrolinx's board of directors (or any respective designate appointed pursuant to Section 63.1 of the Project Agreement) from time to time.

(d) Alstom acknowledges the provisions of Section 8.1(d) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

8.2 Contracting Authority Permits, Licences and Approvals

(a) Alstom acknowledges the provisions of Section 8.2(a) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

(b) Alstom acknowledges the provisions of Section 8.2(b) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

9. ALSTOM RESPONSIBILITIES**9.1 [NOT USED]****(a) [NOT USED]****9.2 General****(a) Alstom shall, at its own cost and risk:**

- (i) perform all of its obligations under, and observe all provisions of, this Revenue Vehicle Supply Contract in compliance with Applicable Law;
- (ii) perform all Vehicle Supplier Activities:
 - (A) in compliance with Applicable Law;
 - (B) in compliance with all VSC Permits, Licences and Approvals and so as to preserve the existence and continued effectiveness of any such VSC Permits, Licences and Approvals;
 - (C) so as to satisfy the Output Specifications;
 - (D) in accordance with Good Industry Practice;
 - (E) in a manner consistent with the Quality Plans;
 - (F) in a timely and professional manner;
 - (G) with due regard to the health and safety of persons and property;
 - (I) subject to the other provisions of this Revenue Vehicle Supply Contract, in a manner which will not impair the ability of Construction Contractor, any CC Party, Project Co, any Project Co Party, Contracting Authority or any Province Persons to comply with Applicable Law;
 - (H) subject to the other provisions of this Revenue Vehicle Supply Contract, in a manner which will not impair the performance of the Governmental Activities; and
 - (I) in accordance with all other terms of this Revenue Vehicle Supply Contract;
- (iii) cooperate with Construction Contractor and Project Co in the fulfillment of the purposes and intent of this Revenue Vehicle Supply Contract, provided however that Alstom shall not be under any obligation to perform any of Construction Contractor's obligations

MT DOCS 19727287v2

under this Revenue Vehicle Supply Contract nor any of Project Co's obligations under the Construction Contract;

- (iv) cooperate with Construction Contractor and Project Co in respect of Project Co's consultations with each City, MTO, Region of Peel, 407 ETR and each Railway Company in relation to the Project and the Vehicle Supplier Activities;
- (v) cooperate and assist Construction Contractor in any dispute relating to the Project to the extent arising from the Vehicle Supplier Activities, including attending at hearings, providing information, and doing such other things as Construction Contractor may reasonably require to resolve the dispute;
- (vi) immediately notify the Construction Contractor Representative, to the extent that Alstom, in the performance of its obligations under this Revenue Vehicle Supply Contract, becomes aware of any defect in the property or Existing Third Party Infrastructure of:
 - (A) Metrolinx, excluding the New Metrolinx Infrastructure;
 - (B) the City of Mississauga, excluding the New City of Mississauga Infrastructure;
 - (C) the City of Brampton, excluding the New City of Brampton Infrastructure;
 - (D) 407 ETR, excluding the New 407 ETR Infrastructure;
 - (E) the MTO, excluding New MTO Infrastructure;
 - (F) Region of Peel, excluding New Region of Peel Infrastructure; or
 - (G) a Railway Company Owner, excluding New Railway Company Infrastructure;
- (vii) [NOT USED]
- (viii) in the performance of its obligations under this Revenue Vehicle Supply Contract, coordinate with each City, the Region of Peel, 407 ETR, MTO, each Utility Company and each Railway Company so as to minimize the impact of Vehicle Supplier Activities on such person's operations and the services provided by such person to the public, including as set out in Part 2 Section 19;
- (ix) immediately notify Construction Contractor in the performance of its obligations under this Revenue Vehicle Supply Contract with respect to:
 - (A) any injuries to persons on Lands owned by or leased to such City, MTO, Region of Peel, 407 ETR or such Railway Company Owner, or damage to any infrastructure or Lands owned by or leased to any of them that occurs during the course of the Vehicle Supplier Activities;

MT DOCS 19727287v2

- (B) any significant developments during the VSC Term that affect infrastructure or Lands owned by or leased to such City, MTO, Region of Peel, 407 ETR or such Railway Company Owner; and
 - (C) any proposed decision where the effect thereof may reasonably be expected to affect the design, functionality, safety or integrity of any part of any infrastructure that belongs to such City, MTO, Region of Peel, 407 ETR or such Railway Company Owner;
- (x) immediately (A) notify Construction Contractor upon the receipt or notice of (and provide Construction Contractor with copies of any correspondence received in relation to), any incident report, investigation report, inspection, order, charge or similar correspondence (in each case, whether in draft or final form) issued by the Ministry of Labour or any other Governmental Authority in respect of the Vehicle Supplier Activities, and (B), following a request by Contracting Authority which relates to the Vehicle Supplier Activities, provide Construction Contractor with a copy of any health and safety investigation report completed by Alstom.

9.3 Alstom Parties

- (a) Alstom shall not be relieved of any liability or obligation under this Revenue Vehicle Supply Contract by the appointment of any Alstom Party, and Alstom shall cause each Alstom Party who enters into a VSC Subcontract after the date hereof, to the extent such Alstom Party performs or is specified hereunder to perform the Vehicle Supplier Activities, to comply with the obligation of Alstom thereunder in the same manner and to the same extent as Alstom.

9.4 VSC Permits, Licences and Approvals

- (a) Alstom shall, at its own cost and risk:
- (i) obtain, maintain, and, as applicable, renew all VSC Permits, Licences and Approvals which may be required for the performance of the Vehicle Supplier Activities;
 - (ii) [NOT USED]
 - (iii) comply with all Permits, Licences and Approvals in accordance with their terms provided however that with respect to Construction Contractor Permits, Licences and Approval, such compliance shall only be to the extent disclosed by Construction Contractor to Alstom as being applicable to the performance by Alstom of its obligations under this Revenue Vehicle Supply Contract that will occur on the Lands;
 - (iv) provide all security, including all letters of credit, that may be required in connection with any VSC Permit, Licence and Approval; and

- (v) if there is a legislative or other requirement for the applicant in respect of any VSC Permit, Licence and Approval to be Contracting Authority, (A) act as Contracting Authority's agent in relation to such VSC Permit, Licence and Approval, and (B) be responsible for all aspects of the applicable application preparation and submittal process. If desired by Contracting Authority, in its sole discretion, Contracting Authority shall approve the form of application prior to its submission by Alstom.
- (b) Where VSC Permits, Licences and Approvals have requirements that may impose any conditions, liabilities or obligations on Project Co, any Project Co Party, Contracting Authority, any Province Person, Construction Contractor or any CC Party, Alstom shall not obtain, amend or renew (other than upon the same terms and conditions) such VSC Permits, Licences and Approvals without the prior written consent of Construction Contractor (which will not be withheld unless Project Co withholds its consent under the Construction Contract or Contracting Authority withholds its consent under the Project Agreement), provided that neither Construction Contractor nor any CC Party (and, pursuant to the Construction Contract, neither Project Co nor any Project Co Party), shall be responsible for obtaining or for the failure of Alstom to obtain any VSC Permit, Licence and Approval. Construction Contractor shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on Construction Contractor or any CC Party by the requirements of any VSC Permits, Licences and Approvals and (subject to the provisions of Part 1 relating to Equivalent Project Relief) shall procure that Project Co complies, or requires compliance, with any conditions, liabilities or obligations as are imposed on Project Co or any Project Co Party. Alstom acknowledges and agrees to the provisions of Section 9.4(b) of the Project Agreement and the provisions of Part 1 relating to Equivalent Project Relief shall apply with respect to Construction Contractor's associated rights under the Construction Contract.
- (c) Alstom shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Construction Contractor may request and as Alstom may reasonably be able to provide, and shall execute such applications and documents as are required to be in its name, to enable Construction Contractor to obtain, maintain or renew any Construction Contractor Permits, Licences and Approvals related to or in respect of the Vehicle Supplier Activities or to demonstrate compliance with any VSC Permits, Licences and Approvals, provided that Alstom shall not be responsible for obtaining or for any delay in obtaining or for the failure of Construction Contractor to obtain any Construction Contractor Permit, Licence and Approval, unless such delay or failure is caused by any act or omission of Alstom, any Alstom Party or any other person for whom Alstom is responsible at law.
- (d) [NOT USED]
- (e) [NOT USED]
- (f) [NOT USED]
- (g) [NOT USED]

MT DOCS 19727287v2

(h) [NOT USED]

(i) [NOT USED]

9.5 Safety and Security

(a) During the VSC Term solely in relation to the Vehicle Supplier Activities, Alstom shall:

(i) comply with the Contractor Site Safety Manual;

(ii) comply with measures implemented by the Construction Contractor pursuant to the Construction Contract and associated measures pursuant to Section 9.5(a)(ii) of the Project Agreement;

(iii) comply with measures implemented by the Construction Contractor pursuant to the Construction Contract and associated measures pursuant to Section 9.5(a)(iii) of the Project Agreement;

(iv) comply with Applicable Law relating to health and safety, including the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;

(v) [NOT USED]

(vi) in accordance with Ontario Workplace Safety and Insurance Act's established benefits and schedules, provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date. On request, within 30 days of such request, Alstom shall deliver to Construction Contractor evidence of the workers compensation coverage maintained by any person involved in production of the Revenue Vehicles, or confirmation of that person's exemption from workers compensation coverage; and

(vii) [NOT USED].

(b) Alstom acknowledges the provisions of Section 9.5(b) of the Project Agreement.

(c) [NOT USED]

9.6 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

MT DOCS 19727287v2

9.7 Protest and Trespass

(a) Alstom acknowledges the provisions of Section 9.7 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall comply with any direction or instructions issued by Construction Contractor to Alstom to ensure compliance by Project Co of its obligations under Section 9.7 of the Project Agreement (and Construction Contractor of its corresponding obligations under the Construction Contract), and to the extent that Equivalent Project Relief does not apply in the context of such direction or instruction issued by Construction Contractor to Alstom, Alstom shall be entitled to the Direct Costs it incurs to comply with such direction or instruction issued by Construction Contractor.

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

9.8 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

(f) [NOT USED]

(g) [NOT USED]

(h) [NOT USED]

(i) [NOT USED]

9.9 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

MT DOCS 19727287v2

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

9.10 System Extension

(a) Contracting Authority shall be entitled to carry out or procure the carrying out of any System Extension at any time during the Project Term pursuant to the Project Agreement and Alstom shall not be entitled to object or prevent the carrying out of any such System Extension.

(b) Alstom acknowledges and agrees to the provisions of Section 9.10(b) of the Project Agreement.

(c) Alstom and Construction Contractor shall comply with Attachment 39 – System Extension in connection with any System Extension considered by Project Co at any time during the VSC Term.

9.11 [Intentionally Deleted]

9.12 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

9.13 Tracking System

(a) Alstom shall provide Construction Contractor, at no additional cost or charge, with any reasonable assistance required by Construction Contractor from time to time for the purposes of Construction Contractor satisfying its obligations under Section 9.13 of the Construction Contract to the extent such obligations are related to or in respect of the Vehicle Supplier Activities.

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

10. REPRESENTATIVES

MT DOCS 19727287v2

10.1 The Construction Contractor and the VSC Representative

- (a) Alstom may only rely upon acceptances and approvals officially given by the Construction Contractor Representative in accordance with the provisions of this Revenue Vehicle Supply Contract and not on any other unofficial inspection (including any observation made by the Construction Contractor Representative in the course of any joint inspection or attending any test). No such inspection, attendance, consent, approval or statement, including official acceptances and approvals, will release Alstom from any obligation or liability other than any obligation or liability relating to having obtained or carried out such inspection, attendance, consent, approval or statement.
- (b) The Construction Contractor Representative is the Construction Contractor representative with oversight of the Vehicle Supplier Activities and of Alstom, including the power to enforce compliance with this Revenue Vehicle Supply Contract, including giving orders to do work determined necessary for Alstom to fulfill the requirements of this Revenue Vehicle Supply Contract. The Construction Contractor Representative shall have the authority to act on behalf of Construction Contractor to the extent provided in this Revenue Vehicle Supply Contract and shall have the power to resolve disputes informally and in a manner which binds Construction Contractor, and to issue VSC Variations and amendments to this Revenue Vehicle Supply Contract. The exercise of or failure to exercise such power shall not relieve Alstom of any of its obligations under this Revenue Vehicle Supply Contract.
- (c) Construction Contractor Representative shall not have the right to initiate meetings or discussions directly with Alstom Parties without consulting Alstom. When a meeting with an Alstom Party is considered to be necessary by the Construction Contractor Representative, the Construction Contractor Representative shall notify Alstom at least 5 Business Days prior to the proposed meeting date in order to organize the meeting (unless such a 5 Business Days minimum notice period is not reasonable or appropriate given the nature of the proposed meeting, in which case Construction Contractor shall provide a shorter notice period that is commercially reasonable). Any direct communication between Construction Contractor and an Alstom Party shall not bind Alstom without Alstom's written agreement to that effect.

10.2 The VSC Representative

- (a) The VSC Representative shall have full authority to act on behalf of Alstom for all purposes of this Revenue Vehicle Supply Contract.
- (b) Alstom may from time to time by written Notice to Construction Contractor Representative change the VSC 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 the VSC Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the VSC Representative's functions under this Revenue Vehicle Supply Contract, Alstom shall perform or may, by written Notice to Construction

MT DOCS 19727287v2

Contractor, promptly appoint an alternative VSC Representative to perform the functions which would otherwise be performed by the VSC Representative. Upon receipt of such written Notice, Construction Contractor and the Construction Contractor Representative shall be entitled to treat any act of such alternative VSC Representative which is permitted by this Revenue Vehicle Supply Contract as being authorized by Alstom, and Construction Contractor and the Construction Contractor Representative shall not be required to determine whether authority has in fact been given.

- (d) Unless otherwise notified in writing, Construction Contractor and the Construction Contractor Representative shall be entitled to treat any act of the VSC Representative which is explicitly authorized by this Revenue Vehicle Supply Contract as being authorized by Alstom, and Construction Contractor and the Construction Contractor Representative shall not be required to determine whether authority has in fact been given.

10.3 Communications to Representatives

- (a) At the time that a Party appoints or changes the appointment of the Construction Contractor Representative or the VSC 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.

10.4 Key VSC Individuals

- (a) The individuals who are critical to the performance of the Vehicle Supplier Activities are identified in Attachment 9 – Key VSC Individuals.
- (b) Alstom shall not remove, replace, substitute, or otherwise change any Key VSC Individual without the prior written consent of Construction Contractor, acting reasonably, provided, however, that Alstom shall not be deemed in breach of this clause if any Key VSC Individual voluntarily terminates his or her employment, is terminated or receives a promotion within the Alstom Group.
- (c) Subject to Part 2 Section 10.4(b): (i) if any of the Key VSC Individuals become unavailable due to resignation, sickness or other factors outside of Alstom’s control, Alstom shall be responsible for timely provision of adequately qualified replacements, (ii) in no event shall a Key VSC Individual position remain unfilled for more than three months; provided however that in the case of a promotion within the Alstom Group such position shall be filled immediately, and (iii) unavailability of personnel shall not exonerate Alstom from meeting the time requirements or other obligations under this Revenue Vehicle Supply Contract or entitle Alstom to relief.
- (d) In the event that Contracting Authority provides its consent to remove, replace, substitute, or otherwise change a Key VSC Individual (including by notice to Construction Contractor), then

MT DOCS 19727287v2

Construction Contractor shall be deemed to have given its consent to such removal, replacement, substitution or change.

11. WORKS COMMITTEE

11.1 Establishment

Alstom acknowledges the provisions of Section 11 of the Project Agreement.

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

11.2 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

11.3 [NOT USED]

(a) [NOT USED]

11.4 [NOT USED]

(a) [NOT USED]

11.5 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

MT DOCS 19727287v2

(f) [NOT USED]

11.6 Proceeding at Risk

- (a) If at any time prior to Final Completion a Proceeding at Risk Matter arises a result of any act or omission by Alstom or any Alstom Party, then Construction Contractor shall issue a copy of the subject Proceeding at Risk Notice to Alstom and shall identify (i) those reasons set out by Contracting Authority in the Proceeding at Risk Notice which are in respect of the Vehicle Supplier Activities, and (ii) any relevant information reasonably requested by Contracting Authority which relates to the Vehicle Supplier Activities and which Alstom will be required to permit Contracting Authority to review the Proceeding at Risk Matter.
- (b) Following the issuance of a Proceeding at Risk Notice by Construction Contractor to Alstom pursuant to Part 2 Section 11.6(a), the Construction Contractor Representative and the VSC Representative shall each promptly and diligently make a reasonable bona fide effort to resolve the Proceeding at Risk Matter as between the Construction Contractor and Alstom and, if requested by Construction Contractor, the VSC Representative shall attend the meeting of the Works Committee pursuant to Section 11.6(b) of the Project Agreement to make a reasonable bona fide effort to resolve the Proceeding at Risk Matter under the Project Agreement.
- (c) Within 7 Business Days after receipt by Alstom of a Proceeding at Risk Notice, Alstom shall deliver a response to Construction Contractor, which shall include:
- (i) the information requested by Contracting Authority in the Proceeding at Risk Notice relating to or in respect of the Vehicle Supplier Activities;
 - (ii) Alstom's opinion confirming agreement with, or disputing the opinion of, Contracting Authority regarding the Proceeding at Risk Matter as the same relates to the Vehicle Supplier Activities;
 - (iii) any other information in support of Alstom's opinion regarding the Proceeding at Risk Matter as the same relates to the Vehicle Supplier Activities;
 - (iv) Alstom's proposal to rectify the Proceeding at Risk Matter as the same relates to the Vehicle Supplier Activities; and
 - (v) any reasonable request for additional information from Contracting Authority in respect of the Proceeding at Risk Matter.
- (d) To the extent that Contracting Authority notifies Project Co pursuant to Section 11.6(d) of the Project Agreement that Contracting Authority requires any additional information from Project Co regarding the Vehicle Supplier Activities, Construction Contractor shall notify Alstom, and Alstom shall provide such additional information to Construction Contractor within 3 Business Days after receipt of such notice.

MT DOCS 19727287v2

- (e) If requested, the VSC Representative shall attend the PAR Meeting to attempt to resolve the Proceeding at Risk Matter as the same relates to the Vehicle Supplier Activities.
- (f) If requested, the VSC Representative shall attend any meeting of the Works Committee in respect of the Works Committee’s attempt to reach a final decision with respect to the Proceeding at Risk Notice pursuant to Section 11.6(f) of the Project Agreement as the same relates to the Vehicle Supplier Activities. If Project Co is deemed to be Proceeding at Risk pursuant to Section 11.6(f) of the Project Agreement as a result of any act or omission of Alstom or any Alstom Party, Alstom shall indemnify Construction Contractor for any Direct Losses it incurs as a result of such deeming (including as a result of Contracting Authority giving notice to the Lenders’ Agent pursuant to Section 11.6(g) of the Project Agreement), provided however that such indemnification by Alstom pursuant to this Part 2 Section 11.6(f) shall not apply to the extent that any Direct Losses contemplated pursuant to this Part 2 Section 11.6(f) include specified damages payable to any third party (e.g. lenders).
- (g) [NOT USED]
- (h) Following the Independent Certifier’s decision pursuant to Section 11.6(f) of the Project Agreement or anything else in Part 2 Section 11.6, either Party may refer the Proceeding at Risk Matter as it relates to the Vehicle Supplier Activities for resolution in accordance with Attachment 27 – VSC Dispute Resolution Procedure.
- (i) Alstom acknowledges that the Proceeding at Risk Notice as it relates to the Vehicle Supplier Activities, review, and comments made during the process set out in Part 2 Section 11.6 are for general conformity to the obligations and requirements of this Revenue Vehicle Supply Contract, and any such notice, review and comment shall not relieve Alstom of the risk and responsibility for the Vehicle Supplier Activities and for meeting all of its obligations under and satisfying all requirements of this Revenue Vehicle Supply Contract, and shall not create any new or additional obligations or liabilities for Construction Contractor, Project Co or Contracting Authority.

12. [NOT USED]

12.1 [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]
- (c) [NOT USED]

12.2 [NOT USED]

- (a) [NOT USED]

MT DOCS 19727287v2

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

12.3 [NOT USED]

(a) [NOT USED]

12.4 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

(f) [NOT USED]

13. QUALITY MANAGEMENT

(a) Alstom shall comply with the provisions of Attachment 11 – Quality Management.

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

(f) [NOT USED]

14. ACCESS TO THE LANDS AND REVENUE VEHICLES

14.1 Access to Lands and Revenue Vehicles

(a) Alstom acknowledges the provisions of Section 14.1(a) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply, pursuant to which Contracting Authority shall grant or have caused to be granted, and shall continuously grant or

MT DOCS 19727287v2

cause to be granted to Alstom and the Alstom Parties, non-exclusive licence rights of use and access to, on and over the Metrolinx Lands and the Project Co System Infrastructure on the Metrolinx Lands as are required by Alstom and the Alstom Parties, sufficient (subject to Alstom performing its obligations described in the VSC Permits, Licences and Approvals and subject to the timing and extent of the grant of use and access to the Metrolinx Lands set out in Attachment 35 – Lands of the Construction Contract) to allow Alstom and the Alstom Parties to perform those Vehicle Supplier Activities to be performed on Metrolinx Lands. Alstom agrees that neither Alstom nor any Alstom Party shall have any greater rights with respect to Metrolinx Lands than are granted to Project Co and the Project Co Parties (together with Alstom and the Alstom Parties) under the Project Agreement.

- (b) Subject to this Part 2 Section 14, from and after the date that Metrolinx has title to a Revenue Vehicle pursuant to a Bill of Sale pursuant to Attachment 43 – Revenue Vehicles, Metrolinx shall grant or have caused to be granted, and shall continuously grant or cause to be granted, to Alstom and all Alstom Parties, a non-exclusive licence and right of use and access to such Revenue Vehicle as is required by Alstom and such Alstom Parties sufficient to allow Alstom and such Alstom Parties to perform the Vehicle Supplier Activities.
- (c) Subject to Alstom's obligation to comply with the other terms and conditions set forth in this Revenue Vehicle Supply Contract, Alstom shall ensure that each Alstom Party shall at all times, when entering the Lands or using or accessing the Project Co System Infrastructure, the New Third Party Infrastructure and the Existing Third Party Infrastructure, act in a manner consistent with the obligations of Alstom under this Revenue Vehicle Supply Contract.
- (d) Alstom shall undertake the Vehicle Supplier Activities subject to and in accordance with this Revenue Vehicle Supply Contract.
- (e) Alstom acknowledges the provisions of Section 14.1(e) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (f) Alstom acknowledges that none of the rights granted pursuant to this Part 2 Section 14.1 shall grant access to,
 - (i) any lands beyond the boundaries of the Metrolinx Lands, or to any lands other than Metrolinx Lands, other than easements and similar interests of Contracting Authority which benefit the Metrolinx Lands, obtained after Commercial Close, to the extent the same are necessary for the Project Operations or exceed any restrictions set out in Schedule 35 – Lands to the Project Agreement; or
 - (ii) any facilities or infrastructure of Contracting Authority, a City, Utility Companies, Railway Companies, MTO, Region of Peel, 407 ETR or any other third parties, except as set out in the Construction Contract and the facilities infrastructure associated with Schedule 35 – Lands to the Project Agreement (which access, if any, is subject to Part 2 Section 14.2(c)).

MT DOCS 19727287v2

- (g) The use and access rights provided in this Part 2 Section 14.1 shall automatically terminate as of the VSC Termination Date, save and except for the earlier termination of the use and access rights specified in the Construction Contract and corresponding use and access rights set out in Schedule 35 – Lands to the Project Agreement.
- (h) For greater certainty, the use and access rights provided in this Part 2 Section 14.1 shall not entitle Alstom or any Alstom Party to extract any mineral from the Metrolinx Lands for use in the Vehicle Supplier Activities.
- (i) Alstom acknowledges the provisions of Section 14.1(i) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (j) [NOT USED]
- (k) Alstom shall ensure that no Alstom Party uses or accesses (including trespasses upon) any lands of a third party land owner or rights holder during and for the purpose of the performance of the Vehicle Supplier Activities, (i) save and except as otherwise set out in this Revenue Vehicle Supply Contract or permitted by Applicable Law, or (ii) unless Alstom has obtained the permission of such third party for such use or access and, in such an event, only in accordance with any and all terms and conditions of such permission.

14.2 Non-exclusive Licence to Metrolinx Lands / Development of Lands

- (a) Alstom acknowledges and agrees that the rights granted to Alstom and the Alstom Parties hereunder to the Metrolinx Lands and the Project Co System Infrastructure on the Metrolinx Lands shall be non-exclusive. In exercising its rights Alstom shall not, and shall use commercially reasonable efforts to require that the Alstom Parties shall not, except as permitted under this Revenue Vehicle Supply Contract, disrupt the performance of the Governmental Activities or the Other Works.
- (b) Alstom acknowledges the provisions of Section 14.2(b) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (c) Alstom acknowledges the provisions of Section 14.2(c) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

14.3 [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]

14.4 No Interest in Land, Facilities or Infrastructure

- (a) Alstom agrees that it acquires no estate, right, title or ownership interest in the Lands or any part of the Project Co System Infrastructure (including, for greater certainty, the Revenue Vehicles) or the New Third Party Infrastructure or any other interest in land, facilities or infrastructure pursuant to this Revenue Vehicle Supply Contract or otherwise.

14.5 Non-Disturbance Agreement

Alstom acknowledges the provisions of Section 14.5 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

- (a) [NOT USED]

14.6 [NOT USED]

- (a) [NOT USED]

- (b) [NOT USED]

- (c) [NOT USED]

- (d) [NOT USED]

- (e) [NOT USED]

- (f) [NOT USED]

14.7 Changes to Lands

- (a) Alstom acknowledges the provisions of Section 14.7(a) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

15. ENCUMBRANCES**15.1 Alstom Shall Perform Obligations Under Encumbrances**

- (a) Alstom's access to and use of the Metrolinx Lands or any part thereof granted in Article 14 shall be subject to the Encumbrances that affect the Vehicle Supplier Activities to be performed by Alstom on the Metrolinx Lands as identified by the Construction Contractor via written notice to Alstom no less than 60 days prior to Alstom commencing performance of the applicable Vehicle Supplier Activities on the Metrolinx Lands.

- (b) [NOT USED]

MT DOCS 19727287v2

- (c) Alstom, whether before, during or after the completion of the Vehicle Supplier Activities, shall not in any manner breach the Encumbrances.

15.2 No Encumbrances

- (a) Alstom shall not create, incur, permit or suffer to exist any Encumbrance to be created, filed, issued or registered upon or against the Metrolinx Lands or any part of them or any interest therein (i) due to an act or omission of Alstom or any Alstom Party, or (ii) arising out of or in relation to the Vehicle Supplier Activities.
- (b) Alstom does not have title to the Metrolinx Lands or any interest therein, and no act or omission by Alstom or any Alstom Party shall give rise to a right for any person to obtain title to or any interest in the Metrolinx Lands or any part thereof, except:
- (i) as may be expressly agreed to in writing by Contracting Authority;
 - (ii) as may be expressly permitted by the terms of this Revenue Vehicle Supply Contract; or
 - (iii) as may be permitted under Applicable Law, but without limiting Alstom's obligations under Part 2 Sections 15.2(c)(i) and 15.3(a).
- (c) In the event that the Metrolinx Lands or any part thereof or any interest therein becomes subject to any Encumbrance following Financial Close:
- (i) due to an act or omission of Alstom or any Alstom Party (which has not been consented to in writing by Construction Contractor), or arising out of or in relation to the Vehicle Supplier Activities, Alstom shall immediately take all steps necessary to terminate, remove, vacate or discharge such Encumbrance. If such Encumbrance is not terminated, removed, vacated or discharged within 7 Business Days of Alstom becoming aware of the creation, filing, issuance or registration of such Encumbrance, then, without prejudice to any other rights or remedies it may have, Construction Contractor may (and Alstom acknowledges the provisions of the Construction Contract pursuant to which Project Co may) take whatever steps it deems necessary and appropriate (in its sole discretion) to terminate, remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Alstom 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, and Alstom hereby appoints Construction Contractor as Alstom's attorney to execute any termination or discharge of an Encumbrance referred to in this Part 2 Section 15.2(c)(i), which appointment is coupled with an interest and shall be irrevocable for the Project Term and thereafter so long as any of Alstom's obligations under this Part 2 Section 15.2(c)(i) are outstanding;
 - (ii) due to an act or omission of Alstom or any Alstom Party (which has been consented to in writing by Construction Contractor), or arising out of or in relation to the Vehicle

MT DOCS 19727287v2

Supplier Activities, Alstom shall perform all obligations under such Encumbrance in accordance with Part 2 Sections 15.1 and 15.3 (as it applicable) and at its sole cost and expense; or

- (iii) which is not due to an act or omission of Alstom or any Alstom Party, or which has not arisen out of or in relation to the Vehicle Supplier Activities, prior to performing obligations under any such Encumbrance, Alstom shall promptly notify Construction Contractor of any such Encumbrance and Alstom acknowledges and agrees to the provisions of Section 15.2.(c)(iii) of the Project Agreement, and pursuant to associated rights under the Construction Contract, Project Co may elect, in its sole discretion, to:
 - (A) have such Encumbrance be removed, vacated or discharged;
 - (B) perform the required obligations thereunder; or
 - (C) instruct Construction Contractor (who shall in turn instruct Alstom) to perform the required obligations thereunder.
- (d) Alstom acknowledges and agrees to the provisions of Section 15.2(d) of the Project Agreement. Alstom shall promptly notify Construction Contractor of any encumbrance identified in Sections (b) (vii), (viii), (ix) or (x) of Schedule 16 - Encumbrances to the Project Agreement upon Alstom becoming aware of such encumbrance in the performance of its obligations under this Revenue Vehicle Supply Contract.
- (e) Alstom acknowledges the provisions of Section 15.2(e) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (f) In the event that any portion of the Lands which are not Metrolinx Lands becomes subject to any encumbrance following Financial Close due to an act or omission of Alstom or any Alstom Party or which arises out of or in relation to the Vehicle Supplier Activities, Alstom acknowledges and agrees that it will be required by the owner of such Lands (or Construction Contractor or Project Co, at the request of such owner) to remove, vacate or discharge such encumbrance. For the purposes of the foregoing, “encumbrance” includes those matters included in Encumbrances, insofar as they relate to or affect the Lands that are not the Metrolinx Lands, *mutatis mutandis*.

15.3 Construction Act (Ontario)

- (a) The Parties acknowledge that Part 2 Section 15.2 shall apply to claims for liens made against the Metrolinx Lands pursuant to the Construction Act and shall also apply to claims made against Construction Contractor or Project Co or the holdback under the Construction Act as though such a claim were an Encumbrance against the Metrolinx Lands as referred to therein. Alstom agrees that Part 2 Section 15.2 shall also apply to any claims for liens against the Lands that are not Metrolinx Lands, *mutatis mutandis*.

MT DOCS 19727287v2

- (b) To the extent required by the Construction Act, Alstom shall withhold from each Alstom Party the holdbacks required thereunder and shall deal with such holdbacks in accordance with the Construction Act.
- (c) Alstom shall, as a condition of final payment under any VSC Subcontract for which lien rights or rights in respect of the holdback may be claimed under the Construction Act, require that a certificate of completion under Section 33(1) of the Construction Act for such VSC Subcontract be issued and the relevant Alstom Party provide statutory declarations or other assurances confirming that all those engaged by the Alstom Party have been paid in accordance with Applicable Law.
- (d) To the extent applicable in the performance of Alstom’s obligations under this Revenue Vehicle Supply Contract, Alstom shall follow the requirements of the Construction Act and Good Industry Practice for posting and advertising certificates of completion when issued.
- (e) Alstom shall, upon request by Construction Contractor and to the extent applicable in the performance of its obligations under this Revenue Vehicle Supply Contract promptly provide Construction Contractor with a copy of any materials that are requested by the Lenders or Project Co that evidence compliance with the Construction Act.
- (f) [NOT USED]
- (g) [NOT USED]

16. SITE CONDITION

16.1 Acceptance of Site Condition

- (a) Subject to Part 2 Sections 6.4, 16.1(b), 16.2, 16.3, 16.4,16.5 and 16.6, Alstom acknowledges and agrees that for the purpose of performing its obligations under this Revenue Vehicle Supply Contract: (i) it has had the opportunity to inspect or investigate the Lands, the Existing Third Party Infrastructure and the Site Conditions in respect of the locations on the Lands where Alstom will be performing the Vehicle Supplier Activities, including the VSC Background Information; prior to executing this Revenue Vehicle Supply Contract, and (ii) has reviewed the VSC Background Information prior to executing this Revenue Vehicle Supply Contract, and agrees to accept the Lands, the Existing Third Party Infrastructure and the Site Conditions in respect of the locations on the Lands where Alstom will be performing the Vehicle Supplier Activities on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Part 2 Sections 6.4, 16.1(b), 16.2, 16.3, 16.4, 16.5 and 16.6, Alstom shall not be entitled to make any claim of any nature whatsoever against Project Co, any Project Co Party, Construction Contractor, any CC Party, Contracting Authority or any Province Person on any grounds relating to the Lands, the Existing Third Party Infrastructure or the Site Conditions, including the fact that incorrect or insufficient information on any matter relating to the Lands, the Existing Third Party Infrastructure or the Site Conditions was given to it by any person, whether or not Project Co, a

MT DOCS 19727287v2

Project Co Party, Construction Contractor, a CC Party, a Contracting Authority entity or a Province Person.

- (b) Part 2 Section 16.1(a) is not intended to prohibit Alstom from relying upon information that has been provided by a person who has given Alstom an express written entitlement to rely on that information, provided, however, that, subject to Part 2 Sections 6.4, 16.2, 16.3, 16.4, 16.5 and 16.6, Alstom shall not be entitled to make any claim of any nature whatsoever against Construction Contractor, any CC Party, Project Co, any Project Co Party, Contracting Authority or any Province Person on any grounds relating to the information provided by that person. For clarity, subject to Part 2 Sections 6.4, 16.2, 16.3, 16.4, 16.5 and 16.6, Alstom's legal recourse shall be against the person who provided the express written entitlement to rely on the information and not any other entity among Construction Contractor, any CC Party, Project Co, any Project Co Party, Contracting Authority or any Province Person.
- (c) Subject to Part 2 Sections 6.4, 16.1(b), 16.2, 16.3, 16.4, 16.5 and 16.6, Alstom acknowledges and agrees that for the purposes of fulfilling its obligations under this Revenue Vehicle Supply Contract, it has and shall be deemed to have for the purposes of fulfilling its obligations under this Revenue Vehicle Supply Contract:
- (i) performed all necessary due diligence and investigation or inspection on the Lands and examined the Lands and their surroundings and any Existing Third Party Infrastructure, in each case, in respect of the locations on the Lands where Alstom will be performing the Vehicle Supplier Activities;
 - (ii) performed all necessary due diligence and investigation or inspection on the Existing Third Party Infrastructure in respect of the locations on the Lands where Alstom will be performing the Vehicle Supplier Activities, and satisfied itself prior to executing this Revenue Vehicle Supply Contract as to the structural, environmental and general condition of such Existing Third Party Infrastructure;
 - (iii) [NOT USED]
 - (iv) satisfied itself as to the adequacy of the rights of access to, from and through the Lands and any accommodation it may require;
 - (v) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Lands;
 - (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties; and
 - (vii) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Lands, the loadbearing and other

MT DOCS 19727287v2

relevant properties of the Lands, the risk of injury or damage to property affecting the Lands, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Vehicle Supplier Activities.

- (d) Alstom further acknowledges and agrees that, other than as referred to or contained in this Revenue Vehicle Supply Contract, no representations or warranties have been made, nor documentation delivered to Alstom or any Alstom Party, which would indicate that Alstom would be unable to perform the Vehicle Supplier Activities in a lawful manner.

16.2 Contamination

- (a) Alstom acknowledges the provisions of Section 16.2(a) of the Project Agreement, in respect of which the provisions of Part 1 dealing with Equivalent Project Relief shall apply. Alstom shall be responsible for Contamination on, in or under, or migrating to or from, the Controlled Elements:
- (i) [NOT USED]
 - (ii) [NOT USED]
 - (iii) [NOT USED]
 - (iv) [NOT USED]
 - (v) to the extent that it is (directly or indirectly) caused or worsened by acts or omissions of Alstom or any Alstom Party,

For clarity, if, in the performance of the Vehicle Supplier Activities, Alstom or any Alstom Party Worsens any Contamination for which Alstom is already responsible pursuant to Part 2 Section 16.2(a), Alstom shall also be responsible for the Worsening of such Contamination.

- (b) [NOT USED]
- (c) [NOT USED]
- (d) If, in the performance of the Vehicle Supplier Activities, Alstom or any Alstom Party:
- (i) Worsens any Contamination for which Alstom is not responsible pursuant to Part 2 Section 16.2; and
 - (ii) the Worsening of such Contamination was caused (directly or indirectly) by a failure of Alstom or any Alstom Party to comply with its obligations under this Revenue Vehicle Supply Contract; and/or
 - (iii) Alstom does not comply with its obligations in Part 2 Section 16.2(f),

MT DOCS 19727287v2

then the Worsened Contamination shall be the responsibility of Alstom.

- (e) [NOT USED]
- (f) Alstom acknowledges the provisions of Section 16.2(f) of the Project Agreement, in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Upon the discovery of any Contamination or Worsened Contamination, as applicable, Alstom shall immediately inform the Construction Contractor Representative, and, in addition, Alstom shall comply, and ensure compliance by all Alstom Parties, with this Revenue Vehicle Supply Contract (including compliance with Applicable Law and Attachment 17 – Environmental Obligations) in respect thereof at its own cost solely in respect of Contamination or Worsened Contamination for which it is responsible pursuant to Part 2 Section 16.2.
- (g) [NOT USED]
- (h) [NOT USED]
- (i) If Alstom is to perform any alteration, addition, demolition, extension or variation in the Vehicle Supplier Activities as a result of Contamination for which Alstom is not responsible pursuant to Part 2 Section 16.2, then any such alteration, addition, demolition, extension or variation in the Vehicle Supplier Activities:
 - (i) prior to Substantial Completion, shall, subject to and in accordance with Part 2 Section 40, be treated as a Delay Event and, subject to and in accordance with Part 2 Section 41, be treated as a Compensation Event; and
 - (ii) following Substantial Completion, shall, subject to and in accordance with Attachment 22 – VSC Variation Procedure, result in a VSC Variation.
- (j) In the event that Construction Contractor and Alstom do not agree as to the nature or extent of the Contamination or of the actions to be performed by Alstom pursuant to Part 2 Section 16.2, such disagreement shall be referred for determination to an independent and suitably qualified and experienced person, acceptable to Alstom and Construction Contractor, each acting reasonably (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person's decision shall be final and binding on the Parties only in respect of the nature or extent of the Contamination and any action to be performed by Alstom pursuant to Part 2 Section 16.2, except to the extent that either Party alleges that such decision would result in non-compliance with Applicable Law or this Revenue Vehicle Supply Contract, in which event either Party may refer the disagreement for resolution in accordance with Attachment 27 – VSC Dispute Resolution Procedure.
- (k) [NOT USED]

16.3 Items of Geological, Historical Heritage or Archaeological Interest or Value

MT DOCS 19727287v2

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- (a) Alstom acknowledges that all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Lands are or shall be the sole and absolute property of Contracting Authority or the owner of the relevant property, as applicable.
- (b) [NOT USED]
- (c) [Intentionally Deleted]
- (d) Upon the discovery of any item referred to in Part 2 Section 16.3(a) in the performance of Alstom's obligations under this Revenue Vehicle Supply Contract, Alstom shall:
- (i) immediately inform the Construction Contractor Representative of such discovery; and
 - (ii) at Construction Contractor's cost, take all steps not to disturb the item and, if necessary, cease or alter any Vehicle Supplier Activities, as may be directed by Construction Contractor, in so far as performing such Vehicle Supplier Activities would endanger the item or prevent or impede its excavation, and comply with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremations Services Act, 2002* (Ontario) and the *Standards & Guidelines for Conservation of Provincial Heritage Properties* issued under the *Ontario Heritage Act* (Ontario).
- (e) [NOT USED]
- (f) If Part 2 Section 16.3(d) requires Alstom to perform any alteration, addition, demolition, extension or variation in the Vehicle Supplier Activities as a result of any such discovery, then any such alteration, addition, demolition, extension or variation shall:
- (i) prior to Substantial Completion (but only to the extent it directly results in the interruption of the Vehicle Supplier Activities during a continuous period of 14 days or more with respect to each such discovery), subject to and in accordance with Part 2 Section 40, be treated as a Delay Event and, subject to and in accordance with Part 2 Section 41, be treated as a Compensation Event; and
 - (ii) following Substantial Completion, subject to and in accordance with Attachment 22 – VSC Variation Procedure, result in a VSC Variation.
- (g) In the event that Construction Contractor and Alstom do not agree as to the nature or extent of the actions required to be performed by Alstom pursuant to Part 2 Section 16.3 such disagreement shall be referred for determination to an independent and suitably qualified and experienced person, acceptable to Alstom and Construction Contractor, each acting reasonably (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person's decision shall be final and binding on the Parties except to the extent that either Party alleges that

such decision would result in non-compliance with Applicable Law or this Revenue Vehicle Supply Contract, in which event either Party may refer the disagreement for resolution in accordance with Attachment 27 – VSC Dispute Resolution Procedure.

16.4 Species-at-Risk

- (a) Alstom acknowledges the provisions of Section 16.4(a) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall be responsible for any Species-at-Risk which may be found on, in or at the Lands the occurrence of which is directly or indirectly caused by an act or omission by Alstom or any Alstom Party.
- (b) Upon the discovery of any Species-at-Risk in the performance of Alstom's obligations under this Revenue Vehicle Supply Contract, Alstom shall:
 - (i) immediately inform the Construction Contractor Representative of such discovery; and
 - (ii) at its own cost solely for any Species-at-Risk in respect of which Alstom has responsibility pursuant to Part 2 Section 16.4(a), comply with all Applicable Law, the provisions of Attachment 15 – Output Specifications and any direction or instruction issued by Construction Contractor to Alstom to ensure compliance by Project Co of its obligations under Schedule 17- Environmental Obligations to the Project Agreement (and Construction Contractor of its corresponding obligations under the Construction Contract).
- (c) In the event that Construction Contractor wishes Alstom to perform actions which are in addition to any required to be performed by Alstom pursuant to Part 2 Section 16.4(b), then Construction Contractor shall issue an instruction to Alstom specifying what action Construction Contractor requires Alstom to take and Alstom shall promptly and diligently comply with all such instructions at Construction Contractor's cost pursuant to Part 2 Section 16.4(d).
- (d) Subject to the provisions of Part 1 relating to Equivalent Project Relief, if Part 2 Section 16.4(b) or Part 2 Section 16.4(c) requires Alstom to perform any alteration, addition, demolition, extension or variation in the Vehicle Supplier Activities as a result of the discovery of any Species-at-Risk for which Alstom is not responsible pursuant to Part 2 Section 16.4(a) or as a result of any instructions given by Construction Contractor pursuant to Part 2 Section 16.4(c) and which would not otherwise be required under this Revenue Vehicle Supply Contract, then any such alteration, addition, demolition, extension or variation:
 - (i) prior to Substantial Completion shall, subject to and in accordance with Part 2 Section 40, be treated as a Delay Event and, subject to and in accordance with Part 2 Section 41, be treated as a Compensation Event; and
 - (ii) following Substantial Completion shall, subject to and in accordance with Attachment 22 – VSC Variation Procedure, result in a VSC Variation.

16.5 Defects – Major Existing Third Party Infrastructure

(a) Alstom acknowledges the provisions of Section 16.5 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply and agrees that Alstom shall be responsible for defects in Major Existing Third Party Infrastructure, to the extent such defects were caused or contributed to by a failure by Alstom or any Alstom Party to comply with any provisions of this Revenue Vehicle Supply Contract.

(b) [NOT USED]

(c) [NOT USED]

16.6 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

17. GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS**17.1 Governmental, Railway and Utility Company Fees**

(a) Alstom shall be responsible for all Financial Obligations under or in respect of all VSC Permits, Licences and Approvals.

Notwithstanding the foregoing, Alstom shall not be responsible for payment of the following:

(A) any development charges relating to the Works, Project Co System Infrastructure, the New Third Party Infrastructure or the Lands; and

(B) any application fees under or in respect of any VSC Permits, Licences and Approvals from any Municipalities relating to the Works.

(b) Alstom acknowledges the provisions of Section 17.1(b) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

(c) The Parties agree that any refund, partial rebate or credit granted by Contracting Authority, a City, the Region of Peel, any applicable Utility Company, any applicable Railway Company, any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Part 2 Sections 17.1(a) and 17.1(b) shall be for the benefit of Construction Contractor to the extent such Financial Obligations were paid by Construction Contractor and

MT DOCS 19727287v2

shall subject to the provisions of Part 1 relating to Equivalent Project Relief, be for the benefit of Alstom to the extent such Financial Obligations were paid by Alstom. Without limiting the generality of the foregoing, to the extent that Project Co enters into any cost sharing arrangements with a City, the Region of Peel, any Utility Company, any Railway Company, any Governmental Authority or any third party, Alstom acknowledges and agrees that Project Co shall be the sole beneficiary of any such cost sharing arrangements and Alstom shall have no entitlement whatsoever to any benefit arising from any such cost sharing arrangements.

18. CHANGE IN STANDARDS

- (a) Where this Revenue Vehicle Supply Contract requires Alstom to comply with a technical or operational standard in respect of the design or construction aspects of the Vehicle Supplier Activities in existence as at February 28, 2013, and that standard has changed, then Alstom may give Notice to Construction Contractor of such change. If, after such Notice from Alstom or by written notice to Alstom, Construction Contractor requires compliance with the changed standard (rather than the standard applicable in existence as at February 28, 2013), then, to the extent such change impacts the design or construction aspects of the Vehicle Supplier Activities and to the extent that a Variation is issued pursuant to Section 18 of the Project Agreement (and a corresponding variation is issued under the Construction Contract), such changed standard shall, subject to and in accordance with Attachment 22 – VSC Variation Procedure, result in a VSC Variation. If Construction Contractor does not require compliance with the changed standard, then Alstom shall continue to comply with the standard applicable in existence as at February 28, 2013, without a VSC Variation therefor. This Part 2 Section 18(a) shall not apply where a change in a technical standard is also a Change in Law.
- (b) [NOT USED]

19. COORDINATION AND NO DISRUPTION

- (a) Alstom shall perform the Vehicle Supplier Activities so as to coordinate (to the extent required or necessary for the performance thereof) with,
- (i) the operations of Construction Contractor, any CC Party, Project Co, any Project Co Party, Contracting Authority, any Province Person, any Governmental Authority, 407 ETR, each City and the Region of Peel;
 - (ii) the construction, operation and maintenance of any System Extension and in accordance with Attachment 39 – System Extension;
 - (iii) the construction of the interface, connection or inter-connection between the Project Co System Infrastructure and the existing City of Mississauga network (including, but not limited to, the MiWay network), the existing City of Brampton network (including, but not limited to, the Brampton Transit network), each existing Railway Company network,

the existing 407 ETR network, the existing GO Transit network, and any other Ontario road or roadway; and

- (iv) all Adjacent Developments.
- (b) Alstom shall use commercially reasonable efforts to minimize:
 - (i) any interference with the operations of:
 - (A) Construction Contractor, any CC Party, Project Co, any Project Co Party, Contracting Authority, any Province Person, any Governmental Authority, 407 ETR, each City, the Region of Peel, any Other Contractor, Railway Company or Utility Company, including the performance of the Governmental Activities and the Other Works; and
 - (B) the existing City of Mississauga network (including, but not limited to, the MiWay network), the existing City of Brampton network (including, but not limited to, the Brampton Transit network), the existing 407 ETR network, each existing Railway Company network, the existing GO Transit network, and any other Ontario road or roadway;
 - (ii) any interference with the construction or maintenance of:
 - (A) the existing City of Mississauga network (including, but not limited to, the MiWay network);
 - (B) the existing City of Brampton network (including, but not limited to, the Brampton Transit network);
 - (C) the existing 407 ETR network;
 - (D) the existing GO Transit network;
 - (E) each existing Railway Company network; and
 - (F) any other Ontario road or roadway;
 - (iii) any lane closures, track closures, traffic diversions, track diversions, traffic restrictions, track restrictions or other impairment of the public's use and enjoyment of the Project Co System Infrastructure; and
 - (iv) any interference with Adjacent Developments.
- (c) [NOT USED]

MT DOCS 19727287v2

20. DESIGN AND CONSTRUCTION OBLIGATIONS

20.1 Overall Responsibility

- (a) Alstom shall perform and complete the Vehicle Supplier Activities:
 - (i) so as to satisfy the Output Specifications;
 - (ii) [NOT USED]
 - (iii) in accordance with any part of the Design Data which is supplied by Alstom to Construction Contractor pursuant to this Revenue Vehicle Supply Contract;
 - (iv) in accordance with the Vehicle Delivery Schedule; and
 - (v) in accordance with the other terms and conditions of this Revenue Vehicle Supply Contract.
- (b) [NOT USED]

20.2 Completion of Revenue Vehicle Deliverables

- (a) Alstom shall design, engineer, construct, manufacture, commission, supply and deliver the Revenue Vehicle Deliverables so as to provide Construction Contractor Revenue Vehicle Deliverables in accordance with the Output Specifications, and that will allow Alstom to perform the Vehicle Supplier Activities, all in accordance with and subject to the terms of this Revenue Vehicle Supply Contract.

20.3 Development of Design

- (a) Alstom shall, at its own cost, develop and complete the design of the Revenue Vehicle Deliverables in accordance with the requirements of this Revenue Vehicle Supply Contract, including Attachment 10 – Review Procedure.
- (b) [NOT USED]
- (c) [NOT USED]
- (d) [NOT USED]
- (e) [NOT USED]
- (f) [NOT USED]
- (g) [NOT USED]

MT DOCS 19727287v2

(h) [NOT USED]

(i) [NOT USED]

(j) [NOT USED]

(k) [NOT USED]

20.4 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

20.5 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

20.6 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

20.7 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

20.8 General Construction Obligations

- (a) Alstom is responsible for all means, methods and techniques used to undertake the Vehicle Supplier Activities and must provide everything (including labour, plant, equipment and materials) necessary for the design, engineering, construction, manufacture, commissioning, supply and delivery of the Revenue Vehicle Deliverables, and other performance of the Vehicle Supplier Activities.

MT DOCS 19727287v2

- (b) Alstom shall in a timely and professional manner and in accordance with the requirements of this Revenue Vehicle Supply Contract:
 - (i) perform the Vehicle Supplier Activities diligently, expeditiously and in a thorough and workman-like manner consistent with Attachment 11 – Quality Management;
 - (ii) [NOT USED]
 - (iii) protect the Revenue Vehicles Deliverables from all of the elements, casualty and damage in accordance Part 2 Section 30.1; and
 - (iv) in respect of equipment and materials incorporated in the Revenue Vehicles and the Revenue Vehicle Equipment, use 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 Law 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 Construction Contractor’s prior written consent in accordance with Attachment 10 – Review Procedures.
- (c) During the VSC Term, Alstom shall not, in any way whatsoever, contravene or cause a contravention of any labour-related contractual obligation or agreement or any provision of any collective agreement to which a City or the Region of Peel is a party that is applicable to the New City of Mississauga Infrastructure, the New City of Brampton Infrastructure or the New Region of Peel Infrastructure, as the case may be, constructed pursuant to the Construction Contract, as such collective agreements or labour-related agreements may be amended from time to time.

20.9 [NOT USED]

- (a) [NOT USED]

20.10 [NOT USED]

- (a) [NOT USED]

20.11 [Intentionally Deleted]

20.12 [NOT USED]

- (a) [NOT USED]

MT DOCS 19727287v2

20.13 [NOT USED]

- (a) [NOT USED]

20.14 Apprenticeship Plan and Program

Alstom shall provide Construction Contractor, at no additional cost or charge, with all information reasonably required by Construction Contractor from time to time for the purposes of Construction Contractor satisfying its obligations under Section 20.14 of the Construction Contract, to the extent such obligations are related to or in respect of the Vehicle Supplier Activities.

- (a) [NOT USED]
(b) [NOT USED]
(c) [NOT USED]
(d) [NOT USED]
(e) [NOT USED]

20.15 Community Benefits and Liaison Plan

Alstom shall provide Construction Contractor, at no additional cost or charge, with all information reasonably required by Construction Contractor from time to time for the purposes of Construction Contractor satisfying its obligations under Section 20.15 of the Construction Contract, to the extent such obligations are related to or in respect of the Vehicle Supplier Activities.

- (a) [NOT USED]
(b) [NOT USED]
(c) [NOT USED]
(d) [NOT USED]
(e) [NOT USED]
(f) [NOT USED]
(g) [NOT USED]

20.16 [NOT USED]

MT DOCS 19727287v2

- (a) [NOT USED]
- (b) [NOT USED]
- (c) [NOT USED]
- (d) [NOT USED]
- (e) [NOT USED]
- (f) [NOT USED]
- (g) [NOT USED]

21. ACCESS AND MONITORING

21.1 Access for Province Persons

- (a) Subject to Part 2 Sections 21.1(b) and 21.1(c), Alstom acknowledges and agrees that throughout the VSC Term, Alstom shall not restrict the access of Contracting Authority, the Province Persons, and their respective representatives, to any workshop where materials, plant or equipment in respect of the Vehicle Supplier Activities are being manufactured, prepared or stored at all reasonable times during normal working hours, including for the purposes of general inspection or audit, or of attending any test or study being carried out in respect of the Vehicle Supplier Activities, or to fulfill any statutory, public or other duties or functions.
- (b) Alstom shall use commercially reasonable efforts to have the Alstom Parties supplying Key Systems grant similar access rights to the Contracting Authority, the Province Persons and their respective representatives provided at least two (2) days' notice is given.
- (c) Alstom acknowledges and agrees to the provisions of Section 21.1(b) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

21.2 Increased Monitoring

Alstom acknowledges and agrees that if Contracting Authority exercises its rights under Section 21.2 of the Project Agreement in respect of the Vehicle Supplier Activities, then Contracting Authority may increase the level of monitoring of Alstom, and Alstom shall be responsible for demonstrating to Contracting Authority's satisfaction (upon which Project Co and Construction Contractor will be deemed to be satisfied), that it is capable of performing and will perform, in all material respects, its obligations under this Revenue Vehicle Supply Contract. Alstom will compensate Construction Contractor for any reasonable costs incurred by Construction Contractor as a result of such increased monitoring.

- (a) [NOT USED]

MT DOCS 19727287v2

21.3 Right to Uncover

- (a) Alstom shall ensure that Contracting Authority is afforded advance Notice of, and that Contracting Authority is afforded a full opportunity to witness, all inspection and test activity related to the Vehicle Supplier Activities in accordance with the Quality Control Plan. If Alstom does not provide such Notice and opportunity, Alstom shall at the request of Contracting Authority uncover any relevant part of the Works related to the Vehicle Supplier Activities which have been covered up or otherwise put out of view or remove any relevant part of the Works related to the Vehicle Supplier Activities that have been proceeded with in order to permit Contracting Authority to witness the relevant inspection or test activity. Alstom shall bear all costs of any such uncovering or removal, as assessed by Project Co under Section 21.3(a) of the Project Agreement, regardless of whether or not any defect is discovered in the relevant Works.
- (b) [NOT USED]
- (c) [NOT USED]
- (d) [NOT USED]

21.3A Additional Inspection Rights

- (a) Notwithstanding Part 2 Section 21, Alstom shall notify the Construction Contractor Representative at least 3 Business Days prior to any test or inspection to be performed at inspection points described in the Quality Control Plan. The notice shall contain details as to the location, date and time and a list of persons required to attend. If Construction Contractor waives its right to be present, Alstom shall proceed with the inspection or test. Any such waiver by Construction Contractor shall not relieve Alstom from the entire responsibility for the complete performance of the Vehicle Supplier Activities in accordance with this Revenue Vehicle Supply Contract. If Alstom fails to provide any required notification to Construction Contractor in relation to the inspection points described in the Quality Control Plan in accordance with this Revenue Vehicle Supply Contract and/or if, when Construction Contractor attends any inspection permitted under this Revenue Vehicle Supply Contract, any Vehicle Supplier Activity is not available for inspection without the approval or consent in writing of the Construction Contractor Representative, it shall be made available to be inspected and made good at the request of the Construction Contractor Representative and reassembled, all at Alstom's expense if any.

21.4 No Relief from Obligations

- (a) The Parties acknowledge that the exercise by Contracting Authority of its rights under Section 21.4 of the Project Agreement (or, correspondingly, Project Co under the Construction Contract or Construction Contractor under this Revenue Vehicle Supply Contract) related to access and monitoring of this Revenue Vehicle Supply Contract shall in no way affect the obligations of Alstom under this Revenue Vehicle Supply Contract except as set out in this Part 2 Section 21.

21.5 [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]
- (c) [NOT USED]

21.6 Public Use

- (a) Alstom acknowledges that Alstom shall have no right to grant, to the general public, the right to use either the Project Co System Infrastructure or the New Third Party Infrastructure.
- (b) Except as explicitly permitted by Construction Contractor or this Revenue Vehicle Supply Contract, and subject to Alstom's compliance with all applicable VSC Permits, Licences and Approvals, Alstom shall,
 - (i) minimize interference with all existing transit systems at all times during the Construction Period; and
 - (ii) to the extent that the Vehicle Supplier Activities necessitate interference, in any way, with the operation of an existing transit system, including the imposition of any closures or detours on an existing transit system, use commercially reasonable efforts to cooperate with Construction Contractor, the CC Parties, Project Co, Project Co Parties, Contracting Authority, each City, MTO, 407 ETR and other relevant third parties to ensure the continued operation of such existing transit system.
- (c) Except as otherwise expressly provided in this Revenue Vehicle Supply Contract, Alstom shall not have any claim whatsoever against Construction Contractor, the CC Parties, Project Co, Project Co Parties, Contracting Authority, Contracting Authority Parties, any Province Person, Emergency Service Providers or any other Governmental Authority for, or in respect of, any lane closure or diversion or any track closure or diversion, including any closure or diversion as a result of the exercise of any other rights or powers or the discharge of any other duties or functions by any such authority, affecting all or any part of the Lands, the Project Co System Infrastructure or the New Third Party Infrastructure, at any time.
- (d) [NOT USED]

22. VEHICLE DELIVERY SCHEDULE AND VEHICLE SUPPLIER ACTIVITIES REPORT**22.1 Completion of Vehicle Supplier Activities**

- (a) Alstom shall complete the Vehicle Supplier Activities in accordance with this Revenue Vehicle Supply Contract and achieve the Vehicle Delivery Schedule.

MT DOCS 19727287v2

22.2 Vehicle Delivery Schedule

- (a) Within 30 days of Financial Close, Alstom shall provide to the Construction Contractor's Project Manager the Vehicle Delivery Schedule for review and acceptance. The Vehicle Delivery Schedule will govern and will be used by the Construction Contractor Representative to monitor the progress of the Vehicle Supplier Activities and to facilitate an efficient inspection process. Alstom will update the Vehicle Delivery Schedule from time to time and no less frequently than monthly and provide an updated Vehicle Delivery Schedule to the Construction Contractor Representative for review and acceptance.
- (b) Alstom shall provide Construction Contractor, at no additional cost or charge, with all information reasonably required by Construction Contractor for the purposes of Construction Contractor satisfying its obligations under Sections 8, 9, 10, 11, 12, and 13 of Schedule 12 – Works Schedule Requirements of the Construction Contract, to the extent that Alstom is expressly required to provide such information pursuant to this Revenue Vehicle Supply Contract.

22.3 Failure to Maintain Vehicle Delivery Schedule

- (a) If Contracting Authority has exercised its rights under Section 14.1 of Schedule 12 – Works Schedule Requirements of the Project Agreement then, to the extent such exercise of rights is related to the Vehicle Supplier Activities, Construction Contractor shall give Notice to Alstom, and Alstom shall:
- (i) within 4 Business Days of receipt of Notice from Construction Contractor, produce and deliver to the Construction Contractor Representative:
- (A) a schedule (the “**VSC Recovery Schedule**”) which shall comply with the following:
- (I) its title shall be “VSC Recovery Schedule”, and
- (II) for the first VSC Recovery Schedule, the Vehicle Delivery Schedule baseline shall be shown in the VSC Recovery Schedule using the scheduling software's baseline functionality to visually indicate the variance between the Vehicle Delivery Schedule and the first VSC Recovery Schedule, or
- (III) for subsequent VSC Recovery Schedules, if applicable, the current VSC Recovery Schedule baseline shall be shown in the new VSC Recovery Schedule using the scheduling software's baseline functionality to visually indicate the variance between the current VSC Recovery Schedule and the new VSC Recovery Schedule,

- (IV) [NOT USED]
- (V) [NOT USED]
- (B) a report (the “**VSC Recovery Schedule Report**”) which shall comply with the following:
 - (I) its title shall be “VSC Recovery Schedule Report”;
 - (II) the VSC Recovery Schedule Report shall describe in narrative form:
 - i. all variances between the Vehicle Delivery Schedule and the Recovery Schedule, or, if applicable, between the current VSC Recovery Schedule and a new VSC Recovery Schedule; and
 - ii. [NOT USED]
- (C) [NOT USED]; and
- (ii) if applicable, bring the progress of the Vehicle Supplier Activities back on schedule in accordance with the deliverables provided for in Part 2 Section 22.3(a)(i) of this Revenue Vehicle Supply Contract.
- (b) If the Construction Contractor Representative determines from a Vehicle Delivery Schedule, as updated from time to time, that there is or will be a schedule slippage as the result of any action or omission of Alstom so as to appear to jeopardize the dates for Acceptance and Delivery of the LRVs, Alstom shall explain the cause of this slippage, and submit for acceptance a revised Vehicle Delivery Schedule together with details of the methods to be used to make up the lost time (which may include overtime, additional facilities, increased sub-contracting). Alstom shall perform in accordance with an amended Vehicle Delivery Schedule acceptable to Construction Contractor, acting reasonably, entirely at Alstom’s own cost and expense, and there shall be no increase in the Contract Price. Construction Contractor shall not be entitled to exercise its rights under this Part 2 Section 22.3(b) to the extent Contracting Authority has exercised its rights under Section 22.3(b) of the Project Agreement and Alstom is in compliance with its obligations thereunder.
- (c) Alstom acknowledges and agrees that it shall not be entitled to accelerate the delivery, or provide for early delivery, of any of the Revenue Vehicle Deliverables (i) as set forth in the Vehicle Delivery Schedule, and (ii) prior to the Readiness for Delivery date set out in Table 3.1-1 of Attachment 15 – Output Specifications (for greater certainty, such Readiness for Delivery date shall be included in the Vehicle Delivery Schedule), unless Alstom obtains the prior written consent of Construction Contractor.
- (d) [NOT USED]

MT DOCS 19727287v2

22.4 Vehicle Supplier Activities Report

- (a) Alstom shall submit monthly reports setting out particulars of the progress of the Vehicle Supplier Activities (which shall include the content of and those matters set forth in Attachment 33 – Vehicle Supplier Activities Report Requirements) and any barriers to progress encountered or anticipated. Alstom shall append to such monthly reports the updated Vehicle Delivery Schedule. Construction Contractor and Alstom shall meet to discuss the monthly report within 7 days of their delivery.

23. LEED, ENERGY AND ENVIRONMENTAL REQUIREMENTS

23.1 Environmental Management / Contamination and Hazardous Substances

- (a) Alstom shall comply with the provisions of Attachment 17 – Environmental Obligations.

23.2 [NOT USED]

- (a) [NOT USED]

23.3 [NOT USED]

- (a) [NOT USED]

23.4 [NOT USED]

- (a) [NOT USED]

- (b) [NOT USED]

23.5 [NOT USED]

- (a) [NOT USED]

23.6 [NOT USED]

- (a) [NOT USED]

- (b) [NOT USED]

- (c) [NOT USED]

- (d) [NOT USED]

23.7 [NOT USED]

MT DOCS 19727287v2

(a) [NOT USED]

24. [NOT USED]

[NOT USED]

24.1 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

24.2 [NOT USED]

(a) [NOT USED]

24.3 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

24.4 [NOT USED]

(a) [NOT USED]

24.5 [NOT USED]

(a) [NOT USED]

24.6 [NOT USED]

(a) [NOT USED]

24.7 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

25. COMMISSIONING AND COMPLETION

25.1 Commissioning Activities

MT DOCS 19727287v2

- (a) Alstom shall perform all Commissioning pursuant to and in accordance with Attachment 14 – Commissioning. Alstom agrees to provide reasonable assistance to the Construction Contractor in relation to all matters relating to Commissioning to the extent that such matters are related to or in respect of the Vehicle Supplier Activities.

25.2 [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]

25.3 [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]
- (c) [NOT USED]
- (d) [NOT USED]
- (e) [NOT USED]
- (f) [NOT USED]
- (g) [NOT USED]

25.4 [Intentionally Deleted]

25.5 Contracting Authority Commissioning

- (a) Alstom acknowledges that Contracting Authority may perform Contracting Authority Commissioning both before and after the Substantial Completion Date. Prior to Substantial Completion, Alstom shall not restrict Contracting Authority, and any of its employees and subcontractors from full access to the Lands, the Project Co System Infrastructure and the New Third Party Infrastructure and all relevant parts thereof at such times as may be set out in the Commissioning Program to enable Contracting Authority to undertake any Contracting Authority Commissioning in accordance with the Commissioning Program. Alstom acknowledges the provisions of Section 25.5(a) of the Project Agreement and the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (b) Alstom acknowledges the provisions of Section 25.5(b) of the Project Agreement and the provisions of Part 1 relating to Equivalent Project Relief shall apply.

MT DOCS 19727287v2

- (c) Alstom acknowledges that, prior to and during the Contracting Authority Commissioning Period, Alstom and its Alstom Parties shall cooperate with Construction Contractor, CC Parties, Project Co, Project Co Parties, Contracting Authority and all Province Persons and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the Contracting Authority Commissioning activities are able to be completed in the timeframe for completion set out in the Commissioning Program.

25.6 [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]
- (c) [NOT USED]
- (d) [NOT USED]
- (e) [NOT USED]
- (f) [NOT USED]

25.7 [NOT USED]

- [NOT USED]
- (a) [NOT USED]
- (b) [NOT USED]
- (c) [NOT USED]
- (d) [NOT USED]
- (e) [NOT USED]
- (f) [NOT USED]
- (g) [NOT USED]

25.8 [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]

MT DOCS 19727287v2

25.9 [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]

25.9A [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]

25.10 [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]
- (c) [NOT USED]
- (d) [NOT USED]
- (e) [NOT USED]
- (f) [NOT USED]
- (g) [NOT USED]

25.11 Effect of Certificates/Use

- (a) The issue of the Substantial Completion Certificate or the Final Completion Certificate, the commencement of use by Project Co, Construction Contractor or the public of any part of the Project Co System Infrastructure or the commencement of any Governmental Activities shall, in no way limit the obligations of Alstom under this Revenue Vehicle Supply Contract including in respect of any warranty obligations described in Part 1 Section 7.

25.12 [NOT USED]

- (a) [NOT USED]

25.13 [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]

MT DOCS 19727287v2

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

(f) [NOT USED]

(g) [NOT USED]

(h) [NOT USED]

(i) [NOT USED]

(j) [NOT USED]

(k) [NOT USED]

(l) [NOT USED]

(m) [NOT USED]

25.14 [Intentionally Deleted]

25.15 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

25.16 [NOT USED]

(a) [NOT USED]

26. [NOT USED]

26.1 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

MT DOCS 19727287v2

26.2 [NOT USED]

(a) [NOT USED]

26.3 [NOT USED]

(a) [NOT USED]

26.4 [NOT USED]

(a) [NOT USED]

26.5 [NOT USED]

(a) [NOT USED]

26.6 [NOT USED]

(a) [NOT USED]

26.7 [NOT USED]

(a) [NOT USED]

26.8 [NOT USED]

(a) [NOT USED]

26.9 [NOT USED]

(a) [NOT USED]

26.10 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

26.11 [NOT USED]

(a) [NOT USED]

MT DOCS 19727287v2

27. [INTENTIONALLY DELETED]**28. HUMAN RESOURCES****28.1 Admittance of Personnel**

- (a) Alstom acknowledges and agrees to the provisions of Section 28.1 of the Project Agreement.

28.2 Confirmation of Action

- (a) Any action taken under Section 28.1 of the Project Agreement in respect of a person employed by (or acting on behalf of) Alstom or any Alstom Party shall promptly be confirmed by Alstom to the Construction Contractor, and, for greater certainty, shall not relieve Alstom of any of its obligations under this Revenue Vehicle Supply Contract.

28.3 Finality as to Admission

- (a) Any decision of Contracting Authority made pursuant to Section 28.1 of the Project Agreement shall be final and conclusive.

28.4 Staff Competency

- (a) Alstom shall ensure that:
- (i) there shall at all times be a sufficient number of persons employed or engaged by Alstom or any Alstom Party (including all relevant grades of supervisory staff) engaged in the performance of the Vehicle Supplier Activities with the requisite level of skill and experience to perform the Vehicle Supplier Activities in accordance with this Revenue Vehicle Supply Contract. For greater certainty, this obligation shall include ensuring that there are a sufficient number of such skilled and experienced persons employed or engaged by Alstom or any Alstom Party to complete the Vehicle Supplier Activities in accordance with the Vehicle Delivery Schedule and to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in the Vehicle Supplier Activities;
 - (ii) all persons employed or engaged by Alstom or any Alstom Party (including all relevant grades of supervisory staff) engaged in the provision of the Vehicle Supplier Activities on the Lands receive such training and supervision as is necessary to ensure the proper performance of this Revenue Vehicle Supply Contract and compliance with all health and safety rules, procedures and requirements and Authority Requirements; and
 - (iii) it maintains a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of persons employed or engaged by Alstom (including all relevant grades of supervisory staff) engaged in the provision of the Vehicle Supplier Activities to ensure the proper performance of this Revenue Vehicle Supply Contract.

MT DOCS 19727287v2

28.5 Employee Training

- (a) [NOT USED]
- (b) [NOT USED]
- (c) Alstom and all Alstom Parties shall be responsible for the cost of all training and certification for all employees of Alstom and Alstom Party employees.

28.6 [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]
- (c) [NOT USED]
- (d) [NOT USED]
- (e) [NOT USED]
- (f) [NOT USED]

28.7 Disciplinary Action

- (a) Alstom acknowledges and agrees to the provisions of Section 28.7 of the Project Agreement. Upon investigation, or notification by Project Co or Construction Contractor (pursuant to the corresponding sections of the Project Agreement or Construction Contract, as applicable), Alstom may institute disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise the Construction Contractor in writing of the outcome of any disciplinary action taken in respect of such person.

28.8 Human Resources Policies

- (a) Alstom shall ensure that there are set up and maintained by it, human resources policies and procedures covering all relevant matters relating to the Vehicle Supplier Activities (including, for example, health and safety). Alstom shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law, Authority Requirements 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 available to Construction Contractor on a timely basis.

28.9 Management Organizations

- (a) Alstom shall provide to Construction Contractor, as required to keep such information current, the names of the management teams responsible for the performance of the Vehicle Supplier Activities.

28.10 Governmental Authority

- (a) Alstom shall ensure that it complies at all times with any regulations, policies or directions set by any Governmental Authority related to labour, employment and/or human resources.

29. GOODS, EQUIPMENT, CONSUMABLES AND MATERIALS**29.1 Standards**

- (a) Alstom shall cause the goods, equipment, Revenue Vehicle Deliverables, consumables and materials used or supplied by it or any Alstom Party in connection with the Vehicle Supplier Activities to be:
- (i) of good quality and maintained in a safe, serviceable and clean condition in accordance with the Output Specifications and Good Industry Practice except when not in Alstom's possession or control;
 - (ii) of the type specified in the Output Specifications, if applicable; and
 - (iii) in compliance with all Applicable Law,

and shall, as soon as practicable after receiving a request from the Construction Contractor Representative following the exercise by Contracting Authority of its rights pursuant to Section 29.1 of the Project Agreement, supply to the Construction Contractor Representative evidence to demonstrate its compliance with this Part 2 Section 29.1(a).

29.2 Stocks

- (a) Alstom shall maintain, for the applicable Warranty Period, the Warranty Spares which, in Alstom's reasonable determination is sufficient to enable it to provide (at no cost to Construction Contractor or Contracting Authority) warranty parts replacement as soon as reasonably practicable in circumstances in which Alstom, acting reasonably, determines that such replacement (rather than repair) is necessary in order for Alstom to comply with its warranty obligations under and in accordance with this Revenue Vehicle Supply Contract.

30. DAMAGE AND DESTRUCTION**30.1 Protection of Works and Property and Reinstatement Work**

MT DOCS 19727287v2

(a) Alstom assumes the risk of loss or damage to each Revenue Vehicle Deliverable occurring until Delivery and shall immediately proceed to repair, replace and make good such loss or damage, without cost to Construction Contractor, whether such loss or damage arises from acts or omissions (whether negligent or not) of Alstom or of third parties or from any other cause except where such loss or damage arises from acts or omissions of Construction Contractor. In connection with the risk of loss in respect of or related to the Vehicle Supplier Activities, it is agreed that Alstom shall take out and maintain adequate insurance coverage for the undepreciated current replacement value against the hazards of all risks of direct physical loss or damage to the property insured. For clarity, Construction Contractor shall be responsible following the Delivery of a Revenue Vehicle Deliverable to the delivery location for any further transportation, storage, security, operation maintenance (and any maintenance testing associated therewith) of such Revenue Vehicle Deliverable, and all required interface infrastructure, save as expressly set out in this Revenue Vehicle Supply Contract.

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

30.2 [NOT USED]

(a) [NOT USED]

30.3 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

31. [NOT USED]

31.1 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

(f) [NOT USED]

MT DOCS 19727287v2

(g) [NOT USED]

31.2 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

31.3 [NOT USED]

(a) [NOT USED]

31.4 [NOT USED]

(a) [NOT USED]

31.5 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

32. PROJECT CO'S REMEDIAL RIGHTS

32.1 Exercise of Remedial Rights

(a) Alstom acknowledges the provisions of Section 32 of the Project Agreement, and agrees that Contracting Authority may exercise all rights set out in Section 32 of the Project Agreement at any time and from time to time, and Alstom agrees to comply with any requirements of Contracting Authority notified to Project Co thereunder (and subsequently notified by Project Co to Construction Contractor under the Construction Contract). Without limiting the foregoing, where Project Co receives notice from Contracting Authority of a breach, act or omission on the part of or attributable to Alstom or any Alstom Party to which Section 32 of the Project Agreement applies, Project Co or Construction Contractor shall notify Alstom of such breach, act or omission and Alstom shall use commercially reasonable efforts to cure such breach, act or omission within 3 Business Days of notice from Project Co or Construction Contractor or, if such breach, act or omission cannot be reasonably cured within such 3 Business Day period, Alstom shall diligently and continuously pursue such cure and cure such breach, act or omission within a reasonable period thereafter.

MT DOCS 19727287v2

32.2 Emergency

- (a) Alstom acknowledges the provisions of Section 32.2 of the Project Agreement and agrees that, notwithstanding that Alstom is not in breach of its obligations under this Revenue Vehicle Supply Contract or that Project Co is not in breach of its obligations under the Project Agreement, Contracting Authority may exercise all of the rights set out in Section 32 of the Project Agreement at any time and from time to time after the Substantial Completion Date, if Contracting Authority, acting reasonably, considers the circumstances to constitute an Emergency.

32.3 Rectification

- (a) Alstom acknowledges the provisions of Section 32.3 of the Project Agreement and agrees to comply with any requirements of or take such steps as Contracting Authority has notified Project Co pursuant to Section 32.3(a) of the Project Agreement (and subsequently notified by Project Co to Construction Contractor under the Construction Contract).

32.4 Costs and Expenses

- (a) Subject to Part 2 Sections 32.5 and 32.6, to the extent caused by any act or omission of Alstom or any Alstom Party:
- (i) Alstom shall bear all costs and expenses incurred by Alstom in relation to the exercise by Contracting Authority's rights pursuant to Section 32 of the Project Agreement; and
 - (ii) Alstom shall reimburse Construction Contractor, Project Co and Contracting Authority for all reasonable costs and expenses incurred by each of them in relation to the exercise by Contractor Authority's rights pursuant to Section 32 of the Project Agreement.

32.5 Reimbursement Events

- (a) Alstom acknowledges the provisions of Section 32.5 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

32.6 Reimbursement if Improper Exercise of Rights

- (a) Alstom acknowledges the provisions of Section 32.6 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

33. VEHICLES

- (a) Alstom agrees to comply with the provisions of Attachment 43 – Revenue Vehicles.

34. PAYMENT

34.1 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

34.2 [NOT USED]

(a) [NOT USED]

34.3 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

34.4 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

34.5 [NOT USED]

(a) [NOT USED]

34.6 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

MT DOCS 19727287v2

(f) [NOT USED]

(g) [NOT USED]

(h) [NOT USED]

(i) [NOT USED]

(j) [NOT USED]

(k) [NOT USED]

34.7 [NOT USED]

(a) [NOT USED]

34.8 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

34.9 [NOT USED]

(a) [NOT USED]

34.10 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

34.11 Manner of Payment

(a) All payments under this Revenue Vehicle Supply Contract 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 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 Business Day, then the electronic transfer shall be made on the Business Day immediately succeeding such day.

(c) Any invoice or similar statement of account issued by Alstom to Construction Contractor under or pursuant to this Revenue Vehicle Supply Contract shall be issued:

MT DOCS 19727287v2

- (i) to Construction Contractor; or
- (ii) to any other person, for and on behalf Construction Contractor, after 60 days following receipt by Alstom of written notice from Construction Contractor confirming that such person is to receive such invoice or similar statement of account, for and on behalf of Construction Contractor (such written notice to Alstom in this regard to set forth the name, address and other customary billing details of and regarding such person).

34.12 Set-Off

- (a) Alstom acknowledges and agrees to the provisions of Section 34.12 of the Project Agreement and agrees that if Project Co exercises any associated set-off right available to it pursuant to the Construction Contract in respect of any amounts due to Construction Contractor by Alstom under this Revenue Vehicle Supply Contract and the payments due to Alstom under this Revenue Vehicle Supply Contract are insufficient to permit Construction Contractor to set-off such amount, then Alstom shall reimburse Construction Contractor within 30 days of receipt of a demand therefor in an amount equal to the shortfall.
- (b) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
 - (i) Construction Contractor to set off against any amounts otherwise due to Alstom pursuant to the terms of this Revenue Vehicle Supply Contract, any amounts (including any amounts payable in accordance with Part 2 Section 56) which are due to Construction Contractor by Alstom pursuant to the terms of this Revenue Vehicle Supply Contract; and
 - (ii) subject to the provisions of Part 1 relating to Equivalent Project Relief, Alstom to set off against any amounts otherwise due to Construction Contractor pursuant to the terms of this Revenue Vehicle Supply Contract, any undisputed amounts (including any amounts payable in accordance with Part 2 Section 56) which are due to Alstom by Construction Contractor pursuant to the terms of this Revenue Vehicle Supply Contract.

34.13 Effect of Payment

- (a) No payment hereunder shall operate to relieve Alstom from the performance of any of its obligations under this Revenue Vehicle Supply Contract which have not been performed.

34.14 Audit of Performance and Payment

- (a) Alstom acknowledges Section 34.14 of the Project Agreement and agrees to comply with any audit related to the Vehicle Supplier Activities, Alstom or the Alstom Parties undertaken by Contracting Authority thereunder.

- (b) Notwithstanding Part 2 Section 34.14(a):
 - (i) in addition to the information otherwise to be submitted or provided to Construction Contractor pursuant to any other provision in this Revenue Vehicle Supply Contract, Alstom shall submit to Construction Contractor, within such period as Construction Contractor may reasonably require (having due regard to the time and costs involved in providing such information but disregarding any costs of less than \$[REDACTED] per request), such other information, records or documents in its possession or control or in the possession or control of any auditors, agents or sub-contractors as Construction Contractor may reasonably request and which relate to the records relating to Alstom’s performance of its obligations under this Revenue Vehicle Supply Contract (the “**Alstom Records**”); and
 - (ii) Construction Contractor or its representatives or agents may, on giving reasonable notice and at all reasonable times, inspect and make copies of:
 - (A) any of the Alstom Records (and Alstom shall ensure that Construction Contractor shall be similarly entitled to inspect and make copies of any such records or documents maintained by any Alstom Party); and/or
 - (B) such other information, records or documents as are in the possession or control of Alstom or any Alstom Party, relating to:
 - (I) the supply of the Revenue Vehicle Deliverables; or
 - (II) the carrying out of any of Alstom's obligations under this Revenue Vehicle Supply Contract,

in each case as Construction Contractor may reasonably request for the purpose of auditing any information supplied to Construction Contractor under this Revenue Vehicle Supply Contract or verifying Alstom’s compliance with its obligations under this Revenue Vehicle Supply Contract.

(c) [NOT USED]

(d) [NOT USED]

34.15 No Other Entitlement

- (a) Alstom shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with this Revenue Vehicle Supply Contract, except as specifically and expressly set out in this Revenue Vehicle Supply Contract.

35. TAXES

MT DOCS 19727287v2

35.1 Taxes

- (a) All amounts specified in this Revenue Vehicle Supply Contract, including, for clarity, any compensation payable on termination, are expressed exclusive of HST, but inclusive of all other Taxes payable pursuant to Applicable Law. For clarity, Construction Contractor shall not be required to pay any interest and/or penalties that are imposed on or assessed against Alstom or any Alstom Party for non-compliance with Applicable Law. If Alstom is required by Applicable Law to collect any such HST from Construction Contractor, Construction Contractor shall pay such HST to Alstom simultaneously with the amount to which such applicable HST relates or applies.
- (b) Alstom acknowledges and agrees to the provisions of Section 35.1(b) of the Project Agreement.
- (c) [NOT USED]

35.2 Changes in Scope of Taxation

- (a) Subject to the provisions of Part 1 dealing with Equivalent Project Relief, if, as a result of a Change in Law, the application of Taxes under Part IX of the *Excise Tax Act* (Canada) or any provincial sales tax legislation changes with respect to the provision of any goods or services by Alstom in connection with the performance of the Vehicle Supplier Activities, Construction Contractor and Alstom agree to cooperate to determine how such change affects their respective obligations under this Revenue Vehicle Supply Contract to the extent not already addressed in this Revenue Vehicle Supply Contract.

35.3 Information and Assistance Provided by Construction Contractor

- (a) Subject to the provisions of Part 1 dealing with Equivalent Project Relief, Construction Contractor will pay to Alstom from time to time, as the same is incurred by Alstom in connection with the performance of the Vehicle Supplier Activities and after Construction Contractor's receipt of each payment from Project Co pursuant to the Construction Contract, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Alstom will pay to Construction Contractor from time to time, as the same is incurred by Alstom, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Part 2 Section 35.3, the term "**Irrecoverable Tax**" means HST or an irrecoverable sales tax levied by the Province in lieu of all or a portion of HST incurred by Alstom in respect of the supply of any good or service to Construction Contractor which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Alstom in the course of carrying out the Vehicle Supplier Activities to the extent that Alstom is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

- (c) For the purposes of this Part 2 Section 35.3, the term “**Recoverable Tax**” means HST incurred by Alstom in respect of the supply of any good or service to Construction Contractor which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Alstom in the course of carrying out the Vehicle Supplier Activities to the extent Alstom is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

35.4 Information and Assistance Provided by Construction Contractor

- (a) Alstom shall, at Construction Contractor’s request and cost, assist Construction Contractor in applying for and obtaining all remissions and credits of Taxes to which any of Construction Contractor, Project Co or Contracting Authority is entitled.
- (b) Alstom acknowledges that pursuant to the Project Agreement, Contracting Authority 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 the Project Agreement. Alstom shall, at Construction Contractor’s cost (subject to the provisions of Part 1 relating to Equivalent Project Relief), assist in making any applications for such global or general exemption, waiver, remission or refund and shall provide Construction Contractor with such documentation as may reasonably require to support such application and, in any event, shall provide such consent as Construction Contractor may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by Contracting Authority through such application shall accrue to the sole benefit of Contracting Authority.
- (c) Alstom will provide Construction Contractor with any information reasonably requested by Project Co, Construction Contractor or Contracting Authority from time to time in relation to any Taxes chargeable in accordance with this Revenue Vehicle Supply Contract and payable by Contracting Authority to Project Co or Project Co to Construction Contractor or Construction Contractor to Alstom from time to time.

35.5 Residency – *Income Tax Act (Canada)*

- (a) Alstom shall not undertake any action or transaction that, if undertaken, would cause or result in Alstom becoming a Non-Resident without Construction Contractor’s prior written consent, which consent may be withheld in Construction Contractor’s sole discretion.

35.6 Taxes – General

- (a) Alstom shall not, without the prior written consent of Construction Contractor (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause Construction Contractor or any CC Party to have (or result in Construction Contractor or any CC 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 Alstom or any Alstom Party under this Revenue Vehicle Supply Contract.

35.7 Taxes – Indemnity

(a) If:

- (i) Alstom becomes a Non-Resident, or
- (ii) Construction Contractor or any CC Party is or becomes required by Applicable Law to deduct or withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Alstom or Alstom Party by Construction Contractor or any CC Party under this Revenue Vehicle Supply Contract,

then Construction Contractor or any CC Party shall be entitled to make any applicable deductions or withholdings required by Applicable Law from any amount paid or credited or to be paid or credited to Alstom or an Alstom Party on or after the date on which:

- (iii) Alstom or the Alstom Party becomes a Non-Resident and at all times while it remains a Non-Resident; or
- (iv) Contracting Authority or any Contracting Authority 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 Construction Contractor or any CC Party under this Revenue Vehicle Supply Contract to Alstom or an Alstom Party shall be paid or credited net of such deductions or withholdings.

(b) If:

- (i) Alstom becomes a Non-Resident, or
- (ii) Construction Contractor or any CC 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 Alstom or an Alstom Party by Construction Contractor or any CC Party under this Revenue Vehicle Supply Contract,

Alstom shall, in each case, indemnify and hold harmless Construction Contractor and the CC Parties for:

- (iii) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by Construction Contractor or any CC Party in respect of any amounts paid or credited by Construction Contractor or any CC Party to Alstom or any Alstom Party under this Revenue Vehicle Supply Contract as a result of either of the foregoing items less any amount withheld or deducted by Construction Contractor or any CC Party in respect of such Taxes, and

MT DOCS 19727287v2

- (iv) 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 Liabilities**”).

Payment under this indemnification shall be made within 30 days from the date Construction Contractor makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Alstom by Construction Contractor shall be conclusive evidence, absent manifest error, of the amount due from Alstom to Construction Contractor. Construction Contractor shall be entitled to exercise its rights of set-off under Part 2 Section 34.12 against any amounts owing under this indemnification.

36. [NOT USED]

36.1 [NOT USED]

- (a) [NOT USED]

36.2 [NOT USED]

- (a) [NOT USED]

- (b) [NOT USED]

- (c) [NOT USED]

- (d) [NOT USED]

- (e) [NOT USED]

37. RECORDS, INFORMATION AND AUDIT

37.1 Records Provisions

- (a) Alstom shall comply with Attachment 26 – Record Provisions.

37.2 Information and General Audit Rights

- (a) Alstom acknowledges the provisions of Section 37.2 of the Project Agreement. In the event that Contracting Authority exercises its rights under Section 37.2(a) of the Project Agreement in respect of the Vehicle Supplier Activities, Alstom shall provide and shall cause each Alstom Party to provide to Contracting Authority all information, reports, documents, records and the like, including as referred to in Attachment 26 – Record Provisions, in the possession of, or

MT DOCS 19727287v2

available to, Alstom as Contracting Authority may reasonably require from time to time for any purpose in connection with this Revenue Vehicle Supply Contract, other than, subject to Part 2 Section 37.4, Sensitive Information. Alstom shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Alstom Parties shall be available to Alstom and Alstom shall include relevant terms in all VSC Subcontracts to this effect.

- (b) In the event that Contracting Authority exercises its rights under Section 37.2(b) of the Project Agreement, Alstom shall also provide to Contracting Authority, and shall require all information, reports, documents, records and the like required to be provided pursuant to Part 2 Section 37.2(a) which subsequently come into the possession of, or become available to, Alstom or each Alstom Party, as Contracting Authority may reasonably require from time to time to enable Contracting Authority to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Project Co System Infrastructure and the New Third Party Infrastructure, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than, subject to Part 2 Section 37.4 Sensitive Information.
- (c) Alstom shall promptly after receipt provide Construction Contractor with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Alstom Party from any Governmental Authority in relation to any of the Vehicle Supplier Activities or the Project Co System Infrastructure or the New Third Party Infrastructure, and Alstom shall include relevant terms in all VSC Subcontracts to this effect.
- (d) Alstom shall promptly notify Construction Contractor of any actions, suits, proceedings, or investigations commenced, pending or threatened against Alstom or, to Alstom's knowledge, any Alstom 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 impairment of its ability to perform its obligations under this Revenue Vehicle Supply Contract.
- (e) All information, reports, documents and records in the possession of, or available to, Alstom, which are required to be provided to or available to Contracting Authority hereunder pursuant to Part 2 Section 37.2(a) or Section 37.2(b), shall be subject and open to inspection and audit by Contracting Authority at any time and from time to time, which inspection and audit shall take place during normal business hours and at Alstom's normal places of business unless Contracting Authority and Alstom otherwise agree. In the event that Contracting Authority exercises its rights under Section 37.2(e) of the Project Agreement, Contracting Authority shall also have the right to monitor and audit the performance of any and all parts of the Vehicle Supplier Activities wherever located, and Alstom shall cooperate with, and shall require each Alstom Party to cooperate with, and provide access to the representatives of Contracting Authority monitoring and auditing such parts of the Vehicle Supplier Activities, including providing it with access and copies (at Contracting Authority's reasonable cost, subject to the provisions of Part 1 relating to Equivalent Project Relief) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Vehicle Supplier Activities. Except as otherwise provided

MT DOCS 19727287v2

herein, all of Construction Contractor’s costs for the inspections, audits and monitoring shall be borne by the Construction Contractor.

- (f) In conducting an audit of Alstom under Part 2 Section 37.2(e) or as otherwise provided under this Revenue Vehicle Supply Contract, Contracting Authority shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at Project Co’s reasonable cost, subject to the provisions of Part 1 relating to Equivalent Project Relief) of all books and records of Alstom required to be provided to or available to Contracting Authority hereunder, upon reasonable Notice and at reasonable times. Alstom shall fully cooperate with Contracting Authority and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Alstom further agrees to promptly review and settle with Contracting Authority all matters arising from such audits, including the refunding of monies to Construction Contractor where applicable. At the reasonable request of Contracting Authority’s auditors, Alstom shall provide such information, reports, documents and records as Contracting Authority’s auditors may reasonably require, other than Sensitive Information.
- (g) Contracting Authority’s rights pursuant to this Part 2 Section 37.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Revenue Vehicle Supply Contract.
- (h) Contracting Authority’s rights pursuant to this Part 2 Section 37.2 shall not limit or restrict Contracting Authority or any Governmental Authority’s right of review, audit, information or inspection under Applicable Law.
- (i) Without limiting the generality of Part 2 Section 37.2(a) and subject to Part 2 Section 52.1(a) and 52.3, in the event that Contracting Authority exercises its rights under Section 37.2(i) of the Project Agreement and Construction Contractor is required to provide information, including financial information, in relation to the Project, to Contracting Authority or the Province for corporate or financial reporting purposes, Alstom shall provide such information to Construction Contractor as it may reasonably require in order to comply with its corporate or financial reporting obligations. Alstom acknowledges and agrees that such information may include Sensitive Information.

37.3 [NOT USED]

- (a) [NOT USED]

37.4 Right to Disclose Intellectual Property

- (a) Alstom acknowledges that Contracting Authority, Project Co and any Project Co Party shall have the right to disclose Confidential Information of Alstom and the Alstom Parties, save and except Sensitive Information, when exercising the rights granted pursuant to Part 2 Section 51 provided

MT DOCS 19727287v2

however that Contracting Authority, Project Co and any Project Co Party shall be entitled to disclose Sensitive Information in the context of exercising any of the rights granted by Alstom pursuant to Part 2 Sections 51.2(b) and 51.3.

37.4A. Additional Provisions re Records

- (a) Notwithstanding the provisions of Part 2 Sections 34.14 and 37:
- (i) Alstom shall for a period of at least [REDACTED] (or such longer period as required by law or as required or recommended by any Government Authority) maintain accurate, up to date and complete records relating to its obligations under this Revenue Vehicle Supply Contract (in a form suitable for inspection) relating to the performance of its obligations under this Revenue Vehicle Supply Contract including:
- (A) the acquisition of all materials, parts and items of equipment included in the manufacture and/or supply of the Revenue Vehicle Deliverables;
 - (B) the design and/or the supply of the Revenue Vehicle Deliverables;
 - (C) all applications for Consents which are the responsibility of Alstom to obtain, and related correspondence and records; and
 - (D) all test results.

38. CHANGES IN LAW

38.1 Performance after Change in Law

- (a) Following any and all Changes in Law, Alstom shall perform the Vehicle Supplier Activities in accordance with the terms of this Revenue Vehicle Supply Contract, including in compliance with Applicable Law.

38.2 Works Change in Law

- (a) Alstom acknowledges the provisions of Section 38.2 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply, but only in respect of claims made by Contracting Authority for payment or compensation in respect of a net decrease in the costs incurred by Project Co in the delivery of the Project Operations as a result of the Works Change in Law.

38.3 Relevant Change in Law

- (a) Alstom acknowledges the provisions of Section 38.3 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply, but only in respect of claims made by Contracting Authority for payment or compensation in respect of a net

MT DOCS 19727287v2

decrease in the costs incurred by Project Co in the delivery of the Project Operations as a result of the Relevant Change in Law.

38.4 VSC Change in Law

- (a) On the occurrence of a VSC Change in Law, Alstom shall be entitled to seek compensation, subject to the provisions of Part 1 relating to Equivalent Project Relief, for any increase in the net cost to Alstom of performing the Vehicle Supplier Activities so as to put Alstom in no better and no worse position than it would have been in had the VSC Change in Law not occurred. Any such compensation shall be subject to the provisions of Part 1 relating to Equivalent Project Relief calculated in accordance with this Part 2 Section 38.4.
- (b) On the occurrence of a VSC Change in Law:
- (i) either Party may give Notice to the other of the need for a VSC Variation as a result of such VSC Change in Law and a corresponding notice for a variation under the Construction Contract shall be given by Construction Contractor to Project Co under the Construction Contract;
 - (ii) the Parties shall meet within 7 Business Days, or as soon as reasonably practicable, after Construction Contractor gives notice to Project Co under the Construction Contract (as described in Part 2 Section 38.4(b)(i) above) or Construction Contractor receives Notice from Project Co under the Construction Contract, to consult with respect to the effect of the VSC Change in Law and to reach an agreement on whether a VSC Variation is required as a result of such VSC Change in Law, and, Construction Contractor shall address with Project Co the question of whether a variation under the Construction Contract is required as a result of such VSC Change in Law (and Construction Contractor shall provide Alstom the opportunity to be present at any meetings with Project Co held pursuant to the Construction Contract as it relates to the effect of the VSC Change in Law). If Construction Contractor and Project Co have not reached an agreement, within the period set out in the Construction Contract for reaching an agreement on whether a Variation is required as a result of such VSC Change in Law, Alstom may, subject to the provisions of Part 1 relating to Equivalent Project Relief, require that Construction Contractor refer the question of whether a VSC Change in Law has occurred or the effect of any VSC Change in Law for resolution in accordance with the Construction Contract; and
 - (iii) Construction Contractor shall, within 10 Business Days of agreement or determination that a variation under the Construction Contract is required, issue a VSC Variation Enquiry and the relevant provisions of Attachment 22 – VSC Variation Procedure shall apply except that:

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- (A) Alstom may only object to any such VSC Variation Enquiry on the grounds that the implementation of the corresponding variation would not enable it to comply with the VSC Change in Law;
- (B) Alstom shall be responsible for obtaining all VSC Permits, Licences and Approvals required in respect of the VSC Variation;
- (C) Construction Contractor shall not be entitled to withdraw any VSC Variation Enquiry unless the Parties otherwise agree;
- (D) Alstom shall proceed to implement the VSC Variation within such period as will enable it to comply with the VSC Change in Law as soon as reasonably practicable;
- (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Revenue Vehicle Supply Contract:
- (I) use commercially reasonable efforts to mitigate the adverse effects of any VSC Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such VSC Change in Law; and
 - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any VSC Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such VSC Change in Law; and
- (F) any entitlement to compensation payable shall be subject to the provisions of Part 1 relating to Equivalent Project Relief and shall be in accordance with this Part 2 Section 38.4, and any calculation of compensation shall take into consideration, *inter alia*:
- (I) any failure by a Party to comply with Part 2 Section 38.4(b)(iii)(E);
 - (II) [NOT USED]
 - (III) any increase or decrease in its costs resulting from such VSC Change in Law; and
 - (IV) any amount which Alstom recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Revenue Vehicle Supply Contract or the terms of any policy of insurance required under this Revenue Vehicle Supply Contract) 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) Alstom's entitlement to any payment, compensation or relief under this Part 2 Section 38.4 shall be subject to the provisions of Part 1 relating to Equivalent Project Relief. Alstom shall not be entitled to any payment or compensation or, except as provided in Part 2 Section 38.4 or otherwise in this Revenue Vehicle Supply Contract, relief in respect of any VSC Change in Law, or the consequences thereof, other than in accordance with this Part 2 Section 38.4, and Part 2 Section 41 shall be construed accordingly.
- (d) [NOT USED]
- (e) In the event that a VSC Change in Law occurs and Alstom exercises its rights under this Part 2 Section 38.4, then notwithstanding that Project Co may have exercised its rights pursuant to Sections 38.2 or 38.3 of the Project Agreement (and Construction Contractor exercises its corresponding rights under the Construction Contract), the provisions of this Part 2 Section 38.4 shall apply.

39. VARIATIONS

39.1 VSC Variation Procedure

- (a) Except as otherwise expressly provided in this Revenue Vehicle Supply Contract, Attachment 22 – VSC Variation Procedure shall apply in respect of VSC Variations to the extent that Contracting Authority has exercised its rights under Schedule 22 – Variation Procedure of the Project Agreement.
- (b) Alstom acknowledges and agrees to the provisions of Section 39.1(b) of the Project Agreement. Where a variation under the Construction Contract related to Vehicle Supplier Activities is issued under the Construction Contract following the exercise by Contracting Authority of its rights under Schedule 22 – Variation Procedure of the Project Agreement, Alstom shall, subject to and in accordance with Attachment 22 – VSC Variation Procedure, be entitled to a VSC Variation under this Revenue Vehicle Supply Contract.
- (c) Without limiting Alstom's obligations pursuant to Part 2 Section 9.2(a) and Attachment 22 – VSC Variation Procedure, Alstom shall include in each VSC Subcontract entered into after the date hereof, and shall cause each Alstom Party engaged pursuant to such VSC Subcontract to comply with, the VSC Variation Procedure, to the extent that the VSC Variation Procedure requires Alstom to minimize the cost and impact of VSC Variations, including VSC Variations as to scope of the Vehicle Supplier Activities.

39.2 [NOT USED]

- (a) [NOT USED]

MT DOCS 19727287v2

- (b) [NOT USED]
- (c) [NOT USED]
- (d) [NOT USED]
- (e) [NOT USED]
- (f) [NOT USED]
- (g) [NOT USED]
- (h) [NOT USED]
- (i) [NOT USED]
- (j) [NOT USED]
- (k) [NOT USED]

40. DELAY EVENTS

40.1 Definition

- (a) For the purposes of this Revenue Vehicle Supply Contract, “**Delay Event**” means any of the following events or circumstances only to the extent, in each case, that it affects the Vehicle Supplier Activities so as to cause a delay in achieving or satisfying the requirements of the Vehicle Delivery Schedule:
 - (i) the implementation of a VSC Variation to the extent Alstom has identified such delay in its VSC Estimate and such delay has been documented in the corresponding VSC Variation Confirmation;
 - (ii) any breach by Contracting Authority of any of Contracting Authority’s obligations under the Project Agreement (including (A) any delay by Contracting Authority in giving access to the Metrolinx Lands pursuant to Section 14.1 thereof, including as a result of any failure to complete or to cause the completion of any of the Preparatory Activities by the applicable date set out in Sections 5.17 to 5.20 (inclusive) of Part 1 of Schedule 15–2 – Design and Construction Requirements thereof; (B) any obstruction of the rights afforded to Project Co under Section 14.1 thereof including as a result of any failure to complete or to cause the completion of any of the Preparatory Activities by the applicable date set out in Sections 5.17 to 5.20 (inclusive) of Part 1 of Schedule 15–2 – Design and Construction Requirements thereof; or (C) any delay by Contracting Authority in carrying out its obligations set forth in Schedule 10 – Review Procedure thereof; (D) [NOT USED]; (E) [NOT USED]), except to the extent that any such breach is caused, or

MT DOCS 19727287v2

contributed to, by Project Co or any Project Co Party or by Alstom and the Alstom Parties;

- (iii) an uncovering of the Works pursuant to Section 21.3 of the Project Agreement where such Works are not subsequently found to be defective or not in compliance with the requirements of the Project Agreement, unless such uncovering of the Works was reasonable in the light of other defects or non-compliance previously discovered by Contracting Authority in respect of the same or a similar component of the Works or subset of the Works;
- (iv) a requirement pursuant to Part 2 Section 16.2(f) for Alstom to perform any alteration, addition, demolition, extension or variation in the Vehicle Supplier Activities, or to suspend or delay performance of the Vehicle Supplier Activities, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Vehicle Supplier Activities, would not otherwise be required under this Revenue Vehicle Supply Contract;
- (v) a requirement pursuant to Part 2 Sections 16.3(d) or 16.3(e) for Alstom to perform any alteration, addition, demolition, extension or variation in the Vehicle Supplier Activities, or to suspend or delay performance of the Vehicle Supplier Activities, upon the discovery of any fossils, artifacts 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 Vehicle Supplier Activities, or suspension or delay in the performance of the Vehicle Supplier Activities, would not otherwise be required under this Revenue Vehicle Supply Contract;
- (vi) a requirement pursuant to Part 2 Sections 16.4(b) or 16.4(c) for Alstom to perform any alteration, addition, demolition, extension or variation in the Vehicle Supplier Activities, or to suspend or delay performance of the Vehicle Supplier Activities, upon the discovery of Species-at-Risk for which Alstom is not responsible, which alteration, addition, demolition, extension or variation in the Vehicle Supplier Activities, or suspension or delay in the performance of the Vehicle Supplier Activities, would not otherwise be required under this Revenue Vehicle Supply Contract;
- (vii) damages, costs or delays from the execution of Additional Works on the Lands by Additional Contractors, as applicable;
- (viii) a requirement pursuant to Section 13.1 of Attachment 27 – VSC Dispute Resolution Procedure for Alstom to proceed in accordance with the direction of Contracting Authority or Project Co during the pendency of a Dispute, which Dispute is subsequently determined in Alstom's favour;
- (ix) an event of Force Majeure;

- (x) a Relief Event;
- (xi) a VSC Change in Law;
- (xii) any change to the terms, conditions or requirements of the Environmental Assessments, except in each case to the extent resulting from any change by Alstom in the design of the Revenue Vehicles or Revenue Vehicle Equipment or from any other act or omission on the part of Alstom;
- (xiii) a requirement for Alstom to perform any alteration, addition, demolition, extension or variation in the Vehicle Supplier Activities, or to suspend or delay performance of the Vehicle Supplier Activities, upon the discovery of pre-existing defects in Major Existing Third Party Infrastructure which was not caused or contributed by a failure by Alstom to comply with any provisions of this Revenue Vehicle Supply Contract which alteration, addition, demolition, extension or variation in the Vehicle Supplier Activities, or suspension or delay in the performance of the Vehicle Supplier Activities, would not otherwise be required under this Revenue Vehicle Supply Contract;
- (xiv) a stop work order issued by a Governmental Authority, Project Co or Construction Contractor in respect of the Vehicle Supplier Activities, provided that such order was not issued as a result of a Relief Event, an act of Force Majeure, or as a result of an act, omission or fault of Alstom or an Alstom Party;
- (xv) [Intentionally Deleted];
- (xvi) a requirement that Alstom perform obligations under an Encumbrance pursuant to Part 2 Section 15.2(c)(iii) or Part 2 Section 15.2(d), which performance imposes costs or delays in the performance of Vehicle Supplier Activities;
- (xvii) a requirement for Alstom to perform any alteration, addition, demolition, extension or variation in the Vehicle Supplier Activities, or to suspend or delay performance of the Vehicle Supplier Activities, upon the discovery of unknown Utility Infrastructure or Mislocated Utility Infrastructure, which alteration, addition, demolition, extension or variation in the Vehicle Supplier Activities, or suspension or delay in the performance of the Vehicle Supplier Activities, would not otherwise be required under this Revenue Vehicle Supply Contract;
- (xviii) [NOT USED];
- (xix) failure by one or more Category 1 Utility Companies to perform each of their respective obligations, as set out in the Final Utility Baseline Documents, to:

- (A) inspect or review, as applicable, the Utility Work in accordance with the deadlines for inspection or review set out in the applicable Final Utility Baseline Document;
- (B) design or construct Utility Infrastructure in accordance with the provisions set out in the applicable Final Utility Baseline Document (including, for clarity, deadlines for design and construction), but only in those circumstances where it is a requirement of the applicable Final Utility Baseline Document that the Category 1 Utility Company must carry out the design and construction of the Utility Infrastructure itself (by the Category 1 Utility Company’s own forces or by a subcontractor retained by the Category 1 Utility Company); or
- (C) carry out the same scope of the work as that set out in the applicable Final Utility Baseline Document, but only in those circumstances where it is a requirement of the applicable Final Utility Baseline Document that the Category 1 Utility Company must carry out the scope of work of the Utility Infrastructure itself (or through a subcontractor of the Category 1 Utility Company),

provided, in each case, that such failure does not arise (directly or indirectly) as a result of any act or omission of Alstom or any Alstom Party. For the purposes of determining whether a failure by any one or more Category 1 Utility Companies has caused a delay in achieving or satisfying the requirements of the Vehicle Delivery Schedule, the Parties shall have regard to the cumulative effect of each and all failures by Category 1 Utility Companies in accordance with Part 2 Sections 40.1(a)(xix)(A), 40.1(a)(xix)(B) and 40.1(a)(xix)(C);

- (xx) [NOT USED]
- (xxi) [NOT USED]
- (xxii) [NOT USED]
- (xxiii) any breach of this Revenue Vehicle Supply Contract or the Construction Contract by Construction Contractor or any breach of the Construction Contract or the Project Agreement by Project Co in each case, to the extent that such breach results in a delay in the performance by Alstom of its obligations under this Revenue Vehicle Supply Contract or an increase in the cost to Alstom of performing those obligations, except to the extent that any such breach is caused by an act or omission of Alstom or any Alstom Party; and
- (xxiv) any act or omission of the Service Provider or the Operator (or in respect of each of the Service Provider and the Operator, their respective subcontractors of any tier, agents, employees officers and directors) to the extent that such act or omission causes undue interference with Alstom’s performance of the Vehicle Supplier Activities, except to the

MT DOCS 19727287v2

extent any such act or omission is caused by an act or omission of Alstom or any Alstom Party.

- (b) [NOT USED]
- (c) For further clarity, Part 2 Section 40.1(a)(xix) does not apply in respect of,
 - (i) Category 1 Utility Companies in circumstances other than those specifically set out in Part 2 Sections 40.1(a)(xix)(A), 40.1(a)(xix)(B) and 40.1(a)(xix)(C); or
 - (ii) Category 2 Utility Companies including failures of a Category 2 Utility Company to perform in accordance with the applicable Utility Agreement;
 - (iii) Works carried out by Project Co or Project Co Parties or by Alstom and the Alstom Parties or goods or services provided by Project Co or Project Co Parties or by Alstom and the Alstom Parties to utility companies.

40.2 Consequences of a Delay Event

- (a) Alstom shall provide written Notice to the Construction Contractor Representative within 2 Business Days of becoming aware of the occurrence of any event or circumstances described in Part 2 Sections 40.1(a)(ii), 40.1(a)(iv), 40.1(a)(v), 40.1(a)(vi), 40.1(a)(vii), 40.1(a)(xii), 40.1(a)(xiii), 40.1(a)(xiv), 40.1(a)(xvi), 40.1(a)(xvii), 40.1(a)(xix), 40.1(a)(xxiii) or 40.1(a)(xxiv) which, at the time of its occurrence, is reasonably likely to form the basis of a future claim by Alstom for relief under Part 2 Section 40.2(e) as a Delay Event.
- (b) Alstom shall, within 8 Business Days (or such longer period of time as the Parties may agree) after delivering such notification under Part 2 Section 40.2(a), provide further written details to the Contracting Authority Representative and the Construction Contractor Representative which shall include:
 - (i) identification of the category of Delay Event on which Alstom's future claim for relief would be based if such event or circumstances were to form the basis of a claim for relief as a Delay Event;
 - (ii) details of the event or circumstances forming the basis of Alstom's notification under Part 2 Section 40.2(a);
 - (iii) details of the contemporary records which Alstom shall thereafter maintain to substantiate its claim for extra time if the event or circumstances detailed in accordance with Part 2 Section 40.2(b)(ii) forms the basis of a future claim by Alstom for relief as a Delay Event;

- (iv) details of the consequences (whether direct or indirect, financial or non-financial) that such event or circumstances may have upon the Vehicle Delivery Schedule, if such event or circumstances forms the basis of a future claim by Alstom for relief as a Delay Event; and
 - (v) details of any measures that Alstom proposes to adopt to prevent such event or circumstances from forming the basis of a future claim by Alstom for relief as a Delay Event or to mitigate the consequences of such claim if such event or circumstances were to become a Delay Event.
- (c) As soon as possible but in any event within 1 Business Day of Alstom receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances disclosed in Part 2 Section 40.2(a), Alstom shall submit further particulars based on such information to the Construction Contractor Representative.
- (d) Alstom acknowledges and agrees to the provisions of Section 40.2(d) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (e) Alstom acknowledges and agrees to the provisions of Section 40.2(e) of the Project Agreement.
- (f) Alstom acknowledges and agrees to the provisions of Section 40.2(f) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (g) Alstom acknowledges and agrees to the provisions of Section 40.2(g) of the Project Agreement.
- (h) Subject to the provisions of this Part 2 Section 40 and Part 1 relating to Equivalent Project Relief, the Construction Contractor Representative shall allow Alstom an extension of time equal to the delay caused by the Delay Event and shall fix a revised Vehicle Delivery Schedule, as soon as reasonably practicable and in any event within 10 Business Days of the later of:
- (i) the date of receipt by the Construction Contractor Representative of Alstom’s Notice given in accordance with Part 2 Section 40.2(e) and the date of receipt of any further particulars (if such are required under Part 2 Section 40.2(f)), whichever is later; and
 - (ii) the date of receipt by the Construction Contractor Representative of any supplemental information supplied by Alstom in accordance with Part 2 Section 40.2(f) and the date of receipt of any further particulars (if such are required under Part 2 Section 40.2(g)), whichever is later.
- (i) [NOT USED]
- (j) If:

- (i) the Construction Contractor Representative declines to fix a revised Vehicle Delivery Schedule;
- (ii) Alstom considers that a different Vehicle Delivery Schedule should be fixed;
- (iii) there is a dispute as to whether a Delay Event has occurred; or
- (iv) [NOT USED]

then the subject matter shall be determined by the Independent Certifier in the event that provisions of Part 1 relating to Equivalent Project Relief apply, and to the extent that such Equivalent Project Relief is not applicable, Alstom shall be entitled to refer the matter for resolution in accordance with Attachment 27 – VSC Dispute Resolution Procedure. The decision of the Independent Certifier may be disputed by either Party and referred for resolution in accordance with Attachment 27 – VSC Dispute Resolution Procedure.

(k) [NOT USED]

(l) To the extent Alstom does not comply with its obligations under Part 2 Sections 40.2(a), (b), (c), (d), (e), (f), (g) or (m), and subject to 40.2(m) such failure shall be taken into account in determining Alstom's entitlement to an extension of time pursuant to this Part 2 Section 40.

(m) If Alstom does not provide further written details to the Construction Contractor Representative as required under Part 2 Section 40.2(b) within the 5 Business Day period referred to in such Section, Alstom acknowledges and agrees that, after a further 10 Business Days, Alstom shall not be entitled to rely upon, and Construction Contractor shall not be obligated to consider, the notice given under Part 2 Section 40.2(a) for the purposes of determining Alstom's entitlement to relief under this Part 2 Section 40. Alstom, at its option, may submit a new, currently dated notice which complies with the provisions of Part 2 Section 40.2(a) for the same event or circumstance which gave rise to the previous, unsubstantiated notice, and the provisions of this Part 2 Section 40 shall apply to such new notice, *mutatis mutandis*. Alstom acknowledges and agrees that Construction Contractor, in determining Alstom's entitlement to an extension of time pursuant to this Part 2 Section 40 and without limiting any other right of Construction Contractor under this Revenue Vehicle Supply Contract, shall be entitled to take into account the delay between:

- (i) Alstom becoming aware of the occurrence of the event or circumstance forming the basis of the original notice delivered pursuant to Part 2 Section 40.2(a); and
- (ii) Alstom submitting any new notice pursuant to Part 2 Section 40.2(a) in respect of that event or occurrence.

(n) [NOT USED]

(o) [Intentionally Deleted]

MT DOCS 19727287v2

- (p) In no event shall the extension of time for a Delay Event be more than the necessary extension of the time necessary to achieve or satisfy the requirements of the Vehicle Delivery Schedule as a result of such Delay Event.

40.3 Mitigation

- (a) If Alstom is (or claims to be) affected by a Delay Event, Alstom shall 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 Revenue Vehicle Supply Contract;
 - (ii) to continue to perform its obligations under this Revenue Vehicle Supply Contract to the extent possible notwithstanding the Delay Event; and
 - (iii) to resume performance of its obligations under this Revenue Vehicle Supply Contract affected by the Delay Event as soon as practicable.
- (b) To the extent Alstom does not comply with its obligations under this Part 2 Section 40.3, such failure shall be taken into account in determining Alstom's entitlement to an extension of time pursuant to Part 2 Section 40.

41. COMPENSATION EVENTS

41.1 Definition

- (a) For the purposes of this Revenue Vehicle Supply Contract, "**Compensation Event**" means any event referred to in Part 2 Sections 40.1(a)(ii), 40.1(a)(iii), 40.1(a)(iv), 40.1(a)(v), 40.1(a)(vi), 40.1(a)(vii), 40.1(a)(viii), 40.1(a)(xii), 40.1(a)(xiii), 40.1(a)(xiv), 40.1(a)(xvi), 40.1(a)(xvii), 40.1(a)(xxiii) and 40.1(a)(xxiv), as a direct result of which Alstom has incurred loss or expense, whether or not any of these events has also caused a delay.

41.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Alstom's sole right to compensation shall be as set out in this Part 2 Section 41, and subject to the provisions of Part 1 relating to Equivalent Project Relief. For greater certainty, except as aforesaid, no other Delay Event shall entitle Alstom to receive any compensation, except as otherwise provided in:
- (i) Attachment 22 – VSC Variation Procedure, in the case of a Delay Event referred to in Part 2 Section 40.1(a)(i);
 - (ii) Part 2 Section 44, in the case of a Delay Event referred to in Part 2 Section 40.1(a)(ix);
 - (iii) Part 2 Section 43, in the case of a Delay Event referred to in Part 2 Section 40.1(a)(x);

MT DOCS 19727287v2

- (iv) Part 2 Section 38, in the case of a Delay Event referred to in Part 2 Section 40.1(a)(xi); and
- (v) Part 2 Section 41.6 in the case of a Delay Event referred to in Part 2 Section 40.1(a)(xix).
- (b) Alstom acknowledges the provisions of Section 41.2(b) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. 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 Construction Contractor to Alstom. Alstom shall promptly provide the Contracting Authority Representative with any information the Contracting Authority Representative may require in order to determine the associated amount of compensation payable pursuant to the Construction Contract.
- (c) **[Intentionally Deleted]**
- (d) If Construction Contractor is required to compensate Alstom pursuant to this Part 2 Section 41.2, then Construction Contractor may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Alstom, acting reasonably.
- (e) To the extent that Alstom does not comply with its obligations under Part 2 Sections 40.2(a), 40.2(b), 40.2(c), 40.2(d), 40.2(e), 40.2(f), 40.2(g) or 40.2(m), such failure shall be taken into account in determining Alstom's entitlement to relief pursuant to this Part 2 Section 41.

41.3 Mitigation

- (a) If Alstom is (or claims to be) affected by a Compensation Event, Alstom shall take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Part 2 Section 41 in relation to any Compensation Event.
- (b) To the extent that Alstom does not comply with its obligations under this Part 2 Section 41.3, such failure shall be taken into account in determining Alstom's entitlement to relief pursuant to this Part 2 Section 41.

41.4 Insured Exposure

The compensation payable to Alstom pursuant to this Part 2 Section 43 shall be reduced by any amount which Alstom recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Revenue Vehicle Supply Contract in respect of insurance or the terms of any policy of insurance required under this Revenue Vehicle Supply Contract, 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.

- (a) **[NOT USED]**

MT DOCS 19727287v2

41.5 [Intentionally Deleted]**41.6 Special Compensation Regarding Category 1 Utility Companies**

Alstom acknowledges the provisions of Section 41.6 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

(a) [NOT USED]

(b) [NOT USED]

41.7 [NOT USED]

(a) [NOT USED]

42. [NOT USED]**42.1 [NOT USED]**

(a) [NOT USED]

42.2 [NOT USED]

(a) [NOT USED]

42.3 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

42.4 [NOT USED]

(a) [NOT USED]

43. RELIEF EVENTS**43.1 Definition**

(a) For the purposes of this Revenue Vehicle Supply Contract, “**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 Revenue Vehicle Supply Contract:

- (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;

MT DOCS 19727287v2

- (ii) failure by any Utility Company, local authority or other like body to provide services or to perform works, (solely in its role as utility service provider or similar service provider to the Project);
- (iii) accidental loss or damage to the Works and/or the Project Co System Infrastructure or any roads servicing the Lands;
- (iv) 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 Project Co System Infrastructure, the New Third Party Infrastructure, the construction or facility operation or maintenance industry (or a significant sector of that industry) in the Province of Ontario or the operation of rail transit systems in the Province of Ontario; or
- (vii) any 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 transit systems in general.

43.2 Consequences of a Relief Event

- (a) Alstom acknowledges the provisions of Section 43.2 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Subject to the provisions of Part 1 relating to Equivalent Project Relief and Part 2 Section 43.3 no right of termination shall arise under this Revenue Vehicle Supply Contract by reason of any failure by a Party to perform any of its obligations under this Revenue Vehicle Supply Contract but only to the extent that such failure to perform, is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Revenue Vehicle Supply Contract remain unaffected by the occurrence of a Relief Event).
- (b) In respect of a Relief Event that is also a Delay Event pursuant to Part 2 Section 40.1(a)(x):
 - (i) Alstom shall only be relieved of its obligations under this Revenue Vehicle Supply Contract to the extent, if any, provided for in Part 2 Section 40.
- (c) Alstom acknowledges the provisions of Section 42.3(c) of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (d) [NOT USED]

(e) Subject to Part 2 Section 49, Alstom's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Part 2 Section 43 and shall be subject to the provisions of Part 1 relating to Equivalent Project Relief.

(f) [NOT USED]

43.3 Mitigation and Process

(a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Revenue Vehicle Supply Contract, shall resume performance of its obligations affected by the Relief Event 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 Part 2 Section 43.3, such failure shall preclude such Party's entitlement to relief pursuant to this Part 2 Section 43.

(c) If Alstom is the Party claiming relief, it shall give initial written Notice to Construction Contractor and Project Co claiming relief within 4 Business Days of becoming aware of the relevant Relief Event. If Construction Contractor is the Party claiming relief, it shall give initial written Notice to Alstom claiming relief within 4 Business Days of 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 and to Project Co within a further 5 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 the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Part 2 Section 43.3(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 Part 2 Section 43.3(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.

43.4 Insured Exposure

(a) The compensation payable to Alstom pursuant to this Part 2 Section 43 shall be reduced by any amount which Alstom or an Alstom Party recovers, or is entitled to recover, under any insurance

MT DOCS 19727287v2

policy, or in the case of Alstom, would have been recovered by Alstom if it had complied with the requirements of this Revenue Vehicle Supply Contract in respect of insurance or the terms of any policy of insurance required under this Revenue Vehicle Supply Contract, 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.

44. FORCE MAJEURE

44.1 Definition

- (a) For the purposes of this Revenue Vehicle Supply Contract, “**Force Majeure**” means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Revenue Vehicle Supply Contract:
- (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
 - (ii) nuclear or radioactive contamination of the Works, the Project Co System Infrastructure and/or the Lands, unless Alstom or any Alstom Party is the source or cause of the contamination;
 - (iii) chemical or biological contamination of the Works, the Project Co System Infrastructure and/or the Lands from any event referred to in Part 2 Section 44.1(a)(i);
 - (iv) pressure waves caused by devices traveling at supersonic speeds; or
 - (v) the discovery of any Species-at-Risk, fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, require the Works to be abandoned.

44.2 Consequences of Force Majeure

- (a) Subject to Part 2 Section 44.3 and subject to the provisions of Part 1 relating to Equivalent Project Relief, the Party claiming relief shall be relieved from liability under this Revenue Vehicle Supply Contract to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Revenue Vehicle Supply Contract.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Part 2 Section 40.1(a)(ix):
- (i) Alstom shall only be relieved of its obligations under this Revenue Vehicle Supply Contract to the extent, if any, provided for in Part 2 Section 40; and subject to the provisions of Part 1 relating to Equivalent Project Relief.
 - (ii) [NOT USED]

MT DOCS 19727287v2

- (c) If an event of Force Majeure occurs, Alstom shall not be entitled to receive any compensation other than as expressly provided in Part 2 Section 49 and subject to the provisions of Part 1 relating to Equivalent Project Relief. For certainty, a Party shall only be entitled to claim relief of any payment obligation under this Revenue Vehicle Supply Contract due to an event of Force Majeure to the extent that, by reason of such event of Force Majeure, such Party is not able to perform such payment obligation.
- (d) [NOT USED]
- (e) [NOT USED]
- (f) Subject to the provisions of Part 1 relating to Equivalent Project Relief and Part 2 Section 49, Alstom's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Part 2 Section 44.
- (g) [NOT USED]

44.3 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 Revenue Vehicle Supply Contract, 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 Part 2 Section 44.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Part 2 Section 44.
- (c) The Party claiming relief shall give written Notice to the other Party and Project Co within 2 Business Days of 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 and Project Co within a further 5 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 the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Part 2 Section 44.3(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.

MT DOCS 19727287v2

- (f) If, following the issue of any Notice referred to in Part 2 Section 44.3(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.

44.4 Insured Exposure

- (a) The compensation payable to Alstom pursuant to this Part 2 Section 44 shall be reduced by any amount which Alstom or an Alstom Party recovers, or is entitled to recover, under any insurance policy, or in the case of Alstom, would have been recovered by Alstom if it had complied with the requirements of this Revenue Vehicle Supply Contract in respect of insurance or the terms of any policy of insurance required under this Revenue Vehicle Supply Contract, 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.

44.5 Modifications

- (a) Alstom acknowledges the provisions of Section 44.5 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (b) Construction Contactor shall ensure that Alstom is consulted, and given an opportunity to make submissions to Project Co, regarding any modifications to the Project Agreement are the subject matter of discussion between Project Co and the Contracting Authority pursuant to Section 44.5 of the Project Agreement to the extent that such modifications relate to or are in respect of any of the Vehicle Supplier Activities.

45. ALSTOM DEFAULT

45.1 Alstom Events of Default

- (a) Subject to Part 2 Section 45.1(b), for the purposes of this Revenue Vehicle Supply Contract, “**VSC Event of Default**” means any one or more of the following events or circumstances:
- (i) the occurrence of any of the following events other than as a consequence of a breach by Construction Contractor of its obligations hereunder:
- (A) a court makes an order that Alstom or the Alstom Parent Company is to be wound up or a resolution for a voluntary winding-up of Alstom or the Alstom Parent Company (as the case may be) is passed and such order or resolution materially and adversely affects the ability of: (I) Alstom to perform its obligations hereunder, or (II) the Alstom Parent Company to perform its obligations under the Vehicle Supply Guarantee;

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- (B) any receiver or manager in respect of Alstom or the Alstom Parent Company is appointed or possession is taken by or on behalf of any creditor of any property of Alstom or the Alstom Parent Company being used in connection with the Vehicle Supplier Activities and such appointment or taking in possession materially and adversely affects the ability of: (I) Alstom to perform its obligations hereunder, or (II) the Alstom Parent Company to perform its obligations under the Vehicle Supply Guarantee;
- (C) Alstom or the Alstom Parent Company admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or any creditor of either Alstom or the Alstom Parent Company takes control, or takes steps to take control, of either Alstom or the Alstom Parent Company or any of their assets being used in connection with the Vehicle Supplier Activities and such taking of control materially and adversely affects (or the taking of such steps can reasonably be expected to materially and adversely affect) the ability of: (I) Alstom to perform its obligations hereunder; or (II) the Alstom Parent Company to perform its obligations under the Vehicle Supply Guarantee, or any proceedings are instituted against either Alstom or the Alstom Parent Company that result in either of them being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by either Alstom or the Alstom Parent Company seeking any such result, or any such proceedings are instituted by a person (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters;
- (D) an administration order is made or an administrator is appointed in respect of Alstom, the Alstom Parent Company or any LC Provider;
- (E) any step or procedure analogous with those in Part 2 Section 45.1(a)(i)(A) to 45.1(a)(i)(D) is taken with respect to Alstom, the Alstom Parent Company or any LC Provider (as applicable) in any jurisdiction;
- (ii) [NOT USED]
- (iii) Alstom either:
- (A) failing to deliver a VSC Recovery Schedule under Part 2 Section 22.3(a)(i)(A);

- (B) [NOT USED]; or
- (C) delivering a VSC Recovery Schedule under Part 2 Section 22.3(a)(i)(A) which is the sole cause of the Recovery Schedule under the Project Agreement not being acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 22.3(a)(i)(A)(III) of the Project Agreement;
- (iv) Alstom making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Alstom's obligations under this Revenue Vehicle Supply Contract, or that may compromise (A) Contracting Authority's reputation or integrity, or (B) the nature of any of the public transit systems within the Region of Peel so as to affect public confidence in any of the public transit systems within such area or the Project and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 7 Business Days of receipt of Notice of the same from Construction Contractor;
- (v) Alstom committing a breach of Part 2 Section 52 or Part 2 Section 53 or a breach of its obligations under this Revenue Vehicle Supply Contract (other than a breach that is referred to in Part 2 Sections 45.1(a)(i) to (iv) inclusive or Part 2 Section 45.1(a)(vi) to (xviii) inclusive) which has or will have a material adverse effect on the Governmental Activities or the availability of the Project Co System Infrastructure to System Users, other than where such breach is a consequence of a breach by Construction Contractor of its obligations under this Revenue Vehicle Supply Contract or Construction Contract, a breach by Project Co of its obligations under the Construction Contract or Project Agreement or a breach by Contracting Authority of its obligations under the Project Agreement, and upon becoming aware of such breach Alstom failing to remedy such breach in accordance with all of the following:
 - (A) Alstom shall:
 - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on Construction Contractor, Project Co, Contracting Authority and the Governmental Activities or the availability of the Project Co System Infrastructure to System Users;
 - (II) put forward, within 4 Business Days of receipt of Notice of such breach from Contracting Authority, Project Co or Construction Contractor, as the case may be, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of Notice of such breach, or if such breach is

not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and

(III) 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; and

(B) upon Alstom failing to comply with any of the provisions of Part 2 Section 45.1(a)(v)(A):

(I) Alstom shall continue to diligently remedy the breach and to mitigate any adverse effects on Construction Contractor, Project Co, Contracting Authority and the Governmental Activities or the availability of the Project Co System Infrastructure to System Users;

(II) Alstom shall, within 3 Business Days after Notice from Contracting Authority, Project Co or Construction Contractor, as the case may be, submit a plan and schedule, which Contracting Authority shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to Contracting Authority, in its sole discretion, and 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; and

(III) for greater certainty, Alstom failing to comply with any of the provisions of Part 2 Section 45.1(a)(v)(B), or Contracting Authority, in its sole discretion, not accepting the plan and schedule submitted by Alstom pursuant to Part 2 Section 45.1(a)(v)(B)(II), shall constitute a VSC Event of Default;

(vi) Alstom abandoning the Vehicle Supplier Activities;

(vii) [NOT USED]

(viii) Alstom failing to comply with Part 2 Sections 59.1 or 59.3;

(ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Part 2 Section 59.4;

(x) [NOT USED]

(xi) [NOT USED]

(xii) [NOT USED]

MT DOCS 19727287v2

- (xiii) Alstom failing to remove an Encumbrance that arose due to an act or omission of Alstom or any Alstom Party (other than any Encumbrance derived through Contracting Authority, Project Co or Construction Contractor) within 30 days of the earlier of:
 - (A) the registration of such Encumbrance against title to the Lands or any part thereof; and
 - (B) the date on which Alstom or any Alstom Party knew, or ought to have known, about the existence of the Encumbrance;
- (xiv) Alstom failing to pay any sum or sums due to Construction Contractor under this Revenue Vehicle Supply Contract, which sum or sums are not being disputed in accordance with Attachment 27 – VSC Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and such failure continues for 25 days from receipt by Alstom of a Notice of non-payment from Contracting Authority or Construction Contractor;
- (xv) Alstom failing to comply with Section 60;
- (xvi) [NOT USED]
- (xvii) any of the following in respect of the [REDACTED] Vehicle Supply Guarantee:
 - (A) [REDACTED];
 - (B) any payment properly demanded in accordance with [REDACTED] the Vehicle Supply Guarantee is not made when due;
 - (C) [REDACTED]; or
 - (D) the Alstom Parent Company commits a breach of any of its material obligations under the Vehicle Supply Guarantee;
- (xviii) Alstom failing to comply with any determination, order or award made against Alstom in accordance with Attachment 27 – VSC Dispute Resolution Procedure;
- (xix) [NOT USED]
- (xx) [NOT USED]
- (xxi) fraud by Alstom;
- (xxii) the amount of Vehicle Delay Liquidated Damages paid or payable by Alstom has reached, in the aggregate [REDACTED]% of the Vehicle Delay Liquidated Damages Subcap; or

MT DOCS 19727287v2

- (xxiii) any other default or breach by Alstom of any of its obligations under this Revenue Vehicle Supply Contract which: (A) has a significant financial impact on Construction Contractor, and/or (B) has a material adverse impact on Construction Contractor's ability to perform its obligations under this Revenue Vehicle Supply Contract or the Construction Contract other than as a consequence of a breach by Construction Contractor of its obligations under this Revenue Vehicle Supply Contract or Construction Contract, a breach by Project Co of its obligations under the Construction Contract or Project Agreement or a breach by Contracting Authority or its obligations under the Project Agreement;
- (xxiv) any VSC Event of Default set out in this Part 2 Section 45.1(a) which causes or can be reasonably expected to cause a Project Co Event of Default under the Project Agreement or the Construction Contract.
- (b) For the purposes of this Revenue Vehicle Supply Contract, any default or breach by Alstom of its obligations under this Revenue Vehicle Supply Contract which does not cause a VSC Event of Default under Part 2 Section 45.1(a) shall be deemed a "**Non-Material VSC Event of Default**", and for greater certainty, such default or breach shall not give rise to any right of termination set out under this Part 2 Section 45.

45.2 Notification of Occurrence

- (a) Alstom shall, promptly upon Alstom becoming aware of the occurrence, notify Construction Contractor of the occurrence, and details, of any VSC 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 the VSC Event of Default.

45.3 Right to Termination

- (a) On the occurrence of a VSC Event of Default, or at any time after Construction Contractor becomes aware of a VSC Event of Default (and, if the occurrence of a VSC Event of Default is disputed by Alstom in good faith, then following confirmation in accordance with Attachment 27 – VSC Dispute Resolution Procedure that a VSC Event of Default has occurred), Construction Contractor may, subject to Part 2 Sections 45.4 and 45.5, take steps to enforce its rights under the VSC Performance Security and/or terminate this Revenue Vehicle Supply Contract in its entirety by written Notice having immediate effect, such Notice to be given to each of Alstom, Project and Contracting Authority.

45.4 Remedy Provisions

- (a) In the case of a VSC Event of Default referred to in Part 2 Sections 45.1(a)(i), 45.1(a)(iii), 45.1(a)(iv), 45.1(a)(vi), 45.1(a)(viii), 45.1(a)(ix) (where the VSC Event of Default referred to in Section 45.1(a)(ix) is capable of being remedied), 45.1(a)(xiv) or 45.1(a)(xviii), Construction

Contractor shall, prior to being entitled to terminate this Revenue Vehicle Supply Contract, give Notice of default to each of Alstom, Project Co and Contracting Authority, and Alstom shall:

- (i) within 4 Business Days of such Notice of default, put forward a reasonable plan and schedule for diligently remedying the VSC Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such VSC Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 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 Construction Contractor, acting reasonably (and for greater certainty any decision made by Contracting Authority in respect of such plan pursuant to the Project Agreement shall be binding on the Parties); 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 Alstom puts forward a plan and schedule in accordance with Part 2 Section 45.4(a)(i) that has a date for the VSC Event of Default to be remedied that is beyond 30 days from the Notice of default, Construction Contractor shall have 7 Business Days from receipt of the same within which to notify Alstom that Construction Contractor does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which Construction Contractor shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a VSC Event of Default, of which a Notice of default was given under Part 2 Section 45.4(a), occurs and:
- (i) Alstom fails to immediately commence and thereafter diligently continue to remedy the VSC Event of Default and to mitigate any adverse effects on Construction Contractor, Project Co, Contracting Authority and the Governmental Activities or the availability of the Project Co System Infrastructure to System Users; or
 - (ii) Alstom fails to put forward a plan and schedule pursuant to Part 2 Section 45.4(a)(i); or
 - (iii) such VSC Event of Default is not remedied within 30 days of such Notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Part 2 Sections 45.4(a) and (b); or
 - (iv) where Alstom puts forward a plan and schedule pursuant to Part 2 Section 45.4(a)(i) and Alstom 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 Construction Contractor may take steps to enforce its rights under the VSC Performance Security and/or terminate this Revenue Vehicle Supply Contract in its entirety by written Notice with immediate effect, such Notice to be given to each of Alstom, Project Co and Contracting Authority.

- (d) Alstom acknowledges Section 45.4(d) of the Project Agreement and agrees that where a VSC Event of Default set out in the Notice referred to in Part 2 Section 45.4(a) has caused a Project Co Event of Default under the Project Agreement, Alstom shall to the extent caused by such VSC Event of Default, at its own risk and expense, comply with any steps Contracting Authority may take pursuant to Section 45.4(d) of the Project Agreement.
- (e) Upon the occurrence of a VSC Event of Default that Alstom has remedied pursuant to this Part 2 Section 45.4, such occurrence of a VSC Event of Default shall thereafter cease to be a VSC Event of Default and Construction Contractor shall not be entitled to terminate this Revenue Vehicle Supply Contract for that occurrence of a VSC Event of Default.

45.5 Additional Remedy Provisions

- (a) In the case of a Non-Material VSC Event of Default or a VSC Event of Default referred to in Part 2 Sections 45.1(a)(iv), 45.1(a)(xvii), 45.1(a)(xxi), 45.1(a)(xxii), 45.1(a)(xxiii) or 45.1(a)(xxiv), Construction Contractor shall, prior to being entitled to take steps to enforce its rights under the VSC Performance Security and/or terminate this Revenue Vehicle Supply Contract, give Notice of default to Alstom, and Alstom shall:
 - (i) have 30 days following receipt of such Notice of default to remedy the VSC Event of Default; or
 - (ii) if unable to remedy such VSC Event of Default within 30 days provide Construction Contractor with an explanation of the reason it is unable to cure such VSC Event of Default within the 30 days and a description of the steps and rectification plan (acceptable to Construction Contractor, acting reasonably) to cure such default which timeframe shall in no event be more than 45 days following Alstom's receipt of such Notice of default and Alstom shall proceed to cure the VSC Event of Default in such time period.
- (b) If a Non-Material VSC Event of Default or a VSC Event of Default of which a Notice of default was given under Part 2 Section 45.5(a) occurs and such Non-Material VSC Event of Default or VSC Event of Default, as applicable, is not remedied within 30 days of such Notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Part 2 Sections 45.5(a) (ii) then Construction Contractor may take steps to enforce its rights under the VSC Performance Security, and shall, in respect of a VSC Event of Default only, prior to being entitled to terminate this Revenue Vehicle Supply Contract, give further Notice of default to each of Alstom, Project Co and Contracting Authority (which, if not previously provided, will set out the specifics of the type and nature of the VSC Event of Default and reasonable details thereof,

MT DOCS 19727287v2

and state that if Alstom does not rectify the VSC Event of Default, Construction Contractor shall be entitled to terminate the Revenue Vehicle Supply Contract pursuant to the terms thereof), and Alstom shall:

- (i) rectify the VSC Event of Default within 30 days of the service of such further Notice of default; or
 - (ii) if unable to rectify such VSC Event of Default within 30 days, then prior to the expiration of such 30 day period, submit to Construction Contractor a rectification program satisfactory to Construction Contractor (acting reasonably) and implement such rectification programme in accordance with its terms.
- (c) Where Alstom puts forward a plan and schedule in accordance with Part 2 Section 45.5(a)(i) that has a date for the VSC Event of Default to be remedied that is beyond 30 days from the Notice of default (but in no event being 45 days following Alstom's receipt of Notice of default), Construction Contractor shall have 3 Business Days from receipt of the same within which to notify Alstom that Construction Contractor does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which Construction Contractor shall be deemed to have accepted the longer period in the plan and schedule.
- (d) If a VSC Event of Default, of which a Notice of default was given under Part 2 Section 45.5(a), occurs and:
- (i) such VSC Event of Default is not remedied within 30 days of such Notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Part 2 Section 45.5(b); or
 - (ii) where Alstom puts forward a plan and schedule pursuant to Part 2 Section 45.5(b)(ii) and Alstom 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 Construction Contractor may terminate this Revenue Vehicle Supply Contract in its entirety by written Notice with immediate effect, such Notice to be given to each of Alstom, Project Co and Contracting Authority.

- (e) Upon the occurrence of a VSC Event of Default that Alstom has remedied pursuant to this Part 2 Section 45.5, such occurrence of a VSC Event of Default shall thereafter cease to be a VSC Event of Default and Construction Contractor shall not be entitled to terminate this Revenue Vehicle Supply Contract for that occurrence of a VSC Event of Default.

45.6 Construction Contractor's Costs

- (a) Alstom shall reimburse Construction Contractor 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 Construction Contractor in exercising its rights under this Part 2 Section 45, including any relevant increased administrative expenses. Construction Contractor shall take commercially reasonable steps to mitigate such costs.

45.7 No other Rights to Terminate

- (a) Construction Contractor shall have no right or entitlement to terminate this Revenue Vehicle Supply Contract, or to accept any repudiation of this Revenue Vehicle Supply Contract, and shall not purport to exercise any such right or entitlement except as set forth in Part 2 Sections 45 and 47.

45.8 Rights and Obligations Upon Termination

- (a) Construction Contractor shall, following the service of the termination Notice pursuant to Part 2 Sections 45.3, 45.4(c) or 45.5(d), as applicable, inform Alstom as to which items of any work-in-progress (if any) Construction Contractor wishes to purchase from Alstom, in order that it might make arrangements for the completion of the relevant Vehicle Supplier Activities elsewhere and, subject to Part 2 Section 45.8(c)(ii) all finished or unfinished documents and any goods and materials procured for or produced pursuant to this Revenue Vehicle Supply Contract shall become the property of Construction Contractor (or as Construction Contractor may direct) and Alstom shall grant to Construction Contractor in respect of such Revenue Vehicle Deliverables all licence rights to Intellectual Property pursuant to this Revenue Vehicle Supply Contract upon the effective date of such termination for a VSC Event of Default.
- (b) Where Construction Contractor delivers a termination Notice, with effect from the date specified in such Notice: (A) the obligations of Alstom to manufacture and deliver any further Revenue Vehicles Deliverables shall cease, save that Alstom shall remain liable to Construction Contractor for the fulfilment of any obligations which are outstanding following any VSC Event of Default which leads to the termination of this Revenue Vehicle Supply Contract; (B) the obligations of Construction Contractor to accept delivery of any further Revenue Vehicles Deliverables shall cease; (C) Construction Contractor will have, in addition to any rights specifically provided in this Revenue Vehicle Supply Contract, all rights given to it by Applicable Law and no such right shall be exclusive of or dependent upon any other right and one or more of such rights may be exercised independently or in combination from time to time; and (D) the provisions of Part 2 Section 45.8(c) shall apply.
- (c) In the event that Construction Contractor serves a termination Notice pursuant to Part 2 Section 45.3:

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- (i) Alstom shall pay to Construction Contractor an amount equal to its demonstrable Direct Losses reasonably incurred as a result of the subject VSC Event of Default in question, and the consequent termination of this Revenue Vehicle Supply Contract, including:
- (A) repayment to Construction Contractor of any Milestone Payments which have previously been paid by Construction Contractor if, and to the extent that, they relate to Revenue Vehicle Deliverables which have neither been Accepted, nor identified pursuant to Part 2 Section 45.8(a) as items of work-in-progress which Construction Contractor wishes to purchase from Alstom; and
 - (B) Construction Contractor's costs in relation to re-tendering for the completion of the manufacture of the Revenue Vehicle Deliverables and/or procuring alternative vehicles or procuring any Revenue Vehicle Deliverables from an alternative supplier and (if applicable) its inability to procure the Vehicle Supplier Activities at a price equal to or less than the price payable for the Vehicle Supplier Activities pursuant to this Revenue Vehicle Supply Contract;
- (ii) Construction Contractor shall pay as directed in writing by Alstom, within 10 Business Days of written demand, an amount which represents the fair value of all work undertaken by Alstom towards the achievement of future Milestones in respect of those Revenue Vehicle Deliverables which Construction Contractor has identified in accordance with Part 2 Section 45.8(a) as items of work- in-progress which it wishes to purchase from Alstom, taking into account the amount which would have been payable hereunder in respect of such Milestones, if those Milestones were completed. Upon payment of such amount, title to all such work-in-progress shall immediately and without further act vest in Construction Contractor (or as Construction Contractor may direct), free of all liens, charges and encumbrances and the Parties shall provide each other with all reasonable access and assistance to make arrangements for collection/delivery of the same;
- (iii) Construction Contractor may procure, upon such terms and in such manner as Construction Contractor may deem appropriate, light rail vehicles or services similar to those which would have been supplied pursuant to this Revenue Vehicle Supply Contract but for such termination. Without in any way affecting Construction Contractor's rights under the Vehicle Supply Guarantee, Alstom shall be liable to Construction Contractor for any excess costs for completing the Vehicle Supplier Activities, and shall continue the performance of this Revenue Vehicle Supply Contract to the extent not so terminated under the provisions of this Revenue Vehicle Supply Contract;
- (iv) Construction Contractor shall, in addition to any other remedy available at law, apply Vehicle Delay Liquidated Damages, up to and including the date of termination. For greater certainty, where the breach relates to an element of an applicable Vehicle Delay Liquidated Damages, the payment of Vehicle Delay Liquidated Damages up to the date of termination shall constitute the sole remedy for such breach and no additional damages

MT DOCS 19727287v2

shall be sought by Construction Contractor upon termination as it relates to that breach to the extent such breach gives rise to an obligation to pay Vehicle Delay Liquidated Damages and such Vehicle Delay Liquidated Damages are paid by Alstom to Construction Contractor; and

- (v) Each Party agrees that the amounts referred to in Part 2 Sections 45.8(c)(i) and 45.8(c)(ii) shall be set off against each other, so as to result in a balance being payable either by Alstom to Construction Contractor or by Construction Contractor to Alstom, as the case may be.
- (d) Nothing in this Part 2 Section 45.8 or elsewhere in this Revenue Vehicle Supply Contract shall entitle Construction Contractor or Metrolinx to hand-back or return Revenue Vehicles Deliverables which have previously been Accepted under this Revenue Vehicle Supply Contract. Any termination of this Revenue Vehicle Supply Contract, howsoever caused, shall not affect any rights or liabilities which have accrued prior to the date of termination.

46. CONSTRUCTION CONTRACTOR'S DEFAULT

46.1 CC Events of Default

- (a) For the purposes of this Revenue Vehicle Supply Contract, "**CC Event of Default**" means a default or breach by Construction Contractor of any of its obligations under this Revenue Vehicle Supply Contract that has a significant negative financial impact on Alstom or a material adverse effect on Alstom's ability to perform its obligations under this Revenue Vehicle Supply Contract. The Parties agree that a CC Event of Default includes the following:
 - (i) Construction Contractor fails to remedy an Overdue Payment. For the purposes of this clause, the term "**Overdue Payment**" means that Construction Contractor has failed to make payment of any undisputed amount that is due and payable by Construction Contractor in accordance with Schedule 20 – Contract Price and Payment;
 - (ii) any receiver or manager in respect of Construction Contractor is appointed or possession is taken by or on behalf of any creditor of any property of Construction Contractor that is the subject of a charge;
 - (iii) Construction Contractor ceases its operations or a court makes an order that Construction Contractor is to be wound up or a resolution for a voluntary winding-up of Construction Contractor is passed;
 - (iv) Construction Contractor admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or any creditor of Construction Contractor takes control, or takes steps to take control, of Construction Contractor or any of its assets, or any proceedings are instituted against Construction Contractor that result in it being declared or ordered bankrupt or in administration,

MT DOCS 19727287v2

liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Construction Contractor seeking any such result, or any such proceedings are instituted by a person (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters;

- (v) an administration order is made or an administrator is appointed in respect of Construction Contractor; or
 - (vi) any step or procedure analogous with those in Part 2 Sections 46.1(a)(iii) to (v) is taken with respect to Construction Contractor in any jurisdiction.
- (b) Alstom may not serve a notice electing to terminate this Revenue Vehicle Supply Contract due to a CC Event of Default unless:
- (i) Alstom has previously served a rectification notice on Construction Contractor and any person specified in the Alstom Direct Agreement and the Lenders' Vehicle Supplier Direct Agreement specifying the type and nature of the CC Event of Default, giving reasonable details thereof and stating that, if Construction Contractor does not rectify the relevant CC Event of Default, Alstom may serve such a notice; and
 - (ii) Construction Contractor fails to rectify the relevant CC Event of Default within 7 days of the service of the rectification notice or (other than in the case of a breach described in Part 2 Section 46.1(a)(i)) to submit to Alstom a rectification programme satisfactory to Alstom (acting reasonably) within 7 days of the service of the rectification notice.
- (c) Without prejudice to its other rights in relation to any such CC Event of Default, if: (i) a CC Event of Default has occurred and is continuing; and (ii) Alstom has complied with Part 2 Section 46.1(b)(i):
- (A) at Alstom's option, Alstom may suspend performance of the Vehicle Supplier Activities until such time as Construction Contractor has remedied such CC Event of Default; and/or
 - (B) if Alstom wishes to terminate this Revenue Vehicle Supply Contract, it shall serve a termination notice on Construction Contractor and on any person specified in the Alstom Direct Agreement and the Lenders' Vehicle Supplier Direct Agreement:
 - (I) giving reasonable details of the CC Event of Default; and

MT DOCS 19727287v2

- (II) specifying the date on which the termination shall take effect,
- in which case, with effect from the date specified in said termination notice: (A) the obligations of Alstom to manufacture and deliver any further Revenue Vehicles Deliverables shall cease; (B) the obligations of Construction Contractor to accept delivery of any further Revenue Vehicle Deliverables shall cease; and (C) the provisions of Part 2 Section 46.1(d) shall apply
- (d) In the event of a termination of this Revenue Vehicle Supply Contract in accordance with Part 2 Section 46.1(c):
- (i) subject to any limitations on Construction Contractor's liability in this Revenue Vehicle Supply Contract, Construction Contractor shall pay as directed in writing by Alstom, within 10 Business Days of written demand:
- (A) all amounts to which Alstom has then become entitled pursuant to this Revenue Vehicle Supply Contract and which have not yet been paid (including, for the avoidance of doubt, any Milestone Payments which relate to a completed Milestone, or other conditional payments for which the relevant condition has been satisfied, notwithstanding that the final date for payment of such amounts pursuant to the other terms of this Revenue Vehicle Supply Contract may not yet have passed) which are not disputed to be due and owing by Construction Contractor, such amounts being Direct Losses;
- (B) an amount which represents the fair value of all work undertaken and substantiated by Alstom towards the achievement of future Milestones in respect of the Revenue Vehicle Deliverables or any of them, taking into account (but pro-rating) the amount which would have been payable hereunder in respect of such Milestones, if those Milestones were completed, such amount being Direct Losses; and
- (C) any and all costs, losses, expenses and liabilities (including full demobilization costs) which have demonstrably been incurred or suffered by Alstom in respect of such termination to the extent the same represent Direct Losses.
- (ii) Upon payment in full of all amounts referred to in Part 2 Section 46.1(d), title in any work-in-progress shall, without further act, vest in Construction Contractor (or as it may direct), free of all liens, charges and encumbrances and the Parties shall provide each other with all reasonable access and assistance to make arrangements for collection/delivery of the same.

46.2 [NOT USED]

- (a) [NOT USED]

MT DOCS 19727287v2

46.3 Alstom's Costs

- (a) Construction Contractor shall reimburse Alstom 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 Alstom in exercising its rights under this Part 2 Section 46, including any relevant increased administrative expenses. Alstom shall take commercially reasonable steps to mitigate such costs.

46.4 No Other Rights to Terminate

- (a) Alstom shall have no right or entitlement to terminate this Revenue Vehicle Supply Contract, nor to accept any repudiation of this Revenue Vehicle Supply Contract, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Revenue Vehicle Supply Contract.

47. RELIEF EVENT AND NON-DEFAULT TERMINATION**47.1 Termination for Relief Event**

- (a) Alstom acknowledges and agrees to the provisions of Section 47.1 of the Project Agreement and agrees that if the Construction Contract is terminated pursuant to Section 47.1 thereof, this Revenue Vehicle Supply Contract shall also be terminated.

- (b) [NOT USED]

47.2 Termination for Force Majeure

- (a) Alstom acknowledges and agrees to the provisions of Section 47.2 of the Project Agreement and agrees that if the Construction Contract is modified pursuant to Section 44.5 thereof or terminated pursuant to Section 47.2 thereof, this Revenue Vehicle Supply Contract shall also be so modified or terminated, as applicable.

47.3 Termination for Convenience

- (a) Alstom acknowledges and agrees to the provisions of Section 47.3(a) of the Project Agreement and agrees that if the Construction Contract is terminated for convenience pursuant to Section 47.3(a) thereof, this Revenue Vehicle Supply Contract shall also be terminated.

- (b) Alstom acknowledges and agrees to the provisions of Section 47.3(b) of the Project Agreement and agrees that if Project Co directs Construction Contractor to refrain from commencing the Works or any part of the Works, Construction Contractor shall be entitled to direct Alstom to refrain from commencing the corresponding Vehicle Supplier Activities or any part of the Vehicle Supplier Activities.

MT DOCS 19727287v2

47.4 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

47.5 Termination upon Termination of the Construction Contract

Subject to the provisions of the Alstom Direct Agreement and the Lenders' Vehicle Supplier Direct Agreement, this Revenue Vehicle Supply Contract shall terminate automatically forthwith upon any termination of the Construction Contract. For the purposes of determining any applicable compensation payable on termination:

- (a) if the Construction Contract is terminated due to a VSC Event of Default, this Revenue Vehicle Supply Contract shall be deemed to have been terminated by Construction Contractor pursuant to Part 2 Section 45.3; and
- (b) if the Construction Contract is terminated due to a CC Event of Default and such CC Event of Default is not caused by Alstom, or any Alstom Party, this Revenue Vehicle Supply Contract shall be deemed to have been terminated by the Construction Contractor pursuant to Part 2 Section 46.1.

48. EFFECT OF TERMINATION AND TRANSITIONAL ARRANGEMENTS**48.1 Termination**

- (a) Notwithstanding any provision of this Revenue Vehicle Supply Contract, upon the service of a Notice of termination or termination pursuant to Part 2 Section 47.5, Part 2 Section 48 shall apply in respect of such termination.

48.2 Continued Effect - No Waiver

- (a) Notwithstanding any breach of this Revenue Vehicle Supply Contract by a Party, the other Party may elect to continue to treat this Revenue Vehicle Supply Contract as being in full force and effect and to enforce its rights under this Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract, including any right to terminate this Revenue Vehicle Supply Contract and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

48.3 [NOT USED]

(a) [NOT USED]

48.4 [NOT USED]

MT DOCS 19727287v2

- (a) [NOT USED]

48.5 Ownership of Information

- (a) Subject to Part 2 Section 46.4(a), all information obtained by Alstom, including the Record Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Project Operations accumulated over the course of the VSC Term shall be the property of Construction Contractor and upon termination of this Revenue Vehicle Supply Contract shall be provided or returned to Construction Contractor, Project Co or the Contracting Authority (as directed by Construction Contractor), as applicable, in electronic format acceptable to Construction Contractor, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

48.6 Provision in VSC Subcontracts

- (a) Alstom shall make provision in all VSC Subcontracts entered into after the date hereof to which it is a party (including requiring the relevant Alstom Parties to make such provision and to require other Alstom Parties to make such provision) to ensure that Construction Contractor shall be in a position to exercise its rights, and Alstom shall be in a position to perform its obligations, under this Part 2 Section 48.

48.7 Transitional Arrangements

- (a) On the termination of this Revenue Vehicle Supply Contract for any reason, for a reasonable period both before and after any such termination, Alstom shall:
- (i) [NOT USED]
 - (ii) as soon as practicable remove from the Lands all property belonging to Alstom or any Alstom Party that is not acquired by Construction Contractor, Project Co or Contracting Authority pursuant to Part 2 Section 48.4 or otherwise, and, if Alstom has not done so within 45 days after any Notice from Construction Contractor requiring it to do so, Construction Contractor 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 Alstom;
 - (iii) forthwith deliver to the Construction Contractor Representative:
 - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Project Co System Infrastructure; and

- (B) to the extent transferable and subject to Part 2 Section 51, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Project Co System Infrastructure; and
- (iv) as soon as practicable vacate the Lands and, shall leave the Lands and the Project Co System Infrastructure in a safe, clean and orderly condition.
- (b) [NOT USED]

48.8 Termination upon Aforesaid Transfer

- (a) On completion of Alstom's obligations pursuant to this Part 2 Section 48, this Revenue Vehicle Supply Contract shall terminate and, except as provided in Part 2 Section 48.9, all rights and obligations of Construction Contractor and Alstom under this Revenue Vehicle Supply Contract shall cease and be of no further force and effect.

48.9 Survival

- (a) Except as otherwise provided in this Revenue Vehicle Supply Contract, termination of this Revenue Vehicle Supply Contract shall be without prejudice to, and shall not affect:
 - (i) all representations, warranties and indemnities under this Revenue Vehicle Supply Contract; and
 - (ii) Part 1 Sections 4, 5, 6, 7, 8, 9, and 10, and Part 2 Sections 1.2, 1.3, 5, 7.1(a), 15.2, 16.1, 16.2(a), 16.3(a), 16.4(a), 16.5(a), 25.11, , 32, 34.12, 34.13, 34.14, 35, 37, 45.6, 46.3, 47.5, 48, 49, 51, 52, 53, 56, 57, 58, 60.3, 61.1, 64.4, 64.8, 64.9, 64.10, 64.11 and 64.12 of this Revenue Vehicle Supply Contract, Sections 1.2 to 1.8 of Attachment 26 – Record Provisions, Attachment 27 – VSC Dispute Resolution Procedure, Attachment 39 – System Extension and any other provisions of this Revenue Vehicle Supply Contract which are expressed to survive termination and which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Revenue Vehicle Supply Contract.

49. COMPENSATION ON TERMINATION

49.1 Compensation on Termination

- (a) If this Revenue Vehicle Supply Contract is terminated pursuant to a termination of the Construction Contract by reason of a CC Event of Default caused by, arising from, directly or indirectly, a VSC Event of Default, Alstom shall be liable to Construction Contractor for all

MT DOCS 19727287v2

Direct Losses incurred by Construction Contractor in relation to such termination. The VSC Performance Support will be available to Construction Contractor to cover this potential liability.

- (b) If this Revenue Vehicle Supply Contract is terminated by reason of a VSC Event of Default (without the Construction Contract being terminated), Alstom shall be liable to Construction Contractor for all Direct Losses incurred by Construction Contractor in relation to such termination, including, without limitation, increases in the cost of completing all remaining components of the Vehicle Supplier Activities, as applicable, above those payments remaining under this Revenue Vehicle Supply Contract, and any outstanding Vehicle Delay Liquidated Damages payable by Alstom. The VSC Performance Support will be available to Construction Contractor to cover this potential liability.
- (c) If this Revenue Vehicle Supply Contract is terminated by reason of a CC Event of Default, the provision of Part 2 Section 46.1 shall apply.

49.2 Full and Final Settlement

- (a) Except as otherwise provided in Part 2 Section 49.2(b), any compensation paid pursuant to this Part 2 Section 49, shall be in full and final settlement of any claims, demands and proceedings of Construction Contractor and Alstom, 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 Revenue Vehicle Supply Contract, and the circumstances leading to such breach or termination, and Construction Contractor and Alstom shall be precluded from exercising 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) Part 2 Section 49.2(a) shall be without prejudice to:
 - (i) any liability of either Party to the other, including under the indemnities contained in this Revenue Vehicle Supply Contract, that arose prior to the VSC 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 Part 2 Section 34.12 in determining or agreeing upon a termination sum;
 - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Part 2 Section 48.9 or the Sections referred to therein, which did not lead to such termination and which arises or continues after the VSC Termination Date; and
 - (iii) any amount owing by one Party to the other Party in relation to:
 - (A) Taxes or tax withholdings, including workers' compensation levies;
 - (B) fines, penalties or restitution orders by a court under any Federal or Provincial statute;

MT DOCS 19727287v2

- (C) any order made by a court under the *Civil Remedies Act* (Ontario); and
- (D) any fraud or other criminal offence committed against the other Party.

50. [NOT USED]

50.1 [NOT USED]

- (a) [NOT USED]

51. INTELLECTUAL PROPERTY

51.1 Intellectual Property (General)

- (a) The Parties agree that all Intellectual Property developed by Alstom and ownership rights therein shall remain vested in Alstom. The Parties agree that all Intellectual Property developed by any other person and ownership rights therein shall remain vested in such person.
- (b) Alstom shall be responsible for the payment of all fees, royalties, and other charges, if any, that may be payable under the terms of any licence or commission in respect of the design, manufacture, supply, use, maintenance, repair, servicing and ownership of the Revenue Vehicle Deliverables, the Warranty Spares and the Software and any work done or method employed in the carrying out by Alstom of its obligations pursuant to this Revenue Vehicle Supply Contract.

51.2 Licence to Use

- (a) Alstom, to the extent possible at the date of this Revenue Vehicle Supply Contract, hereby grants and otherwise shall, at its own cost and as soon as reasonably practicable (and in any event before the delivery of any portion of the Revenue Vehicle Deliverables to which it relates), grant or procure the grant, to Contracting Authority, any Contracting Authority Party, Project Co and any Project Co Party a royalty-free, non-exclusive, irrevocable, perpetual, non-transferable (subject to the terms hereof) world-wide licence to use, reproduce or exploit, free of charge, all Intellectual Property required in connection only with the commissioning, operation, maintenance and repair (and, in the event that Part 2 Section 51.2(b)(i) applies, for the manufacture) of the Revenue Vehicle Deliverables, the Warranty Spares and the Software.
- (b) In the event of:
 - (i) a VSC Event of Default, any one of Contracting Authority, any Contracting Authority Party, Project Co or any Project Co Party may; and
 - (ii) a termination of the Revenue Vehicle Supply Contract pursuant to Part 2 Sections 47.1, 47.2 or 47.3, Contracting Authority or any Contracting Authority Party may,

MT DOCS 19727287v2

use, copy or reproduce the Intellectual Property and Software required solely for the purposes of the manufacture (but only in the event that Part 2 Section 51.2(b)(i) applies), operation, maintenance and repair or replacement of the Revenue Vehicle Deliverables, the Warranty Spares and the Software referred to in Part 2 Section 51.2(a). Should such manufacture, operation, maintenance and repair or replacement require the release or disclosure in whole or in part of the Intellectual Property and Software to a third party (the “**Authorized Third Party**”), the release or disclosure shall be made subject to a prohibition against further use, release or disclosure. The Intellectual Property and Software shall only be used by an Authorized Third Party for the sole purpose of the continuing operation, maintenance, repair and replacement of the Revenue Vehicle Deliverables. Any one of Contracting Authority, a Contracting Authority Party, Project Co or a Project Co Party shall not, and shall cause any Authorized Third Party not to (other than pursuant to the previous sentence of this Part 2 Section 51.2(b)), manufacture for the purposes of profit, sale or resale. Nothing herein shall impair the right of Contracting Authority, any Contracting Authority Party, Project Co or any Project Co Party to use similar or identical Intellectual Property or Software acquired legally from other sources, for such purposes.

51.3 Sublicense Rights

- (a) Each of Contracting Authority, any Contracting Authority Party, Project Co and any Project Co Party shall have the right to grant sub-licences of the rights granted pursuant to Part 2 Section 51.2 to
- (i) a manufacturer in the circumstances and under the terms and conditions identified in Part 2 Section 51.2(b); and
 - (ii) to any other person with the prior written consent of Alstom, such consent not to be unreasonably withheld or delayed.
- (b) Alstom shall ensure that all Intellectual Property and Software used in connection with the performance of its obligations under this Revenue Vehicle Supply Contract is either vested absolutely in Alstom, or licensed to Alstom and that the terms of any licence granted to Alstom of any Intellectual Property and Software used by Alstom in connection with the performance of its obligations hereunder permit the sub-licensing of such Intellectual Property and Software to Contracting Authority, any Contracting Authority Party, Project Co or any Project Co Party, with the right to permit further assignment and sub-licensing by such persons in accordance with the provisions of Part 2 Sections 51.2 and 51.3.

51.4 Copyright

- (a) Subject to the provisions of Part 2 Section 51.2, the copyright vesting in all Required Documents and any other documents provided by Alstom under or pursuant to the provisions of this Revenue Vehicle Supply Contract shall remain vested in Alstom (or its sub-contractors or in such other person in whom the copyright vests as at that time as the case may be), provided that each of Contracting Authority, any Contracting Authority Party, Project Co and any Project Co Party

MT DOCS 19727287v2

shall have the right to reproduce (solely for their own purposes, and for the purposes of any sublicensee in accordance with Part 2 Section 51.3) such documents in connection with the commissioning, operation, maintenance, repair, replacement or manufacture of the Revenue Vehicle Deliverables, the Warranty Spares or the Software.

- (b) The copyright vesting in any documents provided by Contracting Authority, any Contracting Authority Party, Project Co and any Project Co Party under or pursuant to the provisions of this Revenue Vehicle Supply Contract shall remain vested in such person as set forth in the Project Agreement, provided that Alstom shall have the right to reproduce such documents in connection with its obligations under this Revenue Vehicle Supply Contract.

51.5 Updates

- (a) Alstom shall from the date of Acceptance of the first LRV until the date of termination of this Revenue Vehicle Supply Contract, supply to Contracting Authority, any Contracting Authority Party, Project Co, Construction Contractor and any Project Co Party all of the Software and such updates, upgrades, changes and modifications to the Software (and all other software licensed to Contracting Authority, any Contracting Authority Party, Project Co, Construction Contractor and any Project Co Party pursuant to Part 2 Section 51.2) as are required in order for Alstom to comply with its obligations under this Revenue Vehicle Supply Contract.
- (b) Without prejudice to Construction Contractor's rights pursuant to any other provision of this Revenue Vehicle Supply Contract, Alstom shall promptly correct at its own cost and expense any identified error, discrepancy or omission in any of the Required Documents, including those related to Software.
- (c) Alstom shall supply Construction Contractor with copies of the Required Documents, including those related to Software, in such form as agreed by Construction Contractor and Alstom in relation to each Revenue Vehicle Deliverable in accordance with the provisions of this Revenue Vehicle Supply Contract.
- (d) In the case of Software licensed to Contracting Authority, any Contracting Authority Party, Project Co and any Project Co Party pursuant to Part 2 Section 51.2, Alstom shall ensure that copies of the object codes of such Software are provided to such person on the date of termination of this Revenue Vehicle Supply Contract, save to the extent that Alstom has prior to the date of termination, already provided such object code to such person, whether due to such object code being integrated within a Revenue Vehicle Deliverable or otherwise.

51.6 Other Intellectual Property Provisions

- (a) Alstom shall, with all due diligence, execute such documents and take such other commercially reasonable steps as may be required by Contracting Authority, any Contracting Authority Party, Project Co or any Project Co Party to give effect to the provisions of Part 2 Section 51.

MT DOCS 19727287v2

- (b) Alstom shall comply with its obligations in relation to the Software documentation requirements specified in the Output Specifications.
- (c) Where Contracting Authority, any Contracting Authority Party, Project Co, Construction Contractor or any Project Co Party has the right to modify any Intellectual Property licensed by Alstom pursuant to this Revenue Vehicle Supply Contract, Alstom shall ensure that all authors of such Intellectual Property have waived all moral rights that such authors may have therein in favour of such persons and their respective successors, assigns and licensees.
- (d) The provisions of Part 2 Section 51 shall survive termination of this Revenue Vehicle Supply Contract.

52. CONFIDENTIALITY/COMMUNICATIONS

52.1 Disclosure

- (a) Alstom acknowledges and agrees to the provisions of Section 52.1(a) of the Project Agreement.
- (b) Alstom acknowledges and agrees to the provisions of Section 52.1(b) of the Project Agreement.
- (c) Alstom acknowledges and agrees to the provisions of Section 52.1(c) of the Project Agreement.
- (d) [NOT USED]

52.2 Redaction

- (a) Prior to Contracting Authority publishing the Project Agreement as contemplated pursuant to Section 52.1 of the Project Agreement, Construction Contractor shall provide to Alstom a redacted version of the Project Agreement, Construction Contract or Revenue Vehicle Supply Contract or other documents or information to be disclosed or published to the extent related to or in respect of the Vehicle Supplier Activities, on the basis that the information redacted constitutes information which should not be disclosed pursuant to Section 52.1(b) of the Project Agreement.
- (b) If Alstom, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 52.1(b) of the Project Agreement, Construction Contract or Revenue Vehicle Supply Contract and, accordingly, would be exempt from disclosure under FIPPA, Alstom shall notify Construction Contractor of the same and, subject to the provisions of Part 1 relating to Equivalent Project Relief, require that Project Co refer the dispute to the Dispute Resolution Procedure of the Project Agreement.

52.3 Disclosure to Government

- (a) Alstom acknowledges and agrees to the provisions of Section 52.3(a) of the Project Agreement.
- (b) Alstom acknowledges and agrees to the provisions of Section 52.3(b) of the Project Agreement.

MT DOCS 19727287v2

52.4 Freedom of Information and Protection of Privacy Act (Ontario)

- (a) Alstom acknowledges and agrees to the provisions of Section 52.4(a) of the Project Agreement.
- (b) Alstom acknowledges and agrees to the provisions of Section 52.4(b) of the Project Agreement.

52.5 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 Part 2 Section 52.5 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 Revenue Vehicle Supply Contract.
- (b) The Parties acknowledge that
 - (i) Construction Contractor and/or Project Co may:
 - (A) disclose in confidence to the Lenders and prospective Lenders, including any trustee and agents of the Lenders and their respective professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Project Operations or which Project Co is obliged to supply by the terms of the Lending Agreements;
 - (B) as agreed by Alstom, disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations to Project Co;
 - (C) disclose in confidence to Contracting Authority or any Contracting Authority Party and their professional advisors, such Confidential Information as is necessary for the performance by Contracting Authority of its obligations under the Project Agreement; and
 - (ii) Alstom may, subject to providing written notice to Construction Contractor, disclose in confidence to any Alstom Party, such Confidential Information as is necessary for the performance by such Alstom Party of its obligations under its agreement with Alstom in connection with the Vehicle Supplier Activities;
- (c) Alstom acknowledges and agrees to the provisions of Section 52.5(c) of the Project Agreement.

- (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 Revenue Vehicle Supply Contract, as permitted by this Revenue Vehicle Supply Contract or as authorized by the disclosing Party in writing.
- (e) Each Party shall,
- (i) 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 with less than a reasonable degree of care;
 - (ii) if legally compelled to disclose any Confidential Information,
 - (A) provide the disclosing Party with prompt Notice to that effect to allow the disclosing Party to seek any appropriate remedies and cooperate with the disclosing Party and its legal counsel; and
 - (B) disclose only that portion of the Confidential Information that it is legally required to disclose; and
 - (iii) provide Confidential Information to the disclosing Party upon demand by the disclosing Party.

Part 2 Section 52.5(e)(iii) shall not apply to Confidential Information in relation to which a Party has been provided a licence pursuant to Part 2 Section 51 provided that the use of such Confidential Information is in accordance with Part 2 Section 51.

- (f) Alstom acknowledges Section 52.5 of the Project Agreement.

52.6 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 Commercial Close, 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;

MT DOCS 19727287v2

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- (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Revenue Vehicle Supply Contract;
 - (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 and an opportunity to contest such requirement prior to disclosure;
 - (viii) the information is disclosed to Construction Contractor, Project Co or Contracting Authority upon a termination of this Revenue Vehicle Supply Contract, pursuant to Part 2 Section 47.5 or is otherwise required by Construction Contractor, Project Co or Contracting Authority for the purposes of performing (or having performed) the Project Operations, including the design or construction of the Project Co System Infrastructure, the operation, maintenance or improvement of the Project Co System Infrastructure, or any other operations or services the same as, or similar to, the Project Operations; or
 - (ix) where such information is provided by Alstom, the information would not be exempt from disclosure under FIPPA.

52.7 Survival of Confidentiality

- (a) The obligations of the Parties in Part 2 Sections 52.1 to 52.6 will cease on the date that is 3 years after the VSC Termination Date and shall survive the termination of this Revenue Vehicle Supply Contract.

52.8 Communication and Public Engagement Protocol

- (a) [NOT USED]

52.9 Confidentiality of Intellectual Property

- (a) Nothing in this Part 2 Section 52 shall prevent Contracting Authority from exercising any right granted to Contracting Authority pursuant to Part 2 Section 51 hereof to the extent it pertains to this Revenue Vehicle Supply Contract or the Vehicle Supplier Activities (and Project Co and Construction Contractor shall not be prevented from exercising any right under the Construction

MT DOCS 19727287v2

Contract and this Revenue Vehicle Supply Contract necessary to permit the exercise of such right by Contracting Authority). Contracting Authority shall have the right to disclose Confidential Information of Alstom Parties when exercising the rights granted pursuant to Part 2 Section 51 hereof in accordance with this Revenue Vehicle Supply Contract to the extent it pertains to this Revenue Vehicle Supply Contract or the Vehicle Supplier Activities.

53. PERSONAL INFORMATION

53.1 General

- (a) Alstom acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Alstom shall only collect, hold, process, use, store and disclose Personal Information with the prior consent of Contracting Authority and: (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform Alstom's obligations under this Revenue Vehicle Supply Contract; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by Contracting Authority.
- (c) Alstom shall 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 Alstom or to the Vehicle Supplier Activities.
- (d) Alstom shall take all necessary and appropriate action against any person who fails to comply with this Part 2 Section 53.
- (e) Alstom shall allow Contracting Authority on reasonable Notice to inspect any Personal Information in the custody or possession of Alstom or an Alstom Party and to audit Alstom and each Alstom Party's compliance with this Part 2 Section 53 including the measures used by Alstom and each Alstom Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of Contracting Authority with respect to Alstom or each Alstom Party's handling of Personal Information.
- (f) Alstom shall not subcontract or delegate to any third party any of the Vehicle Supplier Activities that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of Contracting Authority and without obtaining written contractual commitments of such third party substantially the same as those of this Part 2 Section 53.

53.2 Protection of Personal Information

MT DOCS 19727287v2

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- (a) Alstom shall 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 Alstom, the Alstom Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Alstom shall restrict access to Personal Information to only those authorized employees and permitted Alstom Parties that require access to such Personal Information to fulfil their job requirements in connection with the Vehicle Supplier Activities and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Part 2 Section 53.
- (c) Upon termination of this Revenue Vehicle Supply Contract or upon request of Contracting Authority, whichever comes first, Alstom shall immediately cease all use of and return to Contracting Authority or, at the direction of Contracting Authority, 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 Vehicle Supplier Activities involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to Part 2 Section 53.2(c), 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) Alstom shall immediately inform Construction Contractor of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Alstom or any Alstom Party or any other breach of this Part 2 Section 53.
- (f) Construction Contractor may from time to time, upon receiving a request from Contracting Authority (including via Project Co), require that Alstom and any Alstom Party or member of its or their staff execute and deliver within 2 Business Days of such request an agreement satisfactory to Contracting Authority, acting reasonably, requiring such person to keep Personal Information confidential.

53.3 Personal Information

- (a) Alstom shall provide in a timely manner, all necessary and reasonable information and co-operation to Construction Contractor and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Law 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.

MT DOCS 19727287v2

- (b) To the extent of any conflict or inconsistency between this Part 2 Section 53 and any other provision of this Revenue Vehicle Supply Contract, this Part 2 Section 53 shall prevail.
- (c) The obligations in this Part 2 Section 53 shall survive the termination of this Revenue Vehicle Supply Contract.

54. INSURANCE

54.1 General Requirements

- (a) Alstom shall comply with the provisions of Attachment 25 – Insurance.

54.2 No Relief from Liabilities and Obligations

- (a) Neither compliance nor failure to comply with the insurance provisions of the Revenue Vehicle Supply Contract shall relieve Construction Contractor or Alstom of their respective liabilities and obligations under this Revenue Vehicle Supply Contract.

55. [NOT USED]

- (a) [NOT USED]

56. INDEMNITIES

56.1 Alstom Indemnities to Construction Contractor

- (a) Alstom shall indemnify and save harmless Construction Contractor and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
 - (i) any physical loss of or damage to any property of Construction Contractor, Project Co, Contracting Authority (which, for greater certainty shall include all or any part of the Lands, lands owned by Metrolinx that are adjacent to the Lands (but that are not Metrolinx Lands), the Project Co System Infrastructure or the New Third Party Infrastructure, or to any equipment, assets or other property related thereto);
 - (ii) the death or personal injury of any person;
 - (iii) any physical loss of or damage to property or assets of any third party including, for clarity, any physical loss of or damage to Existing Third Party Infrastructure, or New Third Party Infrastructure after Handover to the applicable third party;
 - (iv) any other loss or damage of any third party;

MT DOCS 19727287v2

(v) [NOT USED]

(vi) [NOT USED]

arising, directly or indirectly, out of, or in consequence of, or involving or relating to any breach of this Revenue Vehicle Supply Contract by Alstom or any act or omission of Alstom or any Alstom Party, except, in all cases, to the extent caused, or contributed to, by:

(vii) the breach of this Revenue Vehicle Supply Contract caused by Construction Contractor, Project Co or Contracting Authority; or

(viii) any act or omission (whether deliberate, negligent or otherwise) of Contracting Authority, any Province Persons, Project Co, any Project Co Party, Construction Contractor or any CC Party.

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

(f) [NOT USED]

(g) Alstom shall defend, in accordance with the procedures of Part 2 Section 56.3, and indemnify and save harmless Contracting Authority, the Province Persons, Project Co, the Project Co Parties, Construction Contractor and the CC Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses and Indirect Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any third party claims on the grounds that any of the Revenue Vehicle Deliverables, the Warranty Spares or the Software infringe the Intellectual Property of the applicable third party, provided that:

(i) if at any time, any allegation of infringement is made or in Alstom's opinion is likely to be made Alstom will inform Construction Contractor promptly and Alstom may, at Alstom's own expense, procure for Construction Contractor and Metrolinx the right to continue using the infringing items on terms not restricting use of the same or modify or replace the infringing items so that the same cease to be infringing provided that such modification or replacement does not detract in any way from the performance or quality of any item of the Revenue Vehicle Deliverables, any Warranty Spare or the use of the Software; and

- (ii) Alstom shall have no liability to Construction Contractor under this Part 2 Section 56.1(g)(ii) to the extent that such alleged infringement arises in respect of property or rights supplied or granted by Construction Contractor to Alstom.
- (h) [NOT USED]
- (i) The indemnities provided for in this Part 2 Section 56.1 are subject to Part 1, Section 6 (Delay), Part 1 Section 8 (Limitations on Liability) and Part 2 Section 57. The indemnities provided for in this Part 2 Section 56.1 are in addition to any other indemnification obligations provided for in this Revenue Vehicle Supply Contract (including any indemnities stipulated in Part 1 or in any Attachment hereto).

56.2 Construction Contractor Indemnities to Alstom

- (a) Construction Contractor shall indemnify and save harmless Alstom and the Alstom Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them 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 or breach of this Revenue Vehicle Supply Contract by Construction Contractor or any act or omission of any CC Party, except to the extent caused, or contributed to, by the breach of this Revenue Vehicle Supply Contract by Alstom or by any act or omission of Alstom or any Alstom Party;
 - (ii) any physical loss of or damage to all or any part of any property or assets of Alstom or any Alstom Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Revenue Vehicle Supply Contract by Construction Contractor or any deliberate or negligent act or omission of any CC Party, except to the extent caused, or contributed to, by the breach of this Revenue Vehicle Supply Contract by Alstom or by any act or omission of Alstom or any Alstom 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 Revenue Vehicle Supply Contract by Construction Contractor or any deliberate or negligent act or omission of any Alstom Party, except to the extent caused, or contributed to, by the breach of this Revenue Vehicle Supply Contract by Alstom or by any act or omission of Alstom or any Alstom Party,

provided that there shall be excluded from the indemnity given by Construction Contractor any liability for the occurrence of risks against which Alstom is required to insure under this Revenue Vehicle Supply Contract to the extent of the proceeds available or that should have been available

MT DOCS 19727287v2

but for a failure by Alstom to comply with its obligations to properly insure under this Revenue Vehicle Supply Contract.

- (b) Construction Contractor shall indemnify and save harmless Alstom and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Construction Contractor herein.
- (c) Construction Contractor shall indemnify Alstom for damages suffered or incurred on account of:
 - (i) any payment not duly made by Construction Contractor pursuant to the terms of this Revenue Vehicle Supply Contract on the due date; (ii) any overpayment to or underpayment by Construction Contractor; or (iii) an amount determined as payable by Construction Contractor to Alstom under Attachment 27 – VSC Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by Alstom, or from the date identified (if any) applicable to an amount determined as payable by Construction Contractor to Alstom under Attachment 27 – VSC Dispute Resolution Procedure, up to and including the date of payment.
- (d) To the extent that any indemnification of Construction Contractor under this Part 2 Section 56.2 is contingent upon a corresponding indemnification obligation of Project Co to Construction Contractor under the Construction Contract, the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (e) The indemnities provided for in this Part 2 Section 56.2 are subject to Part 1 Section 8 (Limitations on Liability) and Part 2 Section 57. The indemnities provided for in this Part 2 Section 56.2 are in addition to any other indemnification obligations provided for in this Revenue Vehicle Supply Contract (including any indemnities stipulated in Part 1 or in any Attachment hereto).

56.3 Conduct of Claims

- (a) This Part 2 Section 56.3 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 Revenue Vehicle Supply Contract. 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 Part 2 Section 56, the Beneficiary shall give written Notice to the Indemnifier as soon as reasonably practicable and in any event within 8 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.

MT DOCS 19727287v2

- (c) Subject to Part 2 Sections 56.3(d), 56.3(e) and 56.3(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 Part 2 Section 56.3 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 Revenue Vehicle Supply Contract if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Part 2 Section 56.3(c);
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 8 Business Days of the Notice from the Beneficiary under Part 2 Section 56.3(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 Part 2 Section 56.3(d).

MT DOCS 19727287v2

- (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 Part 2 Section 56.3(c) applies. For greater certainty, Alstom acknowledges and agrees that where Construction Contractor is the Beneficiary, Construction Contractor 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 Part 2 Section 56.3(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 Part 2 Section 56.3 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 Revenue Vehicle Supply Contract.

56.4 Mitigation - Indemnity Claims

- (a) For greater certainty, Part 2 Section 64.4 applies to any indemnity given under this Revenue Vehicle Supply Contract and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

57. LIMITS ON LIABILITY

57.1 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

57.2 [NOT USED]

(a) [NOT USED]

57.3 Sole Remedy

(a) [NOT USED]

(b) Nothing in this Revenue Vehicle Supply Contract shall prevent or restrict the right of either Party 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 Revenue Vehicle Supply Contract, and except to the extent recovered under any of the insurances required pursuant to Attachment 25 – Insurance, neither Party shall be entitled to recover compensation or make a claim under this Revenue Vehicle Supply Contract, 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 Revenue Vehicle Supply Contract, or otherwise.

(d) [NOT USED]

57.4 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

57.5 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

MT DOCS 19727287v2

(c) [NOT USED]

(d) [NOT USED]

58. DISPUTE RESOLUTION PROCEDURE

(a) All VSC Disputes shall be resolved in accordance with, and the Parties shall comply with, Attachment 27 – VSC Dispute Resolution Procedure unless the provisions of Part 1 relating to Equivalent Project Relief apply to any such VSC Dispute.

59. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

59.1 Alstom Assignment

(a) Other than in accordance with Part 2 Section 59.1(b), Alstom shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Revenue Vehicle Supply Contract, any of the VSC Subcontracts or any agreement entered into in connection with this Revenue Vehicle Supply Contract without the prior written consent of Contracting Authority, which shall not be unreasonably withheld or delayed, and no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliate is a Restricted Person or a person whose standing or activities may compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of any of the public transit systems within the Region of Peel so as to affect public confidence in any of the public transit systems within such area or the Project.

(b) Alstom may assign all of its rights and obligations pursuant to this Revenue Vehicle Supply Contract to any member of the Alstom Group provided that Alstom shall procure that any such corporation to whom it so assigns, shall assign the same back to Alstom (or another member of the Alstom Group approved by Construction Contractor) immediately prior to its ceasing to be a member thereof.

59.2 Construction Contractor Assignment

(a) Construction Contractor may assign, transfer, dispose of or otherwise alienate any interest in this Revenue Vehicle Supply Contract or any agreement in connection with this Revenue Vehicle Supply Contract to which Alstom and Construction Contractor are parties:

- (i) in accordance with the Alstom's Direct Agreement or the Lenders' Vehicle Supplier Direct Agreement;
- (ii) to an assignee of the Construction Contract or as otherwise may be required to comply with the Project Agreement;
- (iii) by way of security to the Lenders (or their representatives) and the Lenders may re-assign this Revenue Vehicle Supply Contract on redemption of such security interest;

MT DOCS 19727287v2

- (iv) in accordance with Part 2 Section 59.2; and
 - (v) in circumstances other than those described in Part 2 Sections 59.2(a)(i) to 59.2(a)(iv), with the prior written consent of Alstom, not to be unreasonably withheld or delayed.
- (b) [NOT USED]

59.3 Subcontractors

- (a) Alstom shall not:
- (i) subcontract any interest in this Revenue Vehicle Supply Contract, and shall not permit the Alstom Parties to subcontract any interest in any of the VSC Subcontracts to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities may compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of any of the public transit systems within the Region of Peel so as to affect public confidence in any of the public transit systems within such area or the Project; and
 - (ii) in relation to each Key System listed in Attachment 46 – Alstom Key Parties:
 - (A) use or subcontract with any entity other than the Alstom Key Party listed against such Key System in Attachment 46 – Alstom Key Parties to supply such Key System or to carry out Alstom's obligations under this Revenue Vehicle Supply Contract in relation to such Key System; or
 - (B) replace any Alstom Key Party without the prior written consent of Construction Contractor, such consent not to be unreasonably withheld or delayed.
- (b) [NOT USED]
- (c) [NOT USED]
- (d) [NOT USED]

59.4 Changes in Ownership and Control

- (a) No Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over Alstom in relation to the decisions, management, actions or policies of Alstom or in relation to the operation, management and ownership of the Project. Notwithstanding anything else herein, no prior notice, authorization or due diligence will be required for an acquisition of shares in the Alstom Parent Company that may result in Direct or Indirect Power or Control over Alstom as long as the purchaser is not a Restricted Person nor a person whose standing or activities are inconsistent with the Province's reputation or integrity.

MT DOCS 19727287v2

- (b) No Change in Ownership of Alstom, or of any Control Party, shall be permitted:
- (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities may compromise (A) Contracting Authority's reputation or integrity, or (B) the nature of any of the public transit systems within the Region of Peel so as to affect public confidence in any of the public transit systems within such area or the Project; or
 - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Project Operations, the Governmental Activities or the availability of the Project Co System Infrastructure to System Users.
- (c) In the event that a person having Direct or Indirect Power or Control over Alstom in relation to the decisions, management, actions or policies of Alstom or in relation to the operation, management and ownership of the Project becomes a Restricted Person, Construction Contractor may:
- (i) in the case of an individual who becomes a Restricted Person, require that such Restricted Person be divested of his or her Direct or Indirect Power or Control; or
 - (ii) in any other circumstance, require a Change in Ownership so that the Restricted Person shall be divested of its Direct or Indirect Power or Control,
- in each case, on such terms as are satisfactory to Construction Contractor, in its discretion.
- (d) Alstom shall provide notice to Construction Contractor of any Change in Ownership of Alstom or of any Control Party, as the case may be, that is not a Change in Control within 5 Business Days after such Change in Ownership, and such notice shall include:
- (i) a statement identifying all persons with an ownership interest in Alstom or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests, in each case prior to and following such Change in Ownership; and
 - (ii) [NOT USED].
- (e) No Change in Control of Alstom, or of any Control Party, shall be permitted without the prior written consent of Construction Contractor, not to be unreasonably withheld or delayed.
- (f) Alstom shall provide notice to Construction Contractor of any proposed Change in Control of Alstom or of any Control Party, as the case may be, not less than 20 Business Days prior to such proposed Change in Control, and such notice shall include:

- (i) a statement identifying all persons with an ownership interest in Alstom or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests in each case prior to and following any such proposed Change in Control;
- (ii) as applicable, the legal name, registered address, directors and officers of, and nature of the business and activities carried on by, the person who would acquire control over Alstom or the relevant Control Party pursuant to such Change in Control; and
- (iii) [NOT USED].

Following the delivery to Construction Contractor of the notice referred to in this Part 2 Section 59.4(f), Alstom shall provide Construction Contractor with such other information pertaining to the proposed Change in Control as Construction Contractor may reasonably request.

- (g) Upon request by Alstom and delivery of the information required by Construction Contractor, Construction Contractor shall advise Alstom whether the person described in such particulars is a Restricted Person or a person whose standing or activities may compromise (A) Contracting Authority’s reputation or integrity, or (B) the nature of any of the public transit systems within the Region of Peel so as to affect public confidence in the public transit systems within such area or the Project.
- (h) Notwithstanding the definition of “Control Party” set out Attachment 1 – Definitions and Interpretation, this Part 2 Section 59.4 shall not apply to a Change in Ownership or Change in Control or acquisition of Direct or Indirect Power or Control of persons whose equity securities or units evidencing, ownership units or any other ownership interests are listed on a recognized stock exchange.
- (i) [NOT USED]

59.5 Contracting Authority’s Due Diligence

- (a) Alstom shall promptly reimburse Construction Contractor for Contracting Authority’s reasonable due diligence costs (including fees of professional advisors) paid by Construction Contractor in connection with any consent required of Contracting Authority pursuant to Part 2 Sections 59.1, 59.3 or 59.4, whether or not such consent is granted.

59.6 [NOT USED]

- (a) [NOT USED]

60. PROHIBITED ACTS

60.1 Definition

MT DOCS 19727287v2

(a) The term “**Prohibited Act**” means:

- (i) offering, giving or agreeing to give to Contracting Authority 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 Revenue Vehicle Supply Contract or any other agreement with Contracting Authority 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 Revenue Vehicle Supply Contract or any other agreement with Contracting Authority or any public body in connection with the Project;

provided that this Part 2 Section 60.1(a)(i) shall not apply to Alstom or any Alstom Party (or anyone employed by or acting on their behalf) providing consideration to Contracting Authority or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Alstom under this Revenue Vehicle Supply Contract or any other agreement with Contracting Authority or any public body in connection with the Project;

- (ii) entering into any agreement with Contracting Authority or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Alstom, or on its behalf or to its knowledge, to Contracting Authority 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 Contracting Authority, provided that this Part 2 Section 60.1(a)(ii) shall not apply to a fee or commission paid by Alstom or any Alstom Party (or anyone employed by or acting on their behalf) to Contracting Authority 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 Alstom under this Revenue Vehicle Supply Contract or any other agreement with Contracting Authority or any public body in connection with the Project without contravening the intent of this Part 2 Section 60;
- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Revenue Vehicle Supply Contract or any other agreement with Contracting Authority or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud Contracting Authority or any other public body.

MT DOCS 19727287v2

60.2 Remedies

- (a) Alstom acknowledges and agrees to the provisions of Section 60.2 of the Project Agreement and agrees that if Alstom or any Alstom Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then Contracting Authority shall be entitled to act in accordance with the following, and Construction Contractor (as may be directed by Contracting Authority, including via Project Co) shall have the right under this Revenue Vehicle Supply Contract to enforce against Alstom the rights of Contracting Authority and Project Co under Section 60.2 of the Project Agreement and Part 2 Section 60.2 of the Construction Contract, respectively:
- (i) if the Prohibited Act is committed by Alstom or by an employee acting under the direction of a director or officer of Alstom, then Construction Contractor may give written Notice to Alstom and Part 2 Section 45 shall apply;
 - (ii) if the Prohibited Act is committed by an employee of Alstom acting independently of a direction of a director or officer of Alstom, then Construction Contractor may give written Notice to Alstom and Part 2 Section 45 shall apply, unless, within 27 days of receipt of such Notice, Alstom terminates the employee's employment and ensures that the relevant part of the Vehicle Supplier Activities shall be performed by another person;
 - (iii) if a Prohibited Act is committed by an Alstom Party or by an employee of that Alstom Party not acting independently of a direction of a director or officer of that Alstom Party, then Construction Contractor may give written Notice to Alstom and Part 2 Section 45 shall apply, unless, within 27 days of receipt of such Notice, Alstom terminates the relevant VSC Subcontract and ensures that the relevant part of the Vehicle Supplier Activities shall be performed by another person, where relevant, in accordance with Part 2 Section 59.3;
 - (iv) if the Prohibited Act is committed by an employee of an Alstom Party acting independently of a direction of a director or officer of that Alstom Party, then Construction Contractor may give Notice to Alstom Party and Part 2 Section 45 shall apply, unless, within 27 days of receipt of such Notice, Alstom Party causes the termination of the employee's employment and ensures that the relevant part of the Vehicle Supplier Activities shall be performed by another person; and
 - (v) if the Prohibited Act is committed on behalf of Alstom or an Alstom Party by a person not specified in Part 2 Sections 60.2(a)(i) to 60.2(a)(iv), then Construction Contractor may give Notice to Alstom and Part 2 Section 45 shall apply, unless, within 27 days of receipt of such Notice, Alstom causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Vehicle Supplier Activities shall be performed by another person.
- (b) Any Notice of termination under this Part 2 Section 60.2 shall specify:

MT DOCS 19727287v2

- (i) the nature of the Prohibited Act;
 - (ii) the identity of the person whom Construction Contractor believes has committed the Prohibited Act; and
 - (iii) the date of termination in accordance with the applicable provisions of this Revenue Vehicle Supply Contract.
- (c) Without prejudice to its other rights or remedies under this Part 2 Section 60.2, Construction Contractor shall be entitled to recover from Alstom any Direct Loss sustained in consequence of any breach of this Part 2 Section 60, including any amount Construction Contractor is required to pay to Project Co pursuant to Section 60 of the Construction Contract.

60.3 Permitted Payments

- (a) Nothing contained in this Part 2 Section 60 shall prevent Alstom or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

60.4 Notification

- (a) Either Party shall notify the other Party of the occurrence and details of any Prohibited Act promptly on such Party becoming aware of its occurrence.

60.5 Replacement of Alstom Party

- (a) Where Alstom is required to replace any Alstom Party pursuant to this Part 2 Section 60, the party replacing such Alstom Party shall from the time of the replacement be deemed to be an Alstom Party and the provisions of this Revenue Vehicle Supply Contract shall be construed accordingly.

61. NOTICES

61.1 Notices to Parties

- (a) All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Revenue Vehicle Supply Contract shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Revenue Vehicle Supply Contract) and served by sending the same by registered mail, facsimile, electronic mail or by hand, as follows:

If to Alstom:

Alstom Transport Canada Inc.
[REDACTED]

MT DOCS 19727287v2

Fax: [REDACTED]

Attn.: [REDACTED]

If to Construction Contractor: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

61.2 Notices to Representatives

- (a) In addition to the notice requirements set out in Part 2 Section 61.1, where any Notice is to be provided or submitted to the Construction Contractor Representative or the VSC Representative it shall be provided or submitted by sending the same by registered mail, facsimile, electronic mail or by hand, as follows:

If to VSC Representative: [REDACTED]

Fax: [REDACTED]

Attn: [REDACTED]

If to the Construction Contractor Representative: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

61.3 Facsimile

- (a) Where any Notice is provided or submitted to a Party via facsimile or electronic mail, an original of the Notice sent via facsimile or electronic mail shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via facsimile or electronic mail shall not be invalid by reason only of a Party's failure to comply with this Part 2 Section 61.3.

61.4 Change of Address

- (a) Either Party to this Revenue Vehicle Supply Contract may, from time to time, change any of its contact information set forth in Part 2 Sections 61.1 or 61.2 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.

61.5 Deemed Receipt of Notices

- (a) Subject to Part 2 Sections 61.5(b), 61.5(c) and 61.5(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.
 - (iv) a Notice given by electronic mail shall be deemed to have been received on the day it is transmitted by electronic mail.
- (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 Part 2 Section 61.
- (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.

61.6 Service on Construction Contractor

- (a) Where any Notice is required to be served on Construction Contractor, the obligation to serve such Notice shall be fulfilled by serving it on Construction Contractor in accordance with the provisions of this Part 2 Section 61.

62. EMERGENCY MATTERS**62.1 Emergency**

- (a) From Financial Close until the completion of the Vehicle Supplier Activities, upon the occurrence of an Emergency, Alstom shall comply with the Emergency Response Plan in respect of this Revenue Vehicle Supply Contract and the Vehicle Supplier Activities.
- (b) **[Intentionally Deleted].**
- (c) If, in respect of any Emergency, Construction Contractor notifies Alstom that it requires compliance with any additional or overriding procedures as may be determined by Contracting Authority or any statutory body, then Alstom shall, subject to Attachment 22 – VSC Variation Procedure (if compliance with such procedures constitutes a Variation), comply with such procedures (whether such procedures are specific to the particular Emergency or of general application and on the basis that such procedures shall take precedence to the extent that they overlap with the procedures mentioned in Part 2 Section 62.1(a)).

63. CONTRACTING AUTHORITY'S DESIGNATE**63.1 Right to Designate**

- (a) Alstom acknowledges the right of the Crown to delegate administrative responsibilities under the Project Agreement pursuant to Section 63.1 of the Project Agreement.

64. GENERAL**64.1 Amendments**

- (a) This Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract.

64.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Revenue Vehicle Supply Contract 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 Party. 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.

64.3 Relationship Between the Parties

- (a) The Parties are independent contractors. This Revenue Vehicle Supply Contract is not intended to and does not create or establish between the Parties, or between Construction Contractor and any Alstom Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Revenue Vehicle Supply Contract), of principal and agent, and does not create or establish any relationship whatsoever between Construction Contractor and any representative or employee of Alstom or the Alstom Parties.
- (b) The Parties further agree that:
- (i) except as expressly provided in this Revenue Vehicle Supply Contract, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent that it 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 for Employment Insurance, Canada Pension Plan, Workers' Compensation 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 Revenue Vehicle Supply Contract, 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 Revenue Vehicle Supply Contract; and
 - (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Revenue Vehicle Supply Contract, 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.

64.4 General Duty to Mitigate

- (a) Construction Contractor and Alstom 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 Revenue Vehicle Supply Contract.

64.5 Actual Knowledge

- (a) [NOT USED]

64.6 Entire Agreement

- (a) Except where provided otherwise in this Revenue Vehicle Supply Contract, this Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract.

64.7 No Reliance

- (a) Each of the Parties acknowledge that:
- (i) it has not entered into this Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract or not, except those expressly made, given or repeated in this Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract; and
 - (ii) this Part 2 Section 64.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Revenue Vehicle Supply Contract which was induced by fraud, for which the remedies available shall be all those available under the law governing this Revenue Vehicle Supply Contract.

64.8 Severability

- (a) Each provision of this Revenue Vehicle Supply Contract shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract. If any such provision of this Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract as near as possible to its original intent and effect.

64.9 Enurement

MT DOCS 19727287v2

- (a) This Revenue Vehicle Supply Contract and any other agreement entered into in connection with the Project to which Construction Contractor and Alstom are parties shall enure to the benefit of, and be binding on, Construction Contractor and Alstom and their respective successors and permitted transferees and assigns.

64.10 Governing Law and Jurisdiction

- (a) This Revenue Vehicle Supply Contract, and each of the documents contemplated by or delivered under or in connection with this Revenue Vehicle Supply Contract, 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 Attachment 27 – VSC Dispute Resolution Procedure, the 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 Revenue Vehicle Supply Contract affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

64.11 Cumulative Remedies

- (a) Except as otherwise set forth in this Revenue Vehicle Supply Contract, the rights, powers and remedies of each Party set forth in this Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract.

64.12 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 Revenue Vehicle Supply Contract.

64.13 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 Revenue Vehicle Supply Contract.

64.14 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Revenue Vehicle Supply Contract 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 déclare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification

MT DOCS 19727287v2

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 Revenue Vehicle Supply Contract shall be in English.

64.15 Proof of Authority

- (a) Construction Contractor and Alstom each reserve the right to require any person executing this Revenue Vehicle Supply Contract on behalf of the other Party to provide proof, in a form acceptable to Construction Contractor or Alstom, as applicable, that they have the requisite authority to execute this Revenue Vehicle Supply Contract on behalf of and to bind Construction Contractor or Alstom, as applicable.

64.16 Counterparts

- (a) This Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract which was so faxed.

64.17 Province Persons as Third Party Beneficiaries

- (a) Alstom acknowledges and agrees to the provisions of Section 64.17 of the Project Agreement.
- (b) The provisions of Sections 6.1(a), 6.2(a), 6.3(a), 16.1(a), 16.1(b), 21.1, 51.2(a), 51.2(b), 51.3(a), 51.4(a), 52.9(a) and 56.1(g) and each other provision of this Revenue Vehicle Supply Contract which is expressed to be for the benefit of Contracting Authority, a Contracting Authority Party, Province Person, Project Co, or a Project Co Party, as applicable, are:
 - (i) intended for the benefit of each such person, as applicable, and, if so set out in the relevant Section, each such person'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; and
 - (ii) are in addition to, and not in substitution for, any other rights that such person may have in contract or otherwise.

64.18 [NOT USED]

- (a) [NOT USED]

IN WITNESS WHEREOF the Parties have executed this Revenue Vehicle Supply Contract as of the date first above written.

ALSTOM TRANSPORT CANADA INC.

Per:

Name: [REDACTED]

Title: [REDACTED]

Per:

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

[REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

ATTACHMENT 1

DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Revenue Vehicle Supply Contract, unless the context otherwise requires:
 - 1.1 “**Acceptance**” means, in relation to any Revenue Vehicle Deliverable, the time and date of the issue of the Acceptance Certificate in respect of such Revenue Vehicle Deliverable, and “**Accepted**” and similar expressions shall be construed accordingly.
 - 1.2 “**Acceptance Certificate**” means a certificate in the form set out in Attachment 14 – Vehicle Testing and Commissioning issued by Construction Contractor in respect of Revenue Vehicles and other Revenue Vehicle Deliverables in accordance with the provisions of Attachment 14 – Vehicle Testing and Commissioning.
 - 1.3 “**Additional Interest Amount**” has the meaning given in Attachment 20 – Contract Price and Payment.
 - 1.4 **[REDACTED]**.
 - 1.5 “**Aggregate LRV Purchase Price**” means \$**[REDACTED]**.
 - 1.6 “**Alstom**” means Alstom Transport Canada Inc. and any successor or permitted assign.
 - 1.7 “**Alstom Direct Agreement**” means the direct agreement between Contracting Authority, Project Co, Construction Contractor, Alstom, and Alstom Parent Company in the form set out in Attachment 5 – Alstom Direct Agreement.
 - 1.8 “**Alstom Extension Notice Response**” has the meaning given in Attachment 39 – System Extension.
 - 1.9 “**Alstom Extension Proposal**” has the meaning given in Attachment 39 – System Extension.
 - 1.10 “**Alstom Group**” means Alstom, its holding companies and their subsidiaries (as respectively defined or interpreted in the *Business Corporations Act* (Ontario)).
 - 1.11 “**Alstom Initiated VSC Variation**” has the meaning given in Attachment 22 – VSC Variation Procedure.
 - 1.12 “**Alstom Key Party**” means any Alstom Party set forth and described in Attachment 46 – Alstom Key Parties.
 - 1.13 “**Alstom Parent Company**” means **[REDACTED]**.
 - 1.14 “**Alstom Party**” means any person engaged by Alstom from time to time as may be permitted by the Revenue Vehicle Supply Contract to procure or manage the provision of

the Vehicle Supplier Activities (or any of them), and in respect of each such person, their subcontractors of any tier, agents, employees, officers and directors, and “**Alstom Parties**” shall be construed accordingly.

- 1.15 “**Alstom Records**” has the meaning given in Part 2 Section 34.14(b)(i) of the Revenue Vehicle Supply Contract.
- 1.16 “**Alstom’s Project Manager**” means the VSC Representative.
- 1.17 “**Alstom-CC Variation**” has the meaning given in Attachment 22 – VSC Variation Procedure.
- 1.18 “**Alstom-CC Variation Directive**” has the meaning given in Attachment 22 – VSC Variation Procedure.
- 1.19 “**Associated Liabilities**” has the meaning given in Part 2 Section 35.7(b)(iv) of the Revenue Vehicle Supply Contract.
- 1.20 “**Authorized Third Party**” has the meaning given in Part 2 Section 51.2(b) of the Revenue Vehicle Supply Contract.
- 1.21 “**Bench Test Equipment**” means the bench test equipment for or relating to the Revenue Vehicles designated as such in Attachment 15 – Output Specifications, including any additional such bench test equipment to be supplied to Construction Contractor by Alstom as contemplated pursuant to Attachment 15 – Output Specifications.
- 1.22 “**Beneficiary**” has the meaning given in Part 2 Section 56.3(a) of the Revenue Vehicle Supply Contract.
- 1.23 “**Bill of Sale**” has the meaning given in Attachment 43 – Revenue Vehicles.
- 1.24 “**Burn-In Test**” has the meaning given in Attachment 14 – Vehicle Testing and Commissioning.
- 1.25 “**Capital Spares**” means the Spares designated as capital spares for the Revenue Vehicles in Attachment 15 – Output Specifications.
- 1.26 [REDACTED].
- 1.27 “**CC Activities**” means the performance of the Works and the performance of all other obligations of Construction Contractor under the Construction Contract.
- 1.28 “**CC Dispute**” has the meaning given in the Construction Contract.
- 1.29 “**CC Dispute Resolution Procedure**” has the meaning given in the Construction Contract.

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- 1.30 “**CC Event of Default**” has the meaning given in Part 2 Section 46.1(a) of the Revenue Vehicle Supply Contract.
- 1.31 “**CC Party**” means any person engaged by the Construction Contractor from time to time as may be permitted by the Construction Contract to procure or manage the provision of the CC Activities (or any of them), and in respect of each such person, their subcontractors of any tier, agents, employees, officers and directors (excluding, however, Alstom and Alstom Parties), and “**CC Parties**” shall be construed accordingly.
- 1.32 “**CC Subcontractor**” means any subcontractor of Construction Contractor engaged by or through Construction Contractor to perform any of the CC Activities including any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.33 “**Commissioning**” means the commissioning activities to be carried out by Alstom related to or in respect of the Revenue Vehicles and the Revenue Vehicle Equipment in accordance with the Commissioning Program, such commissioning activities to include the successful inspection, testing, verification and acceptance of the systems, facilities, infrastructure and equipment as designed, constructed and installed by Alstom in accordance with the Revenue Vehicle Supply Contract.
- 1.34 “**Commissioning Program**” means all activities and requirements related to or in respect of the commissioning and testing of the Revenue Vehicles and the Revenue Vehicle Equipment, including the associated commissioning standards, submittals and commissioning obligations as set out in Attachment 14 – Vehicle Testing and Commissioning and in Attachment 15 – Output Specifications.
- 1.35 “**Communication**” has the meaning given in Part 1 Section 3.5 of the Revenue Vehicle Supply Contract.
- 1.36 “**Communications Equipment**” means the on-board communications equipment (voice and data radio) in relation to the Revenue Vehicles to be supplied by Construction Contractor and installed by Alstom as specified in Attachment 15 – Output Specifications.
- 1.37 “**Compensation Event**” has the meaning given in Part 2 Section 41.1(a) of the Revenue Vehicle Supply Contract.
- 1.38 “**Confidant**” has the meaning given in Part 2 Section 52.6(a)(i) of the Revenue Vehicle Supply Contract.
- 1.39 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party to the Revenue Vehicle Supply Contract, whether before or after Commercial Close.
- 1.40 “**Consents**” means all permissions, consents, approvals, certificates, permits, licences and authorizations required under any Applicable Law for the Revenue Vehicles to be

brought into use in Revenue Service or that are otherwise necessary for the performance of Alstom's obligations under the Revenue Vehicle Supply Contract.

- 1.41 “**Construction Contractor Act**” means:
- (a) breach of the Revenue Vehicle Supply Contract by Construction Contractor; or
 - (b) any negligent act or omission, other tortious conduct, fraud or wilful misconduct of Construction Contractor or any CC Party.
- 1.42 “**Construction Contractor Members**” means [REDACTED].
- 1.43 “**Construction Contractor Permits, Licences and Approvals**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations to be obtained and/or performed by Construction Contractor in accordance with the Construction Contract required to perform the Project Operations in accordance with the Construction Contract and as required by Applicable Law, and including those permissions, consents, approvals, certificates, permits, licences, agreements and authorizations which are Construction Contractor's responsibility to obtain as set out in Attachment 34 – Permits, Licences and Approvals, but other than the Contracting Authority Permits, Licences and Approvals and the VSC Permits, Licences and Approvals.
- 1.44 “**Construction Contractor Representative**” means the person designated as such by Construction Contractor on or prior to the date of the Revenue Vehicle Supply Contract and any permitted replacement.
- 1.45 “**Construction Contractor's Project Manager**” means the person appointed from time to time by Construction Contractor to act on its behalf, in accordance with Attachment 15 – Output Specifications, and notified to Alstom.
- 1.46 “**Contract Documents**” means, collectively, the Alstom-CC Variation, the Alstom-CC Variation Directive, the VSC Variations, the VSC Variations Directives, the Vehicle Delivery Schedule, the Required Documents and the VSC Submittals, and “**Contract Document**” means any one of them.
- 1.47 “**Contract Drawings**” means the drawings, including progress drawings, to be provided by Alstom in relation to any Revenue Vehicle or any Revenue Vehicle Equipment.
- 1.48 “**Contract Price**” has the meaning given in Part 1 Section 10.1 of the Revenue Vehicle Supply Contract.
- 1.49 “**Contracting Authority Work**” has the meaning given in Attachment 22 – VSC Variation Procedure.
- 1.50 “**Control Party**” means any person with any form of direct ownership interest in Alstom.
- 1.51 “**Corrective Action**” has the meaning given in Attachment 11 – Quality Management.

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- 1.52 “**Corrective and Preventive Actions Plan**” has the meaning given in Attachment 11 – Quality Management.
- 1.53 “**Delay Event**” has the meaning given in Part 2 Section 40.1(a) of the Revenue Vehicle Supply Contract.
- 1.54 “**Delay LD**” means the amounts that become due and payable and accrue as of and from the occurrence of an LD Event, such amounts being calculated as set forth in Part 1 Section 6.1 of the Revenue Vehicle Supply Contract under the headings “Pier diem rate” and “Duration” applicable to such LD Event.
- 1.55 “**Delivery**” and “**Delivered**” means the delivery of any Revenue Vehicle Deliverable to Construction Contractor in accordance with the Revenue Vehicle Supply Contract.
- 1.56 “**Direct Cost**” has the meaning given in Attachment 22 – VSC Variation Procedure.
- 1.57 “**Direct Losses**” means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- 1.58 “**Draw Amount**” has the meaning given in Part 1 Section 9.7 of the Revenue Vehicle Supply Contract.
- 1.59 “**Encumbrances**” has the meaning given in Attachment 16 – Encumbrances.
- 1.60 “**Endemic Defect**” means a defect in a Revenue Vehicle or part which:
- (a) has consistently occurred in other Revenue Vehicles or parts due to the same root cause, such that the number of such defects is [REDACTED]% of the Epidemic Defect level; and
 - (b) Construction Contractor, following good faith consultation with Alstom about the source and nature of such defect, reasonably and objectively determines will thereafter become an Epidemic Defect,
- and repairing or replacing such defective part will prevent damage to the Revenue Vehicles or prevent a safety related issue in the Revenue Vehicles (as determined by an independent expert designated by the Parties to the extent the Parties do not agree).
- 1.61 [REDACTED].
- 1.62 “**Epidemic Defect**” means a defect in a Revenue Vehicle or part which occurs as a result of the same fault (i.e. a fault with the same root cause as such defect) in any period of [REDACTED] months during the Endemic/Epidemic Protection Period on either:
- (a) [REDACTED] or more Revenue Vehicles; or

- (b) [REDACTED] or more of the same parts where fewer than [REDACTED] such parts (excluding consumables) are installed on a Revenue Vehicle; or
- (c) [REDACTED] or more of the same parts (excluding consumables) where [REDACTED] or more such parts (excluding consumables) are installed on a Revenue Vehicle.
- 1.63 “**Equipment Warranty Period**” means, for any Revenue Vehicles or any of the Revenue Vehicle Equipment (other than the Key Components) the period commencing on the date of Acceptance and ending on the earlier of the date being:
- (a) the date that the subject Revenue Vehicle has travelled [REDACTED] kilometres as part of the Project Co System Infrastructure (such travel to include kilometres traveled as part of the Burn-In Test); and
- (b) the date that is [REDACTED] after the date of Acceptance.
- 1.64 “**Equivalent Claim**” has the meaning given in Part 1 Section 4.3 of the Revenue Vehicle Supply Contract.
- 1.65 “**Equivalent Claim Notice**” has the meaning given in Part 1 Section 4.2 of the Revenue Vehicle Supply Contract.
- 1.66 “**Equivalent Project Relief**” has the meaning given in Part 1 Section 4.1 of the Revenue Vehicle Supply Contract.
- 1.67 “**Expected Delivery Date**” means the date of Delivery or Acceptance, as applicable, of the Revenue Vehicles as set forth in the Vehicle Delivery Schedule.
- 1.68 “**Expected Revenue Service Commencement Date**” means the Scheduled Substantial Completion Date.
- 1.69 “**External Quality Audit**” has the meaning given in Attachment 11 – Quality Management.
- 1.70 “**Final Agreement**” has the meaning given in Part 1 Section 6.4 of the Revenue Vehicle Supply Contract.
- 1.71 “**Force Majeure**” has the meaning given in Part 2 Section 44.1(a) of the Revenue Vehicle Supply Contract.
- 1.72 “**Further Warranty Period**” means, in respect of an item of a Revenue Vehicle or Revenue Vehicle Equipment that is replaced and fitted by Alstom and is functional when fitted (including a Warranty Spare which replaces a Spare or a Special Tool) (a “**Replacement Part**”):

- (a) where such item is not a Key Component, the period beginning on the date such item is so replaced and fitted by Alstom with a Replacement Part and ending on the date being the later of:
 - (i) the date that the Equipment Warranty Period expires for the subject Revenue Vehicle; and
 - (ii) the date that is [REDACTED] after the date such item is so replaced and fitted; and
 - (b) where such item is a Key Component and the Warranty Period applicable thereto is [REDACTED] commencing on the date of Acceptance of the applicable Revenue Vehicle, a further period that is the longer of [REDACTED] year from the date upon which such item is so replaced and fitted by Alstom with a Replacement Part, and the expiry of the original [REDACTED] year Warranty Period.
- 1.73 “**Indemnifiable Taxes**” has the meaning given in Part 2 Section 35.7(b)(iii) of the Revenue Vehicle Supply Contract.
- 1.74 “**Indemnifier**” has the meaning given in Part 2 Section 56.3(a) of the Revenue Vehicle Supply Contract.
- 1.75 “**Independent Quality Audit**” has the meaning given in Attachment 11 – Quality Management.
- 1.76 “**Indirect Losses**” has the meaning given in Part 1 Section 8.4 of the Revenue Vehicle Supply Contract.
- 1.77 “**Intellectual Property**” means Software and rights, title and/or interests in intellectual property subsisting anywhere in the world including in:
- (a) patents, petty patents and utility models, design patents, inventors certificates and any form of protection for inventors;
 - (b) trade marks, domain names and trade and business names (including service marks);
 - (c) semi-conductor chip or mask work rights;
 - (d) design rights, including industrial designs;
- whether the above rights are registered, unregistered or form pending applications;
- (e) goodwill;

- (f) copyrights (including copyrights in Software), neighbouring rights and moral rights;
 - (g) database rights;
 - (h) know-how (including trade secrets, confidential business information and rights in inventions, processes, formulae and ideas); and
 - (i) any similar or analogous rights to any of the above, whether arising or granted under the laws of Canada, France or of any other jurisdiction.
- 1.78 “**Interim Agreement**” has the meaning given in Part 1 Section 6.4 of the Revenue Vehicle Supply Contract.
- 1.79 “**Internal Quality Audit**” has the meaning given in Attachment 11 – Quality Management.
- 1.80 “**Irrecoverable Tax**” has the meaning given in Part 2 Section 35.3(b) of the Revenue Vehicle Supply Contract.
- 1.81 “**ISO 9001 Lead Auditor Course**” has the meaning given in Attachment 11 – Quality Management.
- 1.82 “**ISO/IEC**” has the meaning given in Attachment 11 – Quality Management.
- 1.83 “**Key Component**” means those components, including corrosion protection for car body shells, which are identified as such in Attachment 15 – Output Specifications.
- 1.84 “**Key Systems**” has the meaning given in Attachment 14 – Vehicle Testing and Commissioning.
- 1.85 “**Key VSC Individual**” means those Alstom Parties listed in Attachment 9 – Key VSC Individuals.
- 1.86 “**LC Provider**” means:
- (a) any Canadian Schedule I Bank; and
 - (b) any major banking institution having a long term unsecured credit ranking of at least “[REDACTED]” from Standard and Poor’s and “[REDACTED]” from Moody’s.
- 1.87 “**LD Event**” means any of the events listed under the heading “**LD Events**” in the table set forth in Part 1 Section 6.1 of the Revenue Vehicle Supply Contract.

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- 1.88 “**Lenders’ Vehicle Supplier Direct Agreement**” means the direct agreement between Lenders’ Agent, Project Co, Construction Contractor, Alstom and Alstom Guarantor in the form set out in Attachment 4 – Lenders’ Vehicle Supplier Direct Agreement.
- 1.89 “**Letters of Credit**” has the meaning given in Part 1 Section 9.2 of the Revenue Vehicle Supply Contract.
- 1.90 “**Maintenance Spares**” means the Spares specified for the Revenue Vehicles in Attachment 15 – Output Specifications.
- 1.91 “**Manuals**” means the manuals for the Revenue Vehicles (in electronic format and a maximum of 6 hard copies upon request) which describe how those Revenue Vehicles should be repaired, operated, serviced and maintained, and shall be revised to reflect the modifications to the Revenue Vehicles, all as set out in Attachment 15 – Output Specifications and which include parts information so that the appropriate parts can be identified and procured.
- 1.92 “**Milestones**” and “**Milestone Payment**” means the milestones and the percentage of payment of the Contract Price set out in Attachment 20 – Contract Price and Payment.
- 1.93 “**Non-Conformance Report**” has the meaning given in Attachment 11 – Quality Management.
- 1.94 “**Non-Conformance Tracking System**” has the meaning given in Attachment 11 – Quality Management.
- 1.95 “**Non-Material VSC Event of Default**” has the meaning given in Part 2 Section 45.1(b) of the Revenue Vehicle Supply Contract.
- 1.96 “**Notice**” has the meaning given in Part 2 Section 61.1(a) of the Revenue Vehicle Supply Contract.
- 1.97 “**Notice of VSC Dispute**” has the meaning given in Attachment 27 – VSC Dispute Resolution Procedure.
- 1.98 “**Output Specifications**” means Attachment 15 – Output Specifications, and includes Attachment 15-1 – Technical Terms and Reference Documents, Attachment 15-2 – Design and Construction Requirements.
- 1.99 “**Overdue Payment**” has the meaning given to it in Part 2 Section 46.1(a)(i).
- 1.100 “**Part**” means any part, component (which may comprise a number of parts), including, without limitation, a Key Component, an assembly and sub-assembly which is incorporated in, or fixed to, or is designated for incorporation in or fixing to any Revenue Vehicle or Spare, or any furnishing or equipment furnished with such Revenue Vehicle or Spare under the Revenue Vehicle Supply Contract, provided always that such part,

component, assembly or sub-assembly, furnishing or equipment and all documents relating thereto are fitted or supplied by Alstom.

- 1.101 “**Party**” means either the Construction Contractor or Alstom, and “**Parties**” means collectively the Construction Contractor and Alstom.
- 1.102 [REDACTED].
- 1.103 “**Permits, Licences and Approvals**” means the Construction Contractor Permits, Licences and Approvals and the VSC Permits, Licences and Approvals.
- 1.104 “**Preliminary Acceptance**” has the meaning given in Attachment 14 – Vehicle Testing and Commissioning.
- 1.105 “**Preliminary Acceptance Certificate**” has the meaning given in Attachment 14 – Vehicle Testing and Commissioning.
- 1.106 “**Preventive Action**” has the meaning given in Attachment 11 – Quality Management.
- 1.107 “**Pricing Form**” has the meaning given in Attachment 20 – Contract Price and Payment.
- 1.108 “**Prime Rate**” means, on any given day, the average of the annual interest rate announced by each of the five largest (by assets) Schedule 1 Canadian Chartered Banks as its reference rate of interest then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada.
- 1.109 “**Prohibited Act**” has the meaning given in Part 2 Section 60.1(a) of the Revenue Vehicle Supply Contract.
- 1.110 “**Project Co Claim**” has the meaning given in Part 1 Section 5.1 of the Revenue Vehicle Supply Contract.
- 1.111 “**Project Co Party**” means:
- (a) the Construction Contractor;
 - (b) the Service Provider;
 - (c) any person engaged by Project Co, and/or any of the Contractors from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Project Operations (or any of them) (excluding, for clarity, Alstom and any Alstom Party); and
 - (d) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,

and “**Project Co Parties**” shall be construed accordingly.

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- 1.112 “**Project Quality Management Plan**” or “**PQMP**” has the meaning given in Attachment 11 – Quality Management.
- 1.113 “**Project Quality Manager**” has the meaning given in Attachment 11 – Quality Management.
- 1.114 “**Proprietor**” has the meaning given in Part 2 Section 52.6(a) of the Revenue Vehicle Supply Contract.
- 1.115 “**Purchase Price**” means the purchase price of each Revenue Vehicle Deliverable as set forth in respect of such Revenue Vehicle Deliverable in Attachment 20 – Contract Price and Payment.
- 1.116 “**QMS 2015 Auditor**” has the meaning given in Attachment 11 – Quality Management.
- 1.117 “**Quality Audit**” has the meaning given in Attachment 11 – Quality Management.
- 1.118 “**Quality Audit Plan**” has the meaning given in Attachment 11 – Quality Management.
- 1.119 “**Quality Control Manager**” has the meaning given in Attachment 11 – Quality Management.
- 1.120 “**Quality Control Plan**” has the meaning given in Attachment 11 – Quality Management.
- 1.121 “**Quality Director**” has the meaning given in Attachment 11 – Quality Management.
- 1.122 “**Quality Documentation**” has the meaning given in Attachment 11 – Quality Management.
- 1.123 “**Quality Manager**” has the meaning given in Attachment 11 – Quality Management.
- 1.124 “**Quality Manual and Policy**” has the meaning given in Attachment 11 – Quality Management.
- 1.125 “**Quality Records**” has the meaning given in Attachment 11 – Quality Management.
- 1.126 “**Recoverable Tax**” has the meaning given in Part 2 Section 35.3(c) of the Revenue Vehicle Supply Contract.
- 1.127 “**Recovery Amount**” has the meaning given in Part 2 Section 56.3(g) of the Revenue Vehicle Supply Contract.
- 1.128 “**Reliability Target**” means the reliability requirements specified in Section 3.13 of Appendix A in the Output Specifications;

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- 1.129 “**Relief Event**” has the meaning given in Part 2 Section 43.1(a) of the Revenue Vehicle Supply Contract.
- 1.130 “**Replacement Part**” has the meaning given to such term in the definition of “Further Warranty Period”.
- 1.131 “**Required Documents**” means all installation, commissioning, operations, maintenance and procedure manuals and associated and/or related drawings, plans, reports, records, documents, data and information in respect of or relating to the Revenue Vehicles and the Revenue Vehicle Equipment as set forth and described in Attachment 10 – Review Procedure, including the Manuals and Contract Drawings.
- 1.132 “**Revenue Vehicle Acceptance Testing**” has the meaning given in Attachment 43 – Revenue Vehicles.
- 1.133 “**Revenue Vehicle Deliverables**” means the Revenue Vehicles, the Revenue Vehicle Equipment and the Required Documents, and all test equipment and other items to be supplied by Alstom to Construction Contractor under the Revenue Vehicle Supply Contract as specified in or as contemplated pursuant to Attachment 15 – Output Specifications.
- 1.134 “**Revenue Vehicle E&M**” means all electrical and mechanical equipment, machinery and computer hardware and systems comprised or contained within, or included in the Revenue Vehicles together with all Intellectual Property as provided for in the Output Specifications.
- 1.135 “**Revenue Vehicle Equipment**” means the Spares, the Special Tools, and the Bench Test Equipment.
- 1.136 “**Revenue Vehicle Supply Contract Arbitration**” has the meaning given in Attachment 27 – VSC Dispute Resolution Procedure.
- 1.137 “**Revenue Vehicle Warranties**” means the representations and warranties to be provided by Alstom in respect of each Revenue Vehicle Deliverable as specified and required pursuant to Part 1 Section 7 of the Revenue Vehicle Supply Contract.
- 1.138 “**Revenue Vehicles**” or “**LRVs**” means all light rail transit vehicles used to carry passengers on the passenger light rail transit system, including all Revenue Vehicle E&M contained therein and as further described in Attachment 15 – Output Specifications, including any part or parts of the same (but not the Spares or the Special Tools).
- 1.139 “**Sensitive Information**” means financial, technical or commercial information which would, if disclosed to a competitor of Alstom, give that competitor a competitive advantage over Alstom and thereby prejudice the business of Alstom.
- 1.140 “**Software**” means the executable object code version of software relating to the Revenue Vehicle Deliverables, including any software to be provided in accordance with the
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Revenue Vehicle Supply Contract, which is supplied in machine readable form and loaded upon the relevant piece of equipment or computer system to which it relates.

- 1.141 “**Spares**” means the spares, parts and tooling for or relating to the Revenue Vehicles to be supplied to Construction Contractor by Alstom as set forth in Attachment 15 – Output Specifications, including the Capital Spares and the Maintenance Spares, including any additional such spares, parts and tooling to be supplied to Construction Contractor by Alstom as contemplated pursuant to Attachment 15 – Output Specifications.
- 1.142 “**Special Tools**” means the special tools (including test equipment) for or relating to the Revenue Vehicles designated as such in Attachment 15 – Output Specifications, including any additional such tools to be supplied to Construction Contractor by Alstom as contemplated pursuant to Attachment 15 – Output Specifications. The Special Tools do not include the Bench Test Equipment being the “off-train” test bench equipment used for repair and overhaul.
- 1.143 “**Specifications**” means the technical description of the Revenue Vehicles, the Spares, Special Tools and Manuals including the scope of work, performance requirements and other qualitative and quantitative requirements set out in Attachment 15 – Output Specifications, as the same may be varied from time to time by VSC Variation.
- 1.144 “**Surveillance Quality Audits**” has the meaning given in Attachment 11 – Quality Management.
- 1.145 “**Third Party Arbitration**” has the meaning given in Attachment 27 – VSC Dispute Resolution Procedure.
- 1.146 “**Third Party Litigation**” has the meaning given in Attachment 27 – VSC Dispute Resolution Procedure.
- 1.147 “**Train Control System**” means the automatic train control system to be supplied by Construction Contractor and installed by Alstom as specified in Attachment 15 – Output Specifications.
- 1.148 “**Vehicle Delay Liquidated Damages**” means, with respect to an LD Event, the amounts that become due and payable and accrue as of and from the occurrence of such LD Event, such amounts being calculated as set forth in Part 1 Section 6.1 of the Revenue Vehicle Supply Contract under the headings “Pier diem rate” and “Duration” applicable to such LD Event.
- 1.149 “**Vehicle Delay Liquidated Damages Subcap**” has the meaning given in Part 1 Section 8.1 of the Revenue Vehicle Supply Contract.
- 1.150 “**Vehicle Delivery Schedule**” means the contract work schedule which divides the Vehicle Supplier Activities to be performed into scheduled work packages and is developed in concept and in sufficient detail to allow Construction Contractor’s Project Manager to visualize the procedure for Acceptance and Delivery of all of the Revenue

Vehicle Deliverables in accordance with Article 3 of Attachment 15 – Output Specifications, and includes the Milestones.

- 1.151 “**Vehicle Supplier Activities**” means the design, engineering, construction, manufacture, commissioning, supply and delivery of 28 Revenue Vehicles and the Revenue Vehicle Equipment and the performance of all other obligations of Alstom under the Revenue Vehicle Supply Contract and the Vehicle Supplier Project Documents.
- 1.152 “**Vehicle Supplier Activities Report**” has the meaning given in Part 2 Section 22.4(a) of the Revenue Vehicle Supply Contract.
- 1.153 “**Vehicle Supplier Guarantee**” means the guarantee to be delivered to Construction Contractor by Alstom Parent Company pursuant to Part 1 Section 9.1 of the Revenue Vehicle Supply Contract substantially in the form of Attachment 44 – Form of VSC Supply Guarantee of the Revenue Vehicle Supply Contract.
- 1.154 “**Vehicle Supplier Liability Cap**” has the meaning given in Part 1 Section 8.2 of the Revenue Vehicle Supply Contract.
- 1.155 “**Vehicle Supplier Project Documents**” means any agreements or documents relating to the Project to which Alstom is a party.
- 1.156 “**VSC Background Information**” means
- (a) [REDACTED].
- 1.157 “**VSC Change in Law**” means any change to:
- (a) any Applicable Law, Consent or Authority Requirement; or
- (b) the requirements of any Governmental Authority,
- with which Alstom is required to comply pursuant to the Revenue Vehicle Supply Contract, and the effect of such change is to increase the obligations of Alstom thereunder, or to make compliance by Alstom with such obligations more costly or burdensome including by way of causing delay.
- 1.158 “**VSC Dispute**” has the meaning given in Attachment 27 – VSC Dispute Resolution Procedure.
- 1.159 “**VSC Dispute Resolution Procedure**” means the procedure set out in Attachment 27 – VSC Dispute Resolution Procedure.
- 1.160 “**VSC Estimate**” has the meaning given in Attachment 22 – VSC Variation Procedure.
- 1.161 “**VSC Event of Default**” has the meaning given in Part 2 Section 45.1(a) of the Revenue Vehicle Supply Contract.

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- 1.162 “**VSC Performance Security**” means the performance security required pursuant to Part 1 Section 9 of the Revenue Vehicle Supply Contract.
- 1.163 [REDACTED].
- 1.164 “**VSC Permits, Licences and Approvals**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations required to perform the Vehicle Supplier Activities in accordance with the Revenue Vehicle Supply Contract and as required by Applicable Law, and all necessary consents, approvals, certificates, permits, licences, agreements and authorizations from and with any third parties (including, to the extent applicable, all Development Approvals, Railway Approvals and Utility Agreements, and the approval of the Fire Marshal of Ontario), needed to perform the Vehicle Supplier Activities in accordance with the Revenue Vehicle Supply Contract and as required by Applicable Law, but other than the Construction Contractor Permits, Licences and Approvals.
- 1.165 “**VSC Recovery Schedule**” has the meaning given in Part 2 Section 22.3(a)(i)(A) of the Revenue Vehicle Supply Contract.
- 1.166 “**VSC Recovery Schedule Report**” has the meaning given in Part 2 Section 22.3(a)(i)(B) of the Revenue Vehicle Supply Contract.
- 1.167 “**VSC Representative**” means the person designated as such by Alstom on or prior to Commercial Close and any permitted replacement.
- 1.168 “**VSC 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 or Ontario or that is subject to any economic or political sanctions issued through the United States’ Office of Foreign Assets Control;
 - (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, (i) he or she has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such individual is a “VSC Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the Highway Traffic Act (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “VSC Restricted Person” is made hereunder; or

- (d) in the case of a person other than an individual, (i) it or any of the members of its (or its general partner's) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a "VSC Restricted Person" is made hereunder, whether or not such person received a custodial sentence; (ii) any of the members of its (or its general partner's) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a "VSC Restricted Person" is made hereunder; or (iii) any of the members of its (or its general partner's) board of directors or its senior executive managers is subject to any economic or political sanctions issued by Canada or Ontario or through the United States' Office of Foreign Assets Control.
- 1.169 "VSC Subcontract" means the contract entered into by or between Alstom and any Alstom Party or between any Alstom Party at any tier and any other Alstom Party at any tier in relation to any aspect of the Vehicle Supplier Activities.
- 1.170 "VSC Submittals" has the meaning given in Attachment 10 – Review Procedure.
- 1.171 "VSC Term" means the period commencing on Commercial Close and expiring at midnight on the VSC Termination Date.
- 1.172 "VSC Termination Date" means the date on which termination of the Revenue Vehicle Supply Contract takes effect in accordance with its terms.
- 1.173 "VSC Variation" has the meaning given in Attachment 22 – VSC Variation Procedure.
- 1.174 "VSC Variation Confirmation" has the meaning given in Attachment 22 – VSC Variation Procedure.
- 1.175 "VSC Variation Directive" has the meaning given in Attachment 22 – VSC Variation Procedure.
- 1.176 "VSC Variation Enquiry" has the meaning given in Attachment 22 – VSC Variation Procedure.
- 1.177 "VSC Variation Notice" has the meaning given in Attachment 22 – VSC Variation Procedure.
- 1.178 "VSC Variation Procedure" means the procedure set out in Attachment 22 – VSC Variation Procedure.
- 1.179 "Warranty Claim" mean any claim by Construction Contractor that a warranty given in Part 1 Section 7 of the Revenue Vehicle Supply Contract has been breached.

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- 1.180 “**Warranty Period**” means, in respect of a Revenue Vehicle Deliverable, the warranty period specified in relation to such Revenue Vehicle Deliverable as set forth as follows: [REDACTED].
- 1.181 “**Warranty Spares**” has the meaning given in Part 1 Section 7.13 of the Revenue Vehicle Supply Contract.
- 1.182 “**Witness and Hold Point**” has the meaning given in Attachment 11 – Quality Management.
- 1.183 “**Worsens**” means any act or omission of Alstom or any Alstom Party in the performance of the Vehicle Supplier Activities, including for clarity, in the performance of work to remediate Contamination which excavates, disturbs, exposes, spills, releases or otherwise affects (directly or indirectly) any Contamination with the effect of aggravating, exacerbating, migrating, diverting or otherwise increasing the area, volume, impact or costs of dealing with such Contamination, and “**Worsened**” and “**Worsening**” shall have the corresponding meanings wherever used in Part 2 Section 16.2 of the Revenue Vehicle Supply Contract.
2. **Interpretation.** The Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract are for convenience of reference only, shall not constitute a part of the Revenue Vehicle Supply Contract, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Revenue Vehicle Supply Contract.
- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in an Attachment specifically refer to that Attachment or to other portions of the Revenue Vehicle Supply Contract) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Attachments, and other divisions of the Revenue Vehicle Supply Contract are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Attachments to, or divisions of the Revenue Vehicle Supply Contract 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, Attachments, and other divisions of the Revenue Vehicle Supply Contract followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Attachment or other division of the Revenue Vehicle Supply Contract 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, Attachments, 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-
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references to any Attachment in Attachment 15 – Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.

- 2.5 The Attachments to the Revenue Vehicle Supply Contract are an integral part of the Revenue Vehicle Supply Contract and a reference to the Revenue Vehicle Supply Contract includes a reference to the Attachments.
- 2.6 All references in the Revenue Vehicle Supply Contract to an Attachment shall be to an Attachment of the Revenue Vehicle Supply Contract.
- 2.7 All capitalized terms used in an Attachment shall have the meanings given to such terms in Attachment 1 – Definitions and Interpretation or elsewhere in the Revenue Vehicle Supply Contract, unless stated otherwise in a particular Attachment in which case such definition shall have the meaning given to it in that Attachment solely for the purposes of that Attachment, and where a term is not defined in such Attachment or elsewhere in the Revenue Vehicle Supply Contract, such term shall have the meanings given to it in the Project Agreement.
- 2.8 The language of the Output Specifications and other documents comprising the Revenue Vehicle Supply Contract is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Alstom and shall be construed and interpreted as if the words “Alstom 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, limited liability company, joint stock company, 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 Revenue Vehicle Supply Contract, all accounting and financial terms used in the Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract 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 Construction Contractor or any Alstom Party shall be construed having regard to the interactive nature of the activities of Construction Contractor or such Alstom Party and Alstom or any applicable Alstom Party and the and further having regard to:
- (a) acts contemplated by the Output Specifications;
 - (b) [Not used]; or
 - (c) acts otherwise provided for in the Revenue Vehicle Supply Contract.
- 2.18 The words in the Revenue Vehicle Supply Contract shall bear their natural meaning.
- 2.19 Each of the Construction Contractor's and Alstom's respective obligations under the Revenue Vehicle Supply Contract shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) "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 Revenue Vehicle Supply Contract taken as a whole; and
 - (b) "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”.

- 2.21 In construing the Revenue Vehicle Supply Contract, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Revenue Vehicle Supply Contract and, accordingly, general words introduced or followed by the word “other” or “including” or “such as” 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.
- 2.22 Where the Revenue Vehicle Supply Contract 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.
- 2.23 Where the Revenue Vehicle Supply Contract 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.
- 2.24 Where the Revenue Vehicle Supply Contract 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.
- 2.25 Any reference to time of day or date means the local time or date in Toronto, Ontario.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Revenue Vehicle Supply Contract in relation to Alstom or Construction Contractor they shall be construed and interpreted as synonymous and to read “Alstom shall” or “Construction Contractor shall” as the case may be.
- 2.28 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.
- 2.29 Unless otherwise identified in the Revenue Vehicle Supply Contract, all units of measurement in any documents submitted by Alstom to Construction Contractor shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Revenue Vehicle Supply Contract or the Project Agreement which have a technical meaning commonly understood by the transit system

construction and maintenance industry in Ontario will be construed as having that meaning unless the context otherwise requires.

- 2.31 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:

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

- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in the Revenue Vehicle Supply Contract, shall be interpreted by taking into consideration Alstom’s and any Alstom Party’s experience and the investigations, inspections and examinations of the Background Information and in respect of the Lands carried out by Alstom or by any Alstom Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.

**APPENDIX A
[NOT USED]**

[Not Used]

**APPENDIX B
[NOT USED]**

[Not used]

**APPENDIX C
[NOT USED]**

[Not Used]

**APPENDIX D
[NOT USED]**

[Not Used]

**APPENDIX E
[NOT USED]**

[Not Used]

**APPENDIX F
[NOT USED]**

[Not Used]

**APPENDIX G
[NOT USED]**

[Not Used]

ATTACHMENT 2**VSC COMPLETION DOCUMENTS**

In this Attachment 2, “certified” shall mean that the relevant document is certified as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate by an officer or director of the relevant corporation.

1. DOCUMENTS TO BE DELIVERED BY ALSTOM

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, executed by the parties to such agreement other than Construction Contractor and in form and substance satisfactory to Construction Contractor, acting reasonably) is to be delivered by Alstom to Construction Contractor on or prior to the date hereof:

- 1.1 an original of the Revenue Vehicle Supply Contract;
- 1.2 an original of the Lenders’ Vehicle Supplier Direct Agreement;
- 1.3 an original of the Alstom Direct Agreement;
- 1.4 an original Notice of appointment of the VSC Representative;
- 1.5 a certificate of insurance for the insurances required to be taken out by Alstom in accordance with the Revenue Vehicle Supply Contract;
- 1.6 an original of the Vehicle Supplier Guarantee;
- 1.7 **[REDACTED]**;
- 1.8 a certificate of an officer of Alstom substantially in the form attached as Appendix B to this Attachment 2;
- 1.9 a certificate of an officer of Alstom Parent Company substantially in the form attached as Appendix B to this Attachment 2;
- 1.10 an original of the opinion from counsel to Alstom as Construction Contractor may reasonably require substantially in the form attached as Appendix C to this Attachment 2 and otherwise acceptable to Construction Contractor and its counsel in respect of the Revenue Vehicle Supply Contract;
- 1.11 an original of the opinion from counsel to Alstom Parent Company substantially in the form attached as Appendix C to this Attachment 2 and otherwise acceptable to Construction Contractor and its counsel in respect of the Vehicle Supplier Guarantee; and
- 1.12 such other documents as the Parties may agree, each acting reasonably.

2. DOCUMENTS TO BE DELIVERED BY CONSTRUCTION CONTRACTOR

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, executed by Construction Contractor) is to be delivered by Construction Contractor to Alstom on or prior to the date hereof:

- 2.1 an original of the Revenue Vehicle Supply Contract;
- 2.2 an original of the Construction Contract;
- 2.3 an original of the Lenders' Vehicle Supplier Direct Agreement;
- 2.4 an original of the Alstom Direct Agreement;
- 2.5 an original Notice of appointment of the Construction Contractor Representative;
- 2.6 an original of the opinion from counsel to Construction Contractor provided to Project Co pursuant to the Construction Contract with Alstom added as an addressee thereto;
- 2.7 a certificate of an officer of Construction Contractor provided to Project Co pursuant to the Construction Contract with Alstom added as an addressee thereto;
- 2.8 an original of the Vehicle Supplier Guarantee; and
- 2.9 such other documents as the Parties may agree, each acting reasonably.

APPENDIX A

[NOT USED]

[Not Used]

APPENDIX B

FORM OF ALSTOM/ALSTOM PARENT COMPANY OFFICER’S CERTIFICATE

Certificate of an Officer of

[•]

(the “Corporation”)

- TO:** ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended, and METROLINX (collectively “Contracting Authority”)
- AND TO:** METROLINX
- AND TO:** THE MINISTER OF INFRASTRUCTURE
- AND TO:** McCARTHY TÉTRAULT LLP
- AND TO:** MOBILINX HURONTARIO GENERAL PARTNERSHIP (“PROJECT CO”)
- AND TO:** OSLER, HOSKIN & HARCOURT LLP
- AND TO:** AST TRUST COMPANY (CANADA) (“LENDERS’ AGENT”)
- AND TO:** TORYS LLP
- AND TO:** MOBILINX HURONTARIO DBJV, [REDACTED] (“CONSTRUCTION CONTRACTOR”)
- AND TO:** McMILLAN LLP

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

1. Constating Documents
 - (a) The Corporation is duly incorporated under the laws of [•].
 - (b) Attached hereto as **Schedule “A”** are true and complete copies of the articles, together with all amendments thereto, of the Corporation (the “**Articles**”). The Articles are in full force and effect on the date hereof and no other articles have been issued and no proceeding has

been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Articles.

- (c) Attached hereto as **Schedule “B”** are true and complete copies of the by-laws of the Corporation (the “**By-laws**”) enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-laws and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.
 - (d) The Corporation is not a party to nor is it bound or affected by any unanimous shareholders’ agreement (or like instrument).
 - (e) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
 - (f) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
 - (g) There are no provisions in the Articles, By-laws, Unanimous Shareholders’ Agreement or in any other agreement binding on the Corporation which:
 - (i) restrict or limit the powers of the Corporation to enter into:
 - (1) a Revenue Vehicle Supply Contract with Construction Contractor made as of [●], 20● (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Revenue Vehicle Supply Contract**”) pursuant to which the Corporation will design, build, supply and deliver light rail transit vehicles for a new light rail transit system;
 - (2) a lenders’ vehicle supplier direct agreement between the Lenders’ Agent, Project Co, Construction Contractor, Alstom and Alstom Parent Company;
 - (3) direct agreement between Contracting Authority, Project Co, Construction Contractor, Alstom and Alstom Parent Company;
- (collectively, the “**Documents**”); or

- (ii) restrict or limit the authority of the directors or shareholders of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

2. **Resolutions**

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

3. **No Breach or Default**

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

4. **Specimen Signatures**

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

| NAME | POSITION | SIGNATURE |
|------|----------|-----------|
| [•] | [•] | _____ |
| [•] | [•] | _____ |

DATED this ____ day of _____, 201●.

Name:

Title:

APPENDIX C

FORM OF ALSTOM/ ALSTOM PARENT COMPANY OPINION

[INSERT DATE]

Ontario Infrastructure and Lands Corporation
1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5

Metrolinx
10 Bay Street, 17th Floor
Toronto, Ontario M5J 2S3

McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Mobilinx Hurontario General Partnership
[REDACTED]

Osler, Hoskin & Harcourt LLP
Suite 6300, 100 King Street West
Toronto, Ontario
M5X 1B8

AST Trust Company (Canada)
2001, boul. Robert-Bourassa, Bureau 1600
Montreal, Quebec
H3A 2A6

Torys LLP
79 Wellington St. W
Suite, 2000, Toronto, Ontario
M5K 1N2

Mobilinx Hurontario DBJV
[REDACTED]

McMillan LLP
Brookfield Place, 181 Bay Street,
Suite 4400, Toronto, Ontario
M5J 2T3

Dear Sirs/Mesdames:

Re: Revenue Vehicle Supply Contract

We have acted as counsel to [●] (“**Alstom**”), in connection with the alternative financing and procurement transaction whereby Alstom has agreed to enter into a design, build, supply and deliver agreement for the design, build, manufacturing, supply and delivery of light rail transit vehicles for a new light rail transit system in the Region of Peel, Ontario.

This opinion is being delivered to the recipients hereto and their counsel pursuant to Section [1.10 | 1.11] of Attachment 2 to the Revenue Vehicle Supply Contract made as of [●] between Construction Contractor and Alstom (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Revenue Vehicle Supply Contract**”).

All capitalized terms used but not otherwise defined in this opinion shall have the respective meanings ascribed thereto in the Revenue Vehicle Supply Contract.

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

1. the Revenue Vehicle Supply Contract;
2. **[the Vehicle Supplier Guarantee;]**
3. the Lenders' Vehicle Supplier Direct Agreement;
4. the Alstom Direct Agreement; and
5. **[Note to Proponents: To confirm if other documents should be included]**

The Revenue Vehicle Supply Contract and [other documents if applicable] are hereinafter collectively referred to as the “**Documents**”, and each is individually referred to as a “**Document**”.

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

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

Searches and Reliance

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

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

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

In connection with the opinions set forth in paragraphs 1, 2 and 3 below, we have relied exclusively on Certificates of Status issued by the [Ministry of Government Services (Ontario)] of even date, copies of which are attached as Attachment “B”.

Assumptions

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

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than Alstom) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the parties (other than Alstom) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.
4. The completeness, truth and accuracy of all facts set forth in the Officer’s Certificates.
5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the parties (other than Alstom) to Alstom.

Opinions

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

INCORPORATION AND EXISTENCE

1. Alstom is a corporation incorporated under the laws of [●] and has not been dissolved.

CORPORATE POWER AND CAPACITY

2. Alstom has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the
-

Revenue Vehicle Supply Contract, and to enter into and perform its obligations under each of the Documents to which it is a party.

CORPORATE AUTHORIZATION

3. Alstom has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

EXECUTION AND DELIVERY

4. Alstom has duly executed and delivered each of the Documents to which it is a party.

ENFORCEABILITY

5. Each of the Documents to which Alstom is a party constitutes a legal, valid and binding obligation of Alstom, enforceable against it in accordance with its terms.

NO BREACH OR DEFAULT

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

REGULATORY APPROVALS

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

Qualifications

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

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

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

15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on Construction Contractor for which it would be contrary to public policy to require Alstom to indemnify Construction Contractor or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.

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

Yours very truly,

[INSERT NAME OF LAW FIRM]

APPENDIX D-1

[NOT USED]

[Not used]

APPENDIX D -2

[NOT USED]

[Not used]

APPENDIX E

[NOT USED]

[Not used]

ATTACHMENT 4

LENDERS' VEHICLE SUPPLIER DIRECT AGREEMENT

THIS AGREEMENT is made as of the 17th day of October, 2019.

BETWEEN:

AST TRUST COMPANY (CANADA) a trust company existing under the federal laws of Canada, acting and in its capacity as agent for and on behalf of the Lenders

("Lenders' Agent")

AND:

MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED]

("Project Co")

AND:

MOBILINX HURONTARIO DBJV, [REDACTED]

("Construction Contractor")

AND:

ALSTOM TRANSPORT CANADA INC., a corporation incorporated under the laws of Canada

("Alstom")

AND:

[REDACTED]

("Alstom Guarantor")

WHEREAS:

- A. Pursuant to the Project Agreement, Project Co has agreed to provide the design, construction, financing, operation, maintenance and rehabilitation of the Project.
 - B. Pursuant to the Construction Contract, the Construction Contractor has agreed with Project Co to perform certain Project Operations, on a "back-to-back" basis, under and in accordance with the
-

terms of the Project Agreement, the whole as more fully described and set forth in the Construction Contract.

- C. Pursuant to the Revenue Vehicle Supply Contract, Alstom has agreed with the Construction Contractor to perform the Vehicle Supplier Activities contemplated by the Construction Contract, on a “back-to-back” basis, under and in accordance with the terms of the Project Agreement, the whole as more fully described and set forth in the Revenue Vehicle Supply Contract.
- D. Alstom Guarantor has delivered the Vehicle Supplier Guarantee in favour of the Construction Contractor.
- E. Project Co, the Lenders’ Agent and certain others have entered into the Finance Documents, which set out the terms for the credit facilities to be entered into by Project Co to finance the design, construction, operation, maintenance and rehabilitation of the Project.
- F. Project Co has granted Security in favour of the Lenders’ Agent, on its own behalf and for the benefit of the Finance Parties.
- G. As a condition precedent to the completion of the transactions contemplated by the Finance Documents, the Parties have agreed to enter into this Agreement to set forth their respective rights and obligations with respect to the Revenue Vehicle Supply Contract.

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

In this Agreement, unless the context otherwise requires:

- (a) “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto.
- (b) “**Agreement**” means this agreement and all the terms, covenants and conditions set out herein, as amended from time to time in accordance with the provisions of this agreement;
- (c) “**Alstom**” has the meaning set forth in the preamble of this Agreement and shall include any of its successors and permitted assigns.
- (d) “**Alstom Direct Agreement**” has the meaning given in the Revenue Vehicle Supply Contract.
- (e) “**Alstom Enforcement Action**” has the meaning set out in Section 5(a) (but for clarity does not include the enforcement of rights pursuant to applicable construction lien legislation).

-
- (f) “**Alstom Guarantor**” has the meaning set forth in the preamble of this Agreement and shall include any of its successors and permitted assigns.
- (g) “**Applicable Cure Period**” means the applicable cure period under Part 2 Section 46.1(b)(ii) of the Revenue Vehicle Supply Contract for the CC Event of Default in respect of which the Default Notice has been given.
- (h) “**Assignment and Assumption Agreement**” means an agreement, in a form prepared by the Controlling Party and the Suitable Substitute Construction Contractor, and entered into by, *inter alia*, Alstom, Alstom Guarantor, the Construction Contractor, Project Co, the Lenders’ Agent and the Suitable Substitute Construction Contractor, in accordance with the terms of Section 8(f) of this Agreement, pursuant to which the Suitable Substitute Construction Contractor will be assigned all of the rights and will assume all of the obligations and liabilities of the Construction Contractor under the Relevant Agreements.
- (i) “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.
- (j) “**CC Event of Default**” has the meaning given in the Revenue Vehicle Supply Contract.
- (k) “**Common Terms Agreement**” means the common terms and intercreditor agreement dated as of October 17, 2019 among Project Co, as borrower, [REDACTED], and the lenders and hedge providers from time to time parties thereto, as amended, restated, supplemented or modified from time to time.
- (l) “**Construction Contract**” means the construction contract dated on or about October 17, 2019 between Project Co and the Construction Contractor, as the same may be amended, restated, supplemented or otherwise modified from time to time.
- (m) “**Construction Contractor**” has the meaning set forth in the preamble of this Agreement and shall include any of its successors and permitted assigns.
- (n) “**Construction Contractor Event of Default**” means a Construction Contractor Event of Default as defined under the Construction Contract.
- (o) “**Construction Contractor Members**” [REDACTED].
- (p) “**Contracting Authority**” has the meaning given in the Project Agreement.
- (q) “**Controlling Party**” shall mean and refer to Project Co, provided, that, the “**Controlling Party**” shall mean and refer to the Lenders’ Agent at all times after the Lenders’ Agent issues a notice to that effect to Alstom which it may do upon the earlier of (i) the date on which a CC Event of Default occurs, and (ii) the date on which the Initial Default Notice Period expires.

-
- (r) “**Default Notice**” has the meaning given in Section 5(a).
 - (s) “**Default Notice Period**” means the period commencing on the date of delivery of a Default Notice to each of Project Co and the Lenders’ Agent and ending on the later of (i) the expiry of the Applicable Cure Period and (ii) 60 days from the date of the commencement of the Default Notice Period;
 - (t) “**Direct Losses**” has the meaning given in the Project Agreement.
 - (u) “**Enforcement Notice**” means a written notice from the Controlling Party to Alstom that a Construction Contractor Event of Default has occurred and that the Controlling Party is exercising its rights and recourses under this Agreement and/or the Construction Contract and/or any of the Finance Documents.
 - (v) “**Ethical Person**” means a person who satisfies the ethics compliance and business conduct programs and policies of Alstom and its Affiliates that are applied to persons doing business with Alstom and its Affiliates.
 - (w) “**Event of Default**” has the meaning given to such term in the Finance Documents.
 - (x) “**Finance Documents**” has the meaning set out in the Common Terms Agreement.
 - (y) “**Finance Parties**” has the meaning set out in the Common Terms Agreement.
 - (z) “**Governmental Authority**” has the meaning given in the Revenue Vehicle Supply Contract.
 - (aa) “**Initial Default Notice Period**” means the period commencing on the date of delivery of a Default Notice to each of Contracting Authority, Project Co and the Lenders’ Agent and ending on the date that is twenty-one (21) days following the delivery of such Default Notice.
 - (bb) “**Initial Liability Amount**” has the meaning given in Section 5(b) of this Agreement.
 - (cc) “**Lenders**” has the meaning given in the Construction Contract.
 - (dd) “**Lenders’ Agent**” has the meaning set forth in the preamble of this Agreement and shall include any of its successors and permitted assigns.
 - (ee) “**Lenders’ Agent Notice**” has the meaning given in Section 9 of this Agreement.
 - (ff) “**Lenders’ Agent Novation Notice**” has the meaning given in Section 8(e) of this Agreement.
 - (gg) “**Lenders’ Direct Agreement**” has the meaning given in the Project Agreement.

-
- (hh) “**Lending Agreements**” has the meaning given in the Construction Contract.
- (ii) “**Notice Date**” has the meaning given to such term in Section 8(c) of this Agreement.
- (jj) “**Novation Notice**” means a Lenders’ Agent Novation Notice or a Project Co Novation Notice, as applicable.
- (kk) “**Party**” means any of Alstom, Construction Contractor or the Lenders’ Agent, and “**Parties**” means all of Alstom, Construction Contractor and the Lenders’ Agent.
- (ll) “**Project**” has the meaning given in the recitals to the Project Agreement.
- (mm) “**Project Agreement**” means the project agreement made on or about October 17, 2019 between Contracting Authority and Project Co, as the same may be amended, restated, supplemented or otherwise modified from time to time.
- (nn) “**Project Co**” has the meaning set forth in the preamble of this Agreement and shall include any of its successors and permitted assigns.
- (oo) “**Project Co Novation Notice**” has the meaning given to such term in Section 8(d) of this Agreement.
- (pp) “**Project Co Step-In Date**” means the date on which Project Co gives Alstom a Project Co Step-In Notice.
- (qq) “**Project Co Step-In Notice**” has the meaning given in Section 6(a) of this Agreement.
- (rr) “**Project Co Step-In Period**” means the period from the Project Co Step-In Date up to and including the earlier of:
- (i) the corresponding Project Co Step-Out Date; and
 - (ii) the date upon which the Revenue Vehicle Supply Contract is terminated by Alstom in accordance with this Agreement and the Revenue Vehicle Supply Contract.
- (ss) “**Project Co Step-Out Date**” means the earlier of: (i) the date that is 3 Business Days after the date of a Project Co Step-Out Notice; and (ii) the date of any transfer to a Suitable Substitute Construction Contractor pursuant to Section 8(d) of this Agreement, and (iii) the date on which the Lenders’ Agent becomes the Controlling Party as a result of an Event of Default.
- (tt) “**Project Co Step-Out Notice**” means a notice from Project Co (or its Representative) to Alstom pursuant to Section 7(a) of this Agreement.
- (uu) “**Project Documents**” has the meaning given in the Project Agreement.

- (vv) “**Project Operations**” has the meaning given in the Construction Contract.
- (ww) “**Relevant Agreements**” means, collectively, the Revenue Vehicle Supply Contract Documents and the VSC Performance Security, each as amended, restated, supplemented or otherwise modified from time to time.
- (xx) “**Representative**” means any representative or mandatary named by the Controlling Party in a Step-In Notice given by such Controlling Party to Alstom pursuant to Article 5 of this Agreement, which representative may be:
- (i) the Lenders’ Agent, any other Finance Party or any Affiliate of any Finance Party;
 - (ii) a receiver of Project Co appointed or designated under the Finance Documents or at the request or with the acquiescence of the Lenders’ Agent or by an order of any court of competent jurisdiction;
 - (iii) a person directly or indirectly held or controlled by the Lenders’ Agent or any other Finance Party; or
 - (iv) any other person selected by the Controlling Party,
- provided that any representative or mandatary shall be an Ethical Person and shall not be a Restricted Person.
- (yy) “**Restricted Person**” has the meaning given in the Revenue Vehicle Supply Contract.
- (zz) “**Revenue Vehicle Supply Contract**” means the revenue vehicle supply contract made on or about October 17, 2019 between Alstom and the Construction Contractor.
- (aaa) “**Revenue Vehicle Supply Contract Documents**” means the Revenue Vehicle Supply Contract and this Agreement, and any other documents, instruments or agreements to which both Alstom and the Construction Contractor are a party in connection with the Project, and “**Revenue Vehicle Supply Contract Document**” means any one of them
- (bbb) “**Security**” means the security interests granted to the Lenders’ Agent pursuant to the Security Documents.
- (ccc) “**Security Documents**” has the meaning set out in the Common Terms Agreement.
- (ddd) “**Step-In Date**” means the date on which Alstom receives a Step-In Notice from the Lenders’ Agent.
- (eee) “**Step-In Entity**” means the person designated in the Step-In Notice, or the Project Co Step-In Notice, as applicable, to step in and assume the rights, benefits and obligations of the Construction Contractor under the Revenue Vehicle Supply Contract as and from the Step-In Date or the Project Co Step-In Date, as applicable.

- (fff) “**Step-In Notice**” has the meaning given in Section 6(b).
- (ggg) “**Step-In Period**” means the period from the Step-In Date up to and including the earlier of:
- (i) the corresponding Step-Out Date;
 - (ii) the date upon which the Revenue Vehicle Supply Contract is terminated by Alstom in accordance with this Agreement and the Revenue Vehicle Supply Contract.
- (hhh) “**Step-Out Date**” means the earlier of: (i) the date that is three (3) Business Days after the date of a Step-Out Notice; and (ii) the date of any transfer to a Suitable Substitute Construction Contractor pursuant to Section 8(e) of this Agreement.
- (iii) “**Step-Out Notice**” means a notice from the Lenders’ Agent (or its Representative) to Alstom pursuant to Section 7(b) of this Agreement.
- (jjj) “**Subsequent Indebtedness Amount**” has the meaning given in Section 5(d).
- (kkk) “**Subsequent Indebtedness Notice**” has the meaning given in Section 5(d).
- (lll) “**Suitable Substitute Construction Contractor**” means any person, including the Contracting Authority, designated by the Controlling Party, provided that: (i) such person is an Ethical Person; and (ii) a Restricted Person shall not be a Suitable Substitute Construction Contractor.
- (mmm) “**Vehicle Supplier Activities**” has the meaning given in the Revenue Vehicle Supply Contract.
- (nnn) “**Vehicle Supplier Guarantee**” has the meaning given in the Revenue Vehicle Supply Contract.
- (ooo) “**VSC Event of Default**” has the meaning given in the Revenue Vehicle Supply Contract.
- (ppp) “**VSC Performance Security**” has the meaning given in the Revenue Vehicle Supply Contract.
- (qqq) “**VSC Restricted Person**” has the meaning given in the Revenue Vehicle Supply Contract.

2. INTERPRETATION

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

-
- (a) The headings in this Agreement are for convenience of reference only, shall not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) 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.
- (d) 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.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Agreement shall bear their natural meaning.
- (g) References containing terms such as:
- (i) “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 this Agreement taken as a whole; and
 - (ii) “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”.
- (h) In construing this Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this 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.

- (i) Where this 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.
- (j) Where this 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.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) A reference to “days” is a reference to “calendar days”.
- (m) Unless otherwise indicated, time periods will be strictly construed.
- (n) Whenever the terms “will” or “shall” are used in this Agreement they shall be construed and interpreted as synonymous and to read “shall”.

2A. CONFLICT OF DOCUMENTS

In the event of any ambiguity, conflict or inconsistency between the provisions of this Agreement, the Revenue Vehicle Supply Contract and the Alstom Direct Agreement, the provisions of this Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

2B. REPRESENTATIONS AND WARRANTIES

- (a) Project Co represents and warrants to Alstom that as of the date hereof no VSC Restricted Person has a Direct or Indirect Power or Control over Project Co in relation to the decisions, management, actions or policies of Project Co.
- (b) Construction Contractor represents and warrants to Alstom that as of the date hereof no VSC Restricted Person has a Direct or Indirect Power or Control over Construction Contractor in relation to the decisions, management, actions or policies of Construction Contractor.
- (c) The Lenders’ Agent represents and warrants to Alstom that as of the date hereof no VSC Restricted Person has a Direct or Indirect Power or Control over the Lenders’ Agent or, any Lender in relation to the decisions, management, actions or policies of the Lenders’ Agent or such Lender, as applicable.

3. ACKNOWLEDGEMENT AND CONSENT

- (a) The Lenders’ Agent hereby gives notice to Alstom and Alstom Guarantor of the security interests, assignments and liens granted to the Lenders’ Agent, pursuant to the Security.

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- (b) Each of Alstom and Alstom Guarantor acknowledge and agree that:
- (i) it has received notice of the security granted to the Lenders' Agent under the Security as contemplated in Section 3(a) above and it acquiesces to the creation of such Security;
 - (ii) the granting of the security contemplated by Section 3(a) above will not in and of itself result in a default or breach of Construction Contractor's obligations under the Revenue Vehicle Supply Contract or the VSC Performance Security; and
 - (iii) no consent of Alstom or Alstom Guarantor is required for the granting by Project Co of the security contemplated by Section 3(a) above to the Lenders' Agent or to any subsequent transfer of Project Co's right, title and interest in this Agreement in connection with such enforcement.
- (c) The Lenders' Agent confirms and Alstom acknowledges that, until such time as the Lenders' Agent gives notice in writing to Alstom to the contrary, Project Co may exercise or enforce all rights, discretions and remedies under or in respect of this Agreement and to perform or discharge its obligations hereunder. The Lenders' Agent further confirms, and Alstom further acknowledges, that, except as expressly otherwise provided for in this Agreement:
- (i) the Security shall not give rise to any assumption by the Lenders' Agent or any other Finance Parties of the obligations of Project Co under this Agreement and the Construction Contractor or Project Co, as the case may be, shall remain liable under the Relevant Agreements to which they are a party to perform and satisfy all of their respective obligations and liabilities thereunder; and
 - (ii) none of the Lenders' Agent, the other Finance Parties or any receiver or delegate appointed by any of the same shall at any time be under any obligation or liability to Alstom under any of the Relevant Agreements.
- (d) Alstom and Alstom Guarantor acknowledge and agree that following the exercise by the Controlling Party of its step-in rights under this Agreement, the Controlling Party and any Representative of the Controlling Party shall have the right to call upon the VSC Performance Security in the same circumstances as the Construction Contractor is permitted to call upon the VSC Performance Security when Alstom has failed to cure a VSC Event of Default or to provide a rectification plan in respect of such VSC Event of Default acceptable to Construction Contractor pursuant to Part 2 Section 45.5. Alstom hereby confirms to each of Project Co and the Lenders' Agent that it has not, on or prior to the date hereof, received notice or otherwise become aware of any assignment, charge, pledge, mortgage or other security interest, encumbrance or lien with respect any of the Relevant Agreements or any right, title, benefit or interest of the Construction Contractor thereunder.

- (e) Each of Project Co and the Lenders' Agent acknowledges and agrees that to the extent it is a beneficiary or assignee of all or any part of the VSC Performance Security, it shall only be entitled to enforce or exercise any right or benefit thereunder to the extent that it has exercised its step-in rights under this Agreement.

4. AGREEMENTS

- (a) Each of Alstom and the Construction Contractor agrees with the Lenders' Agent that any notice issued by the Construction Contractor to terminate, cancel or rescind the Revenue Vehicle Supply Contract or to terminate the engagement of Alstom or to suspend performance by Alstom under the Revenue Vehicle Supply Contract shall be of no force and effect unless the Lenders' Agent has consented thereto in accordance with the Finance Documents, provided that the Lenders' Agent and the Finance Parties shall have no liability to Alstom for any such termination, cancellation, rescission or suspension.
- (b) On receipt of a written request from the Lenders' Agent specifying the information required, Alstom agrees to promptly supply to the Lenders' Agent a copy of any reports or other information which it provides to the Construction Contractor from time to time pursuant to or in connection with the Revenue Vehicle Supply Contract and the Construction Contractor hereby consents to the disclosure of such information by Alstom to the Lenders' Agent. Alstom agrees that it shall provide to Project Co and the Lenders' Agent copies of any notice pertaining to a CC Event of Default under the Revenue Vehicle Supply Contract concurrently with the provision of any such notice to the Construction Contractor (including, for certainty, notice pursuant to Part 2 Sections 46.1(a)(i) and 46.1(c)(B) of the Revenue Vehicle Supply Contract).
- (c) Alstom, Alstom Guarantor and the Construction Contractor covenant and agree with the Lenders' Agent and Project Co not to materially vary, alter, amend, supplement, surrender, revise or modify any provision of the Revenue Vehicle Supply Contract Documents in any way that would materially and adversely affect the Lenders' Agent's or Project Co's rights under the Vehicle Supplier Guarantee or this Agreement.
- (d) Each of Alstom and Alstom Guarantor acknowledges and consents to the arrangements set out in this Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Agreement.

5. NO TERMINATION BY ALSTOM WITHOUT NOTICE AND STEP-IN LIABILITY

- (a) Alstom shall not exercise any right it may have to terminate the Revenue Vehicle Supply Contract or to treat it as having been repudiated by the Construction Contractor or to discontinue Alstom's performance thereunder (except, for clarity, Alstom shall, subject to the final paragraph of Section 5(f), be entitled to suspend performance of its obligations under the Revenue Vehicle Supply Contract pursuant to Part 2 Section 46.1(c)(A) thereof provided that it has complied with the provisions thereof) or to take any steps to enforce execution against any assets of the Construction Contractor or to enforce its rights and

remedies pursuant to or in respect of any security held by it as security for indebtedness, liabilities and obligations of the Construction Contractor under the Revenue Vehicle Supply Contract or to take any steps to: (i) precipitate, petition or otherwise seek the appointment of any monitor, receiver, interim receiver or similar entity of the Construction Contractor; or (ii) precipitate, initiate or otherwise bring about insolvency or bankruptcy proceedings or any other insolvency or bankruptcy event in respect of the Construction Contractor (such rights to terminate or take other enforcement action being hereinafter referred to, collectively, as “**Alstom Enforcement Action**”) unless:

- (i) Alstom first provides a written notice (a “**Default Notice**”) (which Default Notice shall be delivered concurrently with any notice given by Alstom to the Construction Contractor of the occurrence of a CC Event of Default pursuant to Part 2 Section 46.1(a) of the Revenue Vehicle Supply Contract) to Project Co and the Lenders’ Agent setting out in reasonable detail the CC Event of Default on which Alstom intends to rely in taking any Alstom Enforcement Action; and
- (ii) on (i) the expiry of the Applicable Cure Period, or (ii) if the Lenders’ Agent has given the written notice to Alstom under Section 5(f) requiring it to continue to comply with the provisions of Section 5(a), on the expiry of the Default Notice Period:
 - (A) the CC Event of Default on which Alstom intends to rely in taking any Alstom Enforcement Action has not been remedied; and
 - (B) Alstom has not received a Step-In Notice or a Project Co Step-In Notice, or a Novation Notice has not been given to Alstom in accordance with Sections 8(d) or 8(e),

provided that if such CC Event of Default shall have not been remedied or Alstom shall not have received such Step-In Notice or Novation Notice, as applicable, by the expiry of the Applicable Cure Period or of the Default Notice Period, as applicable, and the Lenders’ Agent is not paying the reasonable costs of Alstom’s continued performance under the Revenue Vehicle Supply Contract in accordance with Section 5(f), Alstom may immediately terminate the Revenue Vehicle Supply Contract and this Agreement (or take any other Alstom Enforcement Action) by delivering a notice to that effect to the Lenders’ Agent and the Construction Contractor.

- (b) The Default Notice shall provide:
 - (i) the proposed calendar date on which the termination of the Revenue Vehicle Supply Contract will take effect (the “**Proposed Termination Date**”), which date must be subsequent to the expiry of the Applicable Cure Period (subject to the Lenders’ Agent’s right to require Alstom not to exercise its rights to take Alstom Enforcement Action upon the expiry of the Applicable Cure Period pursuant to Section 5(f) below);

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- (ii) full particulars of any sums which are due and payable to Alstom but unpaid as at the date of the Default Notice and of any sums which will become due and payable to Alstom in respect of the period up to the Proposed Termination Date and the dates on which they will become due and payable, all to Alstom's knowledge and reasonable estimation having applied reasonable due diligence; and
 - (iii) full particulars of any other breaches, obligations or liabilities of the Construction Contractor not covered by Section 5(b)(ii) above (including any reasonable costs and expenses incurred) relating to the period prior to the Default Notice and the amount reasonably required to compensate Alstom for all claims in respect thereof, all to Alstom's knowledge and reasonable estimation having applied reasonable due diligence,
 - (iv) the sum of the amounts in Sections 5(b)(ii) and 5(b)(iii) being hereinafter referred to as the "**Initial Liability Amount**".
- (c) Alstom agrees to use commercially reasonable efforts to mitigate any Direct Losses which Alstom may incur and which form part of the Initial Liability Amount.
 - (d) If, following receipt by Project Co and the Lenders' Agent of a Default Notice, Alstom determines that there are amounts that have become owing by the Construction Contractor to Alstom in respect of the matters identified in the initial Default Notice that were not included in the Initial Liability Amount or there are any other breaches, obligations or liabilities of the Construction Contractor relating to the period prior to the Project Co Step-In Date or the Step-In Date, as applicable, which were not identified in the Initial Liability Notice, Alstom shall, no later than that date which is 35 days after (as applicable) the date on which Project Co and the Lenders' Agent receives a Default Notice, deliver written notice (a "**Subsequent Indebtedness Notice**") to Project Co and the Lenders' Agent setting out the amounts reasonably required to compensate Alstom for those amounts, breaches, liabilities, or obligations (the "**Subsequent Indebtedness Amount**"). Alstom agrees to use commercially reasonable efforts to mitigate any Direct Losses which Alstom may incur and which form part of the Subsequent Indebtedness Amount.
 - (e) Without prejudice to Project Co or the Lenders' Agent's rights under Article 6 of this Agreement in respect of a CC Event of Default, Alstom agrees that if any failure by the Construction Contractor to pay any amounts due and owing to Alstom under the Revenue Vehicle Supply Contract is remedied by payment in full of that portion of the Initial Liability Amount and the Subsequent Indebtedness Amount due and payable as of such date in accordance with the Revenue Vehicle Supply Contract by Project Co or the Lenders' Agent (provided, however, that neither Project Co, the Lenders' Agent nor any of the Finance Parties shall have any obligation to do so) or any other person prior to the expiry of the Default Notice Period, then any Default Notice served in respect of such failure shall be deemed to be withdrawn and the Revenue Vehicle Supply Contract shall be treated as if no rights had arisen in respect of such failure and provided that any such payment by Project Co or the Lenders' Agent shall not relieve the Construction Contractor

of its obligation to reimburse and indemnify Project Co or the Lenders' Agent, as applicable, for all such amounts.

- (f) Notwithstanding anything else contained in this Agreement, in the event that the Applicable Cure Period expires prior to the expiry of the Default Notice Period and:
- (i) a Novation Notice has not been given by Project Co or the Lenders' Agent, as applicable, to Alstom in accordance with Sections 8(d) or 8(e); and
 - (ii) a Step-In Entity has not exercised its step-in rights pursuant to Article 6,

the Lenders' Agent shall be entitled to provide written notice to Alstom that it requires Alstom to continue to comply with the provisions of Section 5(a) of this Agreement regarding the non-exercise by Alstom of its rights to take Alstom Enforcement Action, in which case Alstom shall continue to comply with such provisions and the Lenders' Agent shall be required to pay Alstom's reasonable costs of continued performance of the Vehicle Supplier Activities (but not, for clarity, (i) any costs (including costs contained within the Initial Liability Amount or Subsequent Indebtedness Amount) attributable to Vehicle Supplier Activities performed by Alstom prior to the date of such notice or (ii) any amount required to cure any CC Event of Default not attributable to the Lenders' Agent's actions or omissions) from the expiry of the Applicable Cure Period until the earliest of:

- (A) the expiry of the Default Notice Period;
- (B) the date a Step-In Entity has stepped-in pursuant to Article 6; and
- (C) the expiry of a 30 day period following the provision of written notice by the Lenders' Agent to Alstom that Alstom shall (upon expiry of the aforesaid 30 day period) be entitled to exercise its rights to take Alstom Enforcement Action.

From and after the earliest of the dates set forth above, the Lenders' Agent shall be released and discharged from any further obligation or liability in respect of Alstom's costs of performance of the Vehicle Supplier Activities.

In the event that Alstom has, pursuant to Part 2 Section 46.1(c)(A) of the Revenue Vehicle Supply Contract, suspended performance of the Vehicle Supplier Activities, the Lenders' Agent may, in its discretion, require Alstom to continue to perform the Vehicle Supplier Activities, provided, however, that the Lenders' Agent shall pay the reasonable costs of such continued performance in accordance with the Revenue Vehicle Delivery Schedule (but not, for clarity, (i) any costs (including costs contained within the Initial Liability Amount or Subsequent Indebtedness Amount) attributable to Vehicle Supplier Activities performed by Alstom prior to the date of such direction or (ii) any amount required to cure any CC Event of Default not attributable to the Lenders' Agent's actions or omissions). The reasonable costs of Alstom's continued performance shall be invoiced by Alstom to

the Lenders' Agent on a bi-weekly basis, and paid by the Lenders' Agent within 5 Business Days of receipt of such invoice.

6. STEP-IN RIGHTS

- (a) Without prejudice to Project Co' rights under any agreement between Project Co and the Construction Contractor, Project Co may, so long as it is the Controlling Party, give Alstom a notice (a "**Project Co Step-In Notice**") that it is exercising its step-in rights under this Agreement at any time (i) during the Initial Default Notice Period (unless the matter to which the Default Notice relates has been remedied and the Default Notice has been retracted and is no longer in effect), or (ii) concurrently with, or at any time following, the delivery of an Enforcement Notice by it. The Project Co Step-In Notice shall identify Project Co's Representative. At any time during the Project Co Step-In Period Project Co may, by written notice to Alstom, designate a new Representative.
- (b) Without prejudice to the Lenders' Agent's rights under any agreement between the Lenders' Agent and Project Co (including, without limitation, the right to enforce any Security and/or the right to appoint or approve a receiver pursuant to any Finance Document or otherwise) and the Construction Contractor, the Lenders' Agent may, provided that it is the Controlling Party, give Alstom a notice (a "**Step-In Notice**") that it is exercising its step-in rights under this Agreement at any time (A) during the Default Notice Period (unless the matter to which the Default Notice relates has been remedied and the Default Notice has been retracted and is no longer in effect), or (B) concurrently with, or at any time following, the delivery of an Enforcement Notice by it. The Step-In Notice shall identify the Lenders' Agent's Representative. At any time during the Step-In Period the Lenders' Agent may, by written notice to Alstom, designate a new Representative.
- (c) Upon the issuance of a Project Co Step-In Notice and until the end of the Project Co Step-In Period, the Construction Contractor shall have no further rights under the Relevant Agreements and Project Co, or as the case may be its Representative, shall assume all of the Construction Contractor's rights under the Relevant Agreements and shall be liable for the Construction Contractor's obligations under the Relevant Agreements arising after the Project Co Step-In Date, it being understood that Project Co, or as the case may be its Representative, shall be the exclusive agent and mandatary of the Construction Contractor for all matters relating to the Relevant Agreements, including, but not limited to, the giving and receiving of all notices and communications under the Relevant Agreements. In addition, within ten (10) Business Days of issuance of the Project Co Step-In Notice Project Co shall pay Alstom the Initial Liability Amount and Subsequent Indebtedness Amount. Failure to make such payment within such time period shall entitle Alstom to take such action as it is otherwise entitled to under and pursuant to the Revenue Vehicle Supply Contract Documents. Project Co shall:
- (i) be able to bind the Construction Contractor and shall have all the rights of the Construction Contractor under the Relevant Agreements and shall be liable for the obligations of the Construction Contractor pursuant to the Relevant Agreements,

including the obligation to pay all amounts due and payable by the Construction Contractor to Alstom under the Revenue Vehicle Supply Contract Documents in respect of the period from the Notice Date to the Project Co Step-In Date, together with the Initial Liability Amount notified pursuant to Section 8(c) of this Agreement and the Subsequent Indebtedness Amount;

- (ii) enjoy and be entitled to exercise all of the rights of the Construction Contractor under the Relevant Agreements and, as between the Construction Contractor and Project Co (or as the case may be its Representative), the latter shall alone (to the exclusion of the Construction Contractor) have the right to deal with Alstom and exercise the rights, authority, powers and discretion available to the Construction Contractor under the Relevant Agreements. Alstom shall not be released, nor shall its liability be affected or impaired, by the exercise by Project Co (or as the case may be its Representative) alone of any such rights, authority, powers or discretion or by any other act or omission on the part of, or indulgence or release granted to, Project Co (or as the case may be its Representative), whether or not with the knowledge or consent of the Construction Contractor; and
 - (iii) be entitled to terminate Revenue Vehicle Supply Contract if the Construction Contractor is so entitled in accordance with its terms.
- (d) Upon the issuance of a Step-In Notice and until the end of the Step-In Period, the Construction Contractor (and as applicable Project Co or its Representative) shall have no further rights under the Relevant Agreements and the Lenders' Agent's Representative shall assume all of the Construction Contractor's rights under the Relevant Agreements and shall be liable for the Construction Contractor's obligations under the Relevant Agreements arising after the Step-In Date, it being understood that the Lenders' Agent's Representative shall be the exclusive agent and mandatary of the Construction Contractor for all matters relating to the Relevant Agreements, including, but not limited to, the giving and receiving of all notices and communications under the Relevant Agreements. In addition, within ten (10) Business Days of issuance of the Step-In Notice the Lenders' Agent's Representative shall pay Alstom the Initial Liability Amount and Subsequent Indebtedness Amount. Failure to make such payment within such time period shall entitle Alstom to take such action as it is otherwise entitled to under and pursuant to the Revenue Vehicle Supply Contract Documents. The Lenders' Agent's Representative shall:
- (i) be able to bind the Construction Contractor and shall have all the rights of the Construction Contractor under the Relevant Agreements and shall be liable for the obligations of the Construction Contractor pursuant to the Relevant Agreements, including the obligation to pay all amounts due and payable by the Construction Contractor to Alstom under the Revenue Vehicle Supply Contract Documents in respect of the period from the Notice Date to the Step-In Date, together with, to the extent not yet paid, but without duplication, the Initial Liability Amount notified pursuant to Section 8(c) of this Agreement and the Subsequent Indebtedness Amount;

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- (ii) enjoy and be entitled to exercise all of the rights of the Construction Contractor under the Relevant Agreements and, as between the Construction Contractor and the Lenders' Agent's Representative, the latter shall alone (to the exclusion of the Construction Contractor) have the right to deal with Alstom and exercise the rights, authority, powers and discretion available to the Construction Contractor under the Relevant Agreements. Alstom shall not be released, nor shall its liability be affected or impaired, by the exercise by the Lenders' Agent's Representative alone of any such rights, authority, powers or discretion or by any other act or omission on the part of, or indulgence or release granted to the Lenders' Agent's Representative, whether or not with the knowledge or consent of the Construction Contractor; and
 - (iii) be entitled to terminate Revenue Vehicle Supply Contract if the Construction Contractor is so entitled in accordance with its terms.
 - (e) If, during a Project Co Step-In Period, Alstom becomes aware of any additional event or circumstance which would entitle Alstom to terminate or suspend the performance of its obligations under Revenue Vehicle Supply Contract or the other Revenue Vehicle Supply Contract Documents, the date upon which the Lenders' Agent receives notice thereof from Alstom shall be deemed to be a Project Co Step-Out Date, the Lenders' Agent shall be deemed to be the Controlling Party hereunder, and a new Default Notice Period shall be deemed to have commenced on such date for a term equal to the remainder of the current Default Notice Period. Furthermore, at any time during a Project Co Step-In Period, upon becoming entitled to be the Controlling Party as a result of an Event of Default, the Lenders' Agent may issue a notice to Alstom to the effect that it shall theretofore be the Controlling Party and concurrently therewith issue a Step-In Notice thereby starting a Step-In Period or issue a Lenders' Agent Novation Notice.
 - (f) Project Co, its Representative or the Lenders' Agent's Representative, as applicable, may, upon reasonable notice, at any time during a Project Co Step-In Period or a Step-In Period, as the case may be, require, acting reasonably, Alstom to provide current information regarding the liabilities and obligations of the Construction Contractor under the Revenue Vehicle Supply Contract Documents (and information relating to any default of the Construction Contractor pursuant to the Revenue Vehicle Supply Contract Documents) which Alstom is obligated to provide to the Construction Contractor under the Revenue Vehicle Supply Contract Documents, in which event Alstom shall as soon as practicable supply to Project Co, its Representative or the Lenders' Agent's Representative, as applicable, all such reasonable information.
 - (g) Alstom acknowledges and agrees that there is no obligation on the part of the Lenders' Agent to take any action pursuant to this Agreement or to exercise any rights available to it under any of the Finance Documents (or to exercise any step-in or similar rights available to it under the Lenders' Direct Agreement or any other agreement) in any circumstances.

- (h) Alstom acknowledges and agrees that there is no obligation on the part of Project Co to take any action pursuant to this Agreement.
- (i) The right of Project Co to serve a Project Co Step-In Notice shall be exercisable on more than one occasion, provided that no more than one Project Co Step-In Notice may be outstanding at any one time.
- (j) The right of the Lenders' Agent to serve a Step-In Notice shall be exercisable on more than one occasion, provided that no more than one Step-In Notice may be outstanding at any one time.

7. STEP-OUT

- (a) Project Co or its Representative may at any time during the Project Co Step-In Period, deliver to Alstom and the Lenders' Agent a Project Co Step-Out Notice which specifies the Project Co Step-Out Date, provided, that the Lenders' Agent shall then be deemed to be the Controlling Party hereunder, and a new Default Notice Period shall be deemed to have commenced on such date.
- (b) The Lenders' Agent or its Representative may at any time during the Step-In Period deliver to Alstom a Step-Out Notice which specifies the Step-Out Date.
- (c) On and from the Project Co Step-Out Date:
 - (i) Alstom will no longer deal with Project Co or its Representative and will deal with the Construction Contractor or the Suitable Substitute Construction Contractor, as the case may be; and
 - (ii) Project Co and the Representative shall be released from all obligations and liabilities under the Relevant Agreements, except for obligations and liabilities which arose during the Project Co Step-In Period and the payment of the Initial Liability Amount and the Subsequent Indebtedness Amount which shall remain the obligation of Project Co and the Representative (but without duplication of any of the same obligations of the Lenders' Agent or its Representative pursuant to the terms of Section 6(d) and 7(d)(ii)).
- (d) On and from the Step-Out Date:
 - (i) Alstom will no longer deal with the Lenders' Agent's Representative and will deal with the Construction Contractor or the Suitable Substitute Construction Contractor, as the case may be; and
 - (ii) the Lenders' Agent's Representative shall be released from all obligations and liabilities under the Relevant Agreements, except for obligations and liabilities which arose during the Step-In Period and the payment of the Initial Liability

Amount and the Subsequent Indebtedness Amount which shall remain the obligation of the Lenders' Agent's Representative.

8. PROJECT CO AND LENDERS' AGENT'S RIGHT TO CURE OR TRANSFER TO SUITABLE SUBSTITUTE CONSTRUCTION CONTRACTOR

- (a) Each of Project Co and the Lenders' Agent has the right, but not the obligation, to cure or cause to be cured any default of the Construction Contractor under the Revenue Vehicle Supply Contract Documents, within the cure periods permitted under the Revenue Vehicle Supply Contract Documents for curing such defaults, and performance by Project Co or the Lenders' Agent or any person authorized by Project Co or the Lenders' Agent for that purpose by notice to Alstom of any obligation of the Construction Contractor under a Revenue Vehicle Supply Contract Document shall constitute due performance of that obligation. Neither Project Co nor the Lenders' Agent shall, by reason only of the performance by Project Co or the Lenders' Agent or such other person authorized by either of them of any obligation of the Construction Contractor, be deemed to have assumed any obligation or liability of the Construction Contractor.
- (b) In assessing whether or not to exercise its rights under this Agreement, Project Co and the Lenders' Agent shall have regard in the first instance to information they obtain from the Construction Contractor (in the case of Project Co) and from Project Co (in the case of the Lenders' Agent), provided that:
- (i) if Project Co or the Lenders' Agent, despite measures to obtain from the Construction Contractor or Project Co, as the case may be, pertinent information relative to the Relevant Agreements, is unable to obtain such information or concludes that such information may be unreliable, each of Project Co and the Lenders' Agent may request Alstom to supply information not provided by the Construction Contractor or Project Co (or which is unreliable), as the case may be, but only to the extent that Alstom is obligated to provide such information to the Construction Contractor under the Revenue Vehicle Supply Contract Documents, and the Construction Contractor consents to such disclosure; and
- (ii) upon receipt of a request from Project Co or the Lenders' Agent under Section 8(b)(i) of this Agreement, Alstom shall as soon as is reasonably practicable respond to the request for information to the extent that the information sought is known by or reasonably available to Alstom and Alstom is obligated to provide such information to the Construction Contractor under the Revenue Vehicle Supply Contract Documents.
- (c) Within 10 Business Days after the date upon which Alstom delivers a Default Notice to each of Project Co and the Lenders' Agent or Alstom receives an Enforcement Notice from the Controlling Party (either such date being herein referred to as the "**Notice Date**", as applicable), Alstom shall provide each of Project Co and the Lenders' Agent with a

statement setting out the Initial Liability Amount together with such further details in respect of such amount as Project Co or the Lenders' Agent may reasonably request.

- (d) As between Project Co and Alstom, Project Co may, subject to the Lenders' Agent's consent, and so long as it is the Controlling Party, in addition to any other rights it may have hereunder including pursuant to Section 6 of this Agreement, by notice to Alstom during any Initial Default Notice Period or Project Co Step-In Period or at any time following delivery of an Enforcement Notice by it, give notice to Alstom that it wishes a Suitable Substitute Construction Contractor to assume, effective as of the Notice Date, by sale, transfer, assignment, novation or other disposal or alienation of the rights, obligations and liabilities of the Construction Contractor and the Representative (if any) under the Relevant Agreements (a "**Project Co Novation Notice**").
- (e) As between the Lenders' Agent and Alstom, the Lenders' Agent may while it is the Controlling Party, and in addition to any other rights it may have hereunder including pursuant to Section 6 of this Agreement, by notice to Alstom during any Default Notice Period or Step-In Period or at any time following delivery of an Enforcement Notice by it, give notice to Alstom that it wishes a Suitable Substitute Construction Contractor to assume, effective as of the Notice Date, by sale, transfer, assignment, novation or other disposal or alienation of the rights, obligations and liabilities of the Construction Contractor and the Representative (if any) under the Relevant Agreements (a "**Lenders' Agent Novation Notice**").
- (f) In the event that the Controlling Party delivers a Novation Notice, the Controlling Party may, or may require the Construction Contractor to, sell, transfer, assign, novate or otherwise dispose of or alienate the rights, obligations and liabilities of the Construction Contractor under the Relevant Agreements to a Suitable Substitute Construction Contractor pursuant to an Assignment and Assumption Agreement, effective as of the Notice Date, with effect that:
- (i) the Suitable Substitute Construction Contractor shall become a party to the Relevant Agreements in place of the Construction Contractor;
 - (ii) the Suitable Substitute Construction Contractor shall enjoy all the rights, powers and privileges of the Construction Contractor under the Relevant Agreements;
 - (iii) the Suitable Substitute Construction Contractor shall be bound by and perform those obligations and liabilities of the Construction Contractor under the Relevant Agreements which arise after the Notice Date together with the payment of the Initial Liability Amount identified pursuant to Section 8(c) of this Agreement and the Subsequent Indebtedness Amount; and
 - (iv) Project Co, the Lenders' Agent and any Representative thereof, as applicable, shall be released from all obligations and liabilities arising under or in connection with the Relevant Agreements,

provided that the Controlling Party demonstrating to Alstom, acting reasonably, that the Suitable Substitute Construction Contractor is an Ethical Person and has sufficient financial resources or is supported by a satisfactory guarantee to perform the obligations of the Suitable Substitute Construction Contractor under the Relevant Agreements and this Agreement. Upon Alstom's request, the Controlling Party shall promptly provide to Alstom any additional information Alstom may reasonably require to assess whether the Suitable Substitute Construction Contractor is an Ethical Person and/or has sufficient financial resources to perform the obligations of the Suitable Substitute Construction Contractor under the Relevant Agreements or to assess whether the guarantee supporting the Suitable Substitute Construction Contractor is satisfactory. If Alstom fails to notify the Controlling Party in writing within fifteen (15) Business Days of receipt of the Novation Notice that it is not satisfied, acting reasonably, that the proposed Suitable Substitute Construction Contractor is an Ethical Person or has sufficient financial resources or is supported by a satisfactory guarantee, the Suitable Substitute Construction Contractor shall be deemed to have been approved. Notwithstanding anything contained in this Section 8, Alstom will not have any right to approve the Suitable Substitute Construction Contractor where the Suitable Substitute Construction Contractor is the Controlling Party or one of the Finance Parties.

9. LENDERS' AGENT OPTION ON TERMINATION

- (a) If Alstom, after duly affording Project Co and the Lenders' Agent the opportunity and rights required by Sections 5, 6 and 8 of this Agreement, terminates the Revenue Vehicle Supply Contract in accordance with its terms and the terms of this Agreement by notice to the Construction Contractor, Project Co and the Lenders' Agent, then the Lenders' Agent may, within 10 Business Days of receiving notice of the said termination, require Alstom to enter into a new Revenue Vehicle Supply Contract directly with a Representative or Suitable Substitute Construction Contractor identified in writing by the Lenders' Agent to Alstom (the "**Lenders' Agent Notice**") on the same terms (and having the same remaining term) as the Revenue Vehicle Supply Contract, with the intent being that the novation of the Revenue Vehicle Supply Contract will place Alstom in the same position as if the Revenue Vehicle Supply Contract had not been terminated and provided Alstom is so indemnified for reasonable costs, fees and expenses induced prior to termination of the Revenue Vehicle Supply Contract and as a result of such novation, and further provided that the Lenders' Agent demonstrates to Alstom, acting reasonably, that the Representative or Suitable Substitute Construction Contractor is an Ethical Person and has sufficient financial resources or is supported by a satisfactory guarantee to perform the obligations of the Representative or Suitable Substitute Construction Contractor, as applicable, under such new Revenue Vehicle Supply Contract. Upon Alstom's request, the Lenders' Agent shall promptly provide to Alstom any additional information Alstom may reasonably require to assess whether the Representative or Suitable Substitute Construction Contractor is an Ethical Person and/or has sufficient financial resources to perform the obligations of the Representative or Suitable Substitute Construction Contractor, as applicable, under such new Revenue Vehicle Supply Contract or to assess whether the guarantee supporting the Representative or Suitable Substitute Construction Contractor, as applicable, is

satisfactory. If Alstom fails to notify the Lenders' Agent in writing within fifteen (15) Business Days of receipt of the Lenders' Agent Notice that it is not satisfied, acting reasonably, that the proposed Representative or Suitable Substitute Construction Contractor, as applicable, is an Ethical Person or has sufficient financial resources or is supported by a satisfactory guarantee, the Representative or Suitable Substitute Construction Contractor, as applicable, shall be deemed to have been approved. In that event:

- (i) Construction Contractor rights and obligations under the Relevant Agreements shall be concurrently assigned to, and assumed by, the Representative or Suitable Substitute Construction Contractor, as applicable;
 - (ii) the Representative or Suitable Substitute Construction Contractor, as applicable, shall forthwith cure all existing CC Events of Default and pay the Initial Liability Amount and the Subsequent Indebtedness Amount; and
 - (iii) if the new Revenue Vehicle Supply Contract is entered into directly with a Representative, the Representative may at any time thereafter, subject to the same terms and conditions as set out in Section 8(f) of this Agreement, assign or otherwise transfer all of its rights and obligations under the new Revenue Vehicle Supply Contract, the other Revenue Vehicle Supply Contract Documents and the VSC Performance Security to a Suitable Substitute Construction Contractor.
- (b) Following the assignment referred to in Section 9(a)(iii) of this Agreement, the Representative shall be released from all liabilities and obligations to Alstom under or in relation to the Relevant Agreements. Notwithstanding anything contained in this Section 9, Alstom will not have any right to approve the Representative or Suitable Substitute Construction Contractor where the Representative or Suitable Substitute Construction Contractor, as applicable, is the Lenders' Agent or one of the Finance Parties.

10. [INTENTIONALLY DELETED]

11. ALSTOM LIABILITY

- (a) The liability of Alstom under this Agreement shall not be modified, released, diminished or in any way affected by:
 - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for Project Co, the Lenders' Agent or any Step-In Entity or Suitable Substitute Construction Contractor, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
 - (ii) the appointment by Project Co or the Lenders' Agent of any other person to review the progress of or otherwise report to Project Co or the Lenders' Agent, as applicable, in respect of the Project, or by any action or omission of such person

whether or not such action or omission might give rise to any independent liability of such person to Project Co or the Lenders' Agent, as applicable,

provided always that nothing in this Article 11 shall modify or affect any rights which Alstom might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event Project Co or the Lenders' Agent delivers a Project Co Step-In Notice or a Step-In Notice, as applicable or Novation Notice, Alstom shall have no greater liability to the Lenders' Agent or Project Co or any Step-In Entity or Suitable Substitute Construction Contractor than it would have had to the Construction Contractor under the Revenue Vehicle Supply Contract, and Alstom shall be entitled in any proceedings by the Lenders' Agent or Project Co or any Step-In Entity or Suitable Substitute Construction Contractor to rely on any liability limitations in the Revenue Vehicle Supply Contract.

12. RESIGNATION OF LENDERS' AGENT

- (a) Upon notification to Alstom that the Lenders' Agent has resigned or been replaced under the Common Terms Agreement:
 - (i) all the liabilities, obligations and rights of the Lenders' Agent under this Agreement shall be assumed by any replacement Lenders' Agent appointed pursuant to the Common Terms Agreement upon receipt of a notice to Alstom and the Construction Contractor from such replacement Lenders' Agent stating that it agrees to be bound by this Agreement and with effect therefrom, the Lenders' Agent that has resigned or been replaced shall cease to have any liability, obligation or right hereunder; and
 - (ii) if the Lenders' Agent has resigned without replacement, it will cease to have any continuing liability, obligation or right hereunder, except, in each case, for and in respect of liabilities, obligations or rights arising under or pursuant to this Agreement in respect of any period prior to such resignation or replacement (unless and until such liabilities, obligations or rights have been specifically assumed by any replacement Lenders' Agent pursuant to Section 11(a)(i)) and except in the case where the Lenders' Agent is the Step-In Entity in which event it shall not be permitted to resign or be replaced under the Common Terms Agreement or as the Step-In Entity save and except to the extent it steps out in accordance with Article 7 herein. For clarity, it is understood and agreed that in the event that the Lenders' Agent agrees to pay Alstom's reasonable costs of continued performance in accordance with Section 5(f), the Lenders' Agent shall continue to be responsible for all such costs incurred by Alstom's continued performance pursuant to Section 5(a), up to and including the earliest of the dates referred to in clauses (A) through (C), inclusive, of Section 5(f)(ii).

13. ALSTOM AS A PARTY

- (a) The Construction Contractor acknowledges and agrees that Alstom shall not be in breach of the Revenue Vehicle Supply Contract by complying with its obligations hereunder

14. ASSIGNMENT

- (a) The Lenders' Agent may assign or otherwise dispose of the benefit of the whole or part of this Agreement to any person to whom the Lenders' Agent may assign or otherwise dispose of its interest in the Common Terms Agreement but only in conjunction therewith and shall provide written notice to the Construction Contractor and Alstom of such assignment or disposition.
- (b) Alstom shall not, without the prior written consent of the Lenders' Agent and the Construction Contractor, not to be unreasonably withheld, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Agreement except as may be permitted under the Revenue Vehicle Supply Contract. Alstom Guarantor shall not, without the prior written consent of the Lenders' Agent and the Construction Contractor, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Agreement except as may be permitted under the Revenue Vehicle Supply Contract or the Vehicle Supplier Guarantee.
- (c) Project Co may assign or transfer any of its respective rights or obligations under this Agreement only on the same basis as it is permitted to assign or transfer its rights under the Project Agreement. Project Co may grant any Security over its rights under this Agreement in favour of the Lenders' Agent for the benefit of the Finance Parties in accordance with the terms of the Finance Documents.
- (d) The Construction Contractor shall not, without the prior written consent of the Lenders' Agent and Project Co, not to be unreasonably withheld, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Agreement except as may be permitted under the Common Terms Agreement and the Revenue Vehicle Supply Contract.

15. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Agreement) and served by sending the same by registered mail or by hand (in each case, with a copy by electronic submission), as follows:

If to the Lenders' Agent:

[REDACTED]

If to Project Co: [REDACTED]

If to the Construction Contractor: [REDACTED]

If to Alstom: [REDACTED]

If to Alstom Guarantor: [REDACTED]

- (b) Any Party to this Agreement may, from time to time, change any of its contact information set forth in Section 15(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.
- (c) Subject to Sections 15(d) and 15(e):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
- (d) 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 by personal delivery in accordance with this Section 15.
- (e) If any notice delivered by hand is so delivered 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 following Business Day.

16. AMENDMENTS

This 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 Agreement.

17. WAIVER

- (a) No waiver made or given by a Party under or in connection with this 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.

18. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Agreement, of principal and agent.

19. ENTIRE AGREEMENT

Except where provided otherwise in this Agreement, this 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 Agreement and there are no warranties, representations or other agreements among the Parties in connection with the subject matter hereof, except as specifically set forth herein.

20. SEVERABILITY

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this 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 Agreement. If any such provision of this 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 Agreement as near as possible to its original intent and effect.

21. ENUREMENT

This Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

22. GOVERNING LAW AND JURISDICTION

- (a) This 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 Parties 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 Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

23. DISPUTE RESOLUTION PROCEDURE

The Parties agree that the dispute resolution procedure provided for in Attachment 27 - Dispute Resolution Procedure to the Revenue Vehicle Supply Contract shall not apply to any dispute under this Agreement.

24. FURTHER ASSURANCE

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

25. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this 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 déclare satisfaite.

26. COUNTERPARTS

This 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 Agreement which was so faxed.

27. CONFIDENTIALITY

The Lenders' Agent agrees to comply with the obligations imposed on Alstom by the provisions of Part 2 Section 52 of the Revenue Vehicle Supply Contract, *mutatis mutandis*, provided that the Lenders' Agent will be permitted to disclose to any relevant regulatory authority only such Confidential Information (as defined in the Revenue Vehicle Supply Contract) as is necessary for the Lenders' Agent to comply with Applicable Law.

28. COPYRIGHT NOTICE

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

29. JOINT AND SEVERAL LIABILITY

Each of the Construction Contractor Members shall be jointly and severally liable for any and all of the liabilities and obligations of Construction Contractor under or pursuant to this Agreement.

[This section intentionally left blank]

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

AST TRUST COMPANY (CANADA), as agent
for and on behalf of the Lenders

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

[REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

ATTACHMENT 5

ALSTOM DIRECT AGREEMENT

THIS AGREEMENT is made as of the 17th day of October, 2019

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended (“**IO**”)

- AND -

METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48

(collectively with IO, “**Contracting Authority**”)

- AND -

MOBILINX HURONTARIO GENERAL PARTNERSHIP, [REDACTED]

(“**Project Co**”)

- AND -

MOBILINX HURONTARIO DBJV, [REDACTED]

(“**Construction Contractor**”)

- AND -

ALSTOM TRANSPORT CANADA INC., a corporation incorporated under the laws of Canada

(“**Alstom**”)

- AND -

[REDACTED]

(“**Alstom Guarantor**”)

WHEREAS:

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- A. Contracting Authority and Project Co have entered into the Project Agreement, which requires the Construction Contractor to enter into the Revenue Vehicle Supply Contract with Alstom.
- B. Alstom and the Construction Contractor have entered into the Revenue Vehicle Supply Contract, which requires Alstom and Alstom Guarantor to enter into this Alstom Direct Agreement with Contracting Authority.
- C. IO, as Crown agent and Metrolinx, as Crown agency, intend to enter into this Alstom Direct Agreement in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of Contracting Authority pursuant to this Alstom Direct Agreement, save and except as provided for in this Alstom Direct 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

In this Alstom Direct Agreement, unless the context otherwise requires:

- (a) “**Alstom Direct Agreement**” means this Alstom Direct Agreement.
- (b) “**Alstom-CC Variation**” has the meaning given in the Revenue Vehicle Supply Contract.
- (c) “**Applicable Law**” has the meaning given in the Project Agreement.
- (d) “**Business Day**” has the meaning given in the Project Agreement.
- (e) “**Construction Contract**” has the meaning given in the Project Agreement.
- (f) “**Construction Contractor Event of Default**” means a Construction Contractor Event of Default as defined under the Construction Contract.
- (g) “**Construction Contractor Members**” means [REDACTED].
- (h) “**Contracting Authority Notice**” has the meaning given in Section 8.
- (i) “**Crown**” has the meaning given in the Project Agreement.
- (j) “**Default Notice**” has the meaning given in Section 5(a).
- (k) “**Enforcement Notice**” means a written notice from either Project Co or Lenders’ Agent to Alstom that a Construction Contractor Event of Default has occurred and that either Project Co or Lender’s Agent, as applicable, is exercising its rights and recourses under the Lenders’ Vehicle Supplier Direct Agreement and/or the Construction Contract and/or any of the Finance Documents.

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- (l) “**Finance Documents**” has the meaning given in the Lenders’ Vehicle Supplier Direct Agreement.
 - (m) “**Governmental Authority**” has the meaning given in the Project Agreement.
 - (n) “**Initial Default Notice Period**” means the period commencing on the date of delivery of a Default Notice to each of Contracting Authority, Project Co and the Lenders’ Agent and ending on the date that is twenty-one (21) days following the delivery of such Default Notice.
 - (o) “**Lenders’ Agent**” has the meaning given in the Lenders’ Vehicle Supplier Direct Agreement.
 - (p) “**Lenders’ Vehicle Supplier Direct Agreement**” has the meaning given in the Revenue Vehicle Supply Contract.
 - (q) “**Party**” means any one of Contracting Authority, collectively, Alstom, the Alstom Guarantor or Project Co, and “**Parties**” means collectively, Contracting Authority, Alstom Contractor, Alstom Guarantor and Project Co.
 - (r) “**Project**” has the meaning given in the Project Agreement.
 - (s) “**Project Agreement**” means the project agreement made on or about October 17, 2019 between Contracting Authority and Project Co.
 - (t) “**Project Co**” has the meaning given in the Project Agreement.
 - (u) “**Revenue Vehicle Supply Contract**” means the revenue vehicle supply contract made on or about October 17, 2019 between Construction Contractor and Alstom.
 - (v) “**Step-In Notice**” has the meaning given in Section 6(a).
 - (w) “**Substitute**” has the meaning given in Section 6(a).
 - (x) “**VSC Variation**” has the meaning given in the Revenue Vehicle Supply Contract.

2. INTERPRETATION

This Alstom Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Alstom Direct Agreement are for convenience of reference only, shall not constitute a part of this Alstom Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Alstom Direct Agreement.

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- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Alstom Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) 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.
- (d) 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.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Alstom Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Alstom Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
- (i) “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 this Alstom Direct Agreement taken as a whole; and
 - (ii) “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”.
- (h) In construing this Alstom Direct Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Alstom Direct 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.
- (i) Where this Alstom Direct 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.
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- (j) Where this Alstom Direct 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.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Alstom Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Alstom Direct Agreement, the Construction Contract and the Revenue Vehicle Supply Contract, this Alstom Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Alstom Direct Agreement and the Lenders’ Vehicle Supplier Direct Agreement, the Lenders’ Vehicle Supplier Direct Agreement shall prevail.

4. AGREEMENTS

- (a) Alstom and the Construction Contractor shall not amend, modify, or depart from the terms of the Revenue Vehicle Supply Contract without the prior written consent of Contracting Authority, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Alstom to perform its obligations under this Alstom Direct Agreement, or the Revenue Vehicle Supply Contract, or the ability of Construction Contractor to perform its obligations under the Construction Contract and, in each case, does not have the effect of increasing any liability of Contracting Authority, whether actual or potential. Alstom and the Construction Contractor shall provide to Contracting Authority a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to VSC Variations and Alstom-CC Variations provided for under the Revenue Vehicle Supply Contract.
- (b) Construction Contractor shall not terminate the Revenue Vehicle Supply Contract without the prior written consent of Contracting Authority, such consent to not be unreasonably withheld or delayed.
- (c) Each of the Parties acknowledges having received a copy of the Project Agreement, the Construction Contract and the Revenue Vehicle Supply Contract.
- (d) If Alstom gives the Construction Contractor any notice of any default(s) under the Revenue Vehicle Supply Contract that may give Alstom a right to terminate the Revenue Vehicle Supply Contract or to treat it as having been repudiated by the Construction Contractor or

to discontinue Alstom's performance thereunder, then Alstom shall concurrently provide Contracting Authority with a copy of such notice and set out in reasonable detail the default(s).

- (e) Construction Contractor shall provide notice to Contracting Authority of any default(s) by Alstom under the Revenue Vehicle Supply Contract that may give Construction Contractor a right to terminate the Revenue Vehicle Supply Contract or to treat it as having been repudiated by Alstom or to discontinue Construction Contractor's performance thereunder, and set out in reasonable detail the default(s).

5. NO TERMINATION BY ALSTOM WITHOUT DEFAULT NOTICE

Alstom shall not exercise any right it may have to terminate the Revenue Vehicle Supply Contract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Alstom's performance thereunder unless:

- (a) Alstom first delivers a written notice (a "**Default Notice**") (which Default Notice shall be delivered concurrently with any notice given by Alstom to the Construction Contractor of the occurrence of a CC Event of Default pursuant to Part 2 Section 46.1(a) of the Revenue Vehicle Supply Contract) to Contracting Authority setting out in reasonable detail the default(s) on which Alstom intends to rely in terminating the Revenue Vehicle Supply Contract or to treat it as having been repudiated by the Construction Contractor or to discontinue Alstom's performance thereunder; and
- (b) within a period of 5 Business Days after the expiration of the Initial Default Notice Period:
 - (i) the default(s) on which Alstom intends to rely in terminating the Revenue Vehicle Supply Contract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Alstom's performance thereunder have not been remedied; and
 - (ii) Alstom has not received a Step-In Notice from Contracting Authority,

provided that if, within such period of 5 Business Days, Contracting Authority agrees to pay Alstom's reasonable costs of continued performance in accordance with the Vehicle Delivery Schedule (including from the date of providing such Default Notice), such period of 5 Business Days shall be extended to 45 days. The reasonable costs of Alstom's continued performance shall be invoiced by Alstom to Contracting Authority on a bi-weekly basis, and paid by Contracting Authority within 5 Business Days of receipt of such invoice.

6. STEP-IN RIGHTS

- (a) Contracting Authority may at any time after the expiration of the Initial Default Notice Period provided Alstom has not already received an Enforcement Notice or a notice in

writing from another entity entitled to the benefit of step-in rights relating to the Revenue Vehicle Supply Contract that it is or has validly exercised those step-in rights:

- (i) within 5 Business Days after the expiration of the Initial Default Notice Period or, if such period has been extended in accordance with Section 5, 45 days; or
- (ii) if Contracting Authority has not received a Default Notice and if Contracting Authority's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "**Step-In Notice**") to each of Project Co and Alstom electing to replace the Construction Contractor under the Revenue Vehicle Supply Contract either with Contracting Authority or a third party designated by Contracting Authority in the Step-In Notice (the "**Substitute**"), provided that Contracting Authority can demonstrate to Alstom, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Revenue Vehicle Supply Contract. If Alstom fails to notify Contracting Authority in writing within fifteen (15) Business Days of receipt of a Step-In Notice that it is not satisfied, acting reasonably, that the proposed Substitute has sufficient financial resources or is supported by a satisfactory guarantee, the Substitute shall be deemed to have been approved. Notwithstanding anything contained in this Section 6, Alstom shall not have any right to approve the Substitute where the Substitute is Contracting Authority. Without limiting the foregoing, where Project Co is in receipt of a Step-In Notice, Project Co shall notify Lenders' Agent of such Step-In Notice and deliver to Lenders' Agent a copy of same.

- (b) Upon receipt by Alstom of a Step-In Notice and subject to Section 6(a):
 - (i) the Construction Contractor and Alstom will be deemed to be released from their existing and future obligations under the Revenue Vehicle Supply Contract to each other (except with respect to any and all indemnities from the Construction Contract or Alstom to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and Alstom will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
 - (ii) the existing and future rights of the Construction Contractor against Alstom under the Revenue Vehicle Supply Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from the Construction Contractor or Alstom to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and Alstom will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from Alstom to Contracting Authority if Contracting Authority pays for Alstom's reasonable costs of continued performance pursuant to Section 5;

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- (iii) any guarantee, bond, covenant, letter of credit or similar performance security in favour of the Construction Contractor from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of Alstom to be performed, observed or carried out by Alstom as contained in, referred to, or inferred from the Revenue Vehicle Supply Contract shall be assigned, novated or granted, as required by Contracting Authority or the Substitute, as applicable, each acting reasonably, to Contracting Authority or the Substitute, as applicable, and Alstom shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where the Construction Contractor shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of Alstom, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to the Construction Contractor shall be conditional on the satisfaction of those obligations to the Construction Contractor; and
- (iv) at Contracting Authority's request, Alstom shall enter into, and shall cause Alstom Guarantor and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and Contracting Authority shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including an agreement between Contracting Authority or the Substitute, as applicable, and Alstom, acceptable to Contracting Authority and Alstom, each acting reasonably, on substantially the same terms as the Revenue Vehicle Supply Contract.
- (c) The Construction Contractor shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Revenue Vehicle Supply Contract to Contracting Authority or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Revenue Vehicle Supply Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time Alstom receives a Step-In Notice, Alstom has already received an Enforcement Notice or a notice in writing from another entity entitled to the benefit of step-in rights relating to the Revenue Vehicle Supply Contract that it is or has validly exercised those step-in rights. If Alstom receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by Project Co or the Lenders' Agent, in which case such other notice and not the Step-In Notice shall be effective, with the Lenders' Agent Step-In Notice being effective if both a Project Co Step-In Notice and a Lenders' Agent Step-In Notice are received on the same day.

- (e) If Contracting Authority gives a Step-In Notice within the time provided hereunder at any time after Alstom has terminated the Revenue Vehicle Supply Contract or treated it as having been repudiated by the Construction Contractor or discontinued Alstom's performance thereunder in accordance with the terms of this Alstom Direct Agreement, Alstom agrees that the Revenue Vehicle Supply Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Contracting Authority shall pay Alstom's reasonable costs for re-commencing the obligations it has under the Revenue Vehicle Supply Contract and Alstom shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Revenue Vehicle Supply Contract or having treated it as being repudiated by the Construction Contractor or having discontinued its performance thereunder.

7. ALSTOM LIABILITY

- (a) The liability of Alstom hereunder shall not be modified, released, diminished or in any way affected by:
- (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for Contracting Authority, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
 - (ii) the appointment by Contracting Authority of any other person to review the progress of or otherwise report to Contracting Authority in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to Contracting Authority,

provided always that nothing in this Section 7 shall modify or affect any rights which Alstom might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event Contracting Authority delivers a Step-In Notice, Alstom shall have no greater liability to Contracting Authority or any Substitute than it would have had to the Construction Contractor under the Revenue Vehicle Supply Contract, and Alstom shall be entitled in any proceedings by Contracting Authority or any Substitute to rely on any liability limitations in the Revenue Vehicle Supply Contract.

8. CONTRACTING AUTHORITY'S OPTION ON TERMINATION

In the event that the Project Agreement is terminated pursuant to Section 47.1, 47.2 or 47.3 (resulting in the termination of the Revenue Vehicle Supply Contract in accordance with its terms), Contracting Authority may, within 10 Business Days following the date of termination of the Project Agreement (and corresponding termination of the Revenue Vehicle Supply Contract) by written notice to Alstom (the "**Contracting Authority Notice**") require Alstom to enter into a new Revenue Vehicle Supply

Contract either with Contracting Authority or with a Substitute on the same terms and conditions (and prorated for the Revenue Vehicle Deliverables remaining to be provided) as the Revenue Vehicle Supply Contract, with the intent being that the novation of the Revenue Vehicle Supply Contract will place Alstom in the same position as if the Revenue Vehicle Supply Contract had not been terminated. In addition, Contracting Authority or the Substitute shall pay the reasonable costs in accordance with the Vehicle Delivery Schedule induced by the prior termination of the Revenue Vehicle Supply Contract. Notwithstanding the foregoing, Contracting Authority must demonstrate to Alstom, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Revenue Vehicle Supply Contract before Alstom enters into the new Revenue Vehicle Supply Contract. If Alstom fails to notify Contracting Authority in writing within fifteen (15) Business Days of receipt of the Contracting Authority Notice that it is not satisfied, acting reasonably, that the proposed Substitute has sufficient financial resources or is supported by a satisfactory guarantee, the Substitute shall be deemed to have been approved. In that event:

- (a) any guarantee, bond, covenant, letter of credit or similar performance security in favour of the Construction Contractor from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of Alstom to be performed, observed or carried out by Alstom as contained in, referred to, or inferred from the Revenue Vehicle Supply Contract shall be assigned, novated or granted, as required by Contracting Authority or the Substitute, as applicable, each acting reasonably, to Contracting Authority or the Substitute, as applicable, and Alstom shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where the Construction Contractor shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of Alstom, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to the Construction Contractor shall be conditional on the satisfaction of those obligations to the Construction Contractor;
- (b) at Contracting Authority's request, Alstom shall enter into, and shall cause Alstom Guarantor and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 8(a) to enter into, and Contracting Authority shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing; and
- (c) the Construction Contractor shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Revenue Vehicle Supply Contract to Contracting Authority or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Revenue Vehicle Supply Contract, ongoing supervisory activities and scheduling.

9. CONSTRUCTION CONTRACTOR AS PARTY

The Construction Contractor acknowledges and agrees that Alstom shall not be in breach of the Revenue Vehicle Supply Contract by complying with its obligations hereunder.

10. ALSTOM GUARANTOR AS PARTY

- (a) Alstom Guarantor agrees with Contracting Authority that Alstom Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii) and, subject to the terms of such guarantee, hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by Alstom of a Step-In Notice and without the requirement of any further action on the part of Contracting Authority, and agrees that Alstom Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing.
- (b) Alstom Guarantor agrees with Contracting Authority that Alstom Guarantor has entered into a guarantee or covenant referred to in Section 8(a), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by Alstom of written notice pursuant to Section 8 and without the requirement of any further action on the part of Contracting Authority, and agrees that Alstom Guarantor shall in accordance with Section 8 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing.
- (c) Alstom Guarantor enters into this Alstom Direct Agreement solely for the purposes of this Section 10.

11. ASSIGNMENT

- (a) The Construction Contractor shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Alstom Direct Agreement except to the extent entitled to do so under the Revenue Vehicle Supply Contract.
- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Alstom Direct Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Alstom and the Construction Contractor of such assignment or disposition.
- (c) Alstom shall not, without the prior written consent of Contracting Authority and the Construction Contractor, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Alstom Direct Agreement except as may be permitted under the Revenue Vehicle Supply Contract.

12. NOTICES

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

If to Contracting Authority: **[REDACTED]**

If to Alstom: **[REDACTED]**

If to Alstom Guarantor: **[REDACTED]**

If to the Construction Contractor: **[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(b).
- (c) Any Party to this Alstom Direct Agreement may, from time to time, change any of its contact information set forth in Section 12(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(e), 12(f) and 12(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.
- (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.

13. AMENDMENTS

This Alstom Direct 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 Alstom Direct Agreement.

14. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Alstom Direct 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.

15. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Alstom Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Alstom Direct Agreement, of principal and agent.

16. ENTIRE AGREEMENT

Except where provided otherwise in this Alstom Direct Agreement, this Alstom Direct 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 Alstom Direct Agreement.

17. SEVERABILITY

Each provision of this Alstom Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Alstom Direct 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 Alstom Direct Agreement. If any such provision of this Alstom Direct 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 Alstom Direct Agreement as near as possible to its original intent and effect.

18. ENUREMENT

This Alstom Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

19. GOVERNING LAW AND JURISDICTION

- (a) This Alstom Direct 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 Parties 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 Alstom Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Alstom Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

20. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Alstom Direct Agreement and Alstom, the Construction Contractor and Alstom Guarantor may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Alstom, the

Construction Contractor and Alstom Guarantor in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Alstom, the Construction Contractor and Alstom Guarantor in writing of any designation hereunder. The rights and obligations of the parties to this Alstom Direct Agreement shall be in no way affected by reason of any such designation. Alstom, the Construction Contractor and Alstom Guarantor acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 20.

21. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Alstom Direct Agreement.

22. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Alstom Direct 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.

23. COUNTERPARTS

This Alstom Direct 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 Alstom Direct Agreement which was so faxed.

24. JOINT AND SEVERAL

IO, as Crown agent and Metrolinx, as Crown agency, shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Alstom Direct Agreement and for each covenant of the other under this Alstom Direct Agreement.

25. COPYRIGHT NOTICE

The Parties acknowledge that Queen's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement and this Alstom Direct Agreement.

26. JOINT AND SEVERAL LIABILITY

Each of the Construction Contractor Members shall be jointly and severally liable for any and all of the liabilities and obligations of Construction Contractor under or pursuant to this Agreement.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

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

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

METROLINX

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

ALSTOM TRANSPORT CANADA INC.

Per: _____
Name:
Title:

I have authority to bind the corporation.

[REDACTED]

Per: _____
Name:
Title:

I have authority to bind the corporation.

ATTACHMENT 9

KEY VSC INDIVIDUALS

The positions listed below are all the Key VSC Individual positions.

A. Key VSC Individuals

[REDACTED]

ATTACHMENT 10

REVIEW PROCEDURE

1. REQUIRED DOCUMENTS

1.1 General

(a) The Required Documents shall be accurate in all material respects and applicable to the Revenue Vehicles and the Revenue Vehicle Equipment being furnished under this Revenue Vehicle Supply Contract, and shall consist of:

- (i) the Manuals;
- (ii) the Contract Drawings;
- (iii) the VSC Submittals;
- (iv) design presentations;
- (v) design review documents;
- (vi) interface specifications;
- (vii) test specifications, test reports, test procedures;
- (viii) subsystem functional descriptions;
- (ix) maintenance management plan;
- (x) illustrated parts catalog;
- (xi) parts listings;
- (xii) spare parts list recommendation;
- (xiii) Vehicle History Books;
- (xiv) training program and training instructions;
- (xv) work breakdown structure; and
- (xvi) the Project Quality Management Plan, Quality Control Plan and Quality Audit Plan.

1.2 Software Documentation Requirements

-
- (a) Alstom shall provide comprehensive documentation of system software (computer programs), which is analogous to hardware design documentation and suitable for the Construction Contractor's Project Manager to track the software development process, review the software design and effectively troubleshoot associated digital processors to the printed circuit board level.
 - (b) At the system design level and in conjunction with the 'System Design Review', the Construction Contractor's Project Manager shall locate and identify all digital processors in the system and define the functions which they perform.
 - (c) Hardware and software implemented functions shall be given comparable treatment in functional block diagrams and descriptions and the interrelationships among hardware and software functional elements shall be clearly defined.
 - (d) At the subsystem design level and in conjunction with corresponding subsystem design reviews, detailed flow charts and functional descriptions of related software programs shall be presented to the Construction Contractor's Project Manager for review. Functional descriptions shall parallel the flow charts and provide sufficient detail for a non-programmer / the Construction Contractor's Project Manager to understand the program logic.
 - (e) In the Construction Contractor's Project Manager's Manuals, the philosophy of software documentation shall be the same as required at the subsystem design level, except that Manuals shall include complete input/output port listings (bit assignments). Descriptions shall be provided relative to these listings that functionally explain the processing of these inputs/outputs. Input/output port assignments shall be identified to the hardware configuration, including printed circuit board location and pin numbers on the board through which the individual input/output signals enter/exit the equipment. Each input/output signal shall be described (in a separate column on the input/output listing) in terms of its form (logic level, pulse width modulated, amplitude modulated, frequency shift keyed, constant voltage, etc.) nominal voltage level(s) and other relevant features (i.e., high level on park brake application).
 - (f) Final software design documentation shall include as-built flow charts, functional descriptions, input/output port assignments and memory maps for all computer programs, complete listing of operating codes and address data stored in ROM/EPROM memory, technical interface specifications and a copy of the operating system.

2. PROCESS

2.1 Project Communications

- (a) Maximum use shall be made of electronic communication, including an electronic data transfer and management system.
- (b) Formal communications shall be between Alstom's Project Manager and the Construction Contractor's Project Manager.

- (c) The Construction Contractor's Project Manager shall not have the right to initiate meetings or discussions directly with VSC Subcontractors without consulting Alstom. When a meeting with a VSC Subcontractor is considered to be necessary by the Construction Contractor's Project Manager, the Construction Contractor's Project Manager shall notify Alstom at least 5 Business Days prior to the proposed meeting date in order to organize the meeting. Any direct communication between Construction Contractor's and a VSC Subcontractor shall not bind Alstom without Alstom's written agreement to that effect.
- (d) All project communications shall be in English. Foreign language information may be provided, as long as it is accompanied by a translation.

2.2 Post Financial Close Conference

- (a) Initial meetings shall take place no later than 21 Business Days after Financial Close at Construction Contractor's offices or Alstom's facilities, as directed by the Construction Contractor's Project Manager, for the purpose of accomplishing the following:
- (i) introduce the Key VSC Individuals to Construction Contractor;
 - (ii) subject to Part 2 Section 10.4 of the Revenue Vehicle Supply Contract, confirming Alstom's management team and key staff and the scope of supply of VSC Subcontractors;
 - (iii) subject to Part 2 Section 22.2(a) of the Revenue Vehicle Supply Contract and Section 3.1 of Attachment 15, confirming the Vehicle Delivery Schedule in respect of the Delivery of the first LRV;
 - (iv) reviewing the Contract Documents to ensure complete understanding of the requirements; and
 - (v) establishing formal channels of communication and procedures and protocols for letters, emails, and meetings.

2.3 Progress Review And Reports

- (a) Progress review meetings shall be held every other month in Toronto or at Alstom's facility in the Greater Toronto Area. Additional meetings shall be held at Alstom's or a VSC Subcontractors' facilities as deemed necessary by the Construction Contractor's Project Manager, acting reasonably.
- (b) The Construction Contractor's Project Manager shall record minutes of progress review meetings and shall circulate the minutes for agreement within 4 Business Days following the meeting. The Alstom's Project Manager shall suggest changes to or indicate acceptance of the minutes within 4 Business Days of receipt thereof.

2.4 VSC Submittal Requirements And Approval Process

-
- (a) To the extent practicable, all correspondence and VSC Submittals shall be provided by Alstom to Construction Contractor electronically or by mail. The date of receipt shall be the arrival timestamp of readable electronic correspondence or the physical arrival of legible paper documents at Construction Contractor's offices, whichever is earliest.
- (b) VSC Submittals requiring Construction Contractor's review and approval (as per Section 3 of this Attachment 10) shall be reviewed and classified by the Construction Contractor's Project Manager as follows:
- (i) **APPROVED:** The Construction Contractor's Project Manager approves the information in its submitted form. The VSC Submittal may be incorporated into the program. This classification shall not be construed as:
 - (A) permitting any departure from the Revenue Vehicle Supply Contract; or
 - (B) relieving Alstom of the responsibility for any error or omission, including with respect to details, dimensions, materials, and calculations, in accordance with the Revenue Vehicle Supply Contract.
 - (ii) **APPROVED, SUBJECT TO MINOR COMMENTS:** The Construction Contractor's Project Manager approves the VSC Submittal in principle, but some details must be revised to make the information fully approved. The VSC Submittal shall be resubmitted to Construction Contractor; only the details identified by Construction Contractor as requiring revision following its initial review shall be subject to review and approval by Construction Contractor.
 - (iii) **REVIEWED WITH SUBSTANTIAL COMMENTS:** The Construction Contractor's Project Manager does not approve the VSC Submittal. Alstom shall not incorporate the material into the program. The Construction Contractor's Project Manager shall communicate its specific objections to the VSC Submittal to Alstom. Alstom shall address such objections and resubmit the VSC Submittal to the Construction Contractor; only the information addressing the objections communicated by Construction Contractor following its initial review shall be subject to review and approval by Construction Contractor as well as other related items that may be directly affected by such information.
 - (iv) **INSUFFICIENT INFORMATION:** The information provided was illegible or insufficient to enable a complete review.
- (c) Alstom shall allow 21 days for the Construction Contractor's Project Manager's review of any VSC Submittal, calculated from the date of receipt by the Construction Contractor's Project Manager determined in accordance with Section 2.4(a) to the date of receipt of a response by Alstom.

2.5 Design Presentation

-
- (a) Alstom will schedule design presentation meetings, organized per subsystem. The design presentation meeting schedule will be agreed with Construction Contractor and will be consistent with the timetable set out in Section 3 of this Attachment 10.
 - (b) The purpose of these design presentation meetings is to demonstrate that the Revenue Vehicle Equipment will satisfy the requirements of the Revenue Vehicle Supply Contract.
 - (c) No less than 8 Business Days prior to each design presentation meeting, Alstom shall provide the Construction Contractor's Project Manager with the drawings, technical data, analyses, and other items required to facilitate the design presentation.
 - (d) Alstom is encouraged to submit design presentation information as it becomes available (and in advance of the design presentation meeting in question), as part of periodic in-progress reviews, in order to reduce the duration and impact of the design presentation meeting. Ideally, the design presentation meeting should be limited to confirmation of previously reviewed and approved-in-principle VSC Submittals, and to resolution of open items.
 - (e) The design presentation for Communication Equipment and Train Control System only shall be conducted incrementally when detailed design of a system is complete.
 - (f) The design presentation shall not relieve Alstom of its responsibility for ensuring compliance with the requirements of the Output Specifications.

2.6 Vehicle History Books

- (a) A "Vehicle History Book" for each LRV shall be provided to Construction Contractor by Alstom prior to the issuance of the Acceptance Certificate for that LRV and shall be updated as applicable after all discrepancies are resolved. Vehicle History Books shall be provided in three-ring binders or an agreed electronic format, and shall contain the information described in the Project Quality Management Plan.
- (b) Documentation recording changes to an LRV (including changes to the configuration, components, and software in the LRV) made by Alstom during the applicable Warranty Period shall be provided by Alstom to Construction Contractor for inclusion in the Vehicle History Book for that LRV.

3. DELIVERABLES, VSC SUBMITTALS AND ACCEPTANCE

3.1 VSC Submittals

- (a) The documents and drawings marked with an "X" in either of the "Submit for Information" or "Submit for Review" columns in Table 1.1-1 of this Attachment 10 (the "VSC Submittals"), identified by Reference number (in the "RVSC Ref #" column), are required to be submitted by Alstom to Construction Contractor by the due date indicated in the "VSC Submittal Due Date" columns.

-
- (b) The VSC Submittals marked with an “X” in the “Submit for Information” column are to be furnished to Construction Contractor for information purposes only and are not subject to Construction Contractor review and approval *provided however* that Construction Contractor shall be entitled to provide written notice to Alstom advising Alstom that the information contained in such VSC Submittal is illegible and/or insufficient to enable a complete review (such written notice containing reasonable details regarding such illegible and/or insufficient information), and Alstom shall, within a reasonable time period following its receipt of such written notification from Construction Contractor, use commercially reasonable efforts to provide such additional information to Construction Contractor to address the issues noted by Construction Contractor in such written notification. For certainty, the Parties agree that Alstom shall be entitled to continue performing the Vehicle Supplier Activities notwithstanding its receipt of written notification by Construction Contractor pursuant to this Section 3.1(b).
- (c) The VSC Submittals marked with an “X” in the “Submit for Review” column are subject to Construction Contractor review and approval in accordance with Section 2.4 of this Attachment 10.
- (d) The “Metrolinx Ref #” column is for reference only.
- (e) In the context of the Vehicle Supplier Activities, Alstom shall, at Construction Contractor’s written request, use commercially reasonable efforts to liaise and co-operate in good faith with Construction Contractor from time to time so as to facilitate the development of the Hurontario LRT, including providing clarifications regarding VSC Submittals and taking commercially reasonable efforts to make available and/or grant access to information, records and documents in respect of or relating to the LRVs as are or may be relevant to development of the Hurontario LRT as are in Alstom’s possession or under its control.

[REDACTED]

ATTACHMENT 11

QUALITY MANAGEMENT

PART 1 DEFINITIONS 2
PART 2 QUALITY MANAGEMENT SYSTEM 5
PART 3 QUALITY PERSONNEL..... 10
PART 4 TESTING..... 12
PART 5 QUALITY AUDITS AND MONITORING..... 13
PART 6 QUALITY DOCUMENTATION 19
PART 7 NON-CONFORMANCES..... 23
PART 8 [NOT USED]..... 24
PART 9 [NOT USED]..... 25

APPENDICES

Appendix A [NOT USED]
Appendix B [NOT USED]
Appendix C Project Quality Management Plan
Appendix D [NOT USED]
Appendix E [NOT USED]
Appendix F [NOT USED]
Appendix G [NOT USED]
Appendix D [NOT USED]

PART 1
DEFINITIONS

1.1 Definitions

The following definitions shall have the following meanings:

- (a) “**Alstom Quality Director**” is Alstom’s Canada quality director that supervises rolling stock quality and safety on all of Alstom’s projects in Canada.
- (b) “**Closing Meeting**” has the meaning given in Section 5.9(a).
- (c) “**Corrective Action**” means an action to eliminate the cause of an existing Non-Conformance, defect or other undesirable situation to prevent its recurrence.
- (d) “**Corrective Action Date**” means the date by which Alstom shall complete the implementation of a Corrective Action in accordance with this Attachment 11.
- (e) “**Corrective and Preventive Actions Plan**” has the meaning given in Section 5.3(a)(iv).
- (f) “**External Quality Audit**” means either or both:
 - (i) a second party Quality Audit conducted by parties having an interest in Alstom or the relevant Alstom Party, such as parties with commercial contracts with Alstom or a relevant Alstom Party or customers/clients of Alstom or a relevant Alstom Party; and
 - (ii) a third party Quality Audit conducted by an external independent organization such as a certification or registration body.
- (g) “**Independent Quality Audit**” means a third party audit of the Quality Management System conducted by an independent quality auditor certified by an accredited auditors’ registration body such as International Register for Certified Auditors, Registrar Accreditation Board, National Quality Institute, or other equivalent body.
- (h) “**Internal Quality Audit**” means a first party Quality Audit of Alstom’s or an Alstom Party’s own processes conducted by or on behalf of the relevant organization.
- (i) “**ISO 9001 Lead Auditor Course**” means an accredited ISO 9001 course for lead auditors who meet the training portion of the requirements for current certification of individual quality system auditors with the International Register of Certified Auditors.
- (j) “**ISO/IEC**” International Organization for Standardization / International Electrotechnical Commission.
- (k) “**IIP Two-Week Look-Ahead**” has the meaning given in Section C.1(e)(iii) of Appendix C to this Attachment 11 – Quality Management.

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- (l) “**Non-Conformance Report**” means a document issued by either Construction Contractor or Alstom pursuant to Section 7.1 detailing the description of an identified Non-Conformance, the remedial action taken or proposed to be taken to eliminate the Non-Conformance, and the date by which the remedial action was completed or proposed to be completed.
- (m) “**Non-Conformance Tracking System**” means a system to track Non-Conformance Reports issued by Construction Contractor or Alstom as set out in Section 7.1.
- (n) “**Preventive Action**” means an action to eliminate the cause of a potential Non-Conformance or other undesirable situation in order to prevent its occurrence.
- (o) “**Preventive Action Date**” means the date by which Alstom shall complete the implementation of a Preventive Action in accordance with this Attachment 11.
- (p) “**Project Quality Management Plan**” or “**PQMP**” means the plan for the quality management of the Vehicle Supplier Activities prepared by Alstom in accordance with Appendix C that address all activities necessary to perform all of the Vehicle Supplier Activities including those activities required for the purposes of undertaking any material and substantial aspect of the Vehicle Supplier Activities.
- (q) “**Project Quality Manager**” has the meaning given in Section 3.3(a).
- (r) “**QMS 2015 Auditor**” means a quality auditor certified by the International Register of Certified Auditors in the “**QMS 2015 Auditor**” grade of certification.
- (s) “**Quality Audit**” means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.
- (t) “**Quality Audit Plan**” means Alstom’s audit plan defining the Internal Quality Audits, External Quality Audits and Independent Quality Audits that Alstom shall perform or cause to be performed on its own processes and the processes of Alstom Parties.
- (u) “**Quality Control Manager**” means an individual quality control manager responsible for each of the quality control requirements as set out in the Quality Control Plan as described in Section 3.4.
- (v) “**Quality Control Plan**” means the plan prepared in accordance with Section C.1(e)(ii) of Appendix C to this Attachment 11 – Quality Management.
- (w) “**Quality Director**” has the meaning given in Section 3.2(a) of Schedule 11 of the Project Agreement.
- (x) “**Quality Documentation**” has the meaning given in Section 6.3.
- (y) “**Quality Manager**” means the quality manager responsible for the Project Quality Management Plan.

- (z) **“Quality Manual and Policy”** means the quality manual and policy maintained by Alstom and used globally by Alstom and its affiliates.
- (aa) **“Quality Records”** has the meaning given in Section 6.8.
- (bb) **“Surveillance Quality Audits”** means Quality Audits conducted by or on behalf of Construction Contractor as contemplated in Section 5.3.
- (cc) **“Witness and Hold Point”** means (a) a point of time in the construction process when it would be unreasonably onerous or impossible, to confirm conformance to or compliance with the Output Specifications with respect to either materials or workmanship once work proceeds past this point and (b) any other witness point or hold point that is required by Alstom or by Construction Contractor and/or Project Co, each acting reasonably.

PART 2
QUALITY MANAGEMENT SYSTEM

2.1 Quality Management

- (a) Alstom shall develop and implement the Project Quality Management Plan in accordance with the requirements of this Attachment 11. The PQMP will be supported by the Quality Manual and Policies which can be consulted. Alstom acknowledges and agrees that it is solely responsible for the quality of the Vehicle Supplier Activities and that a comprehensive Project Quality Management Plan is critical for the proper and timely completion of the Vehicle Supplier Activities.

2.2 Alstom Responsibilities

- (a) Alstom is responsible for all quality assurance and quality control activities set out in this Attachment 11 that are required to manage its own processes as well as those of the Alstom Parties throughout the VSC Term. Alstom shall ensure that all aspects of the Project related to the Vehicle Supplier Activities are the subject of a Project Quality Management Plan that complies with the provisions of this Attachment 11, and shall comply with and cause all Alstom Parties to comply with the requirements of such Project Quality Management Plan.

2.3 [NOT USED]

- (a) [NOT USED]
- (b) [NOT USED]
- (c) [NOT USED]
- (d) [NOT USED]
- (e) [NOT USED]

2.4 Quality Management Requirements

- (a) The Project Quality Management Plan shall, at a minimum, include the Quality Documentation described in Part 6, including:
- (i) Quality Control Plan for all components of the Vehicle Supplier Activities;
 - (ii) processes for:
 - (A) assessing training requirements;
 - (B) providing all staff with quality management system requirements of the Revenue Vehicle Supply Contract;
 - (C) updating training; and

- (D) maintaining all training records,
applicable to all Alstom Parties, including each Alstom Party;
 - (iii) methods to ensure compliance with the Project Quality Management Plan by each Alstom Party;
 - (iv) techniques for integration between all of the Vehicle Supplier Activities;
 - (v) documentation and verification procedures; and
 - (vi) defined roles and responsibilities for all members of the Quality Management team.
- (b) The Project Quality Management Plan shall comply with:
- (i) the requirements and principles of the ISO 9001:2015 Standard and any other applicable standards specified in this Attachment 11;
 - (ii) Good Industry Practice; and
 - (iii) all other requirements set out in this Attachment 11 and the Revenue Vehicle Supply Contract.

2.5 Compliance of Project Quality Management Plan

- (a) Specific Requirements
- (i) The Project Quality Management Plan must be compliant with ISO 9001:2015 within 60 days from Financial Close.
 - (ii) Compliance shall be subject to review and must be approved by Construction Contractor, which compliance shall be maintained by Alstom throughout the VSC Term.
 - (iii) The scope of compliance for the Project Quality Management Plan should be clearly defined to address the Vehicle Supplier Activities, including environmental considerations, if any, in respect of the Project.
 - (iv) Alstom shall update the Project Quality Management Plan and all Quality Documentation as required to ensure that the Project Quality Management Plan and all Quality Documentation are and at all times remain in full compliance with the ISO 9001:2015 Standard and the requirements of this Attachment 11. All Quality Documentation shall be made available to Project Co and Construction Contractor upon request.

2.6 Documentation Deliverables

(a) Deliverables

- (i) Without limiting the generality of Section 2.4, Alstom shall provide to Project Co and Construction Contractor, by the dates shown in Table 2.6.1, each of the following:

Table 2.6.1 – Schedule of Plans and Reports

| Deliverable Name | Attachment 11 Specification Reference | Due Date | Submitted under the Review Procedure |
|---|--|--|---|
| [NOT USED] | | | |
| [NOT USED] | | | |
| Project Quality Management Plan | Appendix C | Submitted within 60 days following Financial Close | Yes |
| [NOT USED] | | | |
| [NOT USED] | | | |
| [NOT USED] | | | |
| Quality Control Plan | | Submitted 60 days prior to the start of manufacturing of 1 st LRV | Yes |
| [NOT USED] | | | |
| Quality Audit Plan | Section 5.1 | Submitted within 60 days following Financial Close | Yes |
| Quality Audit Plan updates | Section 5.1 | At twelve monthly intervals following Quality Audit Plan submittal | Yes |
| Quality Management Plan reports | Section 6.9 | By the 8 th Business Day of each month (in respect of previous month) | Yes |
| Quality Audit Reports | Section 5.2 | Each submitted within 5 Business Days following the applicable Closing Meeting | Yes |
| Corrective and Preventive Actions Plans | Section 5.3 | Each submitted within 5 Business Days following the applicable Closing Meeting | Yes |

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- (ii) The Quality Manual and Policies may be consulted but they shall not be submitted by Alstom nor are they subject to validation. Where specified in Table 2.5.1, Alstom shall submit all deliverables of the Project Quality Management Plan to Construction Contractor for review in accordance with Attachment 10 – Review Procedure.
- (b) Specific Requirements
- (i) Alstom shall prepare and submit the Project Quality Management Plan in respect of Vehicle Supplier Activities and meeting the requirements of the Quality Manual and Policy, and Alstom shall cause all other contractors engaged by Alstom for the purposes of undertaking any material or substantial aspect of the Vehicle Supplier Activities to comply with the Quality Manual and Policy.
- (ii) [NOT USED]
- (c) Timing of Implementation
- (i) The Project Quality Management Plan must be fully implemented within 150 days from Financial Close. Alstom shall not commence or permit the commencement of any aspect of the Vehicle Supplier Activities before those parts of the Quality Documentation that concern such aspect of the Vehicle Supplier Activities have been submitted to Construction Contractor in accordance with this Attachment 11 to the Revenue Vehicle Supply Contract.
- (d) Compliance with Project Quality Management Plan
- (i) Alstom shall ensure that:
- (A) it complies with the Project Quality Management Plan in accordance with the Quality Manual and Policy in connection with its scheduling activities with respect to the Vehicle Supplier Activities;
- (B) the Design Team complies with the Project Quality Management Plan in connection with its design activities;
- (C) [NOT USED];
- (D) any other contractor engaged by Alstom either complies with the relevant Project Quality Management Plan prepared and implemented pursuant to specific requirements of this Attachment 11 in connection with the activities covered by that party's contract with Alstom or provides evidence of the contractor's own quality system and the required quality assurance interfaces to Alstom; and
- (E) any Alstom Party who performs any portion of the Vehicle Supplier Activities shall comply with the Project Quality Management Plan as it relates to that portion of the Vehicle Supplier Activities.

2.7 Continuous Improvement in Quality Management

- (a) Alstom shall implement a program and shall have mechanisms in place, such as management reviews and Quality Audit programs, to allow all identified opportunities for improvement of the effectiveness of the Project Quality Management Plan to be recorded, tracked and implemented or closed out.
- (b) Alstom shall ensure that all Alstom Parties are aware of the importance of continuous improvement and are actively engaged in the implementation of the quality management system in connection with the performance of the Vehicle Supplier Activities.

PART 3
QUALITY PERSONNEL

3.1 General

- (a) Alstom shall provide separate personnel with the required qualifications in a full time role in support of the Quality Management System as set out in this Part 3 of this Attachment 11.

3.2 Quality Director

- (a) Alstom acknowledges the provisions of Section 3.2 of Part 3 of Schedule 11 to the Project Agreement and will cooperate (and cause all Alstom Parties to cooperate) with the Quality Director.
- (b) [NOT USED]
- (c) [NOT USED]

3.3 Project Quality Manager

- (a) Alstom shall appoint a Project Quality Manager who shall be responsible for the Project Quality Management Plan developed by Alstom, (the “**Project Quality Manager**”).
- (b) The Project Quality Manager shall be certified as a quality professional from certifying bodies, as a minimum successful completion of an ISO 9001 Lead Auditor Course.
- (c) [NOT USED]
- (d) [NOT USED]
- (e) [NOT USED]
- (f) [NOT USED]
- (g) The Project Quality Manager shall be independent of the design and construction, and report directly to the Alstom Quality Director.

3.4 Quality Control Manager

- (a) Alstom shall appoint a Quality Control Manager who shall be responsible for quality control requirements as set out in the Quality Control Plan.
- (b) The Quality Control Manager shall be certified as a quality professional from a certifying body.
- (c) The Quality Control Manager shall be responsible for the preparation, review and implementation of the inspection and test plans.

- (d) The responsibilities of the Quality Control Manager shall include supervision of quality inspection staff and ensuring that individuals have the required qualifications and experience to undertake the quality control requirements as set out in the Quality Control Plan.
- (e) [NOT USED]
- (f) The Quality Control Manager shall be independent of the Alstom's production and supervision staff and shall report directly to the Alstom Quality Director.

3.5 Quality Control Staff

- (a) Alstom's quality control staff shall be responsible for the inspection and testing requirements as set out in the Quality Control Plan and shall be trained to fully understand the Quality Control Plan, have access to quality documents, quality records, and issued for manufacturing drawings. Failure of quality control staff to show knowledge of the requirements and work shall be considered a Non-Conformance.
- (b) Alstom's quality control staff responsible for quality control inspection and testing shall be skilled and experienced in quality management.
- (c) The quality control staff shall be independent of the production and supervision staff and shall report directly to the Quality Control Manager.

**PART 4
TESTING**

4.1 Testing Requirements

- (a) [NOT USED]

4.2 Accreditation Standards

- (a) All on and off site calibrations, samples, tests and trials shall be carried out by laboratories that are duly accredited for the carrying out of such calibrations, samples, tests and trials.
- (b) Alstom may require that Construction Contractor request approval of Project Co to use other industry-recognized accreditations, in accordance with the Construction Contract and the corresponding rights under Section 4.2(c) of Schedule 11 of the Project Agreement.
- (c) [NOT USED]
- (d) [NOT USED]
- (e) [NOT USED]

4.3 Remedial Work

- (a) Alstom shall be responsible at its own cost for any remedial work required as a result of any failure to pass any calibration, sample, test or trial required in accordance with the Revenue Vehicle Supply Contract or any Quality Documentation or as a result of any laboratory not being duly accredited as required by Section 4.2(a) of this Schedule 11.

PART 5
QUALITY AUDITS AND MONITORING

5.1 Quality Audit Plans

- (a) Specific Requirements
- (i) Alstom shall provide a Quality Audit Plan relating to the Vehicle Supplier Activities to Construction Contractor within 60 days after Financial Close.
 - (ii) The Quality Audit Plan shall detail the Internal Quality Audits and the External Quality Audits that will be conducted by Alstom on its own processes and those of Alstom Parties, and the planned dates of such Quality Audits.
 - (iii) The Quality Audit Plan shall detail the Independent Quality Audits that will be conducted by the independent quality auditor on Alstom and Alstom Parties, and the planned dates of such Independent Quality Audits.
- (b) Alstom shall provide an updated Quality Audit Plan at twelve month intervals following submission of the initial Quality Audit Plan.

5.2 Alstom's Quality Audits

- (a) General
- (i) Alstom shall conduct Internal Quality Audits and External Quality Audits of its own processes and those of Alstom Parties in accordance with the requirements of this Attachment 11, and the Quality Documentation, including the Quality Audit Plan. These audits shall be conducted as agreed between Construction Contractor and Alstom. The purpose of Alstom's quality auditing process is to confirm that all activities comprising the Vehicle Supplier Activities are in compliance with the Project Quality Management Plan, to identify all Non-Conformances and necessary Corrective Actions and Preventive Actions and to facilitate continuous improvement.
 - (ii) Alstom shall notify Construction Contractor of all audits described in Section 5.2(a)(i) and the Independent Quality Audits. Project Co or Construction Contractor may choose to be present during such audits specific to the Project as a witness.
 - (iii) The Quality Director shall schedule Internal Quality Audits, External Quality Audits and Independent Quality Audits at least quarterly or as agreed upon between Alstom and Construction Contractor.
 - (iv) The Quality Director shall schedule a Closing Meeting in respect of each Internal Quality Audit, External Quality Audit and Independent Quality Audit in accordance with Section 5.9(a).

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- (v) Within 5 Business Days of the Closing Meeting in respect of each Internal Quality Audit, External Quality Audit and Independent Quality Audit (or such longer period of time agreed to by the Parties), Alstom shall document, or cause to be documented, the results of such Quality Audit in an audit report (each is a “**Quality Audit Report**”), and deliver a copy of such Quality Audit Report to Construction Contractor. With respect to each Independent Quality Audit, Alstom shall direct the independent quality auditor to deliver the Quality Audit Report to Project Co at the same time such Quality Audit Report is submitted to Construction Contractor.
 - (vi) Each Quality Audit Report shall, without limitation, set out (A) all of the Non-Conformances identified during the underlying Quality Audit, (B) all of the Corrective Actions and Preventive Actions to be implemented as a result of such Quality Audit, (C) subject to Section 5.2(a)(vii), all of the associated Corrective Action Dates and Preventive Action Dates, and (C) Alstom’s plan for implementing and completing all of the Corrective Actions and Preventive Actions by such Corrective Action Dates and Preventive Action Dates.
 - (vii) Each Corrective Action Date and Preventive Action Date set out in a Quality Audit Report shall be a date that is no later than 10 Business Days (or such longer period of time agreed to by the Parties) following the date the Quality Audit Report is delivered to Construction Contractor in accordance with Section 5.2(a)(v).
 - (viii) Alstom shall implement and complete the implementation of each Corrective Action and Preventive Action set out in a Quality Audit Report by the associated Corrective Action Date and Preventive Action Date set out in such Quality Audit Report.
 - (ix) [NOT USED]
 - (b) Specific Requirements
 - (i) The Quality Director shall schedule Internal Quality Audits, External Quality Audits and Independent Quality Audits to ensure that all key processes are reviewed at least quarterly or as agreed upon between Alstom and Construction Contractor.
 - (ii) Where necessary, follow-up audits shall be scheduled to ensure that identified Corrective Actions and Preventive Actions are carried out by the applicable Corrective Action Dates and Preventive Action Dates.
 - (iii) Internal Quality Audits, External Quality Audits and Independent Quality Audits shall be scheduled taking into account the status and importance of the processes being audited as well as the results of previous audits.
 - (iv) Alstom acknowledges and agrees that Construction Contractor reserves the right to conduct follow up reviews, acting reasonably, but with notice of not less than one Business Day to Alstom to determine if the Corrective Actions and Preventive Actions set out in Alstom’s Quality Audit Report have been implemented and completed.

5.3 Construction Contractor's Quality Audits

(a) General

- (i) Alstom acknowledges and agrees that Construction Contractor shall, following the submission of the Quality Documentation in accordance with this Attachment 11, review the Quality Documentation to identify the critical activities and processes described in the Project Quality Management Plan on which Alstom's auditing efforts and resources should be directed. Alstom acknowledges and agrees that Construction Contractor shall determine the frequency of auditing through regular and ongoing review of Alstom's performance and management systems. Procedures and activities relating to the Vehicle Supplier Activities that show good audit performance may have the frequency of auditing decreased, while those that show poor performance or increased risk of Non-Conformances may have the frequency of auditing increased. Without limiting Alstom's obligations under the Revenue Vehicle Supply Contract, Alstom shall provide and shall ensure Alstom Parties provide Construction Contractor's auditors with all documentation, records, access, facilities and assistance requested in connection with Construction Contractor's Quality Audit activities.
- (ii) Alstom shall provide Construction Contractor electronic access to all inspection and test plans, including supporting quality documentation, on a real time basis in order for Construction Contractor to undertake Quality Audits.
- (iii) Construction Contractor shall schedule a Closing Meeting in respect of each Quality Audit carried out by Construction Contractor pursuant to this Part 5 in accordance with Section 5.9(a).
- (iv) Within 5 Business Days of the Closing Meeting in respect of any Quality Audit carried out by Construction Contractor pursuant to this Part 5 (or such longer period of time agreed to by the Parties), Alstom shall (A) document, or cause to be documented, all of the Corrective Actions and Preventive Actions to be implemented as a result of such Quality Audit, all of the associated Corrective Action Dates and Preventive Action Dates, and Alstom's plan for implementing and completing all of the Corrective Actions and Preventive Actions by such Corrective Action Dates and Preventive Action Dates (each is a "**Corrective and Preventive Actions Plan**"), and (B) deliver a copy of such Corrective and Preventive Actions Plan to Construction Contractor.
- (v) Each Corrective Action Date and Preventive Action Date set out in a Corrective and Preventive Actions Plan shall be a date that is no later than 10 Business Days (or such longer period of time agreed to by the Parties) following the date the Corrective and Preventive Actions Plan is delivered to Construction Contractor in accordance with Section 5.3(a)(iv).
- (vi) Alstom shall implement and complete the implementation of each Corrective Action and Preventive Action set out in a Corrective and Preventive Actions Plan by the associated

Corrective Action Date and Preventive Action Date set out in such Corrective and Preventive Actions Plan.

- (vii) [NOT USED]
- (b) Specific Requirements
- (i) Where necessary, follow-up audits shall be scheduled to ensure that identified Corrective Actions and Preventive Actions are implemented and completed by the applicable Corrective Action Dates and Preventive Action Dates.
- (ii) Alstom acknowledges and agrees that Construction Contractor reserves the right to conduct follow up reviews, acting reasonably, but with notice of not less than one Business Day to Alstom, to determine if Alstom's Corrective and Preventive Actions plan has been implemented and completed.
- (c) Types of Quality Audits
- (i) Alstom acknowledges and agrees that the following two types of Quality Audits may be conducted by, or on behalf of, Construction Contractor in its discretion in accordance with the Project Quality Management Plan:
- (A) Surveillance Quality Audits – scheduled or unscheduled field audits conducted on a random basis or on specific areas of interest throughout the VSC Term. The objective of these surveillance audits is to monitor Alstom's activities involving the Vehicle Supplier Activities, including but not limited to workmanship, performance measures and general quality of materials. Alstom acknowledges and agrees that Construction Contractor shall, during the performance of Surveillance Quality Audits, record any observations and inform Alstom of any deficiencies that require further evaluation. Any noted deficiencies shall be resolved to the satisfaction of Construction Contractor through evidence of Alstom's deficiency evaluation findings, the Corrective Actions and Preventive Actions process set forth in Section 5.3, or the Non-Conformance process set forth in Part 7; and
- (B) Quality Management Audits – scheduled audits conducted at specific times to assess the performance of and compliance with the Project Quality Management Plan. Alstom acknowledges and agrees that Construction Contractor's lead auditor shall contact Alstom's Quality Director and confirm the scope of the audit. At the audit opening meeting with Alstom, Alstom acknowledges and agrees that Construction Contractor's lead auditor shall review the audit scope and objectives. Alstom acknowledges and agrees that Construction Contractor's auditors shall conduct audit interviews, and document any observations on prepared checklists. Alstom acknowledges and agrees that at the end of the audit interviews, Construction Contractor's lead auditor shall evaluate the observations and observed procedural or performance Non-Conformances that require Corrective Action or Preventive Action.

- (ii) Construction Contractor's Quality Audits may include scheduled and unscheduled External Quality Audits.
- (iii) [NOT USED]

5.4 Construction Contractor's Monitoring

- (a) In addition to carrying out any scheduled and unscheduled External Quality Audits of the Project Quality Management Plan (including audits relating to compliance with all Quality Documentation) as provided in Section 5.3, Alstom acknowledges and agrees that Construction Contractor may, at its discretion carry out Quality Audits to monitor and verify the operation of the Project Quality Management Plan by, inter alia, carrying out spot checks and making independent inspections and tests of any Vehicle Supplier Activities, or material including any Vehicle Supplier Activities, or material which fails any test or is suspected by Construction Contractor of not complying with the requirements of the Revenue Vehicle Supply Contract.

5.5 Deficient Quality Audits

- (a) If either:
 - (i) Construction Contractor reasonably believes that Alstom is failing to conduct Quality Audits of the Project Quality Management Plan as required by the Revenue Vehicle Supply Contract in any material respect or if such Quality Audits are not conducted in compliance with the ISO 9001:2015 Standard by personnel competent to conduct such Quality Audits; or
 - (ii) any auditing, monitoring or spot-checks of the Project Quality Management Plan reveals material deficiencies in the Project Quality Management Plan or the implementation thereof,

Alstom acknowledges and agrees that Construction Contractor may carry out increased levels of External Quality Audits (whether in number, duration or detail) of all or any aspect of the Project Quality Management Plan until such time as Construction Contractor is reasonably satisfied that none of the circumstances described in this Section 5.5(a) continue to exist.

5.6 Costs of Audits

- (a) If Project Co carries out any audit of the Project Quality Management Plan pursuant to its corresponding rights under the Construction Contract, and the results of such audit shows any Non-Conformance that materially interferes with the delivery of the Vehicle Supplier Activities in accordance with the Output Specifications and the Project Quality Management Plan, then without limiting any other rights and remedies of Construction Contractor, Alstom shall compensate Construction Contractor for all costs incurred by Project Co in carrying out Alstom's audit as due by Construction Contractor to Project Co under the Construction Contract.

5.7 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

5.8 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

5.9 Quality Audit Closing Meetings

(a) Within five Business Days of the completion of any Quality Audit (or such longer period of time agreed to by the Parties), Alstom and Construction Contractor shall carry out a closing meeting in respect of such Quality Audit (each is a “**Closing Meeting**”) in accordance with Good Industry Practice.

(b) The purpose of each Closing Meeting shall, without limitation, be for the auditor to present and for the Parties to discuss the Quality Audit and the findings and conclusions of the Quality Audit, including any Non-Conformances identified during the Quality Audit, any required or desired Corrective Actions and Preventive Actions, and their respective Corrective Action Dates and Preventive Action Dates.

PART 6
QUALITY DOCUMENTATION

6.1 Principles

- (a) The minimum requirements and principles which apply to the Quality Documentation are set out in Appendix C inclusive to this Attachment 11. The Project Quality Management Plan shall also comply with the requirements and principles of the ISO 9001:2015 Standard and this Attachment 11.

6.2 ISO Reference Documents

- (a) Without limiting the requirement of the Project Quality Management Plan to comply with the ISO 9001:2015 Standard, Alstom's Project Quality Management Plan shall also incorporate the requirements of the following reference documents:
- (i) ISO 9001:2015 Quality Management Systems – Requirements;
 - (ii) ISO 9000:2015 Quality Management Systems – Fundamentals and Vocabulary; and
 - (iii) ISO 19011:2011 Guidelines for Quality and/or Environmental Management Systems Auditing.

6.3 Quality Documentation Requirements

- (a) The minimum documentation requirements for the Project Quality Management Plan are:
- (i) the Project Quality Management Plan for all aspects of the Vehicle Supplier Activities as required pursuant to Section 2.6;
 - (ii) [NOT USED]
 - (iii) that the Quality Control Plan includes quality system procedures and process flow charts documenting who performs the Vehicle Supplier Activities, what they do, and what evidence shall be generated that they have performed quality related aspects of the Vehicle Supplier Activities correctly;
 - (iv) the Quality Audit Plan required pursuant to Section 5.1; and
 - (v) the Quality Records required pursuant to Section 6.8,

(together, the “**Quality Documentation**”).

6.4 Submission of Quality Documentation

- (a) If any Quality Documentation relies on or incorporates any supporting Quality Documentation then such supporting Quality Documentation or the relevant parts thereof shall (unless Alstom and

Construction Contractor otherwise agree) be submitted to Construction Contractor at the time that the relevant Quality Documentation or part thereof or change, addition or revision to the Quality Documentation is submitted in accordance with the Attachment 10 – Review Procedure and the contents of such supporting Quality Documentation shall be taken into account in the consideration, if required, of the relevant Quality Documentation or part thereof or change, addition or revision to the Quality Documentation in accordance with Attachment 10 – Review Procedure. Construction Contractor may require the amendment of any such supporting Quality Documentation to the extent necessary to enable the relevant Quality Documentation to satisfy the requirements of this Attachment 11.

6.5 Alstom Obligation to Update

- (a) Alstom shall be responsible for proactively updating its Project Quality Management Plan and all Quality Documentation from time to time, in accordance with the procedures set forth in the Revenue Vehicle Supply Contract, to ensure that the Project Quality Management Plan and all Quality Documentation are, and at all times remain, in full compliance with the ISO 9001:2015 Standard and the requirements of the Revenue Vehicle Supply Contract.

6.6 Changes to Quality Documentation

- (a) Alstom shall submit to Construction Contractor in accordance with Attachment 10 – Review Procedure any proposed changes or additions to or revisions of any of the Quality Documentation.
- (b) If Alstom does not propose any change, pursuant to Section 6.6(a), which Contracting Authority determines under the Project Agreement to be required then Contracting Authority may propose such change to Project Co who shall in turn propose it to Construction Contractor. Construction Contractor shall then propose such change to the Revenue Vehicle Supply Contract and it shall be dealt with as though it had been proposed by Alstom pursuant to Section 6.6(a) and shall not be treated as a VSC Variation. Any dispute between the Parties in respect of any such change shall be resolved in accordance with the VSC Dispute Resolution Procedure.

6.7 Amendment of Quality Documentation

- (a) If there is no unresolved objection by Construction Contractor under Attachment 10 – Review Procedure to a part of the Quality Documentation pursuant to Section 6.4 or to a change, addition or revision proposed pursuant to Section 6.6(a), then the Quality Documentation shall be amended to incorporate such part, change, addition or revision.

6.8 Quality Records

- (a) Alstom shall establish and maintain complete and accurate quality management records (the “Quality Records”).
- (b) The Quality Records shall provide objective evidence of conformance with all requirements of the Revenue Vehicle Supply Contract, compliance with the ISO 9001:2015 Standard and the effective operation of the Project Quality Management Plan.

6.9 Quality Management System Reports

- (a) For each month of the VSC Term, Alstom shall prepare, and submit to Construction Contractor by the 8th day of the following month, a comprehensive Project Quality Management Plan report.
- (b) Specific Requirements
- (i) Each monthly Project Quality Management Plan report shall address all quality management activities under the Project Quality Management Plan for that month and any outstanding quality issues from prior months.
- (ii) Each monthly Project Quality Management Plan report shall, at a minimum, include the following information separately identified for the Project Quality Management Plan:
- (A) a Non-Conformance Report log summarizing all Non-Conformance Reports opened, closed, or still open from the previous report, in the relevant month and providing the following: “date open”, “date closed”, “status” (open, pending, closed), “classification” (Minor Non-Conformance, Major Non-Conformance, Critical Non-Conformance), “disposition” (repair, rework, reject) and “description of status” which describes the current status of the Non-Conformance Report and if closed, when and how it was closed;
- (B) Corrective Action and Preventive Action logs providing details of the Corrective Actions and Preventive Actions performed during the month and their close-out status;
- (C) a summary of any inspection and testing activities conducted during the month;
- (D) Internal Quality Audits and External Quality Audits performed during the month and a four month look-ahead schedule for planned future Quality Audits;
- (E) any continual improvement initiatives taken during the month;
- (F) any other information required to be included in the monthly Project Quality Management Plan reports pursuant to any of the appendices to this Attachment 11 or the terms of the Project Quality Management Plan; and
- (G) any changes made to the Project Quality Management Plan or the Quality Documentation in compliance with the provisions of the Revenue Vehicle Supply Contract.
- (iii) Each monthly Project Quality Management Plan report shall include a summary of all environmental quality management activities during the applicable month.

6.10 Additional Information

- (a) Notwithstanding any other provision of this Attachment 11, Alstom shall provide Construction Contractor with such information as Construction Contractor may reasonably request from time to time to demonstrate compliance with this Attachment 11.

**PART 7
NON-CONFORMANCES**

7.1 Non-Conformance Reporting Process

- (a) Alstom acknowledges the provisions of Part 7.1 of Schedule 11 to the Project Agreement. During the VSC Term, Alstom shall assist the Construction Contractor in implementing the Non-Conformance Tracking System, preparing Non-Conformance Reports, investigations and responses that are related to the Vehicle Supplier Activities.

7.2 [NOT USED]

- (a) [NOT USED]

- (b) [NOT USED]

7.3 [NOT USED]

- (a) [NOT USED]

7.4 [NOT USED]

- (a) [NOT USED]

PART 8
[NOT USED]

8.1 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

PART 9
[NOT USED]

9.1 [NOT USED]

(a) [NOT USED]

9.2 [NOT USED]

(a) [NOT USED]

**APPENDIX A
[NOT USED]**

APPENDIX B

[NOT USED]

APPENDIX C
PROJECT QUALITY MANAGEMENT PLAN

C.1 Project Quality Management Plan

- (a) Alstom shall provide a comprehensive Project Quality Management Plan (“PQMP”) that describes how it intends to manage the Vehicle Supplier Activities in compliance with the ISO 9001:2015 Standard, its Quality Manual and Policy and the provisions of the Revenue Vehicle Supply Contract. The PQMP is to apply throughout the VSC Term.
- (b) The PQMP shall contain an organizational chart identifying Key VSC Individuals and other key personnel responsible for management and their relationship with the Alstom Quality Director. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for quality management and other disciplines such as design management, production .
- (c) The PQMP shall, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:
 - (i) Project management and audits;
 - (ii) inspection, testing and monitoring;
 - (iii) materials identification and traceability;
 - (iv) [NOT USED]
 - (v) quality assessment and procurement of Alstom Parties;
 - (vi) External Quality Audits of Alstom Parties responsible for construction;
 - (vii) Internal Quality Audits;
 - (viii) control of nonconforming product;
 - (ix) Corrective Actions, Preventive Actions and opportunities for improvement;
 - (x) document management; and
 - (xi) control of Quality Records.
- (d) The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.
- (e) Quality Control Plan

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- (i) Alstom shall provide an over-arching inspection and test plan (the “**Quality Control Plan**”) for all on-site and off-site inspection and test activities for Vehicle Supplier Activities performed by Alstom and the Alstom Parties.
 - (ii) The PQMP shall refer to the Quality Control Plan and the generic inspection and test sub-plans.
 - (iii) At the end of each week, Alstom shall issue a two-week look-ahead schedule (the “**ITP Two-Week Look-Ahead**”) for the upcoming two weeks period of Witness and Hold Points for the following:
 - (A) fabrication or manufacture of elements of the Revenue Vehicle Deliverables at a location that is not on the Lands;
 - (B) the first implementation of any Quality Control Plan at a particular site or by a particular Alstom Party responsible for Key Systems;
 - (C) any activities that will occur at, and between, the hours of 8:00 a.m. and 5:00 p.m., Monday to Friday; and
 - (D) any activities that will occur outside of hours 8:00 a.m. and 5:00 p.m. Monday to Friday and any activities occurring on Saturday, Sundays or Statutory Holidays.
 - (iv) Alstom shall alert Construction Contractor to any alterations to the timings in the ITP Two-Week Look-Ahead in a timely manner; for changes to timings that occur with less than 24 hours of notice, Alstom shall ensure the local site monitoring staff of Construction Contractor is aware of the change as soon and is provided an opportunity to be present for the Witness and Hold Points.
 - (f) [NOT USED]
 - (g) [NOT USED]

**APPENDIX D
[NOT USED]**

**APPENDIX E
[NOT USED]**

**APPENDIX F
[NOT USED]**

**APPENDIX G
[NOT USED]**

**APPENDIX H
[NOT USED]**

ATTACHMENT 14

VEHICLE TESTING AND COMMISSIONING

1. GENERAL REQUIREMENTS

1.1 General Requirements

- (a) This Attachment 14, among other things, defines the testing activity that shall be performed by Alstom on the Revenue Vehicles.

1.2 Definitions

- (a) The following definitions have the following meanings:
- (i) “**Acceptance Certificate**” means a certificate in the form set out in Appendix C to this Attachment 14 issued by Construction Contractor in accordance with the provisions of Section 2.3(a) (in respect of Revenue Vehicle Deliverables other than LRVs) and Section 3.1(i) (in respect of the LRVs).
 - (ii) “**Acceptance Test Plan**” has the meaning given in Section 6.2(a).
 - (iii) “**Alstom Subcontractor**” means a person carrying out Alstom’s obligations under the Revenue Vehicle Supply Contract, including a supplier of goods or services, whether retained directly or indirectly by Alstom (and, for the avoidance of doubt, excluding any person employed by Construction Contractor to carry out any of Construction Contractor’s obligations).
 - (iv) “**Burn-In Test**” has the meaning given in Section 7.1(b).
 - (v) “**Burn-In Track**” has the meaning given in Section 7.1(c);
 - (vi) “**Delivery Certificate**” means, in respect of each Revenue Vehicle Deliverable other than the LRVs, a certificate in the form set out in Appendix C to this Attachment 14 confirming that such Revenue Vehicle Deliverable has been Delivered.
 - (vii) “**Hurontario OMSF**” means the operations, maintenance and storage facility for the Hurontario LRT.
 - (viii) “**Key Systems**” means any of the following systems in respect of an LRV:
 - (A) brake system;
 - (B) door system;
 - (C) propulsion system;

- (D) truck frame;
 - (E) traction motors;
 - (F) couplers;
 - (G) pantograph;
 - (H) batteries;
 - (I) passenger information and communications
 - (J) HVAC;
 - (K) auxiliary power;
 - (L) carbody/underframe;
 - (M) load levelling system;
 - (N) seating;
 - (O) automatic passenger counting system;
 - (P) wheels; and
 - (Q) axles.
- (ix) “**Preliminary Acceptance**” has the meaning given in Section 2.2(a).
- (x) “**Preliminary Acceptance Certificate**” has the meaning given in Section 2.2(a).
- (xi) “**Project Managers**” means the Construction Contractor’s Project Manager and Alstom’s Project Manager.
- (xii) “**Readiness for Delivery**” has the meaning given in Section 3.2(b).
- (i) “**Readiness for Testing and Commissioning**” has the meaning given in Section 3.2(c).
- (ii) “**Revenue Service**” means an LRV being in passenger service and available for use by members of the public.
- (iii) “**Revenue Vehicle Acceptance Tests**” means those Serial Tests to be performed on each Revenue Vehicle to confirm, by simplified tests, design performance in an actual operational environment.

- (iv) “**Serial Test Plan**” has the meaning given in Section 5.2(a).
- (v) “**Serial Tests**” means, collectively, those tests listed and described in Appendix B to this Attachment 14, and “**Serial Test**” means any one of them.
- (vi) “**Testing and Commissioning**” means the testing and commissioning set forth in this Attachment 14 to be carried out in accordance with the provisions of the Revenue Vehicle Supply Contract.
- (vii) “**Type Test Plan**” has the meaning given in Section 8.3(a).
- (viii) “**Type Tests**” means, collectively, those tests listed and described in Appendix A to this Attachment 14, and “**Type Test**” means any one of them.
- (ix) “**Working Day**” means any day which is not a Saturday, a Sunday or a bank or public holiday in the province of Ontario.

2. DELIVERY

2.1 General Requirements

- (a) Each item of Revenue Vehicle Deliverable shall be delivered to and, if applicable, unloaded at the Hurontario OMSF by Alstom in accordance with the provisions of the Vehicle Delivery Schedule during normal working hours on a Working Day or such other time and date as the Project Managers may agree in writing. On Delivery of a Revenue Vehicle Deliverable other than an LRV, Construction Contractor shall issue to Alstom a Delivery Certificate.
- (b) The Parties acknowledge and agree that:
 - (i) for each of the Revenue Vehicle Deliverables risk of loss or damage or destruction thereto or thereof shall pass to Construction Contractor on Delivery; and
 - (ii) title to each of the Revenue Vehicle Deliverables shall pass to Metrolinx on Acceptance.

2.2 Delivery And Preliminary Acceptance Of Revenue Vehicles

- (a) On completion of the manufacture and assembly of each LRV to be delivered, including successful completion of the specified pre-delivery tests and other requirements as set out in this Attachment 14 and following a final successful in-plant inspection, as determined by Construction Contractor, acting reasonably, the Construction Contractor’s Project Manager shall issue a certificate (the “**Preliminary Acceptance Certificate**”) verifying the date on which the LRV has been so completed and is ready for delivery to the Hurontario OMSF (the “**Preliminary Acceptance**”).

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- (b) The Construction Contractor's Project Manager shall either issue the Preliminary Acceptance Certificate or reject the LRV within 5 Working Days of the final in-plant inspection referred to in Section 2.2(a).
- (c) Alstom shall give the Construction Contractor's Project Manager at least 7 days' advance notice of the date on which the pre-delivery tests on the LRV are to commence. If the Construction Contractor's Project Manager fails to respond requesting a different date (which different date shall be reasonably accommodated by Alstom but shall not, as determined by Alstom, acting reasonably, adversely impact the timing or any other aspects set out in the Vehicle Delivery Schedule) or fails to attend such testing, the tests may proceed in his absence and provided the LRVs pass such tests, the LRVs may be deemed ready for delivery and delivered, subject only to the Construction Contractor's Project Manager, for his records, being provided with copies of the test reports demonstrating that the LRV complies with the requirements of the Revenue Vehicle Supply Contract. The Construction Contractor's Project Manager may be accompanied by any person or may designate an alternate to perform the functions of the Construction Contractor's Project Manager hereunder.
- (d) Upon the issuance of a Preliminary Acceptance Certificate by the Construction Contractor's Project Manager, Alstom shall deliver the LRVs to the Hurontario OMSF.
- (e) Construction Contractor agrees that an LRV may be delivered with minor deficiencies (such that they do not affect the safety or operation of the vehicle) provided that the number of minor deficiencies are not excessive and are not of such nature as to frequently or regularly occur as determined by the Construction Contractor's Project Manager, which minor deficiencies shall be corrected as expeditiously as possible by Alstom at the Hurontario OMSF. Such minor deficiencies shall be itemized and listed on the Preliminary Acceptance Certificate prior to shipment along with a rectification date agreed between the Parties, and must be remedied by the agreed upon rectification date.
- (f) Following Delivery of each LRV, Alstom will carry out the post-Delivery Testing and Commissioning of the LRV in accordance with Article 3 of this Attachment 14 and the Vehicle Delivery Schedule.
- (g) Alstom shall be responsible for and shall bear all costs relating to each Delivery, including all:
- (i) carriage costs to the Hurontario OMSF (including, without limitation, costs relating to rigging, the provision of special transport vehicles, the cost of equipment necessary to move each LRV off such special transport vehicles, and any costs associated with preparing that LRV for transport and assembling it after transport);
 - (ii) insurance (in addition to the insurance required by pursuant to Part 2 Section 54 of the Revenue Vehicle Supply Contract);
 - (iii) import and export licences; and

- (iv) Tax (other than HST and other sales or value-added taxes payable on the applicable Purchase Price).
- (h) Construction Contractor shall be responsible following the delivery of an LRV to the Hurontario OMSF for any further transportation, storage, security, operation maintenance (and any maintenance testing associated therewith) of the LRVs, and all required interface infrastructure, save as expressly set out in the Revenue Vehicle Supply Contract.

2.3 Delivery and Acceptance of Revenue Vehicle Deliverables other than LRVs

- (a) The issue in relation to a Revenue Vehicle Deliverable other than the LRVs by Construction Contractor to Alstom of a Delivery Certificate shall constitute evidence only of the Delivery of the relevant Revenue Vehicle Deliverable and shall not constitute any acknowledgement or confirmation on the part of Construction Contractor that such Revenue Vehicle Deliverable complies with the provisions of the Specifications or is otherwise in accordance with the terms of the Revenue Vehicle Supply Contract. If, following inspection and assessment by the Construction Contractor's Project Manager using the relevant criteria specified in Attachment 10 – Review Procedure, the Construction Contractor's Project Manager, acting reasonably, is satisfied that a Revenue Vehicle Deliverable (other than an LRV to which Section 3.1(i) applies) is in accordance with the Revenue Vehicle Supply Contract and satisfies those criteria, the Construction Contractor's Project Manager shall issue the Acceptance Certificate in respect of that Revenue Vehicle Deliverable.

3. TESTING AND COMMISSIONING AND ACCEPTANCE OF LRVs

3.1 General Requirements

- (a) Alstom shall, in respect of each LRV, carry out Testing And Commissioning:
 - (i) in accordance with the provisions of the Vehicle Delivery Schedule (subject, for greater certainty, to Part 2 Section 39 of the Revenue Vehicle Supply Contract);
 - (ii) in accordance with the provisions of this Attachment 14;
 - (iii) to the satisfaction of the Construction Contractor's Project Manager, acting reasonably;
 - (iv) in accordance with the Project Quality Management Plan and the Quality Control Plan;
 - (v) liaising and co-operating with Project Co in all good faith in relation to the planning of Testing And Commissioning;
 - (vi) where applicable, adhere to the reasonable requirements of Project Co (including, with respect to matters of safety); and
 - (vii) so far as reasonably practicable so as to minimize disruption to the provision of Revenue Service.

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- (b) The Construction Contractor's Project Manager may during normal working hours, upon two (2) hours advance notice, have access to any location under Alstom's control where any Revenue Vehicle Equipment is being manufactured, prepared or tested for the purpose of inspecting the same and observing the conduct of any tests (including in-plant tests) in accordance with the Project Quality Management Plan and the Quality Control Plan. Alstom shall provide appropriate access and facilities at such locations for the Construction Contractor's Project Manager at no additional cost to Construction Contractor. In addition, Alstom shall use commercially reasonable efforts to have the Alstom Subcontractors of the Key Systems grant similar access rights to the Construction Contractor's Project Manager save and except that at least two (2) days' advance notice shall be required. The Construction Contractor's Project Manager shall exercise the access rights contemplated in this Section 3.1(b) so as not to delay or interfere with Alstom's and Alstom Subcontractors' respective production schedules.
- (c) Alstom shall update the Project Quality Management Plan and the Quality Control Plan from time to time, for approval by Construction Contractor, such approval not to be unreasonably withheld or delayed. Construction Contractor may review Alstom's compliance with the Project Quality Management Plan and/or the Quality Control Plan, and Alstom shall grant (and shall use commercially reasonable efforts to cause its Sub-contractors to grant) Construction Contractor and/or its nominees access to perform in-plant inspections on at least two (2) days' notice, at the Subcontractor's facilities. Alstom shall, at no additional cost to Construction Contractor, provide Construction Contractor's designated personnel with a private office (and supervised access to such office without notice) located in Alstom's assembly facility in Toronto, Ontario.
- (d) Alstom shall give the Construction Contractor's Project Manager at least 10 Working Days' notice of the performance of each test/activity of the Testing and Commissioning, providing details as to where and when such test/activity is to be carried out. If the Construction Contractor's Project Manager responds requesting a different date such different date shall be reasonably accommodated by Alstom but shall not, as determined by Alstom, acting reasonably, adversely impact the timing or any other aspects set out in the Vehicle Delivery Schedule.
- (e) Alstom shall carry out the tests/activities of the Testing and Commissioning at the times and places so notified and shall provide the Construction Contractor's Project Manager with copies of the results of each test/activity. If the Construction Contractor's Project Manager fails to respond requesting a different date (which request shall be reasonably accommodated by Alstom but shall not, as determined by Alstom, adversely impact the timing or any other aspects set out in the Vehicle Delivery Schedule) or fails to attend any test/activity, or if it is agreed that the Construction Contractor's Project Manager shall not attend, then, provided that Alstom has complied with the provisions of Section 3.1(d), Alstom may conduct the test/activity in the absence of the Construction Contractor's Project Manager and certified copies of the test/activity results shall be deemed to be a correct record thereof, in the absence of evidence to the contrary.
- (f) Subject to Section 3.2(a), Alstom shall provide all labour, materials and equipment necessary for the proper conduct of the Testing and Commissioning.

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- (g) If any LRV fails to pass any of the tests/activities of the Testing and Commissioning, Alstom shall undertake all required rectification work as soon as reasonably practicable and (unless the Construction Contractor's Project Manager dispenses with a repetition of the test/activity) shall repeat the test/activity following a further notice given in accordance with Section 3.1(d). The length of such notice may be less than the period specified in Section 3.1(d) if the respective Project Managers so agree.
- (h) As soon as any LRV, in the opinion of Alstom, substantially meets the requirements of the Revenue Vehicle Supply Contract and has satisfactorily completed the tests/activities of the Testing and Commissioning as are due to be completed before Acceptance and Alstom has provided the Construction Contractor's Project Manager with copies of all test/activity results in accordance with Section 3.1(e), Alstom's Project Manager shall so notify the Construction Contractor's Project Manager.
- (i) Within 10 Working Days after receipt of the notification provided in accordance with Section 3.1(h), the Construction Contractor's Project Manager shall:
- (i) where the relevant LRV satisfies all relevant requirements of the Revenue Vehicle Supply Contract issue an unqualified Acceptance Certificate in respect of that LRV; or
 - (ii) where the relevant LRV does not conform with the requirements of the Revenue Vehicle Supply Contract in any manner which may adversely affect its safety or, in any material manner which may adversely affect its performance, reliability or the travelling environment for passengers, or has not satisfactorily completed the relevant Testing and Commissioning, or is otherwise in material non-conformance with the requirements of the Revenue Vehicle Supply Contract, give notice to Alstom specifying the relevant non-conformance(s) and requiring its remedy; or
 - (iii) where the relevant LRV contains minor non-conformances from the Specifications (which do not materially affect its performance, reliability or the travelling environment for passengers), but otherwise satisfies the substantive requirements of the Revenue Vehicle Supply Contract and has completed the relevant Testing and Commissioning, issue an Acceptance Certificate in respect of such LRV, which shall be endorsed with such conditions relating to the further work, modifications, testing and/or commissioning to be carried out as the Construction Contractor's Project Manager considers (acting reasonably) will be required to remedy the minor non-conformances identified.

If the relevant LRV is brought into Revenue Service then an Acceptance Certificate shall be deemed to have been issued in respect of the relevant LRV at 00:01 on the day after the expiry of the period of 10 Working Days referred to in Section 3.1(j).

- (j) Alstom's Project Manager may:

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- (i) within 10 Working Days after receipt of a notice provided in accordance with Section 3.1(i)(ii), respond to Construction Contractor in writing, setting out in reasonable detail why it considers that either:
- (A) the relevant LRV is in compliance with the requirements of the Revenue Vehicle Supply Contract, such that an unqualified Acceptance Certificate should have been issued in accordance with Section 3.1(i)(i); or
 - (B) any non-conformance by the relevant LRV with the requirements of the Revenue Vehicle Supply Contract should be categorized as minor, so that an Acceptance Certificate, endorsed with appropriate conditions, should have been issued in accordance with Section 3.1(i)(iii); or
- (ii) within 10 Working Days after receipt of an endorsed Acceptance Certificate provided in accordance with Section 3.1(i)(iii), respond to the Construction Contractor's Project Manager, setting out in detail why it considers that either:
- (A) the relevant LRV is in full compliance with the requirements of the Revenue Vehicle Supply Contract, such that an unqualified Acceptance Certificate should have been issued in accordance with Section 3.1(i)(i); or
 - (B) any particular condition endorsed on the Acceptance Certificate is inappropriate.
- (k) Within 10 Working Days after receipt of Alstom's Project Manager's notice provided in accordance with Section 3.1(j), the Project Managers shall meet and consult in good faith in an attempt to come to an agreement in relation to the disputed matter and if they cannot, either party may refer the matter to dispute resolution in accordance with Part 2 Section 58 of the Revenue Vehicle Supply Contract.
- (l) Any notice served on the Construction Contractor's Project Manager by Alstom's Project Manager in accordance with Section 3.1(j) shall not:
- (i) in any way reduce or cancel Alstom's obligations to remedy any defects or complete any works or obligations under the Revenue Vehicle Supply Contract;
 - (ii) prejudice any remedy available to Construction Contractor in respect of defects in the Revenue Vehicle Deliverables or a failure by Alstom to complete all outstanding tests, works and/or obligations in accordance with the Revenue Vehicle Supply Contract; and
 - (iii) render ineffective any Acceptance Certificate issued by Construction Contractor or entitle Construction Contractor to revoke any such Acceptance Certificate.
- (m) Alstom shall organize and provide training programs to enable Construction Contractor to train its designated representatives to operate the applicable LRVs as specified in Specifications. Each training program shall include modules to be provided by Alstom for [REDACTED] trainees for the operation training and to [REDACTED] trainees for the maintenance training and will
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include the provision of such training materials and equipment as are reasonably necessary to permit Construction Contractor training instructors to undertake further training of employees and drivers. Alstom shall, at no additional cost, provide Construction Contractor with proper written training materials in both hard copy and electronic format. Construction Contractor shall be entitled, free of charge, to duplicate as many copies of such training materials as it reasonably requires for the purposes of training its employees and drivers.

3.2 Readiness for Delivery and Final Acceptance Testing

- (a) Construction Contractor shall, in relation to the applicable test/activity of the Testing and Commissioning, provide or procure in accordance with the Vehicle Delivery Schedule:
- (i) drivers;
 - (ii) for final Revenue Vehicle Acceptance Testing, access to tracks provided or identified by Construction Contractor; provided that in relation to dynamic qualification testing for the first LRV produced under the Revenue Vehicle Supply Contract, such dynamic qualification shall be performed on tracks provided or identified by Alstom and such tracks shall replicate the power supply and configuration in a sufficient manner as to provide test results to prove out the system(s) being tested;
 - (iii) appropriately qualified and experienced personnel for the purpose of managing any of the tests/activities of the Testing and Commissioning which are carried out on the relevant infrastructure; and
 - (iv) site facilities sufficient to allow Alstom to perform its Testing and Commissioning activities.
- (b) No later than the date set out for Readiness for Delivery in Table 3.1-1 of Attachment 15, and until all Revenue Vehicles have been delivered to the Hurontario OMSF and have achieved Acceptance Certificates, Construction Contractor shall provide a state of readiness of the Hurontario OMSF that will permit Construction Contractor to accept delivery of the Revenue Vehicles, by truck transport, and to carry out all responsibilities related to the receipt of delivery of the Revenue Vehicles in accordance with the requirements of this Attachment 14, including:
- (i) the provision, and ongoing maintenance, of all infrastructure, systems, resources, functionality, supplies, equipment, procedures and operating protocols in respect of the delivery and receipt of the Revenue Vehicles which shall require,
 - (A) the provision of a detailed notice to Alstom confirming that the infrastructure is ready to accommodate delivery and movement of the Revenue Vehicles;
 - (B) all infrastructure required for Alstom to carryout maintenance on Revenue Vehicles prior to such Revenue Vehicles achieving an Acceptance Certificate of the Revenue Vehicles, which shall require:

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- (I) provision for safe access to the roofs of the stored Revenue Vehicles;
 - (II) provision of portable heating elements to remove any humidity/condensation inside Revenue Vehicles;
 - (III) equipment to lift the Revenue Vehicles (including suitable foundations);
 - (IV) **[REDACTED]**;
 - (V) pest control;
 - (VI) **[REDACTED]**;
 - (VII) sufficient track space to shuttle the Revenue Vehicles into and out of storage on a first in, first out basis;
 - (VIII) provision for post-storage cleaning of the Revenue Vehicles;
 - (IX) access to Special Tools and test equipment that Alstom has provided to Construction Contractor for the Revenue Vehicles; and
 - (X) **[REDACTED]**;
- (C) the ability to carry out a safe and controlled movement of Revenue Vehicles that do not have power;
 - (D) radio communications systems and associated wayside infrastructure within the delivery area required during the delivery and vehicle movement process;
 - (E) procedures and protocols for the safe movement and storage of the Revenue Vehicles that have been Accepted by Construction Contractor;
 - (F) security provisions and protocols to secure and protect the Hurontario OMSF and the Revenue Vehicles;
 - (G) fire protection, lighting building power and associated safety appurtenances;
 - (H) the provision of an unloading area and secure storage area(s) for Alstom's equipment, spare parts and tools;
 - (I) the provision of a Revenue Vehicle unloading ramp;
 - (J) sufficient storage capacity, including track capacity, for Revenue Vehicles as they are delivered;

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- (K) the completion of Construction Contractor's training program (designed and delivered by Project Co) to ensure that a sufficient number of trained drivers and other Construction Contractor personnel are available, as required, to move the Revenue Vehicles within the Hurontario OMSF; and
 - (L) access to the Hurontario OMSF provided to Alstom, including the provision of facilities dedicated to Alstom as follows:
 - (I) an area at the Hurontario OMSF available to park two mobile trailers [REDACTED] for storage of equipment and supplies;
 - (II) secure storage facility within the Hurontario OMSF building (size to be requested by Alstom and mutually agreed upon by Construction Contractor and Alstom); and
 - (III) work and shop facilities within the Hurontario OMSF building (size to be requested by Alstom and mutually agreed upon by Construction Contractor and Alstom); and
 - (ii) sufficient track, infrastructure, and facilities to permit Construction Contractor to carry out all receipt, inspection and storage of Revenue Vehicles.
- (the foregoing being collectively "**Readiness for Delivery**")
- (c) No later than the date set out for Readiness for Testing and Commissioning in Table 3.1-1 of Attachment 15, and until all Revenue Vehicles have been delivered to the Hurontario OMSF and have achieved Acceptance Certificates, Construction Contractor shall provide a state of readiness of the Hurontario OMSF, test track and Burn-in Track that will permit Alstom to carry out all required static and dynamic Revenue Vehicle acceptance testing and commissioning, and all related responsibilities, in accordance with the requirements of this Attachment 14, including:
 - (i) the completion of all facilities and infrastructure required to permit Project Co to carry out post-delivery inspections of the Revenue Vehicles and all Pre-Substantial Completion Maintenance;
 - (ii) the provision of all facilities and infrastructure, including, for clarity, power and work shop facilities, required to permit the Revenue Vehicle Manufacturer to carry out post-delivery modifications of the Revenue Vehicles, including Revenue Vehicle roof access;
 - (iii) the provision of all Systems, resources, functionality, supplies, equipment and protocols in respect of Project Co's obligations related to the testing and commissioning of the Revenue Vehicles which shall require,
 - (A) all infrastructure (including the associated subsystem site acceptance testing to be completed for the relevant portion of the guideway) required to test and

commission the Revenue Vehicles and to accommodate safe movement of the Revenue Vehicles including,

- (I) traction power system;
 - (II) overhead catenary system
 - (III) voice and data radio communication systems (which for purposes of satisfying the definition of Readiness for Testing and Commissioning may be achieved with temporary systems);
 - (IV) emergency trip system;
 - (V) track;
 - (VI) fire protection;
 - (VII) lighting and emergency lighting sufficient to carry out all testing and commissioning; and track drainage; and
 - (VIII) any other infrastructure reasonably required to demonstrate that the infrastructure is ready to accommodate safe movement of the Revenue Vehicles;
- (B) procedures and protocols to ensure safe movement and storage of the Revenue Vehicles anywhere within the Hurontario OMSF, test track, Burn-in Track and any associated or connecting tracks;
- (C) security provisions and protocols to secure and protect the Revenue Vehicle movements on Hurontario OMSF, test track, Burn-in Track and any associated or connecting tracks;
- (D) track and pit space;
- (E) shop power for shop functions and shop power to power the Revenue Vehicle auxiliary electric system;
- (F) roof mezzanine access to Revenue Vehicles;
- (G) tools and equipment, including wheel truing capability, lifts, overhead crane to remove and install equipment and components on the Revenue Vehicle; and
- (H) Burn-in Track to complete all Testing and Commissioning requirements.

- (iv) Construction Contractor's delivery and completion of a training program to allow for a sufficient number of trained drivers and other Construction Contractor personnel, as required, to support the testing and commissioning of the Revenue Vehicles.

(the foregoing being collectively "Readiness for Testing and Commissioning")

4. TRAINING

4.1 General

- (a) Alstom shall organize and provide training programs to enable Construction Contractor to train its designated representatives to operate the applicable LRVs as specified in this Section 4. The training program shall include modules to be provided by Alstom for [REDACTED] trainees for the operation training and to [REDACTED] trainees for the maintenance training and will include the provision of such training materials and equipment as are reasonably necessary to permit Construction Contractor training instructors to undertake further training of employees and drivers. Alstom shall, at no additional cost, provide Construction Contractor with proper written training materials in both hard copy and electronic format. Construction Contractor shall be entitled, free of charge, to duplicate as many copies of such training materials as it reasonably requires for the purposes of training its employees and drivers

4.2 Operation Training

- (a) Pedagogical objectives:

- (i) For the operation training, the main objectives are the following:
- (A) to know the rolling stock architecture and main equipment localization;
 - (B) to be able to use the Manuals related to operation;
 - (C) to be able to use the rolling stock in normal and degraded modes; and
 - (D) to be able to train future drivers of the LRVs.

- (b) Operation training program

- (i) The operation training program is composed of 4 modules for 6 trainees. The duration of the operation training program is 10 days.
- (ii) The modules are set out in Table 3.2-1:

Table 3.2-1: Operation Training

| No | Designation | Contents | Number of Module | Number of Trainees | Duration |
|------------|-------------|------------|------------------|--------------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

- (iii) The operation training program does not include operation rules and specific associated components (e.g., signaling, radio system, track point system, etc.).

4.3 Maintenance Training

(a) Pedagogical objectives:

- (i) For the maintenance training, the main objectives are the following:
 - (A) to know the rolling stock architecture and main equipment localization;
 - (B) to know the LRVs maintenance concept;
 - (C) to be able to use the Manuals related to maintenance;
 - (D) to be able to use the Special Tools;
 - (E) to be able to conduct preventive maintenance (Periodic Maintenance); and
 - (F) to be able to conduct corrective maintenance (un-scheduled maintenance and troubleshooting).

(b) Maintenance training program

- (i) The maintenance training program is composed of [REDACTED] modules for [REDACTED] trainees. The modules are set out in Table 3.3-1:

Table 3.3-1: Maintenance Training

| No | Design-ation | Contents | Number of Trainees | Duration | Recommended Skill |
|------------|--------------|----------|--------------------|----------|-------------------|
| [REDACTED] | | | | | |

5. SERIAL TESTS

5.1 General Requirements

-
- (a) The Serial Tests shall be performed on each Revenue Vehicle to confirm, by simplified tests, the compliance to design performance.
 - (b) The Serial Tests shall not cover the interface and commissioning activities with the radio and automatic train control, as these subsystems and associated activities are the responsibility of Construction Contractor.
 - (c) The static Serial Tests for all Revenue Vehicles shall be performed in an Alstom facility located in Ontario. The dynamic Serial Tests shall be performed at the Hurontario LRT.

5.2 Serial Test Plan and Configuration Management

- (a) Alstom shall provide a written plan defining the scope of each Serial Test, the main Serial Test phases, the main validation infrastructure and tools (the “**Serial Test Plan**”).
- (b) Particular attention shall be paid to the configuration management in order to have consistent test plan, tools, vehicles hardware & software. Tools shall be managed to ensure proper calibration.

5.3 Serial Test Descriptions

- (a) Serial Tests include the following sorts of tests/activities:
 - (i) tests on current return circuits and protection circuits;
 - (ii) dielectric strength and insulation of all [REDACTED] and low voltage circuits;
 - (iii) geometric checks;
 - (iv) weighing;
 - (v) vehicle water tightness check;
 - (vi) driver's cab control devices tests;
 - (vii) exterior signalling and lighting circuits tests;
 - (viii) traction functional check;
 - (ix) braking functional check;
 - (x) door functional tests;
 - (xi) ventilation, cooling and heating systems functional test;
 - (xii) static converter tests;

- (xiii) tests relative to traction – braking circuits (tram empty with no load);
- (xiv) tests relative to brake system control unit and hydraulic circuits;
- (xv) tests of wheel flange lubrication fittings; and
- (xvi) Low speed traction/braking tests.

6. ACCEPTANCE TESTS

6.1 General Requirements

- (a) The Revenue Vehicle Acceptance Tests shall be performed on each Revenue Vehicle. The Revenue Vehicle Acceptance Tests shall be performed on the Burn-In Track.
- (b) The Revenue Vehicle Acceptance Tests shall not cover the interface and commissioning activities with respect to the Communications Equipment and Train Control System, as these subsystems and associated activities are the responsibility of Construction Contractor.
- (c) For clarity, completion of all Type Tests, Serial Tests (which include Burn-in Test), and Revenue Vehicle Acceptance Tests for each Revenue Vehicle are required prior to Acceptance of the subject Revenue Vehicle.

6.2 Acceptance Testing for Revenue Vehicle Produced in the Alstom Manufacturing Site

- (a) Alstom shall provide a written plan defining the scope of each Revenue Vehicle Acceptance Test, the main Revenue Vehicle Acceptance Test phases, the main validation infrastructure and instrumentation (the “**Acceptance Test Plan**”).

6.3 Acceptance Tests Description

- (a) The Revenue Vehicle Acceptance Tests are contained in the Serial Test listing (Appendix B to this Attachment 14), and include the following sorts of tests/activities:
 - (i) Low voltage and high voltage system start up;
 - (ii) Driver cab activation;
 - (iii) Door cycling tests;
 - (iv) Traction / Braking functional test; and
 - (v) Event recorder functional test.

7. BURN-IN TESTS

7.1 General Requirements

- (a) Upon successful completion of all Serial Tests, each Revenue Vehicle shall start the Burn-in Test.
- (b) Each Revenue Vehicle shall be run for [REDACTED] km and shall be free of the following faults:
- (i) rescue towing/pushing is required: severe vehicle impairment;
 - (ii) out-of-service to carhouse: vehicle impairment; or
 - (iii) in service to end of the line: minor vehicle impairment;
- with the only permissible fault being:
- (iv) in service to end of the day; no vehicle impairment.

(the “**Burn-In Test**”)

- (c) Burn-in Tests for each Revenue Vehicle shall be performed on a section of the track connected to the Hurontario OMSF via rail that:
- (i) meets all requirements to permit the Burn-In Test for each Revenue Vehicle, and, for clarity, includes all associated systems, facilities, and infrastructure, of any kind whatsoever, required to carry out such testing;
 - (ii) is at least [REDACTED] in length; and
 - (iii) is configured to simulate Revenue Service, to the extent required for the purpose of Testing and Commissioning of the Revenue Vehicle, excluding the interface and commissioning activities with respect to the Communications Equipment and Train Control System.

(the “**Burn-In Track**”).

- (d) The Burn-In Test shall simulate Revenue Service to the extent required for the purpose of Testing and Commissioning of the Revenue Vehicle, excluding the interface and commissioning activities with respect to the Communications Equipment and Train Control System, and include regular cycling of doors, public address announcements, and automatic passenger announcements, passenger emergency intercom operation, radio communication as well as any other feature normally encountered in Revenue Service.
- (e) In the event that the requirements of Section 7.1(b) are not achieved, the Burn-In Test shall be repeated until the requirement is met.

- (f) Upon successful completion of the Burn-In Test, the vehicle shall be considered fit for Revenue Service.

8. TYPE TESTS

8.1 General Requirements

- (a) The Type Tests shall demonstrate compliance of the Revenue Vehicle with the Revenue Vehicle Supply Contract. A Type Test shall prove that the specified contractual performance and functional requirement has been achieved.
- (b) Only the Type Tests identified in Appendix A to this Attachment with a YES under the column “Test performed for the Construction Contractor” shall be performed or re-performed for Construction Contractor. For the other tests, test procedures and reports will be transmitted to Construction Contractor for information purposes (see CDRLs list).
- (c) The Type Tests shall apply to components/subsystems for the Revenue Vehicles.

8.2 Quality Management

- (a) The Alstom Validation & Certification department shall incorporate in its quality system the requirements set forth in [REDACTED]. Alstom shall be organized according this quality system structures to provide Construction Contractor with objective and accurate testing results. Alstom shall ensure that at all times it is networked with Alstom accredited test laboratories.

8.3 Type Test Plan

- (a) Alstom shall provide a written plan defining the scope of each Type Test, the main Type Test phases, the main validation infrastructure and instrumentation (the “**Type Test Plan**”).
- (b) The Type Test Plan shall cover the full range of activities from component tests, to dynamic performance type tests. These tests shall be performed on new components, or new sub-systems on the Hurontario LRT, which have not been validated on Ottawa LRT or Finch West LRT.

9. COMMISSIONING

9.1 General Requirements

- (a) Alstom shall support and cooperate with the Construction Contractor in relation to all matters within the scope of or in connection with the Commissioning Program as the same pertains to the Vehicle Supplier Activities.
- (b) Alstom shall support and cooperate with the Construction Contractor in relation to the following tests:
- (i) signaling interface tests;

- (ii) signaling performance tests;
- (iii) radio system interface tests;
- (iv) radio operation test;
- (v) Revenue Vehicle to ground communication tests; and
- (vi) additional tests to validate the project specific load and operation conditions.

APPENDIX A

LIST OF TYPE AND VALIDATION TESTS

Table A.1-3: Vehicle Tests

| Vehicle Tests | Tests Performed for the Construction Contractor | Test Location | Comments |
|----------------------|--|----------------------|-----------------|
|----------------------|--|----------------------|-----------------|

[REDACTED]

Table A.1-4: Component Tests

[REDACTED]

APPENDIX B

LIST OF SERIAL TESTS

Table B.1-1: Vehicle Serial Tests

| Vehicle Serial Tests | Test Location |
|----------------------|---------------|
| [REDACTED] | |

APPENDIX C

ACCEPTANCE/DELIVERY CERTIFICATE

FORM OF ACCEPTANCE CERTIFICATE

To: [Supplier]

Date: []

Dear Sirs,

We refer to the Vehicle Supply Contract dated [] between Construction Contractor (**Construction Contractor**) and Alstom Transport Canada Inc. (the **Supplier**) (the “**Revenue Vehicle Supply Contract**”).

Words and expressions defined in the Revenue Vehicle Supply Contract shall, except where otherwise defined herein, bear the same meanings when used herein.

Construction Contractor hereby confirms [Acceptance / Preliminary Acceptance] *[Delete as appropriate]*, pursuant to Section [2.3(a)¹][3.1(j)²][2.2(a)³] *[Delete as appropriate]* of Attachment 14 of the following Revenue Vehicle Deliverable:

[Insert Deliverable details]

Date of Acceptance: on [date]

[In respect of LRV Acceptance or Preliminary Acceptance, include if applicable:]

[This Acceptance Certificate is issued in accordance with Section [3.1(j)(iii)⁴][2.2(e)⁵] of Attachment 14 of the Revenue Vehicle Supply Contract, and is endorsed with the following conditions for further work, modifications and/or testing which the Supplier shall be required to undertake in relation to the acceptance of the above referenced LRV, in accordance with the provisions of Section [3.1(j)(iii)⁶][2.2(e)⁷] of Attachment 14:

[Include details of necessary further work and period for rectification]]

Yours faithfully

Construction Contractor

Signature:

Name:

Title

¹ Use for Acceptance of Deliverables other than LRVs

² Use for Acceptance of LRVs

³ Use for Preliminary Acceptance of LRVs

⁴ Include for Acceptance

⁵ Include for Preliminary Acceptance

⁶ Include for Acceptance

⁷ Include for Preliminary Acceptance

FORM OF DELIVERY CERTIFICATE

To: [Supplier]

Date: []

Dear Sirs,

We refer to the Revenue Vehicle Supply Contract dated [] between Construction Contractor (**Construction Contractor**) and Alstom Transport Canada Inc. (the **Supplier**) (the “**Revenue Vehicle Supply Contract**”).

Words and expressions defined in the Revenue Vehicle Supply Contract shall, except where otherwise defined herein, bear the same meanings when used herein.

Construction Contractor hereby confirms that, at the time and on the date specified below, it took Delivery of the following Revenue Vehicle Deliverable:

[Insert details of relevant Deliverable (other than the LRVs)]

Time of Delivery: am/pm on *[date]*

Yours faithfully

Construction Contractor

Signature:

Name:

Title

**ATTACHMENT 15
OUTPUT SPECIFICATIONS**

[REDACTED]

ATTACHMENT 17

ENVIRONMENTAL OBLIGATIONS

ARTICLE 1. DEFINITIONS 1

1.1 Definitions..... 1

ARTICLE 2. GENERAL ENVIRONMENTAL PROVISIONS..... 3

2.1 Compliance with Environmental Reference Documents 3

2.2 Alstom Additional Environmental Obligations 4

2.3 Construction Contractor’s Environmental Obligations..... 4

2.4 Environmental Impacts and Changes to Environmental Assessments..... 4

2.5 Permits, Licences and Approvals..... 5

2.6 Notification to Construction Contractor 5

2.7 Inquiries to Governmental Authorities..... 5

2.8 Environmental Records..... 6

ARTICLE 3. ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY 7

3.1 [NOT USED] 7

3.2 [NOT USED] 7

3.3 [NOT USED] 7

3.4 [NOT USED] 7

3.5 [NOT USED] 7

3.6 [NOT USED] 7

3.7 [NOT USED] 7

3.8 Environmental Plans and Reports 7

3.9 Environmental Management System 7

3.10 Sustainability Plans and Sustainability Annual Report(s) 8

3.11 Other Required Environmental Plans and Reports 8

ARTICLE 4. CONTAMINATION AND EXCAVATED MATERIAL MANAGEMENT 9

4.1 Notification Requirements 9

4.2 Notification to Construction Contractor 9

4.3 Notification to Governmental Authorities 9

4.4 Soil and Excavated Materials Management Plan..... 9

4.5 Groundwater Management and Dewatering Plan 9

4.6 Management, Removal and Remediation 10

| | | |
|--|--|-----------|
| 4.7 | Hazardous Substances Brought onto the Lands | 10 |
| 4.8 | Spill Prevention and Response Plan..... | 11 |
| 4.9 | Designated Substances and Hazardous Materials Management Plan | 11 |
| ARTICLE 5. ELECTROMAGNETIC COMPATIBILITY AND INTERFERENCE (EMC/EMI) | | 12 |
| 5.1 | EMC/EMI | 12 |
| ARTICLE 6. ARCHAEOLOGY AND CULTURAL HERITAGE | | 13 |
| 6.1 | [NOT USED] | 13 |
| 6.2 | [NOT USED] | 13 |
| ARTICLE 7. AIR QUALITY..... | | 14 |
| 7.1 | Air Quality | 14 |
| ARTICLE 8. NOISE AND VIBRATION | | 15 |
| 8.1 | Noise and Vibration General..... | 15 |
| 8.2 | Noise and Vibration Reference Documents and Performance Limits | 16 |
| 8.3 | Noise and Vibration Control Plan..... | 17 |
| 8.4 | [NOT USED] | 17 |
| 8.5 | [NOT USED] | 17 |
| 8.6 | Assessment and Monitoring During the Construction Period..... | 17 |
| 8.7 | Noise and Vibration Commissioning..... | 17 |
| 8.8 | [NOT USED] | 17 |
| 8.9 | [NOT USED] | 17 |
| 8.10 | [NOT USED] | 17 |
| 8.11 | Inquiries to Governmental Authorities – Noise and Vibration | 18 |
| ARTICLE 9. OTHER ENVIRONMENTAL MATTERS | | 19 |
| 9.1 | [NOT USED] | 19 |
| 9.2 | [NOT USED] | 19 |
| 9.3 | [NOT USED] | 19 |
| 9.4 | [NOT USED] | 19 |
| 9.5 | [NOT USED] | 19 |
| 9.6 | [NOT USED] | 19 |
| 9.7 | [NOT USED] | 19 |
| ARTICLE 10. PERFORMANCE CRITERIA | | 20 |
| 10.1 | [NOT USED] | 20 |

10.2 [NOT USED] 20

ATTACHMENT 17

ENVIRONMENTAL OBLIGATIONS

ARTICLE 1. DEFINITIONS

1.1 Definitions

In this Attachment 17 – Environmental Obligations, unless the context indicates a contrary intention, the following terms shall have the following meanings:

- (a) “**Additional Environmental Reports**” has the meaning given in Section 3.8(a) of Schedule 17 – Environmental Obligations of the Project Agreement.
- (b) “**Additional Sensitive Receiver Performance Requirements**” has the meaning given in Section 8.4(d) of Schedule 17 – Environmental Obligations of the Project Agreement.
- (c) “**Air Quality Management Plan**” means an individual possessing the minimum requirements set out in Section 7.1(b) of Schedule 17 – Environmental Obligations of the Project Agreement.
- (d) “**Applicable Noise and Vibration Requirements**” has the meaning given in Section 8.1(a)(iv).
- (e) “**Archaeological Risk Management Plan**” has the meaning given in Section 6.1(a) of Schedule 17 – Environmental Obligations of the Project Agreement.
- (f) “**Change**” for the purposes of this Attachment 17, means a change to the Project that is inconsistent with the Environmental Assessments.
- (g) “**Designated Substances and Hazardous Materials Management Plan**” has the meaning given in Section 4.9 (a) of the Project Agreement.
- (h) “**Environmental Management System**” has the meaning given in Section 3.9(a) of Schedule 17 – Environmental Obligations of the Project Agreement.
- (i) “**Environmental Reference Documents**” has the meaning given in Section 2.1(a)(i).
- (j) “**Groundwater Management and Dewatering Plan**” has the meaning given in Section 4.5(a) of Schedule 17 – Environmental Obligations of the Project Agreement.
- (k) “**Noise and Vibration Control Plan**” has the meaning given in Section 8.3(a) of Schedule 17 – Environmental Obligations of the Project Agreement.
- (l) “**Noise and Vibration Performance Limits**” has the meaning given in Section 8.2(b) of Schedule 17 – Environmental Obligations of the Project Agreement.
- (m) “**Receiver**” is a stationary position at which noise or vibration levels are specified.

- (n) “**Sensitive Receiver**” means a specific property or location susceptible to impact from noise or vibration at which noise and vibration limits are set out in the Applicable Noise and Vibration Requirements and Additional Sensitive Receiver Performance Requirements.
- (o) “**Soil and Excavated Material Management Plan**” has the meaning given in Section 4.4(a) of Schedule 17 – Environmental Obligations of the Project Agreement.
- (p) “**Spill Prevention and Response Plan**” has the meaning given in Section 4.8(a) of Schedule 17 – Environmental Obligations of the Project Agreement.
- (q) “**Sustainability Plans**” has the meaning given in Section 3.10(a) of Schedule 17 – Environmental Obligations of the Project Agreement.
- (r) “**Tree Inventory Report**” means Hurontario LRT Tree Inventory Report prepared by AECOM and dated December 29, 2017.

ARTICLE 2. GENERAL ENVIRONMENTAL PROVISIONS**2.1 Compliance with Environmental Reference Documents**

- (a) Without limitation to any of Alstom's rights, remedies or obligations under the Revenue Vehicle Supply Contract, including Part 2 Section 16.2 of the Revenue Vehicle Supply Contract:
- (i) Alstom shall, at all times, perform the Vehicle Supplier Activities in accordance with Environmental Law and in a manner that ensures that Construction Contractor is in compliance with all obligations in respect of or relating to the Vehicle Supplier Activities as set forth in each of the following documents (and in any Additional Environmental Report) to the extent that such obligations are identified by Construction Contractor via written notice to Alstom (which written notice shall expressly set forth in detail the applicable provisions and associated obligations requiring compliance) no less than 60 days prior to Alstom commencing performance thereof:
- (A) the Environmental Assessments;
 - (B) the Cultural Heritage Reports;
 - (C) the Archaeological Reports;
 - (D) the Phase 1 and Phase 2 Environmental Site Assessment Reports;
 - (E) the Designated Substances Survey Reports;
 - (F) the ELC/SAR Memo;
 - (G) the Tree Inventory Report;
 - (H) any of the Environmental Approvals; and
 - (I) the Metrolinx Interim Heritage Management Protocol
- (collectively, the "**Environmental Reference Documents**"); and
- (ii) Alstom acknowledges the provisions of Section 2.1(a)(ii) of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (b) Alstom acknowledges the provisions of Section 2.1(b) of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

2.2 Alstom Additional Environmental Obligations

- (a) Throughout the VSC Term, Alstom shall manage all environmental matters and perform all environmental obligations associated with the Vehicle Supplier Activities in accordance with the Revenue Vehicle Supply Contract, including this Attachment 17. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract. Alstom's duty to cooperate contained throughout this Attachment 17 shall extend only to the extent that the corresponding obligations of the Construction Contractor are or could be impacted by Alstom's activities on the Lands.

2.3 Construction Contractor's Environmental Obligations

- (a) Alstom acknowledges the provisions of Section 2.3 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract.

2.4 Environmental Impacts and Changes to Environmental Assessments

- (a) Alstom shall carry out the Vehicle Supplier Activities in such a manner so that the environmental impacts of the Vehicle Supplier Activities are at all times within the magnitude and extent permitted by the Environmental Reference Documents, Additional Environmental Reports and Environmental Law. If it is not possible to contain the environmental impact of any aspect of the Vehicle Supplier Activities to what is permitted in the Environmental Reference Documents, Additional Environmental Reports and Environmental Law, Alstom shall comply with any amendment procedures required to amend the applicable Environmental Reference Document or Additional Environmental Report in accordance with Environmental Law, at Alstom's sole cost and expense. Prior to contacting any Governmental Authority in respect of an amendment to any Environmental Reference Document or Additional Environmental Report contemplated by this Section 2.4(a), Alstom shall prepare and submit a proposal setting out the reason for and details regarding the amendment to the Construction Contractor Representative in accordance with the Construction Contract and corresponding obligations under Schedule 10 – Review Procedure of the Project Agreement and Alstom shall obtain the written consent of Construction Contractor.
- (b) [NOT USED]
- (c) Any amendment to the Environmental Reference Documents or Additional Environmental Reports required as a result of the Vehicle Supplier Activities or any other action or inaction of Alstom, shall be at the sole cost and risk of Alstom whether or not the application for such change to the Environmental Reference Document or Additional Environmental Report is made by Construction Contractor or Alstom.
- (d) For greater clarity, with respect to any Environmental Assessments or amendments thereto that may be required as a result of Section 2.4(a), Section 2.4(b), or Section 2.4(c), Metrolinx shall be the "proponent" under the legislation and Alstom shall be Metrolinx's agent in preparing any such amendment, which shall be submitted to the Construction Contractor Representative in

accordance in accordance with the Construction Contract and corresponding obligations under Schedule 10 – Review Procedure of the Project Agreement.

2.5 Permits, Licences and Approvals

- (a) Alstom acknowledges that Part 2 Section 9.4 of the Revenue Vehicle Supply Contract applies to all Permits, Licences and Approvals necessary to fulfill Alstom's environmental obligations under the Revenue Vehicle Supply Contract, including those relating to the amendment of any Environmental Reference Document or Additional Environmental Report.

2.6 Notification to Construction Contractor

- (a) Alstom shall immediately notify the Construction Contractor Representative of Alstom's knowledge of:
- (i) any charge, order, investigation or notice of violation or non-compliance issued under any Environmental Law,
 - (A) [NOT USED]
 - (B) against Alstom or any Alstom Party relating to the performance of the Vehicle Supplier Activities.
 - (C) [NOT USED]
 - (ii) any actual or potential notice, claim, action or other proceeding brought by any person under any Environmental Law,
 - (A) [NOT USED]
 - (B) against Alstom or any Alstom Party relating to the performance of the Vehicle Supplier Activities.
 - (C) [NOT USED]

2.7 Inquiries to Governmental Authorities

- (a) Alstom acknowledges the provisions of Section 2.7 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract.

2.8 Environmental Records

- (a) Alstom shall maintain all documents and records relating to environmental matters in respect of or relating to the Vehicle Supplier Activities in accordance with Attachment 26 – Record Provisions.

ARTICLE 3. ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY

3.1 [NOT USED]

[NOT USED]

3.2 [NOT USED]

[NOT USED]

3.3 [NOT USED]

[NOT USED]

3.4 [NOT USED]

[NOT USED]

3.5 [NOT USED]

[NOT USED]

3.6 [NOT USED]

[NOT USED]

3.7 [NOT USED]

[NOT USED]

3.8 Environmental Plans and Reports

- (a) Alstom acknowledges the provisions of Section 3.8 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract.

3.9 Environmental Management System

- (a) Alstom acknowledges the provisions of Section 3.9 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract, and shall comply with the Environmental Management System to the extent that obligations thereunder are in respect of or relating to the Vehicle Supplier Activities and such obligations are identified by Construction Contractor via written notice to Alstom (which written notice shall expressly set forth in detail the

applicable provisions and associated obligations requiring compliance) no less than 60 days prior to Alstom commencing performance thereof.

3.10 Sustainability Plans and Sustainability Annual Report(s)

- (a) Alstom acknowledges the provisions of Section 3.10 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract, and shall comply with the Sustainability Plans to the extent that obligations thereunder are in respect of or relating to the Vehicle Supplier Activities and such obligations are identified by Construction Contractor via written notice to Alstom (which written notice shall expressly set forth in detail the applicable provisions and associated obligations requiring compliance) no less than 60 days prior to Alstom commencing performance thereof.

3.11 Other Required Environmental Plans and Reports

- (a) Alstom acknowledges the provisions of Section 3.11 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract.

ARTICLE 4. CONTAMINATION AND EXCAVATED MATERIAL MANAGEMENT**4.1 Notification Requirements**

- (a) Without limiting the notification obligations of Alstom in Part 2 Section 16.2 of the Revenue Vehicle Supply Contract in respect of Contamination, Alstom shall comply with any notifications requirements detailed in Sections 4.2 and 4.3.

4.2 Notification to Construction Contractor

- (a) Alstom shall immediately notify the Construction Contractor Representative of:
- (i) the discovery of Contamination;
 - (ii) any discharge of any Hazardous Substance on, under, at, from or to the Lands, together with full particulars of such discharge, including the time and location of the discharge, Governmental Authorities notified, estimated damages suffered or caused and remedial action taken; and
 - (iii) any notice, claim, action or other proceeding by any person against Alstom or any Alstom Party or otherwise relating to the performance of the Vehicle Supplier Activities concerning any actual or alleged discharge of a Hazardous Substance.

4.3 Notification to Governmental Authorities

- (a) In addition to notifying the Construction Contractor Representative in accordance with Section 4.2(a), where required by Applicable Law, Alstom shall notify the relevant Governmental Authority of any Discharge of a Hazardous Substance on, under, at, from or to the Lands.

4.4 Soil and Excavated Materials Management Plan

- (a) Alstom acknowledges the provisions of Section 4.4 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract, and shall comply with the Soil and Excavated Materials Management Plan to the extent that obligations thereunder are in respect of or relating to the Vehicle Supplier Activities and such obligations are identified by Construction Contractor via written notice to Alstom (which written notice shall expressly set forth in detail the applicable provisions and associated obligations requiring compliance) no less than 60 days prior to Alstom commencing performance thereof.

4.5 Groundwater Management and Dewatering Plan

- (a) Alstom acknowledges the provisions of Section 4.5 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the

Construction Contractor as set out in the Construction Contract, and shall comply with the Groundwater Management and Dewatering Plan to the extent that obligations thereunder are in respect of or relating to the Vehicle Supplier Activities and such obligations are identified by Construction Contractor via written notice to Alstom (which written notice shall expressly set forth in detail the applicable provisions and associated obligations requiring compliance) no less than 60 days prior to Alstom commencing performance thereof.

4.6 Management, Removal and Remediation

- (a) Upon the discovery of any Contamination that Alstom is responsible for pursuant to Part 2 Section 16.2 of the Revenue Vehicle Supply Contract, unless otherwise instructed by Construction Contractor, Alstom shall, within the timeframe specified by Construction Contractor:
- (i) prepare and submit to the Construction Contractor Representative, in accordance with the Construction Contract and corresponding obligations under Schedule 10 – Review Procedure of the Project Agreement, a plan for the remediation or removal of the Contamination in accordance with Applicable Law or as otherwise required under the Revenue Vehicle Supply Contract; or
 - (ii) confirm, in writing to the Construction Contractor Representative, that no such remediation or removal of the Contamination is required by Applicable Law.
- (b) Construction Contractor shall implement the plan submitted in accordance with Section 4.6(a)(ii) in accordance with the Construction Contract and corresponding obligations under Schedule 10 – Review Procedure of the Project Agreement.
- (c) The Parties acknowledge that Alstom’s reasonable costs and expenses associated with the preparation of the plan set out in Section 4.6(a)(ii), shall be borne by Alstom.
- (d) [NOT USED]
- (e) [NOT USED]

4.7 Hazardous Substances Brought onto the Lands

- (a) Notwithstanding any Applicable Law or any other provision in the Revenue Vehicle Supply Contract to the contrary, all products and materials, goods or other items which in their natural, original state, or through environmental transformation or degradation contain Hazardous Substances, that are brought onto the Lands by Alstom or any Alstom Party or any person for whom Alstom is at law responsible shall be and remain the sole and exclusive property and responsibility of Alstom and shall not become the property or responsibility of Construction Contractor, notwithstanding their incorporation into or affixation to the Lands, the Project Co System Infrastructure or New Third Party Infrastructure and notwithstanding any termination or expiration of the Revenue Vehicle Supply Contract. Any resulting Contamination at the Lands in respect of any Hazardous Substances so brought onto the Lands and the remediation and/or

removal thereof and the cost of such remediation and/or removal shall be the sole responsibility of Alstom.

4.8 Spill Prevention and Response Plan

- (a) Alstom acknowledges the provisions of Section 4.8 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract, and shall comply with the Spill Prevention and Response Plan to the extent that obligations thereunder are in respect of or relating to the Vehicle Supplier Activities and such obligations are identified by Construction Contractor via written notice to Alstom (which written notice shall expressly set forth in detail the applicable provisions and associated obligations requiring compliance) no less than 60 days prior to Alstom commencing performance thereof.

4.9 Designated Substances and Hazardous Materials Management Plan

- (a) Alstom acknowledges the provisions of Section 4.9 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract, and shall comply with the Designated Substances and Hazardous Materials Management Plan to the extent that obligations thereunder are in respect of or relating to the Vehicle Supplier Activities and such obligations are identified by Construction Contractor via written notice to Alstom (which written notice shall expressly set forth in detail the applicable provisions and associated obligations requiring compliance) no less than 60 days prior to Alstom commencing performance thereof.

**ARTICLE 5. ELECTROMAGNETIC COMPATIBILITY AND INTERFERENCE
(EMC/EMI)**

5.1 EMC/EMI

- (a) Alstom acknowledges the provisions of Section 5.1 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract.

ARTICLE 6. ARCHAEOLOGY AND CULTURAL HERITAGE

6.1 [NOT USED]

(a) [NOT USED]

6.2 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

ARTICLE 7. AIR QUALITY

7.1 Air Quality

- (a) During the Vehicle Supplier Activities, Alstom shall:
- (i) comply with all Environmental Approvals, Applicable Law, Permits, Licences and Approvals and Good Industry Practice for air quality management when designing, purchasing and operating equipment;
 - (ii) implement measures for managing Project-related air emissions including fugitive dust and odour; and
 - (iii) meet all applicable regulatory requirements and standards regarding air emissions including fugitive dust and odour.
- (b) Alstom acknowledges the provisions of Section 7.1(b) of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract, and shall comply with the Air Quality Management Plan to the extent that obligations thereunder are in respect of or relating to the Vehicle Supplier Activities and such obligations are identified by Construction Contractor via written notice to Alstom (which written notice shall expressly set forth in detail the applicable provisions and associated obligations requiring compliance) no less than 60 days prior to Alstom commencing performance thereof.

ARTICLE 8. NOISE AND VIBRATION**8.1 Noise and Vibration General**

- (a) Without limiting any other provision in the Revenue Vehicle Supply Contract or this Article 8, Alstom shall carry out the Vehicle Supplier Activities in compliance with the noise and vibration obligations set out in this Article 8, and in this regard shall:
- (i) [NOT USED]
 - (ii) implement measures to manage the adverse effects of ground-borne and air-borne noise and vibration by minimizing and mitigating noise and vibration generated as a result of the Vehicle Supplier Activities;
 - (iii) [NOT USED]
 - (iv) comply with:
 - (A) Applicable Law relating to ground-borne and air-borne noise or vibration;
 - (B) Sections 8.1(c) and 8.1(d);
 - (C) the Noise and Vibration Performance Limits to the extent that obligations thereunder are in respect of or relating to the Vehicle Supplier Activities and such obligations are identified by Construction Contractor via written notice to Alstom (which written notice shall expressly set forth in detail the applicable provisions and associated obligations requiring compliance) no less than 60 days prior to Alstom commencing performance thereof;
 - (D) the Noise and Vibration Reference Documents to the extent that obligations thereunder are in respect of or relating to the Vehicle Supplier Activities and such obligations are identified by Construction Contractor via written notice to Alstom (which written notice shall expressly set forth in detail the applicable provisions and associated obligations requiring compliance) no less than 60 days prior to Alstom commencing performance thereof; and
 - (E) Good Industry Practice for ground-borne and air-borne noise and vibration in respect of all Vehicle Supplier Activities, where a noise and vibration limit is not otherwise identified in Sections 8.1(a)(iv)(A), 8.1(a)(iv)(B), 8.1(a)(iv)(C), or 8.1(a)(iv)(D) and such Good Industry Practice is identified by Construction Contractor via written notice to Alstom (which written notice shall expressly set forth in detail the applicable provisions and associated obligations requiring compliance) no less than 60 days prior to Alstom commencing performance thereof,

(collectively, the “**Applicable Noise and Vibration Requirements**”);

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- (v) design, construct, procure, and operate equipment in accordance with this Article 8;
 - (vi) utilize construction equipment that minimizes ground-borne and air-borne noise and vibration;
 - (vii) carry out the Vehicle Supplier Activities so that the operation of the Project Co System Infrastructure and New Third Party Infrastructure complies with Applicable Noise and Vibration Requirements;
 - (viii) carry out the Vehicle Supplier Activities so that the operation of the Project Co System Infrastructure and New Third Party Infrastructure complies with the Additional Sensitive Receiver Performance Requirements for individual Sensitive Receivers, as applicable; and
 - (ix) carry out the Vehicle Supplier Activities to ensure that the noise and vibration generated by the operation of the Revenue Vehicles along the Hurontario LRT is in compliance with Applicable Noise and Vibration Requirements, provided that such operation of the Revenue Vehicles is conducted in accordance with LRT Rules and Standard Operating Procedures.
- (b) The Parties acknowledge and agree that if there is any conflict between any ground-borne or air-borne noise or vibration limit, requirement, standard or criterion contained in one or more item of Applicable Noise and Vibration Requirements, the more stringent ground-borne or air-borne noise or vibration limit, requirement, standard or criterion shall apply.
 - (c) While performing the Vehicle Supplier Activities on or at the Metrolinx Lands, Alstom shall comply with City of Mississauga Noise Control By-Law 360-79.
 - (d) While performing the Vehicle Supplier Activities on or at the Metrolinx Lands, Alstom shall comply with City of Brampton Noise By-law 93-84, as amended by By-laws 225-84, 41-95, 253-98, 202-2006, and 188-2014.
 - (e) Alstom acknowledges the provisions of Section 8.1(e) of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

8.2 Noise and Vibration Reference Documents and Performance Limits

- (a) Alstom acknowledges the provisions of Section 8.2 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract, and shall comply with the Noise and Vibration Reference Documents to the extent that obligations thereunder are in respect of or relating to the Vehicle Supplier Activities and such obligations are identified by Construction Contractor via written notice to Alstom (which written notice shall expressly set forth in detail the applicable provisions and associated obligations requiring compliance) no less than 60 days prior to Alstom commencing performance thereof.

8.3 Noise and Vibration Control Plan

- (a) Alstom acknowledges the provisions of Section 8.3 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract, and shall comply with the Noise and Vibration Control Plan to the extent that such obligations thereunder are in respect of or relating to the Vehicle Supplier Activities and such obligations are identified by Construction Contractor via written notice to Alstom (which written notice shall expressly set forth in detail the applicable provisions and associated obligations requiring compliance) no less than 60 days prior to Alstom providing such cooperation or commencing performance thereof, as applicable.

8.4 [NOT USED]

[NOT USED]

8.5 [NOT USED]

[NOT USED]

8.6 Assessment and Monitoring During the Construction Period

- (a) Alstom acknowledges the provisions of Section 8.6 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract.

8.7 Noise and Vibration Commissioning

- (a) Alstom acknowledges the provisions of Section 8.7 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract.

8.8 [NOT USED]

[NOT USED]

8.9 [NOT USED]

[NOT USED]

8.10 [NOT USED]

[NOT USED]

8.11 Inquiries to Governmental Authorities – Noise and Vibration

- (a) Alstom acknowledges the provisions of Section 8.11 of Schedule 17 of the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply. Alstom shall cooperate with Construction Contractor in relation to any corresponding obligations of the Construction Contractor as set out in the Construction Contract.

ARTICLE 9. OTHER ENVIRONMENTAL MATTERS

9.1 [NOT USED]

[NOT USED]

9.2 [NOT USED]

[NOT USED]

9.3 [NOT USED]

[NOT USED]

9.4 [NOT USED]

[NOT USED]

9.5 [NOT USED]

[NOT USED]

9.6 [NOT USED]

[NOT USED]

9.7 [NOT USED]

[NOT USED]

ARTICLE 10. PERFORMANCE CRITERIA

10.1 [NOT USED]

[NOT USED]

10.2 [NOT USED]

[NOT USED]

ATTACHMENT 20

CONTRACT PRICE AND PAYMENT

- 1.1 The price for each Revenue Vehicle Deliverable is set out in the pricing form attached as Appendix A hereto (the “**Pricing Form**”) and such price is exclusive of HST.
- 1.2 Each Milestone Payment is set out in Appendix B attached hereto.
- 1.3 Provided that all Revenue Vehicle Deliverables (including without limitation, the Revenue Vehicles) which are required to have been provided in accordance with this Revenue Vehicle Supply Contract have, at the relevant time, been duly delivered in accordance with this Revenue Vehicle Supply Contract, Construction Contractor shall pay Alstom the Contract Price as set forth in this Revenue Vehicle Supply Contract.
- 1.4 Construction Contractor may set off any amount owed to it by Alstom under the Revenue Vehicle Supply Contract and which has become due and payable against any amount due to Alstom under the Revenue Vehicle Supply Contract.
- 1.5 Construction Contractor may, at its discretion, at any time make a Milestone Payment to Alstom notwithstanding that the corresponding Milestone has not been achieved. Any payment made pursuant to this Section 1.5 shall not in any way reduce or cancel Alstom's obligations under the Revenue Vehicle Supply Contract or prejudice any remedy available to Construction Contractor where the relevant Revenue Vehicle Deliverable has not been designed, manufactured and/or supplied in accordance with the Revenue Vehicle Supply Contract.
- 1.6 [Intentionally Deleted]

Appendix A – Pricing Form

| Pricing Form | | | |
|--------------|------|------|---|
| Quantity | Unit | Item | Contract Price & Aggregate LRV Purchase Price |
| Vehicle | | | |
| [REDACTED] | | | |

Appendix B – Milestone Payments**[REDACTED]**

If, within 14 days following the date indicated by Alstom in writing to Construction Contractor as being the date on which Alstom is first ready to perform the applicable burn-in test as required under the Revenue Vehicle Supply Contract, the burn-in test as further described in Attachment 14 – Vehicle Testing and Commissioning and Attachment 15 – Output Specifications of the Revenue Vehicle Supply Contract cannot be performed as the light rail test track is not ready to be used for the burn-in tests (excluding for greater certainty any failure to complete such test that is caused by Alstom), then Construction Contractor shall be required to make an additional payment in an amount equal to the interest accumulated on a daily basis (at rate equal to the Prime Rate) on the amount of such **[REDACTED]** payment from the date such **[REDACTED]** payment would have been due until the date the applicable LRV shall have obtained Acceptance (such amount the “**Additional Interest Amount**”). The Additional Interest Amount shall not be payable until the applicable LRVs have obtained Acceptance, it being understood that such payment shall not relieve Alstom of its obligations to proceed promptly with the burn-in test once the requirements set forth in Attachment 14 – Vehicle Testing and Commissioning and Attachment 15 – Output Specifications of the Revenue Vehicle Supply Contract have been met.

ATTACHMENT 22

VSC VARIATION PROCEDURE

1. VARIATIONS

1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) “**Alstom Initiated VSC Variation**” has the meaning given in Section 2.1(a).
 - (ii) “**Alstom-CC Variation**” means any variation to the Specification or the Protocol, or any obligation of either party under the Revenue Vehicle Supply Contract, made or issued in accordance with Section 4 of this Attachment 22 – Variation Procedure, to the extent that such variation does not constitute a VSC Variation.
 - (iii) “**Alstom-CC Variation Directive**” means an Alstom-CC Variation made pursuant to, and in accordance with, Section 4.6.
 - (iv) “**Contracting Authority Work**” has the meaning given in Section 1.7(a).
 - (v) “**Direct Cost**” has the meaning given in Appendix A of this Attachment 22.
 - (vi) “**Overhead and Profit**” has the meaning given in Appendix B of this Attachment 22.
 - (vii) “**Protocol**” means the procedure for Acceptance and Delivery on the specified dates, as amended from time to time by agreement between the parties in writing to reflect any Delay Event or Alstom-CC Variation granted in accordance with the Revenue Vehicle Supply Contract.
 - (viii) “**VSC Estimate**” has the meaning given in Section 1.4(a).
 - (ix) “**VSC Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Vehicle Supplier Activities, including in relation to the whole or any part of the Vehicle Supplier Activities initiated by Construction Contractor in response to Contracting Authority requiring Project Co to carry out and implement a Variation under Section 1.2 of Schedule 22 – Variation Procedure to the Project Agreement, and Project Co exercising a corresponding right under the Construction Contract.
 - (x) “**VSC Variation Confirmation**” means a written confirmation of the VSC Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a VSC Dispute in respect thereof.

- (xi) “**VSC Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the Construction Contractor Representative directing Alstom to immediately proceed with a VSC Variation pending the finalization and issuance of a VSC Variation Confirmation for that VSC Variation.
- (xii) “**VSC Variation Enquiry**” has the meaning given in Section 1.3(a).
- (xiii) “**VSC Variation Notice**” has the meaning given in Section 2.1(a).

1.2 General

- (a) If, pursuant to the Construction Contract, Project Co has the corresponding right under Section 1.2 of Schedule 22 – Variation Procedure to the Project Agreement, from time to time to propose and require Construction Contractor to carry out and implement a Variation, which is in whole or in part a VSC Variation, Alstom shall carry out and implement such VSC Variation and such VSC Variation shall be subject to the provisions of this Attachment 22.
- (b) Alstom acknowledges and agrees that the provisions of Section 1.2(b) of Schedule 22 – Variation Procedure to the Project Agreement shall apply to Attachment 22 and in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (c) The only payment or compensation payable by Construction Contractor to Alstom in connection with any VSC Variation shall be the sum of the following amounts:
 - (i) the Direct Cost of such VSC Variation; plus
 - (ii) Overhead and Profit.
- (d) Alstom will not be entitled to any payment, compensation or extension of time for a VSC Variation except to the extent provided in a VSC Confirmation or VSC Variation Directive in this Attachment 22 and the provisions of Part 1 relating to Equivalent Project Relief.
- (e) Alstom shall attend and shall cause any relevant Alstom Parties to attend any meetings requested by Construction Contractor from time to time to discuss the implementation of any VSC Variation or VSC Variations generally, including with respect to the administration and pricing of VSC Variations.

1.3 VSC Variation Enquiry

- (a) If Project Co delivers to Construction Contractor a corresponding Variation Enquiry pursuant to the Construction Contract with respect to the Vehicle Supplier Activities, Construction Contractor shall forthwith deliver such Variation Enquiry to Alstom (a “**VSC Variation Enquiry**”).
- (b) A VSC Variation Enquiry shall:

- (i) describe the proposed VSC Variation with sufficient detail to enable Alstom to prepare a detailed VSC Estimate;
- (ii) [NOT USED]; and
- (iii) provide a preliminary indication of any provisions of the Revenue Vehicle Supply Contract that will be affected by the proposed VSC Variation, as well as the amendments to the Revenue Vehicle Supply Contract that may be necessary to accommodate the VSC Variation.

1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 7 Business Days after receipt of a VSC Variation Enquiry, or such longer period as the Parties agree acting reasonably, Alstom shall deliver its detailed breakdown, estimate and other information (a “VSC Estimate”) prepared in accordance with and meeting the requirements of Section 1.6 and in the form prescribed by Construction Contractor, acting reasonably.

1.5 Alstom Grounds for Objection

- (a) Subject to the provisions of Part 1 relating to Equivalent Project Relief, Alstom may only refuse to deliver a VSC Estimate if Alstom can demonstrate to Construction Contractor’s satisfaction, acting reasonably, within the period for delivery of a VSC Estimate specified or as agreed pursuant to Section 1.4(a), that:
 - (i) the implementation of the VSC Variation would materially and adversely affect the health and safety of any person;
 - (ii) the implementation of the VSC Variation would:
 - (A) infringe Applicable Law;
 - (B) cause to be revoked any of the existing VSC Permits, Licences and Approvals required by Alstom to perform the Vehicle Supplier Activities, and any such VSC Permit, Licence and Approval is not, using commercially reasonable efforts, capable of amendment or renewal; or
 - (C) require any new VSC Permits, Licences and Approvals for Alstom to perform the Vehicle Supplier Activities, any of which will not, using commercially reasonable efforts by Alstom or Construction Contractor, as applicable, be obtainable;
 - (iii) the proposed VSC Variation would have a material and adverse effect on the performance of the Vehicle Supplier Activities (except those Vehicle Supplier Activities which have been specified as requiring amendment in the VSC Variation Enquiry) in a manner not

compensated pursuant to this Attachment 22 or, subject to the provisions of Part 1 relating to Equivalent Project Relief, the Construction Contract;

- (iv) the implementation of the VSC Variation would be a departure from Good Industry Practice;
 - (v) Contracting Authority does not have the legal power or capacity to require the VSC Variation to be implemented or to do anything envisaged by this Attachment 22 in respect of or in connection with the VSC Variation;
 - (vi) the VSC Variation would, if implemented, result in a change in the essential nature of the Revenue Vehicles or the Revenue Vehicle Equipment;
 - (vii) the VSC Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Alstom to prepare a VSC Estimate in respect thereof);
 - (viii) in the case of a VSC Variation relating to the Vehicle Supplier Activities, the time specified for commencement and/or completion of such VSC Variation cannot be achieved by Alstom despite commercially reasonable efforts; or
 - (ix) [NOT USED].
- (b) With respect to any VSC Variation, if Alstom refuses to provide a VSC Estimate on the grounds set out in Section 1.5(a), Alstom shall, within the period for delivery of a VSC Estimate specified or agreed pursuant to Section 1.4(a), deliver to Construction Contractor a written Notice specifying the grounds upon which Alstom rejects the VSC Variation and the details thereof.

1.6 Estimate Requirements

- (a) Unless Construction Contractor in a VSC Variation Enquiry requires only specified limited information, each VSC Estimate shall include the following information, sufficient to demonstrate to Construction Contractor's reasonable satisfaction:
- (i) the steps Alstom will take to implement the VSC Variation, in such detail as is reasonable and appropriate in the circumstances, including a schedule, work breakdown structure, contact list, description of roles and responsibilities and an organizational structure chart;
 - (ii) any impact on the Expected Delivery Dates, and any other schedule impact on the provision of Revenue Vehicle Deliverables and completion of the Vehicle Supplier Activities (including for certainty, any impact of the proposed VSC Variation after taking into consideration other VSC Variations);

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- (iii) any impact on the performance of the Vehicle Supplier Activities and any other impact on the Revenue Vehicle Supply Contract (including for certainty, any impact of the proposed VSC Variation after taking into consideration other VSC Variations);
 - (iv) [NOT USED];
 - (v) any amendments to the Revenue Vehicle Supply Contract or any other Vehicle Supplier Project Document required as a consequence of the VSC Variation, the objective of such amendments being to ensure that (save for the obligation of Construction Contractor to make payments or altered payments in respect of the VSC Variation, subject to the provisions of Part 1 relating to Equivalent Project Relief) the Parties are in no better and no worse position in relation to the Vehicle Supplier Activities than they would have been in if the VSC 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 VSC Variation;
 - (vi) any impact on the Direct Cost of Alstom and each Alstom Party, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Alstom's cash flows from incurring, reducing or avoiding such costs (whether financed by Alstom or Construction Contractor); and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Alstom's cash flows from incurring, reducing or avoiding such costs;
 - (vii) [NOT USED]
 - (viii) [NOT USED]
 - (ix) [NOT USED]
 - (x) any VSC Permits, Licences and Approvals that must be obtained or amended for the VSC Variation to be implemented, and the latest date by which Alstom must receive a VSC Variation Confirmation and Alstom or Construction Contractor, as applicable, must obtain or amend such VSC Permits, Licences and Approvals for the VSC Estimate to remain valid; and
 - (xi) the proposed methods of certification of any construction or operational aspect of the Vehicle Supplier Activities required by the VSC Variation if not covered by the provisions of the Construction Contract or Revenue Vehicle Supply Contract,
- in each case, together with such supporting information and justification as is reasonably required.
- (b) In preparing its VSC Estimate, Alstom shall include sufficient information to demonstrate to Construction Contractor's satisfaction, acting reasonably, that:

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- (i) subject to Sections 1.6(c) and 1.6(e), Alstom has used commercially reasonable efforts itself or has used commercially reasonable efforts to oblige each Alstom Party (or will oblige any Alstom Party not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders, to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) except as otherwise set out herein, all costs of Alstom and each Alstom Party are limited to the Direct Cost of the proposed VSC Variation described in Appendix A of this Attachment 22;
 - (iii) Overhead and Profit has been calculated in accordance with Appendix B of this Attachment 22;
 - (iv) all costs of providing Vehicle Supplier Activities, including Capital Expenditures, reflect:
 - (A) labour and material rates applying in the open market to providers of services similar to those required by the VSC Variation;
 - (B) any and all changes in the Output Specifications arising out of the proposed VSC 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 in performing the Vehicle Supplier Activities (including for any Capital Expenditure) and that all such expenditures, including all applicable amounts for overhead and profit anticipated to be incurred but for the VSC Variation, have been taken into account and applied in total to reduce the amount of all costs; and
 - (vi) Alstom has mitigated or will mitigate the impact of the VSC Variation, including on the Vehicle Delivery Schedule, the performance of the Vehicle Supplier Activities and the Direct Cost to be incurred.
- (c) Alstom will use commercially reasonable efforts to obtain the best value for money when procuring and/or delivering any work, services, supplies, materials or equipment required by the VSC Variation, including, at the request of Construction Contractor, applying, using and comparing applicable industry benchmarks or benchmarking data for such purposes, and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Alstom would apply if all costs incurred were to its own account without recourse to Construction Contractor, including using commercially reasonable efforts to mitigate such costs. Also, to the extent the procurement or delivery of any work, services, supplies, materials or equipment required by the VSC Variation results in costs or expenses that are in excess of those costs or expenses established by industry benchmarks or benchmarking data, Alstom shall provide Construction Contractor sufficient information and analysis to demonstrate to Construction Contractor's
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satisfaction, acting reasonably, that such excess costs or expenses are reasonable and justified in the context of the subject VSC Variation. Alstom shall not be obligated to disclose any Sensitive Information to Construction Contractor when preparing its VSC Estimate and justifying Direct Cost.

- (d) As soon as practicable and in any event not more than 10 Business Days after Construction Contractor receives a VSC Estimate, Alstom and Construction Contractor shall discuss and seek to agree on the VSC Estimate, including any amendments to the VSC Estimate agreed to by the Parties. Alstom agrees to, and shall be entitled to, participate and assist Construction Contractor in any discussions that Construction Contractor may have with Project Co pursuant to the Construction Contract relating to any VSC Variation.
- (e) If, pursuant to Section 1.6(e) of Schedule 22 - Variation Procedure to the Project Agreement or corresponding requirements under the Construction Contract, or by Applicable Law or any policy applicable to Contracting Authority, Construction Contractor would be required to competitively tender any contract in relation to the proposed VSC Variation, Construction Contractor may require Alstom to seek and evaluate competitive tenders for the proposed VSC Variation, including in accordance with such Applicable Law or policy applicable to Contracting Authority.
- (f) If, pursuant to Section 1.6(f) of Schedule 22 - Variation Procedure to the Project Agreement or corresponding requirements under the Construction Contract, Project Co modifies a Variation Enquiry in writing at any time for any matter relating to the VSC Estimate or the discussions in relation thereto, Construction Contractor shall make corresponding amendments to the VSC Variation Enquiry and Alstom as soon as practicable and in any event not more than 6 Business Days after receipt of such modification, notify Construction Contractor in writing of any consequential changes to the VSC Estimate.
- (g) If the Parties cannot agree on a VSC Estimate, then any Dispute will be determined in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement and the provisions of Part 1 relating to Equivalent Project Relief shall apply.

1.7 Project Co's and Construction Contractor's Right to Perform

- (a) [NOT USED]
- (b) Alstom acknowledges the provisions of Section 1.7(b) of Schedule 22 – Variation Procedure of the Project Agreement and the provisions of Part 1 relating to Equivalent Project Relief shall apply.

1.8 Variation Confirmation

- (a) If, pursuant to Section 1.8(a) of Schedule 22 – Variation Procedure to the Project Agreement or corresponding obligations under the Construction Contract, Construction Contractor receives from Project Co either a notice of withdrawal of a Variation Enquiry or a Variation Confirmation, Construction Contractor shall, if the Variation Enquiry or Variation Confirmation relates to a VSC

Variation, forward a copy of the same to Alstom within 2 Business Days. If Project Co withdraws the Variation Enquiry pursuant to Schedule 22 – Variation Procedure to the Project Agreement or corresponding rights under the Construction Contract, then the corresponding VSC Variation Enquiry shall be deemed to have been withdrawn under the Revenue Vehicle Supply Contract.

- (b) To the extent Contracting Authority issues a Variation Confirmation pursuant to Schedule 22 – Variation Procedure to the Project Agreement and the subject Estimate incorporates therein the VSC Estimate, then such Variation Confirmation shall be deemed a confirmation of the VSC Variation by Project Co and Construction Contractor.
- (c) Alstom acknowledges that if, pursuant to Section 1.8(b) of Schedule 22 – Variation Procedure to the Project Agreement or corresponding requirements under the Construction Contract, Project Co does not issue a Variation Confirmation within the 15 Business Days period described in Section 1.8(a) of Schedule 22 – Variation Procedure to the Project Agreement, then, the corresponding VSC Variation Enquiry shall be deemed to have been withdrawn.
- (d) Subject to the provisions of Part 1 relating to Equivalent Project Relief, upon the VSC Variation Confirmation being issued, and if applicable upon Construction Contractor obtaining financing pursuant to the Construction Contract and corresponding requirements under Section 1.9 of Schedule 22 – Variation Procedure to Project Agreement:
 - (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend the Revenue Vehicle Supply Contract necessary to implement the VSC Variation, including in respect of any required extension of time and including provision for payment as provided in Section 1.10;
 - (ii) Alstom shall implement the VSC Variation as provided for in the VSC Variation Confirmation, and subject to amendments pursuant to Section 1.8(d)(i), all provisions of the Revenue Vehicle Supply Contract applicable to the Vehicle Supplier Activities shall apply to the Vehicle Supplier Activities as thereby changed and no additional claim with respect to the VSC Variation or VSC Variation Confirmation will be considered; and
 - (iii) payment in relation to the VSC Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.8(d)(i).
- (e) If a corresponding Variation Confirmation is subject to Construction Contractor obtaining financing pursuant to Section 1.9 of Schedule 22 – Variation Procedure to the Project Agreement or corresponding requirements under the Construction Contract, then the VSC Variation Confirmation shall not be effective until:
 - (i) Construction Contractor obtains such financing acceptable to Project Co in its sole discretion; or

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- (ii) Project Co in its sole discretion waives such requirement pursuant to the Construction Contract.
- (f) Except as hereinafter provided, until a VSC Variation Confirmation has been issued, Alstom acknowledges that:
- (i) the determination of whether or not to proceed with a VSC Variation shall at all times be at the Contracting Authority's sole discretion, despite any CC Dispute, any VSC Dispute or any other matter in relation to a VSC Variation being referred to or determined in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement or Attachment 27 – VSC Dispute Resolution Procedure; and
 - (ii) Contracting Authority may at any time withdraw a Variation Enquiry under the Project Agreement, and in turn Project Co shall withdraw a corresponding Variation Enquiry under the Construction Contract and, subject to Section 1.8(g), and the provisions of Part 1 relating to Equivalent Project Relief, Construction Contractor shall not be obligated to Alstom in respect of a VSC Variation until such time as Project Co in its sole discretion issues a corresponding Variation Confirmation and, if applicable, Construction Contractor has obtained the financing requested by Project Co or Project Co has waived such requirement,

provided that Contracting Authority (and thus Project Co) may not withdraw or be deemed to have withdrawn a corresponding Variation Enquiry under the Construction Contract in circumstances where Contracting Authority (and thus Project Co) is obligated pursuant to the terms of the Project Agreement or the Construction Contract to proceed with a Variation. In such circumstances Attachment 27 – VSC Dispute Resolution Procedure shall be employed to finalize any aspects of the VSC Variation which cannot otherwise be agreed to in accordance with the terms of this Attachment 22.

- (g) Subject to the provisions of Part 1 relating to Equivalent Project Relief, if a VSC Variation Confirmation is not issued for any Variation Enquiry in respect of which Alstom has used commercially reasonable efforts to produce a fair and accurate VSC Estimate, Alstom shall be reimbursed for the Direct Cost reasonably and properly incurred by Alstom in connection with preparing the VSC Estimate.

1.9 Financing

- (a) Alstom acknowledges and agrees that the provisions of Section 1.9(a) of Schedule 22 – Variation Procedure to the Project Agreement shall apply to this Attachment 22.
- (b) Alstom acknowledges and agrees that the provisions of Section 1.9(b) of Schedule 22 – Variation Procedure to the Project Agreement shall apply to this Attachment 22 and agrees that if a corresponding Variation Confirmation ceases to have effect under the Construction Contract, the

corresponding VSC Variation Confirmation shall cease to have effect under the Revenue Vehicle Supply Contract.

- (c) Alstom acknowledges and agrees that the provisions of Section 1.9(c) of Schedule 22 – Variation Procedure to the Project Agreement shall apply to this Attachment 22 and agrees that if a corresponding Variation Confirmation ceases to have effect under the Construction Contract, the corresponding VSC Variation Confirmation shall cease to have effect under the Revenue Vehicle Supply Contract.
- (d) Alstom acknowledges and agrees that the provisions of Section 1.9(d) of Schedule 22 – Variation Procedure to the Project Agreement shall apply to this Attachment 22 and agrees that if a corresponding Variation Confirmation ceases to have effect under the Construction Contract, the corresponding VSC Variation Confirmation shall cease to have effect under the Revenue Vehicle Supply Contract.
- (e) If, with respect to a VSC Variation, Project Co waives the requirement for financing or if Construction Contractor has no further obligation to obtain financing for the VSC Variation pursuant to the Construction Contract, then Alstom shall proceed with the VSC Variation as set out in the VSC Variation Confirmation in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

1.10 Payment

- (a) Alstom acknowledges and agrees that the provisions of Section 1.10(a) of Schedule 22 – Variation Procedure to the Project Agreement shall apply to this Attachment 22 and in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (b) Alstom acknowledges and agrees that the provisions of Section 1.10(b) of Schedule 22 – Variation Procedure to the Project Agreement shall apply to this Attachment 22 and in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (c) Alstom acknowledges and agrees that the provisions of Section 1.10(c) of Schedule 22 – Variation Procedure to the Project Agreement shall apply to this Attachment 22 and in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (d) Alstom shall not be entitled to any amount in excess of the amount of the VSC Estimate confirmed in the VSC Variation Confirmation.
- (e) Alstom may issue an Equivalent Claim Notice with respect to Construction Contractor's rights under Section 1.10(e) of Schedule 22 – Variation Procedure to the Project Agreement or corresponding right under the Construction Contract, following which Construction Contractor shall provide to Alstom, forthwith following receipt thereof from Project Co, copies of any consent or approval issued by Contracting Authority or Project Co in connection with a proposed Variation.

1.11 Reduction in Vehicle Supplier Activities

- (a) Alstom acknowledges the provisions of Section 1.11(a) of Schedule 22 – Variation Procedure to the Project Agreement and corresponding requirements under the Construction Contract and agrees that, if a VSC Variation involves any reduction in the Vehicle Supplier Activities which results in savings in Direct Cost to Alstom, Alstom’s entitlement to Equivalent Project Relief shall reduce accordingly and such savings may, where Project Co has made a corresponding reduction in compensation payable to Construction Contractor under the Construction Contract result in a reduction in the compensation payable to Alstom under the Revenue Vehicle Supply Contract in an amount equal to such reduction in Direct Cost.

1.12 Variation Directive

- (a) Alstom acknowledges and agrees that the provisions of Section 1.12 of Schedule 22 – Variation Procedure to the Project Agreement and corresponding obligations under the Construction Contract shall apply to this Attachment 22 and, in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply, and agrees that, if Construction Contractor receives a Variation Directive from Project Co under the Construction Contract that originated from Contracting Authority and relates to the Vehicle Supplier Activities, Construction Contractor shall forthwith deliver such Variation Directive to Alstom and, following receipt of the corresponding VSC Variation Directive:
- (i) Alstom shall promptly proceed with the VSC Variation; and
- (ii) Alstom acknowledges and agrees that the provisions of Section 1.12(b) of Schedule 22 – Variation Procedure to the Project Agreement shall apply to this Attachment 22 with respect to which the provisions of Part 1 relating to Equivalent Project Relief shall apply.

- (b) [NOT USED]

2. VSC VARIATIONS**2.1 General**

- (a) Construction Contractor shall not initiate any VSC Variation without the prior written consent of Alstom, such consent not to be unreasonably withheld, and Alstom shall provide Construction Contractor with any assistance reasonably requested by Construction Contractor in initiating and developing a VSC Variation initiated by Construction Contractor. In addition, Alstom may deliver to Construction Contractor a written notice (a “**VSC Variation Notice**”) for each VSC Variation proposed by Alstom (an “**Alstom Initiated VSC Variation**”).

2.2 VSC Variation Notice

- (a) A VSC Variation Notice shall:

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- (i) set out details of the proposed Alstom Initiated VSC Variation in sufficient detail to enable Project Co and Construction Contractor to evaluate it in full;
 - (ii) specify Alstom's reasons for proposing the VSC Variation;
 - (iii) indicate all reasonably foreseeable implications of the VSC Variation, including whether there are any costs or cost savings to Project Co or Construction Contractor; and
 - (iv) indicate the latest date by which a VSC Variation Enquiry must be issued.
- (b) Alstom acknowledges and agrees that the provisions of Section 2.2(b) Schedule 22 – Variation Procedure to the Project Agreement shall apply to this Attachment 22 with respect to which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
- (c) Alstom shall, promptly upon demand, reimburse Construction Contractor for all costs and expenses reasonably incurred by Construction Contractor in connection with Construction Contractor's consideration of any VSC Variation proposed by Alstom pursuant to Section 2 of this Attachment 22, including, without limitation, legal and consulting fees and disbursements, regardless of whether (i) a VSC Variation Enquiry or VSC Estimate is issued in connection therewith or (ii) such VSC Variation is implemented.
- (d) Construction Contractor shall submit the VSC Variation Notice to Project Co pursuant to the Construction Contract, provided that if a proposed Alstom Initiated VSC Variation that is the subject of a VSC Variation Notice would reasonably be expected to have an adverse effect on Construction Contractor, including on its costs or liabilities, or the maintenance, rehabilitation, operation, or any short or long term cost associated with any of the Project Co Services, then Construction Contractor shall be under no obligation to submit the VSC Variation Notice to Project Co. Notwithstanding the foregoing, if Alstom agrees to compensate Construction Contractor for any Direct Loss in relation to such adverse effect, Construction Contractor shall submit the VSC Variation Notice to Project Co, unless the Alstom Initiated VSC Variation is reasonably likely to create a material risk to human health or safety or increased risk of third party claims (which risk is not adequately mitigated by Alstom in its Alstom Initiated VSC Variation or cannot be mitigated by Construction Contractor with the compensation that Alstom has agreed to pay), in which case Construction Contractor shall be under no obligation to submit the VSC Variation Notice to Project Co. Unless agreed otherwise, Alstom shall not share with Construction Contractor any benefit Alstom obtains from an Alstom Initiated VSC Variation, provided however, for certainty, the provisions of Part 1 relating to Equivalent Project Relief shall apply to any Alstom Initiated VSC Variation.

3. [NOT USED]

3.1 [NOT USED]

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

3.2 [NOT USED]

(a) [NOT USED]

4. ALSTOM-CC VARIATIONS

4.1 General

(a) Each of Alstom and Construction Contractor may propose Alstom-CC Variations at any time, and may carry out their respective obligations under Section 4 through Alstom's Project Manager or the Construction Contractor's Project Manager respectively. Where an Alstom-CC Variation is proposed, the relevant provisions of Section 4 shall apply, but the parties shall continue to perform their respective obligations under this Revenue Vehicle Supply Contract notwithstanding any such Alstom-CC Variation proposal.

(b) Where Construction Contractor issues an instruction which is not expressed to propose an Alstom-CC Variation but the implementation of which Alstom reasonably considers should constitute an Alstom-CC Variation, Alstom shall notify Construction Contractor, within 5 Business Days after the date of the relevant instruction and (in any event before putting into effect such instruction), that it considers an Alstom-CC Variation to have been proposed, whereupon:

- (i) Construction Contractor shall, within a further 4 Business Days, revoke or confirm the instruction;
- (ii) where Construction Contractor confirms the instruction, Construction Contractor shall either confirm that it is instructing an Alstom-CC Variation or state that in Construction Contractor's opinion its instruction should not be treated as an Alstom-CC Variation;
- (iii) where Construction Contractor confirms that it is instructing an Alstom-CC Variation, the relevant provisions of Section 4 shall apply;
- (iv) where Construction Contractor states that in its opinion its instruction should not be treated as an Alstom-CC Variation, Alstom shall promptly comply with such confirmed instruction.

4.2 Objection

- (a) The party receiving an Alstom-CC Variation proposal may, by written notice to the proposing party, served within 5 Business Days of receiving such Alstom-CC Variation proposal, object to the same on grounds that:
- (i) the proposed Alstom-CC Variation is not in accordance with the terms of any relevant Consents, Applicable Law, Authority Requirements or the requirements of any Governmental Authority;
 - (ii) more information is required in relation to the relevant proposal before a response can be given.

4.3 Alstom's Notice

- (a) In the case of an Alstom-CC Variation proposed by Construction Contractor, unless Alstom has objected to such Alstom-CC Variation in accordance with Section 4.2, Alstom shall, within 15 Business Days of receiving Construction Contractor's Alstom-CC Variation proposal, respond to Construction Contractor with a written notice stating:
- (i) the steps which Alstom would propose to take to implement the Alstom-CC Variation, giving such level of detail as is reasonable and appropriate in all the circumstances;
 - (ii) the Direct Costs of implementing the Alstom-CC Variation together with a calculation of the Overhead and Profit in respect thereof;
 - (iii) whether, in the view of Alstom, implementing the Alstom-CC Variation would be likely to cause the date of any Delivery, or any expected Acceptance or of any Milestone Payment to occur after the relevant date in the Protocol, and giving an estimate of the extension of time likely to be required (subject to any further time required to obtain or amend any relevant Consent);
 - (iv) any necessary Consents which would need to be obtained or amended for the Alstom-CC Variation to be implemented and the latest date by which any such necessary Consent must be obtained or modified for the matters set out in Section 4.2(a)(i) to (iii) (inclusive) to remain valid.

4.4 Withdrawal

- (a) Construction Contractor may withdraw an instruction for an Alstom-CC Variation upon receiving Alstom's notice pursuant to Section 4.3, or at any time while a necessary Consent (or amendment to a necessary Consent) is awaited and which is necessary in order for the Alstom-CC Variation to be implemented, subject to paying Alstom on a *quantum meruit* basis for any work already

undertaken, following a request from Construction Contractor that Alstom commence work in connection with the relevant Alstom-CC Variation.

4.5 Consents

- (a) If Construction Contractor agrees to the terms set out in Alstom's notice provided in accordance with Section 4.3, it shall issue Alstom with a confirmation to this effect, whereupon:
- (i) if no Consent is need to be obtained or amended in respect of the Alstom-CC Variation in question, this Revenue Vehicle Supply Contract shall be deemed to be amended in the manner set out in Alstom's notice and Alstom shall be obliged to implement the relevant Alstom-CC Variation on those terms; or
 - (ii) if it is necessary to obtain or amend any Consent in respect of any Alstom-CC Variation, Alstom shall use commercially reasonable efforts to obtain or amend such Consent and Construction Contractor shall (where its co-operation is required) assist and co-operate in obtaining or amending such necessary Consent.
- (b) In respect of an Alstom-CC Variation to which Section 4.5 applies, that Alstom-CC Variation shall not take effect until such time as the relevant Consent has been obtained or amended, provided however that the party obliged pursuant to Section 4.5(a)(ii) to obtain or amend the relevant Consent will not be entitled to treat the other party as being in default of its obligations or in any way in breach of this Revenue Vehicle Supply Contract or liable to make or pay any remedy by reason of the other party's performance of its obligations under this Revenue Vehicle Supply Contract in a manner consistent with the relevant Alstom-CC Variation. However, upon such Consent being obtained or amended as necessary, such Alstom-CC Variation (being an Alstom-CC Variation to which Section 4.5 applies) shall automatically take effect, this Revenue Vehicle Supply Contract shall be deemed to be amended in the manner set out in Alstom's notice and Alstom shall be obliged to implement the relevant Alstom-CC Variation on those terms.
- (c) If the relevant Consent is not obtained or amended as necessary by the date specified by Alstom pursuant to Section 4.3(a)(iv) or upon it becoming clear that this will be the case, unless otherwise agreed and without prejudice to Section 4.4, the parties will negotiate in good faith the terms of a further Alstom-CC Variation to take account of such revisions to the Protocol and the amount of Direct Cost and Overhead and Profit which are appropriate to reflect the delay caused by the relevant Consent not being obtained or amended as required and the new date specified by Alstom as the date by which such Consent would need to be obtained or amended in order to fulfil the terms of the relevant Alstom-CC Variation within such revised Protocol and amount of Direct Cost and Overhead and Profit. Section 4.5(b) will apply in respect of such further Alstom-CC Variation and its negotiation.

4.6 Directives

- (a) If an Alstom-CC Variation is not accepted by Construction Contractor, or if Alstom's proposed Direct Cost and Overhead and Profit and adjustment to the Protocol is not acceptable to Construction Contractor, such that the Parties have not been able to agree upon the proposed Alstom-CC Variation in accordance with Section 4, the Construction Contractor's Project Manager shall have the right to order the Alstom-CC Variation at any time within the validity period established in the proposed Alstom-CC Variation by written Alstom-CC Variation Directive and once so ordered Alstom shall proceed with the Vehicle Supplier Activities. Payment shall be made on the basis of Construction Contractor's estimate, acting reasonably, until an agreement has been reached or the issue has been resolved in accordance with the provisions of Attachment 27 – VSC Dispute Resolution Procedure.
- (b) Construction Contractor's Project Manager shall have the right at any time and from time to time to order Alstom by written Alstom-CC Variation Directive to make an Alstom-CC Variation, and Alstom shall make such Alstom-CC Variation. An Alstom-CC Variation shall be issued pursuant to the other provisions of Section 4 as soon as practicable thereafter. If the Parties are unable to agree on the Direct Cost and Overhead and Profit payable in respect of the Alstom-CC Variation or the adjustment to the Protocol, then the provisions of Attachment 27 – VSC Dispute Resolution Procedure shall apply.

APPENDIX A

CALCULATION OF DIRECT COST

1. DIRECT COST

- 1.1 Subject to Section 1.2 of this Appendix A, the term “**Direct Cost**” means the aggregate total, without duplication, of only the following amounts, as paid or incurred by Alstom or each Alstom Party, as applicable, to the extent that they specifically relate to, and are attributable to, the VSC Variation under which Alstom is expressly entitled to its Direct Cost and would not otherwise have been incurred:
- (i) wages and benefits paid for labour in the direct employ of Alstom or each Alstom Party while performing that part of the Vehicle Supplier Activities on the Lands or in Alstom’s manufacturing facility in the Greater Toronto Area;
 - (ii) salaries, wages and benefits of Alstom’s or each Alstom Party’s personnel when stationed at the office on the Lands or in Alstom’s manufacturing facility in the Greater Toronto Area in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
 - (iii) salaries, wages and benefits of Alstom’s or each Alstom Party’s office personnel engaged in a technical capacity, such office personnel to include, for certainty, those providing design services;
 - (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1 of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid to Alstom for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1 of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
 - (v) the cost of materials (including hand tools which have a retail value of [REDACTED] or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the VSC Variation;
 - (vi) the rental costs of all tools (excluding hand tools which have a retail value of [REDACTED] or less), machinery, and equipment used in the performance of the VSC Variation, whether rented from or provided by Alstom or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
 - (vii) deposits lost;

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- (viii) a reasonable amount of profit consistent with prevailing market rates that is charged by any Alstom Party and any entity not at arms-length from Alstom;
 - (ix) the reasonable fees and disbursements of Alstom's external legal advisors;
 - (x) the cost of third party quality assurance required by Construction Contractor, such as independent inspection and testing services;
 - (xi) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the VSC Variation;
 - (xii) subject to Section 1.1(iv) of this Appendix A, Taxes (and without limiting the obligation of Construction Contractor to pay HST payable by it under the Revenue Vehicle Supply Contract), but excluding
 - (A) HST;
 - (B) taxes imposed on Alstom or a Alstom Party based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (C) capital taxes based on or measured by the capital of Alstom or a Alstom Party;
 - (D) taxes relating to withholdings on any payments by Alstom or a Alstom Party; and
 - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Vehicle Supplier Activities;
 - (xiii) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Alstom is not responsible under the Revenue Vehicle Supply Contract;
 - (xiv) termination payments which are required under Applicable Law to be made to employees of Alstom or an Alstom Party reasonably and properly incurred by Alstom or such Alstom Party arising as a direct result of any VSC Variation reducing the scope of the Vehicle Supplier Activities, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
 - (xv) the cost of financing, obtained by Alstom, including additional financing costs related to any delay caused by the implementation of the VSC Variation;
 - (xvi) the cost of competitively tendering any contract in relation to the proposed VSC Variation which is required by Applicable Law or any policy applicable to Construction Contractor;

- (xvii) the cost of any additional insurance or performance security required or approved by Construction Contractor;
- (xviii) the cost of obtaining all VSC Permits, Licences and Approvals; and
- (xix) any third-party cost and expenses incurred by Alstom (including lease payments) as a result of or relating to the extension of the term of the lease (or similar tenancy agreement) regarding Alstom's manufacturing facility in the Greater Toronto Area (or Alstom remaining in possession of the leased premises after the expiry or termination of such lease/agreement) caused by delays to the Project Schedule resulting from the VSC Variation, except, for certainty, those items listed in Section 1.1(i) through (iv) of this Appendix A.

provided that, in respect of any VSC Variation for which there is a corresponding Variation under the Construction Contract for which Construction Contractor is entitled to payment by Project Co, in no event shall Alstom be entitled to any Direct Cost which Construction Contractor is not, pursuant to the Construction Contract, entitled to claim and receive from the Project Co as Direct Cost (as defined in the Construction Contract) in relation to the Vehicle Supplier Activities or which exceed the Direct Cost (as defined in the Construction Contract) received by Construction Contractor pursuant to the Construction Contract.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Vehicle Supplier Activities as a result of the VSC Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the Direct Cost with respect to the per hour charged by Alstom or any VSC Subcontracts with Alstom Parties for salaried personnel shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by [REDACTED] hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in the GTA;
- (v) the amount paid in accordance with this Appendix A for fees, wages, salaries and benefits charged by Alstom or any VSC Subcontracts with Alstom Parties shall be reasonable and VSC Subcontracts with Alstom Parties shall not exceed commercially competitive rates available in the GTA;

- (vi) [NOT USED];
- (vii) the Direct Cost shall not include:
 - (A) any cost incurred due to the failure on the part of Alstom or any Alstom Party to exercise reasonable care and diligence in its attention to the execution of that part of the Vehicle Supplier Activities (including any cost due to any negligence, improper work, deficiencies or breaches of contract by Alstom and/or any Alstom Party);
 - (B) the fees, costs or expenses, or any other form of compensation, paid or payable by Alstom or any Alstom Party to any person performing asset management, personnel services and/or similar, comparable or like services to or for the benefit of Project Co or any Subcontractor;
 - (C) the cost and expense of maintaining corporate offices, the cost and expense of office administration, estimation, accounting, payroll, printing, office supplies, phones and courier/postal service, the cost and expense of personnel not directly involved in the implementation of the VSC Variation and any other overhead cost or expense;
 - (D) [NOT USED];
 - (E) any costs or expenses associated with the participation of Alstom and any Alstom Party in the meetings described in Section 1.2(e) of this Attachment 22;
- (viii) for greater certainty, the Direct Cost shall include the aggregate real dollar amount value of all of the costs permitted by this Appendix A related to any variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the Revenue Vehicle Supply Contract associated with the VSC Variation; and
- (ix) the Direct Cost must be quantifiable and, except with respect to Sensitive Information, supported by evidence and proper documentation, such as invoices, proof of payments, and detailed hourly rate information as required by Construction Contractor. Except with respect to Sensitive Information, proper documentation shall include unit rates or prices and quantities for all items, including labour and materials that comprise the Direct Cost, including for all work completed by any Alstom Party. Any Direct Cost item claimed as a percentage of any other Direct Cost item, such as a “risk contingency”, will not be permissible, unless approved by Construction Contractor in writing.

APPENDIX B

CALCULATION OF OVERHEAD AND PROFIT

- (a) **“Overhead and Profit”** means, for each of rows 1 and 2 in Table A – Applicable Overhead and Profit, the product of:
 - (i) the Direct Cost of, as applicable, the work or services within the category described in such row, multiplied by
 - (ii) the percentage set out in such row as determined based on the Direct Cost of the variation.
- (b) [NOT USED]
- (c) [NOT USED]
- (d) [NOT USED]
- (e) [NOT USED]
- (f) Alstom acknowledges and agrees that the Overhead and Profit payable in accordance with this Attachment 22 is intended to compensate Alstom for all costs and expenses incurred in connection with a VSC Variation other than the Direct Cost, including, without limitation, all overhead, profit, office administration and the amounts expressly excluded from the Direct Cost pursuant to Section 1.2 of Appendix A of this Attachment 22.

**TABLE A
APPLICABLE OVERHEAD AND PROFIT**

[REDACTED]

ATTACHMENT 25

INSURANCE REQUIREMENTS

ARTICLE 1

INSURANCE COVERAGE

- 1.1 [REDACTED].

ARTICLE 2

NO LIMIT ON RECOVERY

- 2.1 Notwithstanding any other provision of the Revenue Vehicle Supply Contract, it is hereby agreed that the limits of liability specified in this Attachment 25 for insurance policies, whether such policies are required to be obtained (or caused to be obtained) by Alstom, shall in no way limit Alstom's liability or obligations to Construction Contractor, and shall in no way affect the limitations of liability set forth in Part 1 Section 8.1 of the Revenue Vehicle Supply Contract.

ARTICLE 3

ADDITIONAL COVER

- 3.1 Without prejudice to the other provisions of this Attachment 25, Construction Contractor and Alstom shall, at all relevant times and at their own expense, obtain and maintain, or cause to be obtained and maintained, those insurances which they are required to obtain and maintain, or cause to be obtained and maintained, by Applicable Law, or that they consider necessary.

ARTICLE 4

PREMIUMS AND DEDUCTIBLES

- 4.1 The insurance premiums and deductibles in respect of any insurances to be effected and maintained by Alstom shall be solely the responsibility of Alstom.

ARTICLE 5

DAMAGE OR DESTRUCTION

- 5.1 In the event of damage to, or destruction of, all or any part of the Revenue Vehicle Deliverables for which there is coverage under an insurance policy, any insurance proceeds received by Alstom shall first be applied so as to ensure the performance by Alstom of its obligations under the Revenue Vehicle Supply Contract, including, where appropriate, the reinstatement, restoration or replacement of the Revenue Vehicle Deliverables or any other

assets, materials or goods necessary or desirable for the carrying out of the Vehicle Supplier Activities.

**ARTICLE 6
INTENTIONALLY DELETED**

- 6.1 [Intentionally Deleted]
- 6.2 [Intentionally Deleted]

**ARTICLE 7
RENEWAL**

- 7.1 Alstom shall provide to Construction Contractor and Contracting Authority, at least five (5) Business Days prior to the expiry date of any policy of insurance required to be obtained (or caused to be obtained) by Alstom pursuant to this Attachment 25, evidence of the renewal of each such policy satisfactory to Construction Contractor and Contracting Authority, each acting reasonably.

**ARTICLE 8
INTENTIONALLY DELETED**

- 8.1 [Intentionally Deleted]

**ARTICLE 9
FAILURE TO MEET INSURANCE REQUIREMENTS**

- 9.1 If after furnishing such certificates of insurance, any policy lapses or is cancelled, then Construction Contractor or Contracting Authority shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Alstom, and the cost thereof shall either, at Construction Contractor's or the Contracting Authority's option, be payable by Alstom to Construction Contractor or Contracting Authority on demand or be deducted from the next payment or payments otherwise due to Alstom.

**ARTICLE 10
MODIFICATION OR CANCELLATION OF POLICIES**

- 10.1 All insurance provided by Alstom shall contain endorsements confirming that the policy will not be cancelled without the insurer(s) or Alstom giving at least thirty (30) days prior written notice by registered mail, at the addresses specified, to Construction Contractor and Contracting Authority.
- 10.2 All insurance provided by Alstom shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) or Alstom will give at least

fifteen (15) days prior written notice by registered mail, at the addresses specified, to Construction Contractor and Contracting Authority.

**ARTICLE 11
INSURERS**

- 11.1 All policies of insurance to be obtained (or caused to be obtained) by Alstom in accordance with this Attachment 25 shall be issued by financially sound insurers acceptable to Construction Contractor and Contracting Authority, each acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.

**ARTICLE 12
FAILURE TO COMPLY**

- 12.1 Neither failure to comply with nor full compliance by Alstom with the insurance provisions of this Attachment 25 shall relieve Alstom of its liabilities and obligations under the Revenue Vehicle Supply Contract.

ATTACHMENT 26**RECORD PROVISIONS****1. General Requirements**

- 1.1 Alstom shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1, as follows:
- (a) in accordance with this Section 1;
 - (b) in accordance with the Revenue Vehicle Supply Contract;
 - (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 Alstom's normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in electronic format;
 - (i) in sufficient detail, in appropriate categories and generally in such a manner as to enable Alstom to comply with Alstom's obligations under Part 2 Section 37 of the Revenue Vehicle Supply Contract; and
 - (j) in a form that is capable of audit.
- 1.2 Alstom shall retain and maintain all records, in addition to retaining and maintaining records referred to in Section 2.1 in electronic format.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy and electronic form. Alstom may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including the Record Drawings) required to be made or supplied pursuant to the Revenue Vehicle Supply Contract, and when printed, 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 Alstom to Construction Contractor, and shall conform to the Output Specifications, Good Industry Practice and the CAD Standards. All drawings, except for Sensitive Information, are to be submitted via Construction Contractor's electronic control management system provided the software and license thereof is provided to Alstom free of cost, with one hard

- copy provided to Construction Contractor. Alstom shall make or supply drawings and other documents in such form as has been agreed by the Parties. Construction Contractor shall provide Alstom access to Construction Contractor's electronic control management system.
- 1.5 Records, except for Sensitive Information, shall be stored in electronic format within Construction Contractor's and Project Co's electronic control management system (to the extent that Construction Contractor has rights under the Revenue Vehicle Supply Contract to the records) where Alstom shall have access thereto and will continue to have access thereto, such that Construction Contractor (to the extent that Construction Contractor has rights under the Revenue Vehicle Supply Contract to the records) and Project Co will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Alstom shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 for a minimum period of at least **[REDACTED]** or such longer period as required by Applicable Law.
- 1.7 Alstom shall provide Notice to Construction Contractor and Project Co if Alstom wishes to destroy any records referred to in this Attachment 26. The Parties agree that:
- (a) within 90 days of such Notice, Project Co may elect to require Alstom to deliver such records to Project Co, in which case Alstom shall, at the expense of Project Co, deliver such records (with the exception of Sensitive Information) to Project Co in the manner and to the location as Project Co shall specify; or
 - (b) if Project Co fails to notify Alstom or Construction Contractor of its election pursuant to Section 1.7(a) within such 90 day period, Alstom may, at its expense, destroy such records.
- 1.8 In the event of termination of the Revenue Vehicle Supply Contract prior to the VSC Term, Alstom shall deliver all records that Alstom retains and maintains pursuant to this Attachment 26 to Construction Contractor in the manner and to the location that Construction Contractor shall reasonably specify. Construction Contractor shall make available to Alstom all the records Alstom delivers pursuant to this Section 1.8 subject to prior reasonable Notice. Alstom may deliver true copies of original records required by:
- (a) statute to remain with Alstom;
 - (b) Alstom in connection with its fulfilment of any outstanding obligations under the Revenue Vehicle Supply Contract; or
 - (c) **[NOT USED]**.

- 1.9 Where the termination of the Revenue Vehicle Supply Contract arises:
- (a) as a result of an Alstom Event of Default or pursuant to Part 2 Section 45.1 of the Revenue Vehicle Supply Contract, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by Alstom; 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 [REDACTED] following the VSC Termination Date (unless a longer period is required by Applicable Law), shall be borne by Construction Contractor.

1.10 [NOT USED]

1.11 [NOT USED]

2. Records To Be Kept

- 2.1 Without limiting any other requirement of the Revenue Vehicle Supply Contract, Alstom shall prepare, retain and maintain at its own expense:
- (a) the Revenue Vehicle Supply Contract, its Attachments and the Vehicle Supplier Project Documents, including all amendments to such agreements;
 - (b) all records relating to the appointment and replacement of the Construction Contractor Representative and the VSC Representative;
 - (c) any documents, drawings (including the Record Drawings) or submissions in accordance with Attachment 10 – Review Procedure;
 - (d) any documents relating to VSC Permits, Licences and Approvals, including any refusals and appeals relating to any applications;
 - (e) [NOT USED]
 - (f) all records relating to any inspections of the Revenue Vehicles and/or Revenue Vehicle Equipment;
 - (g) any notices, reports, results and certificates relating to Acceptance;
 - (h) [NOT USED]
 - (i) any documents relating to events of Force Majeure, Delay Events, Compensation Events, and Relief Events;
 - (j) [NOT USED]

- (k) [NOT USED]
- (l) [NOT USED]
- (m) [NOT USED]
- (n) all documents submitted in accordance with Attachment 22 – VSC Variation Procedure;
- (o) any documents related to decisions resulting from the VSC Dispute Resolution Procedure;
- (p) any documents related to an Alstom Change in Ownership or Change in Control;
- (q) [NOT USED]
- (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) Alstom’s liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (ii) Alstom’s liabilities or payments for capital taxes based on or measured by the capital of Alstom;
 - (iii) the withholdings of any payments by Alstom; or
 - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
- (s) [NOT USED]
- (t) [NOT USED]
- (u) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Alstom with respect to the Vehicle Supplier Activities;
- (v) any documents relating to insurance and insurance claims;
- (w) [NOT USED]; and
- (x) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Alstom pursuant to the Revenue Vehicle Supply Contract.

2.2 Either Party may review the documents required to be prepared, retained and maintained by Alstom pursuant to Section 2.1.

ATTACHMENT 27

VSC DISPUTE RESOLUTION PROCEDURE

1. General

- 1.1 All disputes, controversies, or claims arising out of or relating to any provision of the Revenue Vehicle Supply Contract, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under the Revenue Vehicle Supply Contract, or the interpretation, enforceability, performance, breach, termination, or validity of the Revenue Vehicle Supply Contract, including this Attachment 27, or any matter referred to for resolution pursuant to this Attachment 27 (collectively and individually, a “**VSC Dispute**”) shall be resolved in accordance with the provisions of this Attachment 27.
- 1.2 The Parties agree that at all times, both during and after the VSC Term, each of them will make bona fide efforts to:
- (a) resolve by amicable negotiations any and all VSC Disputes arising between them on a without prejudice basis; and
 - (b) have all VSC Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 3 to 9.

1.3 [NOT USED]

2. [NOT USED]

[NOT USED]

3. Amicable Resolution

- 3.1 If, following the process referred to in Section 1 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6), a VSC Dispute is not resolved by negotiation, a Party, at any time, may give the other Party written notice (the “**Notice of VSC Dispute**”) that such VSC Dispute not so resolved. Within 15 days after delivery of a Notice of VSC Dispute, the recipient Party shall deliver to the other a written response. Both the Notice of VSC Dispute, and the response must include a statement of that Party’s position, a summary of arguments supporting that position, and the name and contact particulars of the person who will represent that Party and of any other person who will accompany the representative. Within 30 days after delivery of the Notice of VSC Dispute, the representatives of the Parties shall meet at mutually acceptable times and places, as often as they reasonably deem necessary, to attempt to resolve the VSC Dispute.
- 3.2 [NOT USED]
- 3.3 Once a VSC Dispute is referred to them, the executive of each Party shall promptly and diligently make all reasonable bona fide efforts to resolve the VSC Dispute. All discussions and negotiations,

and all documents exchanged, between them related to the VSC Dispute shall be on a without prejudice basis to facilitate the resolution of the VSC Dispute, shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

4. [NOT USED]

[NOT USED]

5. [NOT USED]

[NOT USED]

6. **Adjudication**

6.1 If, the Parties fail to resolve any VSC Dispute through the process referred to in Section 3 within 35 days after delivery of the Notice of VSC Dispute (or such other period as may be agreed or expressly stipulated in respect of the relevant matter), either Party may refer the VSC Dispute to be finally resolved by arbitration in accordance with the National Arbitration Rules of the ADR Institute of Canada Inc. then currently in effect (the “**ADR Rules**”), by three arbitrators one of whom is appointed by Construction Contractor, another of whom is appointed by Alstom and the third of whom is appointed in accordance with the ‘screened’ appointment procedure provided in ADR Rules. The arbitration will be governed by the laws of Ontario and the laws of Canada applicable therein, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction. The place of arbitration will be Toronto, Ontario and the arbitration will be conducted in the English language.

6.2 Notwithstanding Sections 1, 3 and 6.1, any VSC Dispute which involves:

- (a) amounts in excess of [REDACTED]; or
- (b) the determination of whether or not a VSC Event of Default either exists or has been cured; or
- (c) any matter arising out of or related to the Construction Act.

is not subject to Section 1.1 to 6.1, inclusive, and may be directly referred to and adjudicated on by the courts of the Province of Ontario.

6.3 [NOT USED]

6.4 [NOT USED]

6.5 [NOT USED]

7. [NOT USED]

[NOT USED]

8. [NOT USED]

[NOT USED]

9. [NOT USED]

[NOT USED]

10. Consolidation of Revenue Vehicle Supply Contract, Adjudication, Arbitration and Litigation

10.1 For any VSC Dispute in respect of which the provisions of Part 1 relating to Equivalent Project Relief apply, unless:

- (a) both Parties otherwise agree; or
- (b) the issue in a particular Dispute arises pursuant to or in the context of Attachment 10 – Review Procedure; or
- (c) the issue in a particular VSC Dispute is such that waiting to resolve that VSC Dispute will cause irreparable harm to one of the Parties; or
- (d) [NOT USED]; or
- (e) in respect of a particular VSC Dispute, the VSC Dispute is consolidated or joined with Third Party Arbitration (as hereinafter defined) or Third Party Litigation (as hereinafter defined) pursuant to Section 11;

all adjudication, arbitral and litigation proceedings between the Parties in respect of such VSC Dispute 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.

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 VSC Dispute between the Parties for which a Notice of VSC Dispute has been given, then any arbitration of the VSC Dispute between the Parties which includes those common factual, legal or damages issues (“**Revenue Vehicle Supply Contract Arbitration**”) shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if Construction Contractor, Alstom 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 Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract Arbitration proceeding and Third Party Litigation, or order a joinder of the Revenue Vehicle Supply Contract Arbitration and the Third Party Litigation. If such joinder is ordered, the Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Revenue Vehicle Supply Contract Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Revenue Vehicle Supply Contract 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 Revenue Vehicle Supply Contract 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 VSC 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 VSC 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 VSC 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 Revenue Vehicle Supply Contract Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other

issues in the VSC Dispute shall continue to be resolved by Revenue Vehicle Supply Contract Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

12. [Intentionally Deleted]

13. Miscellaneous

- 13.1 Alstom and Construction Contractor shall diligently carry out their respective obligations under the Revenue Vehicle Supply Contract during the pendency of any VSC Disputes, including without limitation, adjudication, arbitration or litigation proceedings. If during the pendency of any VSC Dispute it is considered necessary by either Party to proceed in respect of the matter that is in VSC Dispute, then without prejudice to Alstom's rights in respect of the VSC Dispute (including in respect of Delay Events, Compensation Events, VSC Variations and Alstom-CC Variations), Alstom shall proceed in accordance with the direction of Construction Contractor, and in the event the matter in VSC Dispute is determined in favour of Alstom, then, to the extent that such VSC Dispute affects the Revenue Vehicle Deliverables, proceeding in accordance with Construction Contractor's position prior to Substantial Completion shall, subject to the provisions of Part 1 relating to Equivalent Project Relief, be treated as a Delay Event and, subject to the provisions of Part 1 relating to Equivalent Project Relief, be treated as a Compensation Event.
- 13.2 Nothing contained in this Attachment 27 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction where available pursuant to Applicable Law, if necessary to prevent irreparable harm to a Party.
- 13.3 [NOT USED]
- 13.4 Alstom shall ensure that any and all documents and other information in the possession or control of any Alstom Party that are available to Alstom and that may be necessary for the resolution of a VSC Dispute on an informed basis pursuant to Sections 1 and 3, or by an arbitrator or court of competent jurisdiction, are made available in a timely manner to Construction Contractor and the Construction Contractor Representative.
- 13.5 Construction Contractor shall ensure that any and all documents and other information in the possession or control of any Construction Contractor Party that are available to Construction Contractor and that may be necessary for the resolution of a VSC Dispute on an informed basis pursuant to Sections 1 and 3, or by an arbitrator or court of competent jurisdiction, are made available in a timely manner to Alstom and the VSC Representative.
- 13.6 The Parties can, by written agreement, on a VSC Dispute by VSC Dispute basis:
- (a) extend any or all timelines set out in this Attachment 27;
 - (b) agree to waive or by-pass any one or more of the VSC Dispute resolution processes in Sections 1, 3, and 6.1 and, instead, proceed directly to resolution of the VSC Dispute by litigation pursuant to Sections 6.2.

(c) [NOT USED]

(d) [NOT USED]

ATTACHMENT 33

VSC ACTIVITIES REPORT REQUIREMENTS

1. The Vehicle Supplier Activities Report shall include the following:
 - (a) an executive summary describing the general status of the Vehicle Supplier Activities;
 - (b) the current up-to-date progress schedule and report with respect to the Vehicle Delivery Schedule representing the current Alstom strategy for completing the Vehicle Supplier Activities;
 - (c) design and integration management, including:
 - (i) design change management (engineering change reporting); and
 - (ii) weight information;
 - (d) reliability progress;
 - (e) detailed status of the Vehicle Supplier Activities, including:
 - (i) a narrative detailing the progress of the Revenue Vehicles and the Revenue Vehicle Equipment;
 - (ii) a narrative detailing the progress of design and review;
 - (iii) a narrative on contemplated innovations, where applicable; and
 - (iv) a narrative detailing the progress and status of issues related to:
 - (A) communications;
 - (B) signaling equipment;
 - (C) [Not used];
 - (D) [Not used];
 - (E) [Not used];
 - (F) [Not used];
 - (G) [Not used];
 - (H) [Not used];

- (I) [Not used];
- (J) all Commissioning, including a narrative on:
 - (1) validation and testing management, including serial testing;
 - (2) final acceptance tests and burn-in tests status;
 - (3) Revenue Vehicles and the Review Vehicle Equipment; and
 - (4) [Not used].
- (f) plans for Vehicle Supplier Activities scheduled in the forthcoming reporting period;
- (g) goals for the next reporting period (such as progress on activities, resolution of issues);
- (h) progress photos;
- (i) outstanding technical and contractual decisions;
- (j) [Not used];
- (k) quality assurance and quality control, including:
 - (i) the status of the Project Quality Management Plan and the Quality Control Plan;
 - (ii) a table setting out and responding to items of Non-Conformance and deficiencies in ongoing Vehicle Supplier Activities as identified by Construction Contractor or Alstom or both;
 - (iii) the status of Design Certificates;
 - (iv) an update of quality control and quality assurance activities and personnel responsible;
 - (v) the monthly Quality Management System reports, Quality Audit Reports, Corrective and Preventive Actions Plans, and summary information from the Non-Conformance Tracking System (all as described in Attachment 11 - Quality Management); and
 - (vi) the status of Internal Quality Audits and External Quality Audits;
- (l) organization and staffing changes, deletions, and additions for Alstom and all Alstom Parties;
- (m) post-delivery warranty management, including:

- (i) post-delivery open item tracking; and
- (ii) warranty status;
- (n) health and safety, including:
 - (i) near miss;
 - (ii) high potential near miss;
 - (iii) untreated injury;
 - (iv) first aid;
 - (v) medical aid/health care;
 - (vi) lost time injury;
 - (vii) other critical injury (as defined by OHSA);
 - (viii) fatality;
 - (ix) injury to public;
 - (x) property damage;
 - (xi) operational impact;
 - (xii) environmental;
 - (xiii) lost time injury frequency;
 - (xiv) total hours worked; and
 - (xv) Ministry of Labour inspections, orders, and charges;
- (o) VSC Subcontract status, including with respect to:
 - (i) consultants;
 - (ii) VSC Subcontracts awarded;
 - (iii) tenders; and
 - (iv) [Not used];

- (v) [Not used];
- (vi) labour report (average workforce);
- (p) financial status, including:
 - (i) [Not used];
 - (ii) progress and Variations status;
 - (iii) an insurance summary; and
 - (iv) Alstom default status;
 - (v) [Not used];
 - (vi) [Not used];
 - (vii) [Not used];
- (q) risk management, including:
 - (i) an updated risk register;
 - (ii) risk response plans requiring action from Construction Contractor or Project Co;
 - (iii) claims;
 - (iv) liens;
 - (v) environmental issues;
 - (vi) labour;
 - (vii) market conditions;
 - (viii) outstanding disputes;
 - (ix) safety and security, including a threat and vulnerability log;
 - (x) operational risks;
 - (xi) Stakeholder risks; and
 - (xii) other risks; and

(r) detailed manufacturing status.

ATTACHMENT 39**SYSTEM EXTENSION****ARTICLE 1
DEFINITIONS****1.1 Definitions**

In this Attachment 39, unless the context otherwise requires, terms defined in Section 1.1 of Schedule 39 to the Project Agreement shall have the meaning given to them therein.

- (a) “**Alstom Extension Notice Response**” means the response notice delivered by Alstom pursuant to Section 2.2(b).
- (b) “**Alstom Extension Proposal**” means the proposal delivered by Alstom pursuant to Section 2.2(d).
- (c) “**Alstom Extension Work**” has the meaning given in Section 2.2(a).
- (d) “**Alstom Notice of Extension**” has the meaning given in Section 2.2(a).

**ARTICLE 2
SYSTEM EXTENSION****2.1 System Extension**

Alstom acknowledges the provisions of Section 2.1 of Schedule 39 to the Project Agreement.

2.2 Negotiation between Construction Contractor and Alstom of Extension

- (a) If, in the event Project Co notifies Construction Contractor, or Contracting Authority notifies Project Co, prior to the Substantial Completion Date that it wishes to negotiate with Construction Contractor to perform any or all of the Extension Work and /or Extension Services and it is a requirement or condition of Contracting Authority that all or any part of the Extension Work and /or Extension Services is to be performed by Alstom (such Extension Work and /or Extension Services to be performed by Alstom being the “**Alstom Extension Work**”) and Contracting Authority or Project Co delivers to Construction Contractor a Notice of Extension in this regard (the “**Alstom Notice of Extension**”), Construction Contractor shall deliver to Alstom the Alstom Notice of Extension, provided that Alstom is not in default under the Revenue Vehicle Supply Contract, indicating that it wishes to negotiate with Alstom to perform any or all of the Alstom Extension Work, and the Alstom Notice of Extension shall include the following information respecting the Project, provided by Project Co to Construction Contractor:
 - (i) a description of the scope of the Alstom Extension Work;

-
- (ii) preliminary “term sheet level” output specifications for the Alstom Extension, including: as applicable, number of LRVs, details with respect to alignment, number of stations, length of track (in kilometres), modelling results and performance expectations with respect to the System Extension, as-builts for existing System infrastructure and utilities, condition reports, results of environmental assessments, development plans, stakeholder engagement information, electrical and mechanical requirements specific to the System Extension, location and Project Co requirements of any operations, maintenance and storage facilities; and
 - (iii) a preliminary schedule and required timelines for completion of the Alstom Extension Work.
- (b) No later than 30 days after the date of receipt of the Alstom Notice of Extension, Alstom shall deliver to Construction Contractor its response to the Alstom Notice of Extension (“**Alstom Extension Notice Response**”), stating whether or not Alstom desires to proceed to the next stage of negotiation with Construction Contractor in respect of the System Extension. In the event Alstom desires to proceed, Alstom shall, no later than 60 days after the delivery of its Alstom Extension Notice Response, deliver to Construction Contractor a preliminary cost estimate and schedule for the Alstom Extension Work.
 - (c) Alstom acknowledges the provisions of Section 2.2(c) of Schedule 39 to the Project Agreement in respect of which the provisions of Part 1 relating to Equivalent Project Relief shall apply.
 - (d) No later than 90 days after the receipt of the Contracting Authority Extension Requirements (or corresponding proposal under the Construction Contract), Alstom shall deliver to Construction Contractor the information required by Construction Contractor to complete the Project Co Extension Proposal (or corresponding proposal under the Construction Contract) in accordance with Section 2.2 of Schedule 39 to the Project Agreement (the “**Alstom Extension Proposal**”).
 - (e) Alstom acknowledges the provisions of Section 2.2(e) of Schedule 39 to the Project Agreement and shall, if Alstom is in receipt of an Alstom Notice of Extension pursuant to Section 2.2(a), deliver to Construction Contractor the information required by such section, and Construction Contractor shall include such information in the Project Co Extension Proposal (or corresponding proposal under the Construction Contract).
 - (f) Subject to Section 2.2(g) of Schedule 39 to the Project Agreement, as soon as practicable after the receipt of the Alstom Extension Proposal, Project Co, Construction Contractor and Alstom shall, in good faith and acting reasonably, negotiate the terms of the binding agreement for the performance of the Alstom Extension Work as well as any necessary amendments to the Revenue Vehicle Supply Contract and Construction Contract and any relevant documents, based on the contents of the Contracting Authority Extension Requirements (or corresponding proposal under the Construction Contract) and the Alstom Extension Proposal.

- (g) Alstom acknowledges the provisions of Section 2.2(g) of Schedule 39 to the Project Agreement.

2.3 [Intentionally Deleted]

**ARTICLE 3
ALSTOM COOPERATION**

3.1 Alstom Cooperation with Construction Contractor, Project Co and Contracting Authority and Interface with an Extension Contractor

- (a) In the event Contracting Authority pursues all or any part of a System Extension with any one or more Extension Contractors, prior to the Substantial Completion Date, Alstom shall, within a reasonable period of time, use commercially reasonable efforts to provide such assistance to Contracting Authority, Project Co and Construction Contractor as they may request, acting reasonably. Such assistance shall include as it relates to the Vehicle Supplier Activities:
- (i) providing to Contracting Authority, Project Co and Construction Contractor such information which they may reasonably require concerning the System and the public and third party infrastructure or the operations, maintenance and rehabilitation of the System and the public and third party infrastructure necessary for the purposes of Contracting Authority procuring or entering into (or considering procuring or entering into) contracts for design, construction, and/or operations, and/or maintenance of any System Extension and in particular (but without limitation to) for the purposes of compiling and making available any information memorandum, invitation to tender, technical specifications, draft contract or other document connected with such purposes;
 - (ii) the development of technical specifications in respect to the Extension Work and/or the Extension Services, as applicable, and the evaluation of designs proposed by prospective Extension Contractors to ensure compatibility with the Hurontario OMSF, electrical and mechanical equipment, Vehicles already supplied, and other items as specified by Contracting Authority, Project Co and Construction Contractor;
 - (iii) permitting Contracting Authority, Project Co and Construction Contractor access to relevant information respecting the System, electrical and mechanical equipment and Vehicles already supplied, and other items as specified by Contracting Authority, Project Co and Construction Contractor;
 - (iv) advising Contracting Authority, Project Co and Construction Contractor on potential modifications to the Extension Work and/or the Extension Services, as applicable, that could result in cost savings or other benefits to Contracting Authority, Project Co and Construction Contractor;

- (v) the development of an interface protocol between any one or more of: Contracting Authority, Construction Contractor, Alstom, Project Co and the Extension Contractors;
- (vi) liaising with Extension Contractors (or any of their consultants and advisors) who are performing any aspect of the design, construction, maintenance or operation of any System Extension, as applicable, in accordance with the reasonable requests of Contracting Authority, Project Co, Construction Contractor or any Extension Contractors; and
- (vii) subject to the prior reasonable notice and reasonable requirements of Alstom with regard to health and safety, co-operate and co-ordinate with any Extension Contractor (and any of their consultants and advisors) who has been given access by Contracting Authority, Project Co and Construction Contractor to those parts of the System and public and/or third party infrastructure to which access is required for the efficient carrying out of such design, construction, maintenance or operation of any System Extension by the Extension Contractor.

Contracting Authority's, Project Co's, Construction Contractor's and Alstom's obligations under this Section 3.1(a) shall be subject to and in accordance with Part 2, Section 51 of the Revenue Vehicle Supply Contract.

- (b) Subject to the provisions of Part 1 relating to Equivalent Project Relief, Construction Contractor shall pay Alstom reasonable consulting fees in respect of the assistance Alstom provides pursuant to this Section 3.1. Each Alstom invoice in respect of such consulting fees shall set out in reasonable detail, the nature of assistance provided in the invoice period, the personnel involved and the time committed by Alstom personnel in respect of such assistance.
- (c) Alstom acknowledges the provisions of Section 3.1(c) of Schedule 39 to the Project Agreement. Alstom agrees to provide such assistance as Construction Contractor may reasonably require in the negotiation and execution of an interface agreement and/or construction procedures agreement to govern matters relating to the coordination of Alstom's activities in respect of the Vehicle Supplier Activities and the Extension Contractor's activities relating to the Extension Work and/or the Extension Services, as applicable.
- (d) Alstom acknowledges the provisions of Section 3.1(d) of Schedule 39 of the Project Agreement and agrees to provide assistance as Construction Contractor may reasonably require in the negotiation of the agreement contemplated thereby.
- (e) Alstom acknowledges the provisions of Section 3.1(e) of Schedule 39 of the Project Agreement and agrees to provide assistance as Construction Contractor may reasonably require in the negotiation of the agreement contemplated thereby.
- (f) Alstom acknowledges the provisions of Section 3.1(f) of Schedule 39 of the Project Agreement.

ARTICLE 4
SYSTEM EXTENSION VARIATION

- 4.1 [NOT USED]
- 4.2 [NOT USED]
- 4.3 [NOT USED]

ATTACHMENT 43**REVENUE VEHICLES****1. DEFINITIONS**

In this Attachment 43 – Revenue Vehicles, unless the context indicates a contrary intention, terms which are defined in the Revenue Vehicle Supply Contract (and not otherwise defined in this Attachment 43 – Revenue Vehicles) shall have meanings given to them in the Revenue Vehicle Supply Contract and the following terms shall have the following meanings:

- 1.1 **“Revenue Vehicle Acceptance Testing”** means Revenue Vehicle acceptance testing conducted in accordance with the Revenue Vehicle Supply Contract, including Attachment 14 – Vehicle Testing and Commissioning and Attachment 15 – Output Specifications. For clarity, Revenue Vehicle Acceptance Testing includes all acceptance tests set out in Attachment 15 – Output Specifications.

2. ALSTOM OBLIGATIONS

2.1 As part of the performance of the Vehicle Supplier Activities, Alstom shall:

- (a) design, engineer, construct and manufacture the Revenue Vehicles and the Revenue Vehicle Equipment in accordance with the Output Specifications;
- (b) commission, supply, provide and deliver the Revenue Vehicles, the Revenue Vehicle Equipment and the other Revenue Vehicle Deliverables for the Project in accordance with Attachment 14 – Vehicle Testing and Commissioning and the Output Specifications;
- (c) be responsible for conducting and completing testing (including Revenue Vehicle Acceptance Testing) and commissioning activities in respect of the Revenue Vehicles and the Revenue Vehicle Equipment, such testing and activities being carried out in accordance with Attachment 14 – Vehicle Testing and Commissioning and the Output Specifications;
- (d) provide integration support to Construction Contractor for activities of or associated with the integration of the Revenue Vehicles and the Revenue Vehicle Equipment into and with the other elements of the Project Co System Infrastructure (including, for certainty, the installation and integration activities of or associated with the integration of the Train Control System and the Communications Equipment into and with the Revenue Vehicles) in accordance with Sections 4.1(d) and (e) and Sections 5.1 (d) and (e) of Attachment 14 – Vehicle Testing and Commissioning and the Output Specifications;
- (e) [NOT USED]
- (f) [NOT USED]

- (g) [NOT USED]
- (h) [NOT USED]
- (i) [NOT USED]; and
- (j) provide the operations, maintenance and engineering training associated with the Revenue Vehicles and the Revenue Vehicle Equipment as set forth in Attachment 14 – Vehicle Testing and Commissioning and Attachment.

3. [NOT USED]

3.1 [NOT USED]

4. [NOT USED]

4.1 [NOT USED]

4.2 [NOT USED]

4.3 [NOT USED]

5. TITLE WITH RESPECT TO THE REVENUE VEHICLE DELIVERABLES

5.1 The Parties hereby agree that title to each Revenue Vehicle Deliverable, but not the risk of loss or damage or destruction thereto, shall pass to Metrolinx upon Acceptance.

5.2 Alstom shall execute and deliver to Construction Contractor a bill of sale (or like instrument) issued by Alstom to and in favour of Metrolinx for each Revenue Vehicle, in form and content satisfactory to Construction Contractor (each a “**Bill of Sale**”), on the date of issuance of each Acceptance Certificate for such Revenue Vehicle, in which Alstom:

- (a) represents and warrants that:
 - (i) Metrolinx is, at the time of Acceptance, rightfully and absolutely entitled to such Revenue Vehicle;
 - (ii) Alstom at the time of Acceptance of such Revenue Vehicle, has good right, title and authority to grant, bargain, sell, assign, transfer, convey and set over to Metrolinx such Revenue Vehicle; and
 - (iii) Metrolinx shall, immediately on the execution and delivery of such Bill of Sale, have possession of and peaceably and quietly have, hold, possess and enjoy such Revenue Vehicle, free and clear of all encumbrances, to and for its own use and benefit without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by Alstom or any person whomsoever

and with good title thereto, free and clear and absolutely released and discharged from and against all former and other bargains, sales, gifts, grants, mortgages, pledges, security interests, adverse claims, liens, charges and encumbrances of any nature or kind whatsoever;

- (b) grants, bargains, sells, assigns, transfers, conveys and sets over to Metrolinx absolutely, all of Alstom's right, title and interest in and to such Revenue Vehicle, subject to the provisions of Part 2 Section 51 of the Revenue Vehicle Supply Contract; and
- (c) covenants and agrees with Metrolinx that Alstom will from time to time and at all times at its expense, on every reasonable request of Metrolinx make, do and execute or cause and procure to be made, done and executed all further acts, deeds or assurances as may be reasonably required by Metrolinx (with the exception of conducting lien searches), whether for more effectually and completely vesting in Metrolinx such Revenue Vehicle in accordance with the terms of each such Bill of Sale or for the purpose of registration or otherwise.

5.3 Alstom shall provide Construction Contractor:

- (a) concurrent with the delivery to Metrolinx of the Bill of Sale for the applicable Revenue Vehicle, a copy of the Preliminary Acceptance Certificate and the Acceptance Certificate for each such Revenue Vehicle;
- (b) the Canadian Content Certificate in respect of each such Revenue Vehicle; and
- (c) access to and copies of all Required Documents in respect of such Revenue Vehicle in accordance with Attachment 10 – Review Procedure.

5.4 Each Canadian Content Certificate delivered by Alstom to Construction Contractor pursuant to Section 5.3(a) shall:

- (a) demonstrate that the subject Revenue Vehicle meets the Canadian Content Requirements;
- (b) include any necessary or desirable back-up information reasonably necessary to support the contents thereof and to address the requirements of the Canadian Content Policy;
- (c) be true and correct; and
- (d) be substantially in the form of Appendix A and Appendix B, as applicable, to this Attachment 43 - Revenue Vehicles.

5.5 At the request of Contracting Authority made under the Project Agreement (and a corresponding request made by Project Co to Construction Contractor under the Construction Contract), Alstom shall deliver a bill of sale (or like instruments) from Alstom to and in favor of Metrolinx for any Revenue Vehicle Equipment or any other Revenue Vehicle Deliverable, such bill of sale to be in form and content satisfactory to Construction Contractor and consistent with the provisions of

Section 5.2, including, for certainty, with regard to the representations, warranties, covenants and agreements to be provided by Alstom as set forth therein.

5.6 [NOT USED]

6. [NOT USED]

6.1 [NOT USED]

**Appendix A
Initial Canadian Content Certificate**

**CANADIAN CONTENT DECLARATION &
CONSENT FORM**

Construction Contractor requires Alstom to indicate the level of Canadian content (determined in accordance with the Canadian Content Policy) of the LRVs. In this regard, Alstom is advised that Construction Contractor requires a declaration from Alstom setting out and certifying the level of Canadian content. As well, Construction Contractor requires the consent of Alstom to the disclosure and verification of the information certified in the declaration and to the audit of these levels both during the term of the Revenue Vehicle Supply Contract and after the termination or expiration of the term of the Revenue Vehicle Supply Contract, by or on behalf of Construction Contractor, Province of Ontario, Province of Ontario’s Auditor General, or any of their agents or designates.

All capitalized terms used in this Appendix A shall have the meanings given to such terms in the Revenue Vehicle Supply Contract, unless otherwise stated herein.

Alstom acknowledges that Construction Contractor is relying upon this declaration to ensure compliance with Canadian Content Policy. This declaration may be verified or audited in such manner as Construction Contractor, Ministry of Transportation, or the Auditor General, or any of their designates, may reasonably require. Should such verification or audit disclose a material inaccuracy of the information certified in this declaration, Construction Contractor shall have the right to disqualify Alstom and terminate any contract awarded to Alstom.

Consent to Disclosure, Verification & Audit

We consent to Construction Contractor releasing the information certified in this declaration to the Ministry of Transportation, as well as any other information necessary for the purpose of verifying the continuing accuracy of the level of Canadian content certified in this declaration.

We also consent to Construction Contractor, Ministry of Transportation, and the Auditor General, or any of their designates verifying and auditing the level of Canadian content of the LRVs during the term of the Revenue Vehicle Supply Contract and for [REDACTED] after such term.

Dated at [Toronto] this ____ day of _____, 20 .

(An authorized signing officer with the authority to bind Alstom)

(Print Name)

(Title)

Appendix B
Further Canadian Content Certificate

**CANADIAN CONTENT DECLARATION
& CONSENT FORM**

Reference is made to the revenue vehicle supply contract dated October __, 2019 (the “**Revenue Vehicle Supply Contract**”) between Alstom Transport Canada Inc. (“**Alstom**”) and Construction Contractor. Unless otherwise defined in this Canadian Content Declaration & Consent Form, all capitalized terms used herein shall have the meanings given to them in the Revenue Vehicle Supply Contract.

This Canadian Content Declaration & Consent Form is hereby delivered by Alstom to Construction Contractor in respect of LRV No. ● (the “**Certified LRV**”) in accordance with Attachment 43 – Revenue Vehicles of the Revenue Vehicle Supply Contract.

Construction Contractor requires Alstom to demonstrate upon final delivery of each LRV how it complies with the Canadian Content Requirements (determined in accordance with the Canadian Content Policy). In this regard, Alstom is advised that Construction Contractor requires a written declaration from Alstom setting out and certifying the percentage of Canadian content of the Certified LRV, calculated in accordance with the Canadian Content Policy. As well, Construction Contractor requires the consent of Alstom to the disclosure, verification and audit of the information forming the basis of the declaration, both during the term of the Revenue Vehicle Supply Contract and after the termination or expiration of the term of the Revenue Vehicle Supply Contract, by any of Construction Contractor, the Ministry of Transportation of the Province of Ontario, the Auditor General of the Province of Ontario, or any of their respective designates.

Declaration – Canadian Content Requirements

Alstom hereby certifies that the Canadian content of the Certified LRV, calculated in accordance with the Canadian Content Policy, is at least **[REDACTED]** as set out in Sub-Appendix 1 hereto, which information is true and correct in all material respects to the best of Alstom’s knowledge.

Alstom acknowledges that Construction Contractor is relying upon this declaration to ensure compliance with the Canadian Content Policy. Should a verification or compliance audit performed by any of (i) Construction Contractor, (ii) the Ministry of Transportation of the Province of Ontario, or (iii) the Auditor General of the Province of Ontario disclose a material inaccuracy in the information certified in this declaration, Construction Contractor shall have the right to terminate the Revenue Vehicle Supply Contract in accordance with the provisions thereof.

Consent to Disclosure, Verification & Audit

Alstom consents to Construction Contractor releasing the information certified in this Canadian Content Declaration & Consent Form and the information forming the basis thereof to the Ministry of Transportation of the Province of Ontario and/or the Auditor General of the Province of Ontario, or any of their respective designates, for the purposes of demonstrating compliance with the Canadian Content Policy.

Alstom further consents to a verification or compliance audit of the Canadian content of the Certified LRV being performed by any of (i) Construction Contractor, (ii) the Ministry of Transportation of the Province of Ontario, or (iii) the Auditor General of the Province of Ontario, or any of their respective designates, during the term of the Revenue Vehicle Supply Contract and for [REDACTED] after the expiry or termination of such term. Alstom shall cooperate with Construction Contractor, the Ministry of Transportation of the Province of Ontario and the Auditor General of the Province of Ontario in the conduct of any such audit, including making available all such information, reports, documents, records and accounts in respect of the Certified LRV as they may reasonably require to perform such audit.

Dated at ● this ● day of ●, 20●.

ALSTOM TRANSPORT CANADA INC.

by _____

Name:

Title:

(An authorized signing officer with
authority to bind Alstom)

SUB-APPENDIX 1

**TO THE CANADIAN CONTENT DECLARATION & CONSENT FORM
IN RESPECT OF LRV NO. ●**

| Item | Category of Item | Percentage of Total Vehicle Cost (A) | Percentage of Canadian Content for Item (B) | Total Percentage Canadian Content (A*B%) |
|---|-------------------------|---|--|---|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |
| 7. | | | | |
| 8. | | | | |
| 9. | | | | |
| 10. | | | | |
| TOTAL PERCENTAGE OF CANADIAN CONTENT OF THE CERTIFIED LRV: | | | | |

ATTACHMENT 44

GUARANTEE

THIS GUARANTEE is made as of the 17th day of October, 2019.

BETWEEN:

[REDACTED]

(the “**Guarantor**”)

AND:

MOBILINX HURONTARIO DBJV, [REDACTED]

(“**Construction Contractor**”)

WHEREAS Alstom Transport Canada Inc. (the “**Supplier**”), as supplier, and Construction Contractor intend to enter into a Revenue Vehicle Supply Contract (the “**Vehicle Supply Contract**”), a draft of which is attached hereto;

NOW, THEREFORE, in consideration of Construction Contractor entering into the Vehicle Supply Contract with the Supplier, in recognition of the direct and indirect benefits to be received by the Guarantor from the entering into of the Vehicle Supply Contract, and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each of the parties), it is hereby agreed as follows:

- 1.1 **Definitions and Interpretation.** This Guarantee shall be interpreted according to the following provisions, unless the context requires a different meaning:
- (a) unless otherwise defined, all capitalized terms shall have the meanings given to them in the Vehicle Supply Contract and, unless the context otherwise requires;
 - (b) the headings in this Guarantee are for convenience of reference only, shall not constitute a part of this Guarantee and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Guarantee;
 - (c) unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Guarantee and the terms “Section” and “Clause” are used interchangeably and are synonymous;
 - (d) words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, 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;

- (e) 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;
- (f) references to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Guarantee concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned;
- (g) the words in this Guarantee shall bear their natural meaning;
- (h) references containing terms such as:
 - (i) “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 this Guarantee taken as a whole; and
 - (ii) “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”;
- (i) where this Guarantee 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;
- (j) where this Guarantee 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;
- (k) any reference to time of day or date means the local time or date in Toronto, Ontario;
- (l) a reference to “days” is a reference to “calendar days”;
- (m) a reference to “Business Days” shall mean any day other than Saturday, Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario;
- (n) unless otherwise indicated, time periods will be strictly construed;

- (o) whenever the terms “will” or “shall” are used in this Guarantee they shall be construed and interpreted as synonymous and to read “shall”; and
- (p) in the event of any ambiguity, conflict or inconsistency between the provisions of the Vehicle Supply Contract and this Guarantee, the provisions of this Guarantee shall prevail and govern to the extent of such ambiguity, conflict or inconsistency, unless such ambiguity, conflict or inconsistency pertains to the Liabilities, in which event the Vehicle Supply Contract shall prevail and govern.

1.2 **Guarantee.** For the above-mentioned consideration:

- (a) the Guarantor irrevocably and unconditionally guarantees to Construction Contractor (i) the due and punctual performance by the Supplier of each and all of the obligations (including any indemnity obligations), warranties, duties and undertakings of the Supplier now existing or hereafter arising under the Vehicle Supply Contract in respect of the Revenue Vehicle Deliverables when and to the extent performance of such obligations (including any indemnity obligations), duties and undertakings shall become due according to the terms of the Vehicle Supply Contract (taking into account any period for performance of such obligations expressly provided for in the Vehicle Supply Contract), and (ii) the due payment and discharge of all sums of money and liabilities now or hereafter due, owing or incurred or payable and unpaid by the Supplier to Construction Contractor under the Vehicle Supply Contract in respect of the Revenue Vehicle Deliverables (taking into account any period for payment of such sums and liabilities expressly provided for in the Vehicle Supply Contract) or as a result of any breach of the terms of the Vehicle Supply Contract by the Supplier, including all reasonable, properly documented out-of-pocket costs, expenses and disbursements arising directly from Construction Contractor’s enforcement of its rights under this Guarantee (collectively, the “**Liabilities**”, and each a “**Liability**”);
- (b) the Guarantor agrees with Construction Contractor that if and whenever at any time and from time to time the Supplier fails to pay or perform any of the Liabilities (taking into account any period for payment or performance of such Liabilities expressly provided for in the Vehicle Supply Contract), the Guarantor shall promptly, on receipt of a written demand from Construction Contractor (which demand shall (i) notify the Guarantor of such failure (ii) include the default notice provided by the Vehicle Supply Contract, and (iii) include a description of the Liabilities that the Guarantor is to pay, perform or discharge) and in any event within 10 Business Days, pay, perform or discharge such Liabilities, as the case may be, as if the Guarantor instead of the Supplier was expressed to be a party to, and jointly and severally liable for all obligations of, the Supplier under the Vehicle Supply Contract in respect of the Revenue Vehicle Deliverables. For greater certainty, Construction Contractor shall not issue a written demand to the Guarantor and the Guarantor shall not be required to pay, perform or discharge any Liabilities, until the expiry of any cure or remedial period provided to the Supplier in the Vehicle Supply Contract;
- (c) subject to the procedure set forth in Section 1.2(b), the Guarantor shall indemnify Construction Contractor, promptly on receipt of written demand from Construction Contractor and in any event within 7 Business Days of receipt of such demand, in respect

of any claim, demand, proceedings, liability, loss, damage, costs, charges or expenses (and any taxes arising thereon) directly arising out of any failure by the Supplier to perform each and all of the obligations, warranties, duties and undertakings of the Supplier or to pay and discharge each and all sums of money and liabilities due, owing, incurred or payable and unpaid to Construction Contractor, in each case pursuant to the Vehicle Supply Contract in respect of the Revenue Vehicle Deliverables; and

- (d) the Guarantor shall indemnify Construction Contractor, promptly upon receipt of written demand from Construction Contractor and in any event within 6 Business Days of receipt of such demand, against any loss or liability suffered by Construction Contractor as a result of any obligation guaranteed by the Guarantor being or becoming unenforceable, invalid or illegal (other than as a result of an act or omission of Construction Contractor) as if the obligation guaranteed had not become unenforceable, invalid or illegal, provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal and provided further that the Guarantor shall not be obligated to perform any obligation to the extent that it would be illegal for it to do so.
- 1.3 **No Exoneration.** The Guarantor's obligations under this Guarantee shall not be prejudiced, and the Guarantor shall not be exonerated by any time being given to the Supplier by Construction Contractor nor by any concession or arrangement or waiver or forbearance granted or made by Construction Contractor to or with the Supplier or by anything that Construction Contractor or the Supplier may do or omit or neglect to do (including, but without limitation, the assertion of or failure or delay to assert any right or remedy of Construction Contractor or any irregularity or defect in the manner of pursuing any rights or remedies by Construction Contractor other than as provided in Section 1.27(d)) or the giving by the Supplier of any security or the release, modification or exchange of any such security or the liability of any persons, or any present or future law or regulation purporting to reduce or prejudice any of the Liabilities which, but for this provision, might exonerate the Guarantor or by any unenforceability, illegality or invalidity of any provision or provisions of the Vehicle Supply Contract or any of the Liabilities or any obligations under or in connection with any security in respect of the Liabilities, so that this Guarantee shall be construed as if there were no such unenforceability, illegality or invalidity, provided that the Guarantor shall not be obligated to perform any Liability to the extent it would be illegal for the Guarantor to do so.
- 1.4 **Term.** The term of this Guarantee shall commence on the date the Vehicle Supply Contract is entered into and the liability of the Guarantor hereunder shall expire on the expiry of the last latent defect period referenced in Part 1 Section 7.2(e), except with respect to any claims existing and for which notice has been given prior to such expiry date, in which case this Guarantee shall not terminate with respect to such claims until such claims have been satisfied in full.
- 1.5 **Liability as Principal Obligor.** Without prejudice to Construction Contractor's rights against the Supplier as principal obligor, the Guarantor shall be deemed a principal obligor in respect of its obligations under this Guarantee and not merely as surety. The Guarantor shall not be discharged nor shall its liability hereunder be affected by any act or thing or means whatsoever by which its said liability would have been discharged or affected if it had not been principal obligor.

- 1.6 **Amendments to Vehicle Supply Contract.** The Guarantor hereby authorizes (without need for further consent) the Supplier and Construction Contractor to make:
- (a) any amendment, addendum or variation to the Vehicle Supply Contract, the due and punctual performance of which amendment, addendum or variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee; and
 - (b) any waiver or concession under the Vehicle Supply Contract, which waiver or concession shall be binding on the Guarantor for the purposes of this Guarantee.

Subject to Section 1.27, the obligations of the Guarantor hereunder shall in no way be lessened by any amendment, variation or addendum to or waiver or concession under the Vehicle Supply Contract.

- 1.7 **Continuing Guarantee.** Subject to Section 1.4, this Guarantee is a continuing guarantee and, accordingly, shall remain in operation and in full force and effect (notwithstanding any intermediate satisfaction by the Supplier, the Guarantor or any other person) until all of the Liabilities shall have been satisfied or performed or as the case may be discharged in full. This Guarantee is not revocable and is in addition to and not in substitution for any other security which Construction Contractor may at any time hold for the performance of any of the Liabilities and may be enforced against the Guarantor without first having recourse to any such security and without taking any steps or proceedings against the Supplier, any other guarantor or any other person (and it shall not be a requirement of this Guarantee that the Supplier, any other guarantor or any other person be joined as a party to any proceedings for the enforcement of any provisions of this Guarantee), and should Construction Contractor elect to realize on any other security it may hold, either before, concurrently with or after demand is made under this Guarantee, the Guarantor shall not have any right of discussion or division. A separate action may be brought and prosecuted against the Guarantor whether or not any action is brought against the Supplier and whether or not the Supplier is joined in any such action or actions. In the event that Construction Contractor brings formal legal proceedings against the Supplier related to the Vehicle Supply Contract, the Guarantor will be bound by any final judgement made by the court in such proceedings.
- 1.8 **Guarantee Unaffected.** Neither the liability of the Guarantor hereunder nor the rights of Construction Contractor in relation to this Guarantee shall be discharged, released, reduced, impaired or affected by reason of (i) any release or stay of proceedings against any other person (except for the Supplier) liable as guarantor pursuant to any law relating to bankruptcy, insolvency or restructuring or affecting creditors' rights, (ii) any failure to obtain, preserve or perfect any right against the Supplier or any other person, or (iii) the winding up, dissolution, administration, incapacity, lack of power or re-organisation of the Supplier or any other person or any change in its or their status, function, direct or indirect control or ownership or any lack or deficiency in the authority of any person acting on behalf of the Supplier or any other person in connection with the Liabilities or by any other act, event or omission which might, but for the provisions of this Guarantee, operate to discharge, impair or otherwise affect any of the obligations or liabilities of the Guarantor hereunder or any of the rights, remedies or powers conferred upon Construction Contractor.

- 1.9 **Limitations on Guarantor's Rights.** While any of the Liabilities remain unpaid or unperformed or any obligation or liability of the Guarantor under this Guarantee remains unpaid or unperformed, the Guarantor shall not (in relation solely to the Vehicle Supplier Activities and the Revenue Vehicle Deliverables):
- (a) if the Guarantor has any rights of subrogation against the Supplier or any rights to exercise in a liquidation of the Supplier, exercise such rights except in accordance with the written consent of Construction Contractor;
 - (b) by virtue of or in respect of any payment made, security realised or monies received for or on account of the Guarantor's liability under this Guarantee, be subrogated to, benefit from, succeed to or share in any rights, security or monies held or received by Construction Contractor or be entitled to any right of contribution or claim any right of indemnity, or exercise any other rights or legal remedies;
 - (c) claim, recover, accept or prove as creditor or otherwise in competition with Construction Contractor in respect of any monies owing to it by the Supplier in the event of any bankruptcy, liquidation or other insolvency proceedings relating to the Supplier; and the Guarantor shall give Construction Contractor the benefit of each such claim and proof and of all monies to be received in respect thereof and in the meantime hold the same in trust for Construction Contractor; or
 - (d) claim or recover from the Supplier any sum paid by the Guarantor hereunder or claim any set-off or counterclaim against the Supplier or prove in competition with Construction Contractor to claim or have the benefit of any security which Construction Contractor holds or may hold for any money or liabilities due or incurred by the Supplier to Construction Contractor and, in case the Guarantor receives any sums from the Supplier in respect of any payment made by the Guarantor hereunder, the Guarantor shall hold such monies in trust for Construction Contractor.
- 1.10 **Liability arises on Demand; Manner of Payment.** The liability of the Guarantor under this Guarantee shall arise forthwith after a demand under Section 1.2 has been made in writing on the Guarantor. Notwithstanding any provision contained in this Guarantee, Construction Contractor shall not make a claim under this Guarantee unless a VSC Event of Default has occurred and notice of such VSC Event of Default has been given to the Supplier in accordance with the Vehicle Supply Contract.
- 1.11 **Waiver of Notice.** Except as set forth in Section 1.10, Construction Contractor shall not be required to give any notice or do any other act or thing in order to preserve or enforce Construction Contractor's rights hereunder, any such notice being expressly waived by the Guarantor.
- 1.12 **Effect of Waiver.** A waiver by either party of any right or remedy hereunder on any occasion shall not be construed as a bar to any right or remedy which such party would otherwise have had on any future occasion with regard to any subsequent breach. No failure to exercise nor any delay in exercising on the part of either party of any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power

or privilege. The rights and remedies herein provided are cumulative and may be exercised singularly or concurrently.

- 1.13 **Reinstatement.** If any payment by the Supplier or the Guarantor in respect of the Liabilities is avoided or annulled or must be repaid as a result of insolvency or any similar event, the liability of the Guarantor will continue as if such payment had not occurred (and to the extent necessary, the guarantee of the Guarantor provided for herein will automatically be reinstated and the Guarantor shall indemnify and save Construction Contractor harmless from all costs related thereto). For greater certainty, the Guarantor agrees that it will remain liable for the performance in full of the Liabilities even if the Supplier is discharged therefrom by applicable legislation relating to bankruptcy, insolvency or reorganization.
- 1.14 **Responsibility to Keep Informed.** The Guarantor assumes responsibility for being and keeping informed of the financial condition of the Supplier and of all other circumstances bearing upon the risk of non-performance of the Liabilities which diligent inquiry would reveal, and agrees that Construction Contractor shall not have any duty to advise the Guarantor of information known to it now or hereafter regarding such condition or any such circumstances.
- 1.15 **Further Assurances.** The Guarantor covenants that, upon reasonable demand by Construction Contractor, it will perform all acts and execute all deeds and documents reasonably necessary to give full effect to the provisions hereof and to ensure that this Guarantee will be at all times enforceable against the Guarantor.
- 1.16 **Interest.** Any amount not paid when due hereunder shall bear interest at the interest rate set out in the Vehicle Supply Contract, provided that such interest will not be in duplication of any interest payable pursuant to the Vehicle Supply Contract and claimed hereunder.
- 1.17 **Limitations on Rights against Supplier.** While any of the Liabilities remain unpaid or unperformed or any obligation or liability of the Guarantor under this Guarantee remains unpaid or unperformed, the Guarantor shall not, by paying any sum due hereunder or by any means or on any ground, claim or recover by the institution of proceedings or the threat of proceedings or otherwise such sum from the Supplier or claim any set-off or counterclaim relating solely to the Vehicle Supplier Activities and the Revenue Vehicle Deliverables against the Supplier or prove in competition with Construction Contractor to claim or have the benefit of any security which Construction Contractor holds or may hold for any of the Liabilities and, in case the Guarantor receives any sums from the Supplier in respect of any payment made by the Guarantor hereunder, the Guarantor shall hold such monies in trust for Construction Contractor so long as any sums are payable (contingently or otherwise) under this Guarantee.
- 1.18 **No Withholdings; Gross-up.** All sums payable under this Guarantee shall be paid in full free and clear of and without deduction of or withholding for or on account of any present or future taxes, duties and/or other charges, save where required by law. If the Guarantor is required by law to deduct or withhold any amount from any sum payable under this Guarantee, the Guarantor shall promptly pay an additional amount so as to ensure that the net amount received by Construction

Contractor fully compensates Construction Contractor for the underlying Liability on an after-tax basis.

1.19 **Judgment Currency.**

- (a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder to Construction Contractor in one currency (the “**Original Currency**”) into another currency (the “**Judgment Currency**”), the Guarantor agrees, to the fullest extent that it may effectively do so under Applicable Law, that the rate of exchange used shall be that at which in accordance with normal banking procedures Construction Contractor could purchase the Original Currency with the Judgment Currency on the Business Day preceding that on which final judgment is paid or satisfied.
- (b) The obligations of the Guarantor in respect of any sum due in the Original Currency from it to Construction Contractor under this Guarantee shall, notwithstanding any judgment in any Judgment Currency, be discharged only to the extent that, on the Business Day following receipt by Construction Contractor of any sum adjudged to be so due in such Judgment Currency, Construction Contractor may in accordance with normal banking procedures purchase the Original Currency with such Judgment Currency. If the amount of the Original Currency so purchased is less than the sum originally due to Construction Contractor in the Original Currency, the Guarantor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify Construction Contractor against such loss and, if the amount of the Original Currency so purchased exceeds the sum originally due to Construction Contractor in the Original Currency, Construction Contractor shall remit such excess to the Guarantor.

1.20 **Successors and Assigns.** This Guarantee shall become effective when it is executed and thereafter shall enure to the benefit of Construction Contractor and its respective successors and permitted assigns and be binding upon the Guarantor and its successors and permitted assigns. The Guarantor may not assign, transfer or novate any of its rights or obligations under this Guarantee without the prior written consent of Construction Contractor, not to be unreasonably withheld. This Guarantee is assignable by Construction Contractor to the Lenders (as such term is defined in the Vehicle Supply Contract), Project Co, the Contracting Authority, and to a permitted assignee of Construction Contractor under the Vehicle Supply Contract to whom Construction Contractor assigns its interest under the Vehicle Supply Contract without the consent of the Guarantor and when so assigned, to the extent of such assignment, the Guarantor shall be liable to the assignee as the Guarantor would have been if such assignee were Construction Contractor hereunder. The Guarantor hereby acknowledges and agrees that notwithstanding that the assignee is not a party to this Guarantee it shall have all the contractual rights as if it were a contracting signatory hereto.

1.21 **Limitation Period.** No action or proceedings for any breach of this Guarantee in respect of any particular Liability shall be commenced against the Guarantor after the expiry of the applicable limitation period (if any) in respect of such Liability.

1.22 **Representations by Guarantor.** The Guarantor represents and warrants to Construction Contractor that as of Financial Close:

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- (i) it is a corporation incorporated and validly existing under the laws of France, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to perform its obligations under this Guarantee;
 - (ii) it has the requisite power, authority and capacity to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Guarantee to be done, executed, delivered or performed;
 - (iii) no steps or proceedings have been taken or are pending to supersede or amend its constating documents, articles or by-laws in a manner that would impair or limit its ability to perform its obligations under this Guarantee;
 - (iv) this Guarantee constitutes a legal, valid, and binding obligation of it, enforceable 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;
 - (v) the performance of its obligations under this Guarantee 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;
 - B. any Applicable Law; or
 - C. any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
 - (vi) there are no actions, suits, proceedings, or investigations pending or threatened against it 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 its business, properties, or assets, or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Guarantee, and it has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment.

- 1.23 **Waiver of Presentment, etc.** The Guarantor waives any demand for payment, presentment or notice, except as expressly provided under Section 1.2 and Section 1.10 of this Guarantee.
- 1.24 **No Double Recovery.** Construction Contractor shall not be entitled to recover compensation or make a claim pursuant to any provision of this Guarantee in respect of any loss that it has incurred or in respect of any interest or enforcement costs, to the extent that it has already been compensated in respect of such loss, failure, interest or costs.
- 1.25 **Governing Law and Submission to Jurisdiction.** This Guarantee shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein without regard to conflicts of laws principles, and all actions or proceedings in respect of any claim arising out of or related to this Guarantee, whether in contract, tort, at law or in equity, shall be brought in the courts of the Province of Ontario.
- 1.26 **Miscellaneous.**
- (a) The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.
 - (b) This Guarantee may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Guarantee.
 - (c) This Guarantee supersedes all prior understandings and agreements, whether written or oral, between the parties (or any of them) relating to the subject matter hereof.
- The guarantee provided for herein is in addition and without prejudice to, and supplemental to, all other guarantees and other securities held, or which may hereafter be held, in connection with any or all of the Liabilities.
- (d) Time shall be of the essence hereof. No amendment or waiver of any provision of this Guarantee nor consent to any departure by the Guarantor therefrom shall be effective unless and until the same shall be in writing and signed by Construction Contractor and such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.
- 1.27 **Limitations on Liability.** Notwithstanding any other provision of this Guarantee:
- (a) in no event shall the aggregate liability of the Guarantor under this Guarantee exceed the liability of the Supplier under the Vehicle Supply Contract and the Guarantor shall have the benefit of all rights, limitations and defences otherwise available to the Supplier, including, without limitation, maximum aggregate limit of liability of the Supplier, and shall be subject to the same limit of liability, as set out in the Vehicle Supply Contract, but this limit of liability shall be subject to the same exceptions as apply to the limit of liability of the Supplier as set out in the Vehicle Supply Contract and in determining whether any limit of liability under the Vehicle Supply Contract has been reached or exceeded, the Guarantor's liabilities hereunder shall be taken into account as if the amount of the relevant

Liability had been recovered by Construction Contractor from Supplier under the Vehicle Supply Contract;

- (b) in determining the Guarantor's liability under this Guarantee, the Guarantor shall, subject to Sections 1.3 and 1.8 of this Guarantee, have the benefit of all (but no greater) rights, remedies, defences and limitations that the Supplier would have been entitled to assert under the Vehicle Supply Contract;
- (c) where a Liability has become unenforceable due to the expiry of the applicable limitation period, the Guarantor's liability under this Guarantee shall be determined as if the Guarantor had the benefit of the same limitation periods that the Supplier would be entitled to assert under the Vehicle Supply Contract and under Applicable Law; and
- (d) any payment, performance or discharge of the Liabilities through the realization of any security held or received by Construction Contractor in respect of the Liabilities shall, to the extent of such payment, performance or discharge, reduce the liability of the Guarantor under this Guarantee.

1.28 Any notice or demand (“**Communication**”) hereunder shall be duly signed by or on behalf of a duly authorized officer of the person giving the Communication and left at or sent by hand delivery or by facsimile or electronic transmission to the following addresses:

If to Guarantor: [REDACTED]

If to Construction Contractor: [REDACTED]

- (a) Any party may change its address for Communication to another address by prior Communication in writing to the other party.
- (b) Any Communication shall be deemed to have been received:
 - (i) if sent by hand, when delivered;
 - (ii) if sent by facsimile or electronic transmission, upon sending, subject to:
 - A. confirmation of uninterrupted transmission by a transmission report; and
 - B. there having been no telephonic communication by the recipient to the sender (any such telephonic communication to be confirmed in writing)

that the facsimile or electronic transmission has not been received in legible form:

- (1) within 3 hours after sending, if sent on a Business Day and between the hours of 9:00 a.m. and 4:00 p.m.; or
- (2) by noon on the next following Business Day if sent after 4:00 pm on a Business Day but before 9:00 a.m. on the following Business Day; and
- (3) provided that any Communication given by facsimile or electronic transmission shall be confirmed by letter sent by hand or post, but without prejudice to the original facsimile or electronic transmission Communication if received in accordance with this Section 1.28(b)(ii)B.

1.29 **Joint and Several Liability.** Each of the Construction Contractor Members shall be jointly and severally liable for all of the liabilities and obligations of Construction Contractor under and pursuant to this Guarantee.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

[REDACTED]

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

I have authority to bind the corporation.

MOBILINX HURONTARIO DBJV

[REDACTED]

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

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

I/We have authority to bind the corporation.

ATTACHMENT 45

[REDACTED]

ATTACHMENT 46

ALSTOM KEY PARTIES

Key System

• [REDACTED]

Approved Sub-Contractors

[REDACTED]