

# **PROJECT AGREEMENT**

## **Execution Version**

# **EGLINTON CROSSTOWN LRT PROJECT**

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**Confidential – Economic Interests of Ontario**

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## SCHEDULES

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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	- <b>[Intentionally Deleted]</b>
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	- Maintenance and Rehabilitation Requirements
Schedule 16	- Encumbrances
Schedule 17	- Environmental Obligations
Schedule 18	- Communication and Public Engagement Protocol
Schedule 19	- <b>[Intentionally Deleted]</b>
Schedule 20	- Payment Mechanism
Schedule 21	- Construction 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	-	Standby Letter of Credit
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	<b>[REDACTED]</b>
Schedule 33	-	Works Report Requirements
Schedule 34	-	HMQ Permits, Licences and Approvals
Schedule 35	-	Lands
Schedule 36	-	Vehicles
Schedule 37	-	Intellectual Property
Schedule 38	-	Tunnels
Schedule 39	-	System Extension
Schedule 40	-	Door Access Matters
Schedule 41	-	Procurement Monitoring and Implementation Plan
Schedule 42	-	Non-Affiliate Contractor Plan



**THIS PROJECT AGREEMENT** is made as of the 21<sup>st</sup> day of July, 2015

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**, as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated 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 in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48

(collectively, “**HMQ Entities**”)

**AND: CROSSLINX TRANSIT SOLUTIONS GENERAL PARTNERSHIP,**  
[REDACTED]

(“**Project Co**”)

**WHEREAS:**

A. HMQ Entities intend to develop a new light rapid transit system which includes the following elements:

- (a) Eglinton Maintenance and Storage Facility located at Black Creek Drive;
- (b) approximately 0.8 km of new alignment within the Eglinton Avenue right of way from Mt. Dennis Station to the West Portal (east of Black Creek Drive), mostly above-grade with a small section of Tunnel;
- (c) approximately 10.2 km of new below grade (tunnel) alignment section along Eglinton Avenue from the West Portal, east of Black Creek Drive, to the East Portal, east of Brentcliffe Road, via Tunnel;
- (d) approximately 8.0 km of new alignment within the Eglinton Avenue right of way from the East Portal, east of Brentcliffe Road to Kennedy Station, mostly at-grade, with small sections of Tunnel;
- (e) 15 underground Stations;
- (f) 10 at-grade Stops;
- (g) Associated Facilities; and
- (h) integration, maintenance and storage of Vehicles.

B. Project Co will provide the Project Operations, which Project Operations include the design, construction, financing, maintenance and rehabilitation of the Project Co System Infrastructure and design, construction and financing of the New Third Party Infrastructure (the “**Project**”).

C. HMQ Entities 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.

D. This Project involves the development of the first 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 such as the GO Transit and Toronto Transit Commission systems, (iii) stimulating land development and supporting intensification at Urban Growth Centres (as defined in the Province’s “*Growth Plan for the Greater Golden Horseshoe*”), (iv) reducing greenhouse gas emissions by increasing transit modal share, and (v) supporting local population and employment growth, particularly at Urban Growth Centres.

E. The Project will proceed as an alternative financing and procurement project approved by the Ministry of Economic Development, Employment and Infrastructure (“**MEDEF**”).

F. 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.

G. Consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.

H. 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 HMQ Entities and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

I. HMQ Entities intend to be liable, on a joint and several basis, for all of the obligations of HMQ Entities 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
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Schedule 25	- Insurance and Performance Security Requirements
Schedule 26	- Record Provisions
Schedule 27	- Dispute Resolution Procedure
Schedule 28	- Refinancing
Schedule 29	- Standby Letter of Credit
Schedule 30	- Insurance Trust Agreement
Schedule 31	- Project Co Information
Schedule 32	- <b>[REDACTED]</b>
Schedule 33	- Works Report Requirements

Schedule 34	-	HMQ Permits, Licences and Approvals
Schedule 35	-	Lands
Schedule 36	-	Vehicles
Schedule 37	-	Intellectual Property
Schedule 38	-	Tunnels
Schedule 39	-	System Extension
Schedule 40	-	Door Access Matters
Schedule 41	-	Procurement Monitoring and Implementation Plan
Schedule 42	-	Non-Affiliate Contractor Plan

- (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 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, HMQ Entities 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 HMQ Entities, no consent, approval or satisfaction of HMQ Entities or the HMQ 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;

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- (iv) Schedule 1 - Definitions and Interpretation;
  - (v) Schedule 34 - HMQ Permits, Licences and Approvals;
  - (vi) Schedule 35 - Lands;
  - (vii) Schedule 27 - Dispute Resolution Procedure;
  - (viii) Schedule 21 - Construction Payments;
  - (ix) Schedule 20 - Payment Mechanism;
  - (x) Schedule 15 - Output Specifications;
  - (xi) Schedule 17 - Environmental Obligations;
  - (xii) Schedule 25 - Insurance and Performance Security Requirements;
  - (xiii) Schedule 22 - Variation Procedure;
  - (xiv) Schedule 10 - Review Procedure;
  - (xv) Schedule 14 - Commissioning;
  - (xvi) Schedule 11 - Quality Management;
  - (xvii) Schedule 28 - Refinancing;
  - (xviii) Schedule 23 - Compensation on Termination;
  - (xix) Schedule 26 - Record Provisions;
  - (xx) Schedule 24 - Expiry Transition Procedure;
  - (xxi) the other Schedules in the order in which they are listed in Section 1.1(b); and
  - (xxii) 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 HMQ Entities, upon discovery of same, shall immediately give Notice to the HMQ Representative. The HMQ 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) HMQ Entities and Project Co shall comply with the determination of the HMQ Representative pursuant to this Section 1.2 unless HMQ Entities or Project Co dispute the decision of the HMQ 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.

## 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 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 29 – Standby Letter of Credit, Schedule 34 – HMQ 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) On Commercial Close, Project Co shall deliver, or cause to be delivered, to HMQ Entities an irrevocable standby letter of credit (the “**Standby Letter of Credit**”) in the amount of **[\$REDACTED]** substantially in the form of Schedule 29 - Standby Letter of Credit. Project Co may, with the consent of HMQ Entities which consent may be withheld in the sole discretion of HMQ Entities, provide multiple irrevocable standby letters of credit delivered from **[REDACTED]** as approved and confirmed by HMQ Entities (each a “**Letter of Credit Provider**”) in amounts totalling **[\$REDACTED]** and each substantially in the form of Schedule 29 - Standby Letter of Credit. For the purposes of this Section 2.2, each of the multiple irrevocable standby letters of credit is referred to as a Standby Letter of Credit.
- (b) Unless a Standby Letter of Credit is drawn by HMQ Entities in accordance with the provisions of this Project Agreement, HMQ Entities 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 2.2(a), Project Co acknowledges and agrees that:
- (i) HMQ Entities may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider in any specified ratable amount;
  - (ii) HMQ Entities 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) HMQ Entities 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 HMQ Entities 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 HMQ Entities' 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 HMQ Entities drafts of all documents referred to in Section 1 of Schedule 2 - Completion Documents.
- (b) On or before the Financial Close Target Date:
- (i) Project Co shall deliver to HMQ Entities the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
  - (ii) HMQ Entities shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 - Completion Documents.
- (c) If Project Co fails to deliver to HMQ Entities any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by HMQ Entities of their obligations under Section 2.3(b)(ii)) and HMQ Entities do not waive such requirement, HMQ Entities will be entitled to draw on the Standby Letter of Credit 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 HMQ Entities 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 HMQ Entities as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not HMQ Entities incur or mitigate their damages, and that HMQ Entities shall not have any obligation to mitigate any such damages.

- (d) Project Co shall, no later than 10 days following written instructions from HMQ Entities at Financial Close, pay an amount equal to the Design and Bid Fee plus, for clarity, any applicable HST to each of the eligible unsuccessful Proponents, as directed by HMQ Entities. If Project Co is directed to pay the Design and Bid Fee to fewer than one Proponent, then Project Co shall revise the Financial Model prior to Financial Close to reflect such change.
- (e) If HMQ Entities fail to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 - Completion Documents by the Financial Close Target Date (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, HMQ Entities may in their 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 HMQ Entities 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 HMQ Entities elect to be assigned.
- (c) If HMQ Entities exercise their 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. HMQ Entities' 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 HMQ Entities, that such fee represents full and final satisfaction of any obligation or liability of HMQ Entities 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 HMQ Entities, except as otherwise provided in this Project Agreement. Project Co's sole recourse to Metrolinx with respect to the subject matter of this Project Agreement shall be to Metrolinx in its capacity as agent of the Province.

### 4. BUSINESS OPPORTUNITIES, ADVERTISING AND PUBLIC EVENTS

#### 4.1 Business Opportunities

- (a) Project Co acknowledges that HMQ Entities: (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, wifi, radio, public television on the Project Co System Infrastructure, and a CGP Energy Opportunity ("**Business Opportunities**"); (ii) reserve 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) For clarity, Project Co acknowledges and agrees that the addition of retail facilities, kiosks, or newsstands, the erection of billboards and other forms of advertising by HMQ Entities or the implementation of other Business Opportunities by HMQ Entities shall not entitle Project Co to any additional compensation or extension of time in relation thereto.
- (c) Project Co shall cooperate with HMQ Entities in HMQ Entities' implementation of Business Opportunities.
- (d) To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for HMQ Entities' consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to both HMQ Entities and Project Co. HMQ Entities may accept any such proposal in their sole discretion and subject to such terms and conditions as HMQ Entities may require.
- (e) Notwithstanding that Project Co has proposed a Business Opportunity to HMQ Entities for their consideration, Project Co acknowledges and agrees that:
  - (i) HMQ Entities reserve the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party;

- (ii) HMQ Entities 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 HMQ Entities (in any form) on the basis that Project Co proposed such Business Opportunity to HMQ Entities, even if HMQ Entities proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party.
- (f) For clarity, in the case of a CGP Energy Opportunity, HMQ Entities acknowledge and agree that, to the extent that CGP Energy Opportunity required Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations or results in an increase or decrease in cost to Project Co, such CGP Energy Opportunity shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

## 5. REPRESENTATIONS AND WARRANTIES

### 5.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to HMQ Entities that as of Commercial Close:
- (i) Project Co is **[REDACTED]** formed and validly existing under the laws of the Province of Alberta, 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 duly observe and perform its obligations hereunder;
    - (A) **[REDACTED]** under the laws of British Columbia 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 duly observe and perform its obligations hereunder in its capacity as a partner of Project Co;
    - (B) **[REDACTED]** under the laws of Canada, 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 duly observe and perform its obligations hereunder in its capacity as a partner of Project Co;
    - (C) **[REDACTED]** under the laws of Ontario, 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 duly observe and perform its obligations hereunder in its capacity as a partner of Project Co; and
    - (D) **[REDACTED]** under the laws of Canada, 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 duly observe and perform its obligations hereunder in its capacity as a partner of Project Co;

- (ii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction, maintenance and rehabilitation of light rail transit projects, including the 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 has 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 the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Project Agreement;
- (v) this Project Agreement has been duly authorized, executed, and delivered by Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co 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 of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
  - (A) its constating, formation or organizational documents, including any by-laws;
  - (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 Project Co Event of Default has occurred and is continuing;
- (viii) all of the information regarding Project Co 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, to Project Co's knowledge, 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 in any impairment of its ability to perform its obligations under this Project Agreement, and Project Co 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) 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 HMQ Entities and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Maintenance and Rehabilitation 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) 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 not 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 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) the Construction Contractor is in possession of, the Health and Safety Certification as required under this Project Agreement (or has made an application to IHSA for its Health and Safety Certificate as required under this Project Agreement) and has the ability to maintain such Health and Safety Certification until the Final Completion Date in accordance with its terms, provisions and conditions.

## 5.2 HMQ Entities Representations and Warranties

- (a) HMQ represents and warrants to Project Co, on a several basis, that as of Commercial Close:
  - (i) IO is a non-share capital corporation continued and amalgamated 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), 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 the Province;
- (iii) subject to Sections 5.2(a)(v)(C), (D), (E) and (F), HMQ 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) IO has obtained all necessary approvals to enter into this Project Agreement as agent for the Province;
- (v) this Project Agreement has been duly authorized, executed, and delivered by HMQ and constitutes a legal, valid, and binding obligation of HMQ, enforceable against HMQ 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 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 HMQ 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 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*, including without limitation section 35, 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 agent for the Province;
  - (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* 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* 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 HMQ Entities to grant or to cause to be granted to Project Co the access rights contemplated in Section 14.1.
- (c) HMQ Entities represent and warrant to Project Co, on a joint and several basis, that as of Commercial Close, no HMQ 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, 16.6 and 16.7 neither HMQ Entities nor any other 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 HMQ Entities or any other 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, 16.6 and 16.7:
- (i) neither HMQ Entities nor any other Province Person gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither HMQ Entities nor any other 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 HMQ Entities 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, 16.6 and 16.7, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against HMQ Entities 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) HMQ Entities agree that, if as of Commercial Close, except as disclosed in any Background Information or as otherwise disclosed by HMQ Entities or any HMQ 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 HMQ Entities, incorrect or there is relevant information in the possession or control of HMQ Entities 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 HMQ Entities" means to the actual knowledge of the IO project manager – Project Delivery for the Project, or the Metrolinx Director, Eglinton Crosstown 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 HMQ Entities.

### 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 HMQ Entities, whether actual or potential;
  - (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive 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 HMQ Entities, 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 HMQ Entities, 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 HMQ Entities, 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 HMQ Entities, 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. HMQ ENTITIES' RESPONSIBILITIES**

### **8.1 General**

- (a) HMQ Entities shall, at their 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 HMQ Entities shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) HMQ Entities shall, and shall cause all HMQ 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 HMQ Entities or any other 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, HMQ and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of HMQ Entities 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 agent of the Province.

## 8.2 HMQ Permits, Licences and Approvals

- (a) HMQ Entities shall, at their own cost and risk:
  - (i) except as otherwise provided in Schedule 34 – HMQ Permits, Licences and Approvals, obtain on or before Financial Close, maintain, and, as applicable, renew all HMQ 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) HMQ Entities shall, at their own cost, provide or cause to be provided such information, documentation, and administrative assistance as Project Co may request and as HMQ Entities may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable Project Co to obtain, maintain or renew any Project Co Permits, Licences and Approvals or to demonstrate compliance with any Permits, Licences and Approvals, provided that HMQ Entities shall not be responsible for obtaining or for any delay in obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval, unless such delay or failure is caused by any act or omission of HMQ Entities or any HMQ Party. For greater certainty, HMQ Entities 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 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 HMQ Entities, in their 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 HMQ Entities, any HMQ 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 HMQ Entities 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 HMQ Entities' obligations under this Project Agreement;
- (iv) cooperate with HMQ Entities in respect of HMQ Entities' consultations with the City and the Toronto Transit Commission in relation to the Project and the Project Operations;
- (v) cooperate and assist HMQ Entities in any dispute relating to the Project or the Project Agreement arising out of the Master Agreement, including attending at hearings, providing information, and doing such other things as HMQ Entities may reasonably require to resolve the dispute;
- (vi) immediately notify the HMQ Representative and the Toronto Transit Commission or the City, as applicable, to the extent that Project Co becomes aware of any defect in the property or Existing Third Party Infrastructure, of,
  - (A) the Toronto Transit Commission, excluding New TTC Infrastructure; or
  - (B) the City, excluding New City Infrastructure;
- (vii) enter into any agreements that may be required by Utility Companies to complete the Works;
- (viii) coordinate with the City all Construction Activities relating to Existing Third Party Infrastructure owned by the City and New City Infrastructure, including the provision of the Works Schedule and any updates to the Works Schedule relating to such infrastructure, so as to minimize the impact of Construction Activities on City operations and services provided by the City to the public; and
- (ix) immediately notify HMQ Entities and the City with respect to,
  - (A) any injuries to persons on Lands belonging to the City or damage to any infrastructure or Lands owned by the City that occurs during the course of the Project Operations;
  - (B) any significant developments during the Construction Period that affect infrastructure or Lands owned by the City; 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 the City, or the City's budget with respect to the Project.

### 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) Subject to Section 9.4(d), and subject to the deletion of Project Co's obligations in respect of Permits, Licences and Approvals as a result of a CGP De-scoping, 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) comply with all Permits, Licences and Approvals in accordance with their terms; and
  - (iii) provide all security, including all letters of credit, that may be required by the City in connection with any Project Co Permit, Licence and Approval, provided that, if HMQ Entities are 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 HMQ Entities an accurate accounting of the costs and expenses avoided by Project Co as a result of any such exemption; and
    - (B) HMQ Entities 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.
- (b) Where Project Co Permits, Licences and Approvals have requirements that may impose any conditions, liabilities or obligations on HMQ Entities 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 HMQ Entities, provided that neither HMQ Entities 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. HMQ Entities shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on HMQ Entities or any Province Person by the requirements of any Project Co Permit, Licence or Approval obtained with HMQ Entities' 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 HMQ Entities may request and as Project Co may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable HMQ Entities to obtain, maintain or renew any HMQ 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 HMQ Entities to obtain any HMQ 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) If, prior to the Scheduled Substantial Completion Date, the 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 130 per cent times the number of Business Days designated for a final determination by the City in Appendix F to Schedule 1 – Definitions and Interpretation for the applicable Listed Project Co PLA (the “**City PLA Deadline**”), then any delay in the Works Schedule 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 the City, including providing timely and thorough responses to questions or concerns posed by the 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 Works Schedule; and
  - (iv) Project Co’s application for the Listed Project Co PLA and Project Co’s responses to all questions or concerns posed by the City were in accordance with Good Industry Practice.
- (e) For clarity, Section 9.4(d) does not entitle Project Co to a Delay Event or a Compensation Event,
- (i) in the event that the 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 the 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.

## 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 Construction Safety Management Plan;

- (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 Construction Safety Management Plan 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 applicable Site or Metrolinx Lands Discrete Parcels 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, with Applicable Law relating to health and safety, including the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
  - (v) with respect to the Works, perform, or cause a Project Co Party to perform, all of the obligations of the “constructor”, and indemnify HMQ Entities and each other Province Person against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto; and
  - (vi) provide HMQ Entities 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 HMQ Representative from time to time.
- (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 Maintenance Period, Project Co shall:
- (i) cooperate with HMQ Entities, the Operator, 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 HMQ Entities of any breach of security or potential breach of security on or off the Project Co System Infrastructure;
- (iii) cooperate with HMQ Entities, the Operator, 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 HMQ Entities, the Operator, Emergency Service Providers or any Governmental Authority as a result of accidents, incidents or changes in Applicable Law and shall promptly provide to HMQ Entities, 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) cooperate with the Operator and follow the safety and security instructions of HMQ Entities as 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 Eglinton Maintenance and Storage Facility,
  - (A) keep the Eglinton Maintenance and Storage Facility 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 Eglinton Maintenance and Storage Facility; and
- (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 EMSF, take instruction from the Operator and HMQ Entities with respect to maintaining the security and safety of the Project Co System Infrastructure, the System Users, and the Eglinton Maintenance and Storage Facility.

## 9.6 Health and Safety Certification

- (a) Project Co shall cause the Construction Contractor at its own cost and risk, at all times during the performance of the Project Operations to:
  - (i) to the extent the Construction Contractor has not obtained its Health and Safety Certification prior to Financial Close, to use best efforts to obtain its Health and Safety

Certification no later than six months following Financial Close. In the event that HMQ Entities are satisfied, in their sole discretion, that the Construction Contractor has used best efforts to obtain its Health and Safety Certification in accordance with this Section 9.6 and the Construction Contractor has not obtained its Health and Safety Certification by the end of such six month period, then HMQ Entities shall establish a time period during which the Construction Contractor shall obtain its Health and Safety Certification, which time period shall not be less than 60 days;

- (ii) maintain, and, as applicable, renew its Health and Safety Certification; and
  - (iii) comply with all requirements of the Health and Safety Certification in accordance with its terms.
- (b) Without limiting any other provision of this Project Agreement, if at any time during the performance of the Project Operations:
- (i) The Construction Contractor fails,
    - (A) to maintain its Health and Safety Certification in accordance with its terms or in accordance with this Project Agreement; or
    - (B) to obtain its Health and Safety Certification in accordance with this Project Agreement and HMQ Entities determines that the failure to obtain the Health and Safety Certification is as a result of the Construction Contractor not using best efforts to obtain such certification and HMQ Entities delivers a notice to Project Co indicating that the Construction Contractor has failed to obtain its Health and Safety Certification in accordance with this Project Agreement,(collectively, an “**H&S Certification Default Event**”); or
  - (ii) HMQ Entities deliver a notice to Project Co indicating that HMQ Entities are of the opinion that the Construction Contractor will fail to maintain its Health and Safety Certification in accordance with its terms or in accordance with this Project Agreement;

Project Co shall either:

- (iii) immediately upon the occurrence of an H&S Certification Default Event, notify HMQ Entities that an H&S Certification Default Event has occurred and,
  - (A) produce and deliver to HMQ Entities a report identifying the reasons for the failure to maintain the Health and Safety Certification;
  - (B) produce and deliver to HMQ Entities a plan showing the steps that are to be taken to have the Health and Safety Certification reinstated within a period of not more than 30 days (the “**Health and Safety Certification Reinstatement Plan**”), which Health and Safety Certification Reinstatement Plan shall be subject to review and approval by HMQ Entities and, to the extent HMQ Entities

require any amendments or revisions to be made to the Health and Safety Certification Reinstatement Plan, Project Co shall take, and shall cause Construction Contractor to take, all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to HMQ Entities an amended and Health and Safety Certification Reinstatement Plan not more than 5 Business Days from the date on which such request is made by HMQ Entities; and

- (C) no later than 5 Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Inspection in accordance with Section 13(b); or
- (iv) within 5 Business Days of receipt of the notice from HMQ Entities under 9.6(b)(ii),
  - (A) produce and deliver to the HMQ Representative a report identifying the manner in which the Health and Safety Certification shall be maintained or obtained, as applicable;
  - (B) produce and deliver to the HMQ Representative a plan showing the steps that are to be taken to ensure that the Health and Safety Certification will be maintained without interruption (the “**Health and Safety Certification Maintenance Plan**”), which Health and Safety Certification Maintenance Plan shall be subject to review and approval by HMQ Entities and, to the extent HMQ Entities require any amendments or revisions to be made to the Health and Safety 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 HMQ Entities an amended and Health and Safety Certification Maintenance Plan not more than 5 Business Days from the date on which such request is made by HMQ Entities; and
  - (C) arrange to have conducted a complete H&S Inspection in accordance with Section 13(b).

## 9.7 Protest and Trespass

- (a) Except as otherwise provided in this Project Agreement, HMQ Entities 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 HMQ Entities 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 Maintenance Period, in respect of the Project Co System Infrastructure, excluding the Eglinton Maintenance and Storage Facility, Project Co shall follow the instructions of HMQ Entities, the

Operator and the Police Service with respect to the management of Protestors and Trespassers and Project Co shall promptly notify the HMQ Representative of the occurrence of any Protestors or Trespassers on the Maintenance Period Lands or Project Co System Infrastructure. For clarity, Project Co's obligations with respect to the Maintenance Period Lands shall commence only upon the commencement of the Maintenance Period, and following receipt of the Notice to be delivered by HMQ Entities in accordance with Section 14.1(i).

- (c) The management of any Protesters 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 Eglinton Maintenance and Storage Facility and that portion of the Metrolinx Lands on which the Eglinton Maintenance and Storage Facility is 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, facilities or infrastructure referred to in Section 9.7(c)(i) or Section 9.7(c)(ii), or access to such Site, facilities, or infrastructure is prevented or interfered with by Protesters or Trespassers, Project Co shall use all appropriate measures reasonable in the circumstances to manage such Protesters or Trespassers and promptly notify the HMQ 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 Protesters or Trespassers from the Site, 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 HMQ 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 HMQ Entities less than 24 hours prior to the commencement of such legal proceeding) and shall continually update the HMQ 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 HMQ Entities (at the cost of Project Co) to remove Protesters or Trespassers during the period, and for the Site, facilities or infrastructure, set out in Section 9.7(c)(i) or Section 9.7(c)(ii) if Project Co demonstrates to HMQ Entities' 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 that Project Co is unable to mitigate.

Following such request, HMQ Entities shall notify Project Co whether HMQ Entities 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, HMQ Entities shall provide such assistance (at the cost of Project Co) to the extent it is, in the discretion of HMQ Entities, 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) HMQ Entities may, in their sole discretion, carry out Additional Works.
- (c) HMQ Entities 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, HMQ Entities may, in their sole discretion, assign such responsibilities to Project Co during either or both of the Construction Period or Maintenance Period.
- (d) In connection with the Additional Works, HMQ Entities shall,
  - (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 Maintenance and Rehabilitation Services during the Maintenance Period;
  - (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 HMQ Entities have 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 Maintenance and Rehabilitation 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 HMQ Entities and Additional Contractors in reviewing the construction schedules of Additional Contractors, when directed to do so by HMQ Entities; and
  - (v) if part of the Works is affected by or depends upon, for its proper execution, the Additional Works, promptly report to HMQ Entities 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 HMQ Entities 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 the Works Schedule 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 the Works Schedule as a result of any such Additional Works (other than Additional Work that is required to meet the Output Specifications and provided such Additional Work is performed by such Additional Contractors in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with HMQ Entities)

then any such delay in the Works Schedule 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 HMQ Entities have made commercially reasonable efforts to ensure that provisions similar to Schedule 27 – Dispute Resolution have been included in the contracts between HMQ Entities and the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any Additional Contractor whose contract with HMQ Entities 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 HMQ Entities of HMQ Entities' 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 HMQ Entities assigns responsibilities to Project Co pursuant to Section 9.8(c) and Section 9.8(e) after Substantial Completion, and Project Co demonstrates to HMQ Entities, acting reasonably, that it is unable to carry out such responsibilities without adding additional resources to the resources providing the Maintenance and Rehabilitation Services at the relevant time, Project Co shall have a period of 10 Business Days following Notice from HMQ Entities 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), HMQ Entities 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 HMQ Entities have, under Section 9.8(h)(iii), given Notice to Project Co that they do not agree that a Variation is required, HMQ Entities 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) HMQ Entities shall not be entitled to withdraw any such Variation Enquiry unless HMQ Entities determine 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 and Developer RFP

- (a) Project Co shall,
  - (i) provide all such commercially reasonable assistance as HMQ Entities may request to,
    - (A) facilitate the discussion, agreement and any implementation of proposals with respect to Adjacent Developments; and
    - (B) avoid or mitigate any adverse impact of an Adjacent Development on the Works, the Maintenance and Rehabilitation Services and the Project Co System Infrastructure;
  - (ii) permit the developer of the Adjacent Development to post or affix signage in respect of the Adjacent Development, which signage may identify the Adjacent Development project architect, engineer and lender, and other members of the developer's project team;
  - (iii) permit the developer of the Adjacent Development to post or affix signage, as required by



the City and in locations required by the City, in connection with a development application; and

- (iv) provide, to the developer of the Adjacent Development, all Project documentation in respect of the design and construction of elements of the Project Co System Infrastructure that are relevant to the 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 HMQ Entities and Project Co, each acting reasonably.
- (b) With respect to the Bayview Development, in addition to carrying out its obligations pursuant to Schedule 15 – Output Specifications and the Overbuild Specifications, Project Co,
- (i) shall permit the Bayview Developer to post or affix signage in respect of the Bayview Development which signage may identify the Bayview Development project architect, engineer and lender, and other members of the Bayview Developer’s project team;
  - (ii) shall permit the Bayview Developer to post or affix signage, as required by the City and in locations required by the City, in connection with a development application;
  - (iii) agrees to provide, to the Bayview Developer, all Project documentation in respect of the design and construction associated with the Overbuild Specifications, subject to the Bayview Developer executing a confidentiality agreement and a waiver of liability, each in a form and substance satisfactory to HMQ Entities and Project Co, each acting reasonably;
  - (iv) shall permit the Bayview Developer and its representatives to inspect and review that portion of the Project Co System Infrastructure designed and constructed pursuant to the Overbuild Specifications; and
  - (v) shall grant permission to the Bayview Developer and its representatives to access to the Bayview Station during both the Construction Period and the Maintenance Period, on terms and conditions acceptable to Project Co, acting reasonably, and at times which are convenient to Project Co and which do not interfere with the Project Operations.
- (c) HMQ Entities shall not permit the commencement of the construction of the Bayview Development until after Project Co has achieved Substantial Completion.

#### **9.10 System Extension**

- (a) HMQ Entities 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 HMQ Entities shall comply with Schedule 39 – System Extension in connection with any System Extension considered by HMQ Entities at any time during the Project Term.

#### **9.11 Vehicle and Tunnel Interface**

- (a) Project Co shall comply with the terms and conditions in respect of the interaction between Project Co and the Project Operations and activities pursuant to the existing Vehicle Contract as set out in Schedule 36 – Vehicles.
- (b) Project Co shall comply with the terms and conditions in respect of the interaction between Project Co and the Project Operations and activities pursuant to the existing Tunnel Contracts as set out in Schedule 38 – Tunnels.

### **10. REPRESENTATIVES**

#### **10.1 The HMQ Representative**

- (a) The HMQ Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the HMQ Representative and such other functions and powers of HMQ Entities under this Project Agreement as HMQ Entities may notify Project Co from time to time.
- (b) HMQ Entities may, from time to time by written Notice to Project Co, change the HMQ 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 HMQ Representative has been appointed, or when the HMQ Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the HMQ Representative's functions under this Project Agreement, HMQ Entities shall perform or may, by written Notice to Project Co, promptly appoint an alternative HMQ Representative to perform the functions which would otherwise be performed by the HMQ Representative. Upon receipt of such written Notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative HMQ Representative which is permitted by this Project Agreement as being authorized by HMQ Entities, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The HMQ 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 HMQ Representative which is explicitly authorized by this Project Agreement as being authorized by HMQ Entities, 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 HMQ Entities.
- (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 HMQ Entities, 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 HMQ Entities' 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, HMQ Entities and the HMQ 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 HMQ Entities and the HMQ 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, HMQ Entities and the HMQ 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 HMQ Entities and the HMQ 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 HMQ 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 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. As long as a Key Individual continues to be employed by Project Co or a Project Co Party (and the employee is not on short or long term disability), Project Co shall not, for the duration of the Works, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party, if, in the reasonable opinion of HMQ Entities 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 HMQ Entities an amount equal to \$[REDACTED] for each Key

Individual to which the failure to comply applies, as liquidated damages. The Parties agree that the liquidated damages set out in this Section 10.4(a) are not a penalty but represent a genuine and reasonable pre-estimate of the damages that HMQ Entities will suffer as a result of Project Co's failure to provide the applicable Key Individual. 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. If Project Co fails to provide a Key Individual that is acceptable to HMQ Entities for the role of Construction Quality Manager in the timeframe set out in Schedule 9 – Key Individuals, such failure shall constitute a failure to comply with this Section 10.4(a) and the liquidated damages set out in this Section 10.4(a) shall apply.

- (b) The individuals who are critical to the start-up of the performance of the Maintenance and Rehabilitation Services are identified in Schedule 9 - Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons are involved in the Maintenance and Rehabilitation Services in the capacity set out in Schedule 9 - Key Individuals at the outset of the Maintenance Period. Project Co shall ensure that such Key Individuals (Maintenance and Rehabilitation Services) are replaced over the duration of the Maintenance Period in a planned and orderly fashion and in consultation with HMQ Entities and with explicit identification of each Key Individual's length of time as a Key Individual during the Maintenance Period. Once a Key Individual has been identified and approved by HMQ Entities as part of the planned and orderly replacement of Key Individuals pursuant to this Section 10.4(b), if that Key Individual continues to be employed by Project Co or a Project Co Party, Project Co shall not, for the planned period of the Maintenance and Rehabilitation Services, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the reasonable opinion of HMQ Entities, such involvement would have a material adverse effect on the Maintenance and Rehabilitation Services.
- (c) Subject to Project Co's obligations to ensure that Key Individuals remain involved in the Works and in the Maintenance and Rehabilitation 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 provide HMQ Entities with relevant information on the proposed replacement and shall consult with HMQ Entities 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 HMQ Entities, 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.
- (d) If HMQ Entities determine, acting reasonably, that it is in the best interests of HMQ Entities that any individual identified in Schedule 9 - Key Individuals be replaced, HMQ Entities 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 HMQ Entities with relevant information on the proposed replacement and shall consult with HMQ Entities 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 HMQ Entities from time to time, one of whom will be the HMQ 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) The Independent Certifier shall be entitled, but not 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 HMQ 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 Maintenance 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 Works Schedule;
  - (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 community and media relations issues in accordance with Schedule 18 - Communication and Public Engagement Protocol;
  - (viii) any issues related to Schedule 7 – Mobility Matters; and
  - (ix) 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 a major milestone date set out in the Works Schedule, 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 HMQ Entities have a right of consent or in respect of which HMQ Entities 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) HMQ Entities shall be entitled to replace any of their respective representatives on the Works Committee by written Notice to Project Co. HMQ Entities will use commercially reasonable efforts to deliver prior written Notice of any such replacements to Project Co. Project Co may replace any of its representatives on the Works Committee with the prior written consent of HMQ Entities.

### **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 HMQ 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 City of Toronto 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 HMQ Entities (one of whom shall be the HMQ 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 HMQ Entities notify Project Co within five Business Days of receipt of the minutes that HMQ Entities disagree with the contents of the minutes, HMQ Entities 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 HMQ Entities during regular business hours.

## 12. MAINTENANCE COMMITTEE

### 12.1 Establishment

- (a) The Parties shall, not later than 18 months prior to the Scheduled Substantial Completion Date, establish a committee (the “**Maintenance Committee**”) to serve until the Termination Date consisting of:
- (i) 4 representatives appointed by HMQ Entities from time to time, one of whom may be the Operator;
  - (ii) 1 senior representative of Project Co; and
  - (iii) 1 senior representative of the Maintenance and Rehabilitation Contractor.
- (b) Members of the Maintenance 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 Maintenance Committee.
- (c) One of the representatives of HMQ Entities shall be the chairperson of the Maintenance Committee.

### 12.2 Function and Role

- (a) The Maintenance 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 Maintenance Period. The Maintenance Committee shall interface with the Works Committee as and when required.
- (b) The Maintenance Committee shall be responsible for receiving and reviewing all matters related to the Project Co System Infrastructure, both prior to and during the Maintenance Period, including:
- (i) any joint review of the Project Co System Infrastructure and the Output Specifications;
  - (ii) any performance issues;
  - (iii) any special matter referred to the Maintenance Committee by HMQ Entities 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 Maintenance Committee shall be final and binding on the Parties. If the Maintenance 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 Maintenance 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 Maintenance and Rehabilitation Services or the performance by the relevant parties of any Governmental Activities; or
  - (iv) any matter with respect to which HMQ Entities have a right of consent or in respect of which HMQ Entities may exercise discretion pursuant to this Project Agreement.

### **12.3 Replacement of Committee Members**

- (a) HMQ Entities shall be entitled to replace any of its representatives on the Maintenance Committee by written Notice to Project Co. HMQ Entities 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 Maintenance Committee with the prior written consent of HMQ Entities.

### **12.4 Procedures and Practices**

- (a) The members of the Maintenance Committee may:
- (i) adopt such procedures and practices for the conduct of the activities of the Maintenance Committee as they consider appropriate from time to time;
  - (ii) invite to any meeting of the Maintenance Committee such other persons as the members of the Maintenance Committee may agree;
  - (iii) exclude from any meeting of the Maintenance Committee such persons as the members of the Maintenance Committee may agree; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the Maintenance Committee.
- (b) Once established, the Maintenance Committee shall meet at least once each month during the Maintenance Period, unless otherwise agreed by the members of the Maintenance Committee or the Parties.
- (c) Any member of the Maintenance Committee may convene a special meeting of the Maintenance Committee at any time. Special meetings of the Maintenance Committee may be convened on

not less than 5 Business Days' Notice to all members of the Maintenance 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 Maintenance Committee, the Maintenance Committee shall meet at the Site, the Project Co System Infrastructure, in the City or in any other location in Ontario. Meetings of the Maintenance 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 Maintenance Committee must attend in person at least once each calendar quarter.
- (e) One representative of IO, one representative of Metrolinx and one representative of Project Co shall constitute a quorum at any meeting of the Maintenance Committee. A quorum of members may exercise all the powers of the Maintenance Committee. The members shall not transact business at a meeting of the Maintenance Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Maintenance Committee, including those made by telephone or other form of communication, shall be recorded and maintained by HMQ Entities. HMQ Entities 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 HMQ Entities within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, HMQ Entities and Project Co shall be deemed to have approved such minutes. HMQ Entities shall maintain a complete set of all minutes of the meetings of the Maintenance 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) Project Co shall cause 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(b)(iii)(C) or 9.6(b)(iv)(C) (each, an “**H&S Inspection**”), which H&S Inspections shall:
  - (i) be conducted by a Certified H&S Inspector; and
  - (ii) 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 Sites at which the Works are being conducted 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.

Project Co shall cause the results of each H&S Inspection (such results referred to as the “**H&S Inspection Report**”) to be delivered to HMQ Entities and the Works Committee not more than 5

Business Days from the date on which the H&S Inspection is completed. Any H&S Inspection Report arising from an H&S 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 Inspection Report was issued.

## 14. ACCESS TO THE LANDS

### 14.1 Access to Lands

- (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, HMQ Entities shall grant or have caused to be granted, and shall continuously grant or cause to be granted, to Project Co and Project Co Parties, non-exclusive licence right of use and access to, on and over the Metrolinx Lands as are required by Project Co and 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 Project Co Parties to perform those Project Operations to be performed on 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, and Schedule 36 – Vehicles and Schedule 38 – Tunnels, HMQ Entities 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 right of use and access to the Eglinton Crosstown Tunnels and the Vehicles 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 in respect of the Eglinton Crosstown Tunnels and Vehicles. The rights granted to Project Co pursuant to this Section 14.1(b) shall be effective on the commencement dates for access to the Eglinton Crosstown Tunnels and Vehicles as set out in Schedule 36 – Vehicles and Schedule 38 – Tunnels.
- (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, 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 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 HMQ Entities' rights hereunder, in particular, its rights of access to the Metrolinx Lands prior to the Substantial Completion Date for the purposes of any HMQ Commissioning, and subject to any restrictions set out in Schedule 35 – Lands, Schedule 36 – Vehicles and Schedule 38 – Tunnels, HMQ Entities acknowledge that, in respect of the Project

Operations, Project Co and the Project Co Parties require, and HMQ Entities shall provide access to the Metrolinx Lands, Vehicles, and the Eglinton Crosstown Tunnels without material interference by HMQ Entities or any Province Person for such period of time identified in Sections 14.1(a) and 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 HMQ Entities 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 HMQ Entities, the City, the Toronto Transit Commission, Utility Companies, Railway Companies or any other third parties, except as set out in Schedule 35 – Lands, Schedule 36 – Vehicles and Schedule 38 – Tunnels (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) HMQ Entities 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. HMQ Entities shall provide Notice to Project Co of the commencement of access rights to the Metrolinx Lands as such access is obtained by HMQ Entities.
- (j) Project Co acknowledges and agrees that HMQ Entities have no authority to grant use and access to the City Road Allowance, other than that portion of the City Road Allowance that is or will be Metrolinx Land, which use and access must be sought from the City in accordance with the Applicable Law and any Permit, Licence or Approval or other requirements imposed by the City.
- (k) If, the City delays, refuses to grant or applies conditions to a City Road Allowance PLA and Project Co can demonstrate to HMQ Entities, acting reasonably, that such delay, application of conditions, or refusal is a Discriminatory Condition, Delay or Refusal, then any delay in the Works Schedule or additional costs in respect of the Works caused by such Discriminatory Condition, Delay or Refusal 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. For clarity, this Section 14.1(k) does not entitle Project Co to a Delay Event or a Compensation Event for a Discriminatory Condition, Delay or Refusal, with respect to,
- (i) a Permit, Licence or Approval that is not explicitly listed in the definition of “City Road Allowance PLAs”; or

- (ii) a Permits, Licences or Approval that is related to, but not explicitly listed in, the definition of “City Road Allowance PLAs”.

#### 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 shall be non-exclusive and that HMQ Entities and any person authorized by HMQ Entities 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 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities' rights pursuant to Section 14.3(a), with the prior written consent of HMQ Entities, 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 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 HMQ Entities mortgage, charge or otherwise encumber the Metrolinx Lands, HMQ Entities 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 of the Metrolinx Lands permitting Project Co and the Collateral Trustee 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 or any person claiming by or through such mortgagee. 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) [REDACTED].
- (b) [REDACTED].
- (c) Project Co shall be entitled to obtain any properties (or obtain temporary access 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, on any properties which Project Co acquires pursuant to this Section 14.6(c).

**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 HMQ Entities under all Encumbrances for or on behalf of HMQ Entities, other than:
  - (i) obligations which Project Co is not legally capable of performing for or on behalf of HMQ Entities; and
  - (ii) obligations which the applicable counterparty to such Encumbrance formally relieves or waives Project Co from performing, with the consent of HMQ Entities, in their sole discretion (and if such relief or waiver is not consented to by HMQ Entities, 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 due to an act or omission of Project Co or any Project Co Party.
- (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 HMQ Entities;
  - (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 HMQ Entities), 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, HMQ Entities may take whatever steps they deem necessary and appropriate (in their 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 HMQ Entities 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 HMQ Entities), 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, prior to performing obligations under any such Encumbrance, Project Co shall promptly notify HMQ Entities of any such Encumbrance and HMQ Entities 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,

HMQ Entities 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 HMQ Entities 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, Project Co acknowledges and agrees that it will be required by the owner of such Lands (or HMQ Entities, 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 Lien Act (Ontario)

- (a) The Parties acknowledge that Section 15.2 shall apply to claims for liens made against the Metrolinx Lands pursuant to the CLA and shall also apply to claims made against HMQ Entities or the holdback under the CLA 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 CLA and shall deal with such holdbacks in accordance with the CLA.
- (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 CLA, require that a certificate of completion under Section 33(1) of the CLA for such Subcontract be issued and the relevant Subcontractor provide statutory declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.
- (d) Project Co shall follow the requirements of the CLA and Good Industry Practice for posting and advertising certificates of completion when issued.
- (e) Project Co shall promptly provide HMQ Entities with a copy of any materials which are provided to the Lenders to evidence compliance with the CLA.
- (f) Upon request by HMQ Entities, Project Co shall perform and deliver to HMQ Entities a sub-search of title on the Lands or any part thereof. HMQ Entities 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.

**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, 16.6 and 16.7 and Schedule 36 – Vehicles and Schedule 38 – Tunnels, 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, 16.6 and 16.7 and Schedule 36 – Vehicles and Schedule 38 - Tunnels, Project Co shall not be entitled to make any claim of any nature whatsoever against HMQ Entities 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 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 and Schedule 36 – Vehicles and Schedule 38 – Tunnels, Project Co shall not be entitled to make any claim of any nature whatsoever against HMQ Entities 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 and Schedule 36 – Vehicles and Schedule 38 – Tunnels, Project Co’s legal recourse shall be against the person who provided the express written entitlement to rely on the information and not HMQ Entities or any Province Person.
- (c) Subject to Sections 6.4, 16.1(b), 16.2, 16.3, 16.4, 16.5, 16.6 and 16.7 and Schedule 36 – Vehicles and Schedule 38 – Tunnels, 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;
  - (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; and
  - (viii) performed all necessary due diligence on the Tunnel Design and Construction Data.
- (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) HMQ Entities shall be responsible for Contamination on, in or under, or migrating to or from, the Lands, except for any such Contamination, or the migration of that Contamination to or from the Lands that:
- (i) was within the actual knowledge of Project Co or a Project Co Party as of Commercial Close and that is caused or worsened by Project Co in carrying out the Works or the Maintenance and Rehabilitation Services;
  - (ii) was described in, or was properly inferable, readily apparent or readily discoverable from, the Designated Substances Survey Reports, Phase 1 and Phase 2 Environmental Site Assessment Reports or the Geotechnical Reports and that is caused or worsened by Project Co in carrying out the Works or the Maintenance and Rehabilitation Services;
  - (iii) is Minor System User Contamination, provided that Project Co notifies HMQ Entities of any occurrence of Minor System User Contamination for which Project Co is responsible within twelve hours of such occurrence of Minor System User Contamination;
  - (iv) that Project Co is obliged to remediate pursuant to the provisions of Schedule 15 – Output Specifications; or
  - (v) that is caused by Project Co or any Project Co Party.
- (b) For the purposes of Sections 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) Upon the discovery of any Contamination, Project Co shall immediately inform the HMQ Representative and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and Schedule 17 - Environmental Obligations in respect thereof:
- (i) at HMQ Entities' cost pursuant to Section 16.2(f), in respect of Contamination for which HMQ Entities are responsible pursuant to Section 16.2(a); and
  - (ii) at its own cost in respect of Contamination for which it is responsible pursuant to Section 16.2(a).
- (d) Except to the extent required to prevent or mitigate an Emergency or to comply with Applicable Law, Project Co shall not undertake any significant work pursuant to Section 16.2(c) in respect of Contamination for which HMQ Entities are responsible pursuant to Section 16.2(a) until the HMQ Representative has been given a reasonable opportunity to review the nature and extent of the Contamination and has instructed Project Co to proceed with such work.
- (e) In the event that HMQ Entities wish Project Co to perform actions in respect of any Contamination which are in addition to any required pursuant to Section 16.2(c), then HMQ Entities shall issue an instruction to Project Co specifying what action HMQ Entities require Project Co to take and Project Co shall promptly and diligently comply with all such instructions at HMQ Entities' cost pursuant to Section 16.2(f).
- (f) If Sections 16.2(c) or 16.2(e) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of Contamination for which HMQ Entities are responsible pursuant to Section 16.2(a) or as a result of any instructions given by HMQ Entities pursuant to Section 16.2(e) 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 Maintenance and Rehabilitation Services shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.
- (g) In the event that HMQ Entities 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(c), such disagreement shall be referred for determination to an independent and suitably qualified and experienced person, acceptable to Project Co and HMQ Entities, 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(c), 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.

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

- (a) 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 HMQ Entities or the owner of the relevant property, as applicable.
- (b) HMQ Entities 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;
  - (ii) any Cultural Heritage Assessment Report(s), Cultural Heritage Resource Assessment Report(s) or Phase 1 Cultural Heritage Evaluation Report(s);
  - (iii) any Cultural Heritage Evaluation Report(s), Cultural Heritage Resource Evaluation Report(s) or Phase 2 Cultural Heritage Evaluation Report(s);
  - (iv) any Heritage Impact Assessment(s) or Technical Evaluation and Analysis Memoranda;
  - (v) any Cultural Heritage Documentation Report(s); or
  - (vi) any Metrolinx Heritage Committee Decision Form(s).
- (c) In the event of ambiguities, conflicts or inconsistencies between or among any of the documents listed in Section 16.3(b)(ii) to 16.3(b)(vi), for the purposes of this Project Agreement, the documents shall govern in the following order of precedence, with each taking precedence over those listed subsequently:
- (i) any Metrolinx Heritage Committee Decision Form(s);
  - (ii) any Cultural Heritage Documentation Report(s);
  - (iii) any Heritage Impact Assessment(s) or Technical Evaluation and Analysis Memoranda;
  - (iv) any Cultural Heritage Evaluation Report(s), Cultural Heritage Resource Evaluation Report(s) or Phase 2 Cultural Heritage Evaluation Report(s); and
  - (v) any Cultural Heritage Assessment Report(s), Cultural Heritage Resource Assessment Report(s) or Phase 1 Cultural Heritage Evaluation Report(s).
- (d) Upon the discovery of any item referred to in Section 16.3(a), Project Co shall:
- (i) immediately inform the HMQ 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 HMQ Entities' cost pursuant to Section 16.3(f), in respect of any such discovery for which HMQ Entities are 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 HMQ Entities and the Project Operations are in compliance with the Metrolinx Interim Heritage Management Protocol (2013).

- (e) In the event that HMQ Entities wish 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 HMQ Entities shall issue an instruction to Project Co specifying what action HMQ Entities require Project Co to take and Project Co shall promptly and diligently comply with all such instructions at HMQ Entities' 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 HMQ Entities are responsible pursuant to Section 16.3(b) or as a result of any instructions given by HMQ Entities 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 HMQ Entities 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 HMQ Entities, 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) HMQ Entities shall be responsible for any Species-at-Risk which may be found on, in or at the Lands, except for any Species-at-Risk the occurrence of which, in the location in which it is found was described in the Environmental Assessments.
- (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 17 – Environmental Obligations. Upon the discovery of any Species-at-Risk for which HMQ Entities are responsible pursuant to Section 16.4(a), Project Co shall:
  - (i) immediately inform the HMQ Representative of such discovery; and
  - (ii) comply, and ensure compliance by all Project Co Parties, with all Applicable Law and the provisions of Schedule 17 - Environmental Obligations in respect thereof, including taking all necessary steps to preserve the respective habitat and relocate the Species-at-Risk at HMQ Entities' cost pursuant to Section 16.4(d).
- (c) In the event that HMQ Entities wish Project Co to perform actions which are in addition to any required pursuant to Section 16.4(b), then HMQ Entities shall issue an instruction to Project Co specifying what action HMQ Entities require Project Co to take and Project Co shall promptly and diligently comply with all such instructions at HMQ Entities' cost pursuant to Section 16.4(d).
- (d) If Sections 16.4(b) or 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 HMQ Entities are responsible pursuant to Section 16.4(a) or as a result of any instructions given by HMQ Entities 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 Mislocated or Unknown Utilities**

- (a) Project Co shall be responsible for Utility Infrastructure on the Lands pursuant to Schedule 15 – Output Specifications, except for any Utility Infrastructure that is Mislocated Utility Infrastructure, or is 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 16.5(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 16.5(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 Utility Infrastructure on the Site that is not the responsibility of Project Co pursuant to Section 16.5(a) delays Project Co’s performance of the Works then any such delay in the Works Schedule 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 the Delay Event or Compensation Event set out in this Section 16.5 in respect of any Utility Infrastructure that is outside of the study area limits represented by the Subsurface Utility Engineering (SUE) Reports.

**16.6 Defects – Major Existing Third Party Infrastructure**

- (a) HMQ Entities 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) was not properly attributable to the result of the aging of the Major Existing Third Party Infrastructure; or
  - (iv) was not caused or contributed to by Project Co.
- (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) If a defect in Major Existing Third Party Infrastructure that is the responsibility of HMQ Entities pursuant to Section 16.6(a),
- (i) delays Project Co's performance of the Works, then any such delay in the Works Schedule 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 Maintenance and Rehabilitation Services or materially adversely affects Project Co's cost of performing the Maintenance and Rehabilitation Services shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

### 16.7 Underground Station Construction Activities

- (a) Subject to Section 16.7(e), HMQ Entities shall be responsible for unknown geotechnical conditions that require Project Co to perform material alterations, additions, demolitions, extensions or variations to their Underground Station Construction Activities ("**Underground Station Works Unknown Geotechnical Conditions**") except to the extent that such geotechnical conditions,
- (i) were within the actual knowledge of Project Co or a Project Co Party as of Commercial Close; or
  - (ii) were described in, or were properly inferable, readily apparent or readily discoverable from, the Geotechnical Reports.
- (b) For the purposes of Section 16.7(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) Upon the discovery of any Underground Station Works Unknown Geotechnical Conditions, Project Co shall immediately inform the HMQ Representative.
- (d) Subject to Section 16.7(e), if Project Co is required to perform any alteration, addition, demolition, extension or variation in the Underground Station Construction Activities as a result of the Underground Station Works Unknown Geotechnical Conditions for which HMQ Entities are responsible pursuant to Section 16.7(a), and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation in the Underground Station Construction Activities shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to Section 16.7(e) and subject to and in accordance with Section 41, be treated as a Compensation Event.
- (e) The aggregate amounts payable to Project Co in respect of any and all Compensation Events claimed pursuant to Section 16.7(d) shall be calculated in accordance with Section 41 but payment to Project Co shall exclude the first \$[REDACTED] of all amounts which would have been payable to Project Co in respect of any and all Compensation Events pursuant to Sections

16.7(c) and Section 41. For clarity, the first \$[REDACTED] calculated pursuant to Section 41 in respect of Section 16.7(d) shall be at Project Co's sole cost and expense.

## 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 HMQ Permits, Licences and Approvals that are set out as being Project Co's responsibility in Schedule 15 – Output Specifications or Schedule 34 – HMQ Permits Licences and Approvals.
- (b) Subject to Section 17.1(a)(ii), HMQ Entities shall be responsible for all Financial Obligations under or in respect of all the HMQ Permits, Licences and Approvals, including such Financial Obligations, as applicable in either case, to the City, any Utility Company, any Railway Company, any Governmental Authority or any third party in respect of the Project Operations, including:
- (i) any development charges relating to the Works, Project Co System Infrastructure, the New Third Party Infrastructure or the Lands;
  - (ii) any engineering administration and inspection fees required in respect of works or services required to be performed;
  - (iii) any security deposits required under any HMQ Permits, Licences and Approvals; and
  - (iv) any other amounts payable under any HMQ Permits, Licences and Approvals.
- (c) The Parties agree that any refund, partial rebate or credit granted by HMQ Entities, 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 HMQ Entities to the extent such Financial Obligations were paid by HMQ Entities 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 HMQ Entities enter into any cost sharing arrangements with any Utility Company, any Railway Company, any Governmental Authority or any third party, Project Co acknowledges and agrees that HMQ Entities 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 standard in respect of the design and construction aspects of the Project Operations, and that standard has changed between Commercial Close and the date that such compliance is required, then Project Co shall give Notice to HMQ Entities of such change. If, after such Notice, HMQ Entities require compliance with the changed standard (rather than the standard applicable as of the date of Commercial Close), then, to the extent such change impacts the design and construction 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 HMQ Entities do not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of Commercial Close, without a Variation therefor. This Section 18 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 HMQ Entities, any Province Person, any Governmental Authority, Vehicle Manufacturer, Tunnel Contractors;
  - (ii) the construction, operation and maintenance of the 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, the existing Toronto Transit Commission network, the existing GO Transit network, the existing Canadian Pacific network, and any other Ontario road or roadway;
  - (iv) Future Known Expansions; and
  - (v) the performance of any services by any Operator.
- (b) Project Co shall use commercially reasonable efforts to minimize:
- (i) any interference with the operations of HMQ Entities, any Province Person, any Governmental Authority, any Other Contractor, Railway Company or Utility Company, including the performance of the Governmental Activities and the Other Works;
  - (ii) any interference with the construction, operation, maintenance of:
    - (A) the existing Toronto Transit Commission network;
    - (B) the existing GO Transit network;

- (C) the existing Canadian Pacific network;
  - (D) the existing City of Toronto road network; and
  - (E) any other Ontario road or roadway; and
- (iii) any lane closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the Project Co System Infrastructure.

## **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 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 Maintenance and Rehabilitation 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.

### **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 HMQ Entities 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 Works, 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 HMQ Representative and the HMQ Design Team in an interactive process. If the result of any consultation with Stakeholders is a change to the scope, configuration or size of any Project Co System Infrastructure or New Third Party Infrastructure or a change in the Construction Activities, or a change in the Maintenance and Rehabilitation Services, then such change shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.
- (d) The Parties agree that Appendix A to Schedule 10 - Review Procedure is an initial list 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 HMQ Representative):
- (i) design development drawings, reports, schedules and specifications progressed from Commercial Close 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) [REDACTED]% completion; and
    - (B) [REDACTED]% completion;(collectively, the “**Design Development Submittals**”);
  - (ii) 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
    - (A) [REDACTED]% completion;

- (B) [REDACTED]% completion; and
- (C) [REDACTED]% completion (Issued for Construction);  
(collectively, the “Construction Document Submittals”); and
- (iii) all other documentation required pursuant to Schedule 10 - Review Procedure.
- (e) Project Co shall submit to the HMQ 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 HMQ 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 Metrolinx 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 HMQ Entities nor any Province Person will have any liability:
- (i) if a document submitted by Project Co and reviewed by HMQ Entities, the HMQ Representative or the HMQ 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 HMQ Entities will cooperate with each other in the design review process. Notwithstanding such cooperation by HMQ Entities, 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 HMQ Representative and the HMQ Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the HMQ Representative and/or HMQ Design Team, as applicable, as soon as practicable following receipt of a written request from the HMQ Representative.

#### 20.4 Start-Up Meeting

- (a) Within 10 Business Days after Commercial Close, Project Co and the Design Team shall attend a start-up meeting (the “**Start-Up Meeting**”) with HMQ Entities 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 HMQ Entities for the purpose of supporting HMQ Entities in achieving their 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 integrated team;

- (v) a proposed schedule of Works Submittals which is consistent with the Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the HMQ Representative to allow sufficient time for review of each Works Submittal by the HMQ Representative, and taking into account both the resources available to the HMQ 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 Works Schedule;
- (vi) Project Co's plan to successfully integrate feedback from consultations with Stakeholders and the HMQ 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 HMQ Entities and the HMQ Design Team upon the following terms:
  - (i) the Project Co Representative shall arrange the Design Review Meetings in consultation with the HMQ Representative;
  - (ii) all Design Review Meetings shall be held in the City unless HMQ Entities agree otherwise in writing;
  - (iii) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings and shall incorporate such schedule into the Works Schedule;
  - (iv) Project Co shall circulate to HMQ Entities and the HMQ 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 HMQ Design Team for comment any interim drafts of any designs or plans required under this Project Agreement, which submissions shall be used to inform HMQ Entities 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. For greater certainty, interim submissions shall be informal and shall not be reviewed 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 HMQ Entities and the HMQ 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) HMQ Entities 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 HMQ Entities shall not be bound by the input provided in connection with the Design Review Meetings.
- (b) The Parties shall, together with the HMQ 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 HMQ Entities 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 HMQ 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 HMQ Representative gives written Notice to Project Co that it does not require such Notice. The HMQ Representative and any other HMQ Party at HMQ Entities' 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 HMQ 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 HMQ 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 registered to practice in the Province of Ontario. Such architects and engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and design practices for such work in the Province of Ontario, all other applicable standards, specifications and codes, and as otherwise required by Applicable Law.

**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 HMQ Entities' 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 the City is a party that is applicable to the New City Infrastructure constructed by or on behalf of Project Co pursuant to the 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 HMQ Entities, in their 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 HMQ Entities prior to Substantial Completion, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by HMQ Entities pursuant to Schedule 10 - Review Procedure. The first document to be submitted by Project Co for review by HMQ Entities 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 Procurement Monitoring and Implementation Plan

- (a) Project Co shall implement the Procurement Monitoring and Implementation Plan attached as Schedule 41 to this Project Agreement.
- (b) A director or officer of Project Co shall submit, annually, on each anniversary of Commercial Close, a completed and executed declaration in the form attached as Appendix 1 to Schedule 41 – Procurement Monitoring and Implementation Plan that Project Co has made the proper inquiries and has determined that the requirements of the Procurement Monitoring and Implementation Plan have been complied with by Project Co and its Subcontractors in the immediately previous year.

## 20.13 Non-Affiliate Contractor Plan

- (a) Project Co shall implement the Non-Affiliate Contractor Plan attached as Schedule 42 to this Project Agreement.

- (b) A director or officer of Project Co shall submit, on a monthly basis during the Construction Period, a completed and executed declaration in the form attached as Appendix 1 to Schedule 42 – Non-Affiliate Contractor Plan that Project Co has made the proper inquiries and has determined that the requirements of the Non-Affiliate Contractor Plan have been complied with by Project Co and its Construction Contractor.

#### 20.14 Apprenticeship Plan and Program

- (a) No later than six months after Financial Close, Project Co shall provide a plan setting out Project Co's Project-specific approach to maximizing apprenticeship opportunities on the Project (the "**Apprenticeship Plan**") for review and approval by HMQ Entities. The Apprenticeship Plan shall include,
- (i) specific objectives for apprenticeship opportunities for the Project on a trade-by-trade basis;
  - (ii) apprenticeship opportunities for each trade required on the Project;
  - (iii) a confirmation that apprenticeships will be registered with the Ministry of Training, Colleges and Universities and the Ontario College of Trades, as applicable;
  - (iv) a program to ensure the required supply of apprentices to meet Project Co's Apprenticeship Plan objectives and requirements;
  - (v) a program to support apprentices on the Project to complete their apprenticeships during the Project Term and, for those whose apprenticeships are not complete by the end of the Project Term, a program to support apprentices to complete their apprenticeships after the end of the Project Term; and
  - (vi) a focused apprenticeship program for youth-at-risk, historically disadvantaged groups in local communities including low-income, racialized and immigrant populations, and military veterans.
- (b) Project Co shall implement the approved Apprenticeship Plan.
- (c) Project Co shall provide an annual report to HMQ Entities 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 journeypersons, 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, including an identification of any barriers that prevented Project Co from achieving its objectives.

- (d) HMQ Entities may require Project Co to amend its Apprenticeship Plan if, in HMQ Entities' opinion, acting reasonably, Project Co is failing to maximize apprenticeship opportunities on the Project pursuant to the then current Apprenticeship Plan.
- (e) HMQ Entities may, in their 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 six months after Financial Close, Project Co will provide to HMQ Entities, 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 HMQ Entities 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) HMQ Entities may require Project Co to amend its Community Benefits and Liaison Plan from time to time if, in HMQ Entities' opinion, acting reasonably, Project Co is failing to successfully implement the Community Benefits and Liaison Plan.

- (f) HMQ Entities may, in their 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 Liquidated Damages – GO Transit Passenger Train Delay**

- (a) If Project Co, contrary to its obligations pursuant to the Project Agreement and during the Construction Period, delays a GO Transit in-service passenger train from the applicable GO Transit timetable, Project Co shall pay to HMQ Entities liquidated damages in the following amounts:
  - (i) **[\$[REDACTED]]** for the first five minutes of each incident of delay; and
  - (ii) **[\$[REDACTED]]** for each subsequent ten minute interval of the applicable incident of delay.
- (b) The Parties agree that the liquidated damages set out in Section 20.16(a) are not a penalty but represent a genuine and reasonable pre-estimate of the damages that HMQ Entities will suffer as a result of Metrolinx's obligation to compensate passengers with respect to the applicable GO train passenger train delay. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ Entities as a result of Metrolinx's obligation to reimburse passengers arising from the delay of the GO Transit in-service passenger train. The Parties agree that such liquidated damages shall be payable whether or not HMQ Entities incur or mitigate their damages, and that HMQ Entities shall not have any obligation to mitigate any such damages.
- (c) The liquidated damages set out in Section 20.16(a) shall be limited to **[\$[REDACTED]]** per calendar year.
- (d) For clarity, Section 20.16(a) shall not apply if GO Transit has agreed, in writing, with Project Co to alternative arrangements in respect of delays to GO Transit in-service passenger trains (measured against the applicable GO Transit timetable) during the Construction Period.

#### **20.17 Cogeneration Plant and the Redundant THESL Solution – General**

- (a) Project Co shall design, engineer, construct and commission the Cogeneration Plant and the Redundant THESL Solution in accordance with the requirements of Schedule 15 – Output Specifications and in accordance with the following:
  - (i) Project Co shall expedite the identification of, and application for, all Permits, Licences and Approvals for the CGP in accordance with Section 9.4;
  - (ii) Project Co shall fully complete and submit applications (including any required re-submissions) for all material Permits, Licences and Approvals required for the CGP,

excluding any Permits, Licences and Approvals solely related to the Commissioning of the CGP, (the “CGP PLAs”) no later than the CGP PLA Dates, subject only to a delay in the CGP PLA Dates arising from,

- (A) re-submission requirements which are outside of the normal course, not provided within a reasonable time, or which are unduly onerous, provided such requirements do not arise from the poor quality of a Project Co submission; or
- (B) a requirement for an environmental, screening, individual environmental assessment, or material amendment to one or more of the Environmental Assessments, all in respect of the CGP,

(each a “Permitted CGP PLA Date Revision”).

- (iii) If Project Co fails to complete and submit one or more CGP PLAs prior to the applicable CGP PLA Dates and such failure is attributable to a Permitted CGP PLA Date Revision,
    - (A) Project Co shall continue to expedite the identification of, and application for, all Permits, Licences and Approvals for the CGP in accordance with Section 9.4; and
    - (B) those CGP PLA Dates that are impacted by a Permitted CGP PLA Date Revision shall be revised by the Parties, acting reasonably;
  - (iv) In the event that the CGP PLA Dates omits a material Permit, Licence or Approval for the CGP, such omission is at Project Co’s own cost and risk, without recourse to HMQ Entities, and such omitted Permit, Licence or Approval shall be deemed, for all purposes, to be a CGP PLA and included on the CGP PLA Dates list and a reasonable corresponding “Date of Application Submittal” shall be added to the CGP PLA Dates; and
  - (v) Project Co shall expedite the Design of the CGP and all associated Design Submittals in accordance with Schedule 10 – Review Procedure.
- (b) Project Co shall not be eligible for a Delay Event or a Compensation Event in respect of the CGP arising from any Permit, Licence or Approval in respect of the CGP. For further clarity, Project Co shall not be eligible for a Delay Event or a Compensation Event pursuant to Section 40.1(a)(xi), 40.1(a)(xii), 40.1(a)(xxi), or 40.1(a)(xxii) arising from any Permit, Licence or Approval in respect of the CGP.
- (c) Project Co shall not be eligible for a Delay Event or a Compensation Event arising from a circumstance where HMQ Entities declined to give their consent to Project Co incurring cost for equipment, labour, materials and supplies, for the construction of the CGP, that Project Co wished to incur prior to achieving all CGP PLAs.

**20.18 De-scoping of the CGP and Financial Consequences of a De-scoping**

- (a) The Parties may elect to discontinue all work on the CGP and the Energy Toggling Function, and eliminate the CGP and Energy Toggling Function from the scope of the Project (a “**CGP De-scoping**”) only in the following circumstances:
- (i) HMQ Entities may, in their sole discretion, trigger a CGP De-scoping by Notice to Project Co, at any time prior to the CGP Commissioning (the “**HMQ Entities Discretionary Trigger**”). For clarity, HMQ Entities shall not exercise an HMQ Entities Discretionary Trigger after CGP Commissioning;
  - (ii) Either Party may trigger a CGP De-scoping by Notice to the other Party in the event that Project Co has not received all material Permits, Licences and Approvals for the CGP, excluding any Permits, Licences and Approvals related to commissioning of the CGP, by the date which is three years prior to the Scheduled Substantial Completion Date (the “**De-scoping Deadline Trigger**”). For clarity, neither Party is obliged to trigger a CGP De-scoping pursuant to this Section 20.18(a)(ii); and
  - (iii) Project Co and HMQ Entities may, by mutual agreement, trigger a CGP De-scoping at any time (the “**De-scoping by Agreement**”).
- (b) In the event of a CGP De-scoping pursuant to Section 20.18(a)(i), Section 20.18(a)(ii), or Section 20.18(a)(iii),
- (i) subject to Sections 20.18(c) and 20.18(d), all rights and obligations of the Parties with respect to the design, engineering, construction, commissioning, operation, maintenance and rehabilitation of the CGP, including the CGP Energy Toggling Function, shall be automatically eliminated from the Project and the Project Agreement, without further action on the part of either Party;
  - (ii) Project Co shall, as soon as practical, cease all work on the CGP and the Energy Toggling Function and shall carry out reinstatement of the site of the CGP, as required, (including, on request by HMQ Entities, demolition of any portion of the CGP that is already constructed), provided that such reinstatement of the site of the CGP or demolition of any portion of the CGP that is already constructed shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation;
  - (iii) the Redundant THESL Solution shall become the sole source of power for the Project;
  - (iv) the Substantial Completion Payment shall be reduced by \$[REDACTED] plus the cost of all financing associated with that \$[REDACTED];
  - (v) the Annual Service Payment and the Annual Life Cycle Payment shall be reduced in accordance with the credits set out in Table that follows for the applicable Contract Year (amounts are Inflation Base Date dollars): and



Contract Year	CGP De-scoping Credit (Annual Service Payment) (Inflation Base Date dollars)	CGP De-scoping Credit (Annual Lifecycle Payment) (Inflation Base Date dollars)	Total De-scoping Credit
1*	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]	[REDACTED]
8	[REDACTED]	[REDACTED]	[REDACTED]
9	[REDACTED]	[REDACTED]	[REDACTED]
10	[REDACTED]	[REDACTED]	[REDACTED]
11	[REDACTED]	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]	[REDACTED]
13	[REDACTED]	[REDACTED]	[REDACTED]
14	[REDACTED]	[REDACTED]	[REDACTED]
15	[REDACTED]	[REDACTED]	[REDACTED]
16	[REDACTED]	[REDACTED]	[REDACTED]
17	[REDACTED]	[REDACTED]	[REDACTED]
18	[REDACTED]	[REDACTED]	[REDACTED]
19	[REDACTED]	[REDACTED]	[REDACTED]
20	[REDACTED]	[REDACTED]	[REDACTED]
21	[REDACTED]	[REDACTED]	[REDACTED]

Contract Year	CGP De-scoping Credit (Annual Service Payment) (Inflation Base Date dollars)	CGP De-scoping Credit (Annual Lifecycle Payment) (Inflation Base Date dollars)	Total De-scoping Credit
22	[REDACTED]	[REDACTED]	[REDACTED]
23	[REDACTED]	[REDACTED]	[REDACTED]
24	[REDACTED]	[REDACTED]	[REDACTED]
25	[REDACTED]	[REDACTED]	[REDACTED]
26	[REDACTED]	[REDACTED]	[REDACTED]
27	[REDACTED]	[REDACTED]	[REDACTED]
28	[REDACTED]	[REDACTED]	[REDACTED]
29	[REDACTED]	[REDACTED]	[REDACTED]
30	[REDACTED]	[REDACTED]	[REDACTED]
31*	[REDACTED]	[REDACTED]	[REDACTED]
<b>Total</b>	[REDACTED]	[REDACTED]	[REDACTED]
* Calculated based on a September 28, 2021 Substantial Completion Date. Contract Year 1 and 31 are partial years (at six months long each). Chart includes the credit for descope both the Cogeneration Plant and the Energy Toggling Function.			

- (vi) HMQ Entities shall make the payments to Project Co, if any, set out in Section 20.18(c) or Section 20.18(d), as applicable.
- (c) In the event that, HMQ Entities trigger a CGP De-scoping pursuant to Section 20.18(a)(i),
  - (i) HMQ Entities shall pay to Project Co (or Project Co shall retain, to the extent already paid by HMQ Entities) any eligible CGP Construction Costs calculated on a pro rata basis (reflecting the extent of completion of the CGP) based on the Total CGP Capital Costs; and
  - (ii) the provisions of Schedule 8 - Energy Matters shall apply in respect of the Gainshare Adjustment for Target Global Adjustment Peak Demand.

- (d) In the event that one or both of Project Co or HMQ Entities trigger a CGP De-scoping as a result of a De-scoping Deadline Trigger pursuant to Section 20.18(a)(ii), or, a De-scoping by Agreement pursuant to Section 20.18(a)(iii),
- (i) HMQ Entities shall pay to Project Co (or Project Co shall retain, to the extent already paid by HMQ Entities) an amount equal to that portion of Project Co's eligible CGP Construction Costs that are calculated on a Direct Cost Basis. In the event HMQ Entities have paid Project Co for CGP Construction Costs in excess of the amount calculated in accordance with this Section 20.18(d)(i), HMQ Entities shall deduct such excess amount from the Substantial Completion Payment;
  - (ii) HMQ Entities shall deduct, from the Substantial Completion Payment, the Global Adjustment Peak Demand Liquidated Damages; and
  - (iii) the provisions of Schedule 8 - Energy Matters shall apply in respect of the Gainshare Adjustment for Global Adjustment Peak Demand.
- (e) For clarity, eligible CGP Construction Costs shall be paid by HMQ Entities to Project Co, up to the Total CGP Capital Costs, in accordance with Schedule 21 – Construction Period Payments.

#### **20.19 Completing the Cogeneration Plant after Substantial Completion**

- (a) If Project Co,
- (i) has received all CGP PLAs;
  - (ii) commenced construction of the CGP promptly following the date on which all CGP PLAs were received;
  - (iii) can demonstrate to the Independent Certifier that the CGP will achieve CGP Commissioning no later than 6 months after Substantial Completion;
  - (iv) has otherwise met all other requirements to achieve Substantial Completion, including, for clarity, the completion of the Redundant THESL Solution;
  - (v) has otherwise met all other requirements for substantial performance pursuant to Section 32(a) of the CLA, excluding substantial performance as it relates to the CGP,

Project Co shall be permitted to achieve Substantial Completion, notwithstanding that the state of completion of the CGP would otherwise have prohibited Project Co from achieving Substantial Completion.

- (b) If Project Co wishes to achieve Substantial Completion by exercising the CGP exception to the requirements for Substantial Completion set out in Section 20.19(a), the remaining Works required to achieve CGP Commissioning shall be removed from the requirements of Substantial Completion and the following shall apply:

- (i) If, in the period between the Substantial Completion Date and the date of the CGP Commissioning, HMQ Entities incur cost because the Actual Global Adjustment Peak Demand exceeds the target global adjustment peak demand set out in the Table included in Section 20.19(b)(i)(C) (for late completion of the CGP) (the “**Target Global Adjustment Peak Demand (Late CGP)**”), Project Co shall pay to HMQ Entities, no later than ten days after HMQ Entities have given Notice to Project Co that the calculations set out in this 20.19(b)(i) are complete, an amount calculated as follows:
- (A) Actual Global Adjustment Peak Demand minus the Target Global Adjustment Peak Demand (Late CGP) energy use amounts (for the applicable Service Level) (the “**Differential Amount**”), multiplied by,
- (B) an amount equal to,
- (I) \$[REDACTED], for that portion of the Differential Amount that is less than or equal to [REDACTED]% of the Target Global Adjustment Peak Demand (Late CGP) energy use amounts set out in the table in Section 20.19(b)(i)(C);
- (II) \$[REDACTED], for that portion of the Differential Amount that is greater than [REDACTED]% and less than or equal to [REDACTED]% of the Target Global Adjustment Peak Demand (Late CGP) energy use amounts set out in the table in Section 20.19(b)(i)(C); or
- (III) \$[REDACTED], for that portion of the Differential Amount that is greater than [REDACTED]% of the Target Global Adjustment Peak Demand (Late CGP) energy use amounts set out in the table in Section 20.19(b)(i)(C);
- (C) Table (Service Level and Target Global Adjustment Peak Demand (Late CGP)):

Service Level	TGAPD (Late CGP) (MWe)
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Service Level	TGAPD (Late CGP) (MWe)
[REDACTED]	[REDACTED]

- (ii) HMQ Entities may withhold, from the Substantial Completion Payment, an amount equal to,
- (A) [REDACTED] per cent of the capital cost of that portion of the CGP that has been completed, based on the Total CGP Capital Costs, plus
- (B) \$[REDACTED],
- (the “**CGP Holdback**”) until such time as the Independent Certifier certifies that Project Co has achieved CGP Commissioning, at which time the CGP Holdback shall be released to Project Co in accordance with Section 20.20(b).
- (c) For clarity, if HMQ Entities trigger a CGP De-scoping pursuant to Section 20.18(a)(i) after Substantial Completion in the circumstances set out in Section 20.19(b) but before the CGP Commissioning, the HMQ Entities payment requirements pursuant to Section 20.18(c), taking into account amounts already paid by HMQ Entities for the CGP, shall apply and the CGP Holdback shall be released to Project Co no later than 5 Business Days after the HMQ Entities' trigger of a CGP De-scoping pursuant to Section 20.18(a)(i).

#### 20.20 Completion of the CGP

- (a) If Project Co completes the CGP at the same time that it achieves Substantial Completion for the Project as a whole, or earlier, HMQ Entities shall deduct from the Substantial Completion Payment an amount equal to \$[REDACTED] as a one-time payment for HMQ Entities',
- (i) full assumption of the responsibility for setting the Energy Source Directions; and
- (ii) full assumption of the risk associated with the ability to minimize Global Peak Adjustments by establishing the Energy Source Directions,
- (the “**Energy Source Direction Payment**”).
- (b) If Project Co completes CGP Commissioning in accordance with Section 20.19, HMQ Entities shall,
- (i) deduct the Energy Source Direction Payment from the CGP Holdback and promptly release the remaining amount of the CGP Holdback to Project Co, subject only to the holdback for Minor Deficiencies in respect of the CGP as determined in accordance with the Project Agreement; and

- (ii) pay the unpaid portion of the Total CGP Capital Costs, subject only to the holdback for Minor Deficiencies in respect of the CGP as determined in accordance with the Project Agreement.

## **21. ACCESS AND MONITORING**

### **21.1 Access for Province Persons**

- (a) Subject to Section 21.1(b), but without limiting any of HMQ Entities' 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 HMQ Entities, the Province Persons, the Operator, 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) in respect of the Metrolinx Lands, HMQ Entities, the Province Persons, the Operator, their respective representatives, HMQ Entities shall:
  - (i) provide reasonable prior Notice appropriate to the circumstances (other than for any offices or other facilities provided for the use of HMQ Entities and/or Province Persons); and
  - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time.

### **21.2 Increased Monitoring**

- (a) If, at any time during the Project Term, HMQ Entities are 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), HMQ Entities may, without prejudice to any other right or remedy available to them, 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 HMQ Entities consider reasonable taking into account the nature of the relevant defect or failure until such time as Project Co shall have demonstrated, to HMQ Entities' satisfaction, that it is capable of performing and will perform, in all material respects, its obligations under this Project Agreement. Project Co will compensate HMQ Entities for any reasonable costs incurred as a result of such increased monitoring.

### **21.3 Right to Uncover**

- (a) Project Co shall ensure that HMQ Entities are afforded advance Notice of, and that HMQ Entities are 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 HMQ Entities 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 HMQ Entities 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) HMQ Entities shall have the right, at any time during the Project Term, to request Project Co to uncover and inspect (or allow HMQ Entities to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where HMQ Entities reasonably believe 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 HMQ Entities make such a request, HMQ Entities 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 HMQ Entities 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 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 HMQ Entities of their 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 HMQ Entities or the HMQ 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 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 HMQ Entities for inspection and 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 and the New 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), HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 to grant the right of use to the general public to the New City Infrastructure;
  - (ii) Toronto Transit Commission to grant the right of use to the general public to the New TTC Infrastructure;
  - (iii) Railway Companies to grant the right of use to the general public to the New Railway Company Infrastructure; and
  - (iv) Utility Companies to grant the right of use to the general public to the New Utility Company Infrastructure.
- (b) Except as explicitly permitted by HMQ Entities 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 the existing transit system at all times during the Construction Period; and
  - (ii) to the extent that the Project necessitates interference, in any way, with the operation of the existing transit system, including the imposition of any closures or detours on the existing transit system, use commercially reasonable efforts to cooperate with HMQ Entities, the City, the Toronto Transit Commission, GO Transit, and other relevant third parties to ensure the continued operation of the existing transit system.

- (c) Except as otherwise expressly provided in this Project Agreement, Project Co shall not have any claim whatsoever against HMQ Entities, any Province Person, Emergency Service Providers or any other Governmental Authority for, or in respect of, any lane closure or diversion, including any lane 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 Maintenance and Rehabilitation 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 HMQ Entities or any other person.

## **22. WORKS SCHEDULE AND WORKS REPORT**

### **22.1 Completion of 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 The Works Schedule**

- (a) Project Co shall prepare and submit to the Independent Certifier and to HMQ Entities in accordance with Schedule 10 – Review Procedure:
  - (i) within 45 days after Financial Close, a detailed 6-Month Works Schedule;
  - (ii) within 120 days after Financial Close, a detailed draft of the Works Schedule; and
  - (iii) every month in accordance with Section 22.5, an updated and progressed 6-Month Works Schedule and the Works Schedule,

each using the Critical Path Method scheduling using Oracle Enterprise Project Portfolio Management (P6) software, Release 8.3 or later as directed by HMQ Entities from time to time. All Works Schedules shall also be converted and submitted in Tilos linear scheduling software, version 8 or equivalent that can be opened in Tilos. These schedule submissions to HMQ Entities shall be in P6 native format (“XER”) and Tilos native format (“HSP”), and in portable document format (PDF). The Submittals shall include the electronic data files that support the chosen software.

- (b) HMQ Entities shall provide Project Co with comments on the 6-Month Works Schedule and the draft of the Works Schedule in accordance with Schedule 10 - Review Procedure, provided that

the period for review of the draft of the 6-Month Works Schedule and the Works Schedule shall be 20 Business Days rather than the 15 Business Days prescribed in Section 2.2 of Schedule 10 - Review Procedure. Project Co shall revise the 6-Month Works Schedule and the draft of the Works Schedule to the extent required by Schedule 10 - Review Procedure within 15 days of receipt of any comments from HMQ Entities.

- (c) When a “REVIEWED” status is issued in accordance with Schedule 10 – Review Procedure, the draft of the Works Schedule shall become the Works Schedule.
- (d) The 6-Month Works Schedule and the Works Schedule shall be prepared in accordance with Good Industry Practice for a light rail transit project of similar scale, scope, type and complexity and shall be in sufficient detail so as to enable the HMQ Representative and, if applicable, the Independent Certifier, to monitor the progress of the Works, including all commissioning activities, and the likely future progress of the Works. For the purposes of the 6-Month Works Schedule and the Works Schedule, Good Industry Practice includes:
  - (i) *A Guide to the Project Management Body of Knowledge (PMBOK® Guide)- Fifth Edition;*
  - (ii) *Construction Extension to the PMBOK Guide -Third Edition;*
  - (iii) *The Practice Standard for Work Breakdown Structures- Second Edition;*
  - (iv) *The Practice Standard for Scheduling- Second Edition;*
  - (v) *The Practice Standard for Earned Value Management- Second Edition;* and
  - (vi) *The Forensic Schedule Analysis - AACE International Recommended Practice No.29R-03.*
- (e) Without limiting the generality of Section 22.2(d), the 6-Month Works Schedule shall include, at a minimum, in respect of the 6-month period beginning at Financial Close:
  - (i) all elements to be included in the Works Schedule pursuant to the Output Specifications , broken down to a level where dependencies amongst the activities can be clearly understood and will be detailed enough to assess the logical relationship amongst the activities, approval requirements, third party interfaces and progress;
  - (ii) all activities capable of being quantitatively measured in terms of progress;
  - (iii) a work breakdown structure for defining the schedule hierarchy to be used in planning, executing and reporting the progress of the Works. The schedule shall have an ability to summarize the percent complete of each activity at each work breakdown structure level;
  - (iv) a sorting capability with respect to the established work breakdown structure elements, responsible organizations, dates, float and activity identification numbers;

- (v) all activities for key decisions, if any, that require HMQ Entities support or participation for progression of the Works;
- (vi) all activities for adjustments to the Metrolinx Lands;
- (vii) all activities for access to the Lands;
- (viii) all property commencement dates;
- (ix) all milestone events;
- (x) all activities to support the proposed dates for all plans, all Works Submittals and Maintenance and Rehabilitation Submittals required to be submitted under this Project Agreement and any Schedule by Project Co pursuant to the Review Procedure;
- (xi) all activities related to the environmental process, proposed Stakeholder consultations, and Environmental Approvals, including review periods by Governmental Authorities and third parties pursuant to Project Co Permits, Licences and Approvals showing in sufficient detail how these dates affect the critical path, as well as how these dates affect the commencement date of Construction Activities;
- (xii) all activities related to review periods by Governmental Authorities and third parties pursuant to Project Co Permits, Licences and Approvals showing in sufficient detail how these dates affect the critical path, as well as how these dates affect the commencement date of Construction Activities;
- (xiii) all design related activities;
- (xiv) all activities leading up to the commencement of Construction Activities;
- (xv) any Commissioning and HMQ Commissioning activities;
- (xvi) all Construction Activities, including construction staging and subcontract work, both on and off the Site, and interfacing with Other Contractors;
- (xvii) free float for each activity and total float for the overall Project;
- (xviii) the underlying assumptions used including the dependency of each activity on other activities;
- (xix) the critical path;
- (xx) all dates for assets delivered by HMQ Entities and their logical relationship with the critical path;
- (xxi) all communications and public engagement activities;

- (xxii) all Internal Quality Audits and External Quality Audits;
  - (xxiii) all projected Construction Contract cash flows; and
  - (xxiv) a narrative that describes, in sufficient detail, the rationale behind the items identified in this Section 22.2(e).
- (f) Without limiting the generality of Section 22.2(d), the Works Schedule shall include, at a minimum, in respect of the period following Financial Close until the Final Completion Date:
- (i) all elements to be included in the 6-Month Works Schedule pursuant to Section 22.2(e);
  - (ii) the schedule for acceptance of all New Third Party Infrastructure by the applicable third party;
  - (iii) all major equipment and materials;
  - (iv) the manpower requirements for each activity, including subcontract work with resources coded for design disciplines, construction craft, and locally sourced;
  - (v) a manpower histogram, with descriptions of overall manpower as well as by trade and manpower sourced locally (including both direct engagement and subcontract work);
  - (vi) the price loading for each activity to facilitate “Earned Value Analysis and Management” in accordance with the “PMI Practice Standard for Earned Value Management”;
  - (vii) shall not include negative lags and “Mandatory Constraints” options available in P6;
  - (viii) a cumulative “S”-curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Final Completion Date;
  - (ix) Project Co’s original baseline and progress in percent complete for each scheduled activity and the critical path; and
  - (x) all scheduled dates for Subway or SRT shutdowns.
- (g) For the 6-Month Works Schedule and the Works Schedule, Project Co shall:
- (i) use the project codes option rather than the global codes option available in P6;
  - (ii) name activity codes with a “ECL\_” prefix in all its activity codes, calendar names, resource codes, and user defined field codes;
  - (iii) incorporate HMQ Entities’ activity coding structure, as detailed in *Metrolinx RTI Program Controls Coding Guidelines* and provide an ability to view the Work Schedule using this activity coding structure; and

- (iv) use the cost coding structure as detailed in *Metrolinx RTI Program Controls Coding Guidelines*.
- (h) On the 5th Business Day following the submittal of the Works Report, Project Co shall hold a progress meeting with HMQ Entities to present and discuss the Works Report content.

### 22.3 Failure to Maintain Schedule

- (a) Without limiting any other provision of this Project Agreement but subject to Section 40, if, at any time:
  - (i) the actual progress of the Works has significantly fallen behind the Works Schedule; or
  - (ii) HMQ Entities are of the opinion that:
    - (A) the actual progress of the Works has significantly fallen behind the Works Schedule; or
    - (B) Project Co will not achieve Substantial Completion by the Longstop Date,Project Co shall be required:
  - (iii) within 5 Business Days of receipt of Notice from HMQ Entities, to produce and deliver to each of the HMQ Representative and the Independent Certifier:
    - (A) a report identifying the reasons for the delay; and
    - (B) a plan accompanied by an updated Works Schedule showing the steps that are to be taken by Project Co to eliminate or reduce the delay to:
      - (I) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
      - (II) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date; and
  - (iv) to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 22.3(a)(iii)(B) and approved by the HMQ Representative.
- (b) Project Co shall notify the HMQ Representative if, at any time,
  - (i) the actual progress of the Works is significantly ahead of the Works Schedule; or
  - (ii) Project Co is aware of any development relating to the Project that may reasonably be expected to affect,

- (A) Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date; or
  - (B) the functionality or the cost of the Project.
- (c) For greater certainty, provided that Project Co has complied with this Section 22.3 and is not in default under Section 45.1(a)(iii), the failure to achieve Substantial Completion by the Scheduled Substantial Completion Date shall not be a Project Co Event of Default for the purposes of Section 45.1(a)(v).

#### 22.4 Notification of Early Substantial Completion

- (a) Unless Project Co obtains the prior written consent of HMQ Entities, in their 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 HMQ Entities that it expects to be able to achieve Substantial Completion prior to the Scheduled Substantial Completion Date, the HMQ Representative shall be entitled to require Project Co to produce and submit to the HMQ Representative a revised Works Schedule 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 HMQ Entities to consider at their 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.

#### 22.5 Works Report

- (a) (a) Project Co shall continuously monitor the progress of the Works in relation to the 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 Independent Certifier and submit to the HMQ Representative in accordance with Schedule 10 – Review Procedure 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 Works Schedule, in both summary and detailed formats;
  - (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) an update on those matters set out in Schedule 33 - Works Report Requirements;

- (v) in accordance with Section 23, a LEED progress report;
- (vi) a progress report comparing Project Co's actual Construction Activities and procurement activities relating to the Project Co System Infrastructure with LEED rating requirements;
- (vii) a narrative, described in sufficient detail, that includes the following:
  - (A) detailed Works Schedule analysis narrative including the current critical path reasons for delays, and their impacts, corrective actions taken, planned recovery actions, and risks;
  - (B) a tabular earned value report for all the activities, organized by work breakdown structure, and include at a minimum the activity percentage complete, invoices certified and paid, planned value, earned value, schedule variance and cost performance index (where applicable); and
  - (C) explanation for revisions to logic and relationships and any other significant changes to the Works Schedule; 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 HMQ Entities, acting reasonably. For greater certainty, for all updates and revisions to the Works Schedule, Project Co must provide a revised critical path reflecting the updated/revised Works Schedule.

Project Co shall use, and shall ensure that the Construction Contractor uses, the project management software system specified by HMQ Entities.

## **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 HMQ Entities shall comply with the provisions of Schedule 8 – Energy Matters.

### **23.3 LEED and Toronto Green Standard Design and Construction Obligations**

- (a) Project Co shall perform the Works in respect of the Eglinton Maintenance and Storage Facility 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.



- (b) Project Co shall perform the Works in respect of all Stations, Stops, the Eglinton Maintenance and Storage Facility, Associated Facilities, and other requirements as detailed in the Output Specifications so as to achieve the requirements of the Toronto Green Standard, except as set out in the Output Specifications, Project Co may, in its sole discretion, determine to achieve a higher Tier of performance.

#### **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) With respect to “Credit 1 Optimize Energy Performance under Performance Category: Energy & Atmosphere” required pursuant to the Output Specifications, Project Co shall obtain a minimum of 5 points.

#### **23.5 LEED and Toronto Green Standard 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) HMQ Entities have caused the Eglinton Maintenance and Storage Facility to be registered with CaGBC. Project Co shall verify that the Eglinton Maintenance and Storage Facility is registered with CaGBC within 60 days following Financial Close and confirm to HMQ Entities that Project Co is satisfied that the registration is valid, and is effective as of the date 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 HMQ Entities 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 Eglinton Maintenance and Storage Facility as soon as possible.
- (d) In the event that:
- (i) Project Co fails to obtain the minimum number of points required pursuant to Section 23.4(b); or
  - (ii) LEED Silver Rating is not obtained within 24 months after the Substantial Completion Date,

other than as a direct result of any act or omission of HMQ Entities or any HMQ Party, Project Co shall pay to HMQ Entities liquidated damages in the amount of \$[REDACTED]. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that HMQ Entities will suffer as a result of the happening of either of the

specified events and would be difficult or impossible to quantify upon the happening of either of the specified events. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ Entities as a result of a failure by Project Co to obtain the minimum number of points required pursuant to Section 23.4(b) or to achieve LEED Silver Rating and, for greater certainty, a failure by Project Co to obtain any of the mandatory prerequisites or credits set out in the Output Specifications or to achieve LEED Silver Rating for the EMSF shall not result in a Project Co Event of Default. The Parties agree that such liquidated damages shall be payable whether or not HMQ Entities incur or mitigate their damages, and that HMQ Entities shall not have any obligation to mitigate any such 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 HMQ Entities and Project Co shall have no entitlement to any of such credits whatsoever.

## **24. INDEPENDENT CERTIFIER**

### **24.1 Appointment**

- (a) On or prior to Financial Close, 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 HMQ Entities 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 HMQ Entities 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 HMQ 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 HMQ Commissioning Agent and the HMQ 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 HMQ Commissioning Agent and the HMQ 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 HMQ Commissioning Agent and the HMQ 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 HMQ Representative at least 10 Business Days' Notice prior to the date upon which Project Co anticipates delivering the Substantial Completion Notice.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative Notice (the "**Substantial Completion Notice**") and upon the satisfaction of all requirements for Substantial Completion, which Substantial Completion Notice shall, describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied.

- (c) HMQ Entities shall, within 5 Business Days after receipt of a Substantial Completion Notice, provide the Independent Certifier and Project Co with HMQ Entities' opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied and, if applicable, any reasons as to why they consider that the Substantial Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of HMQ Entities' opinion pursuant to Section 25.3(c), 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 HMQ Entities, to determine whether any Minor Deficiencies exist, and to issue to HMQ Entities 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.
- (e) Where the Independent Certifier has issued a report in accordance with Section 25.3(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 HMQ 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 Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Substantial Completion Notice and Sections 25.3(c) to (e), inclusive, shall be repeated until the Substantial Completion Certificate has been issued.
- (f) 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.

#### **25.4 Liquidated Damages – Failure to Achieve Revenue Service**

- (a) In the event that,
- (i) Project Co has provided a Countdown Notice in accordance with Section 25.6 to HMQ Entities that states that the Anticipated Substantial Completion Date (and, therefore, the date Project Co has achieved Readiness for Revenue Service) will be earlier than the Scheduled Substantial Completion Date, HMQ Entities have consented to the earlier Substantial Completion Date in accordance with Section 25.6(c), and Project Co fails to achieve the earlier Substantial Completion Date for which consent was given by HMQ Entities;
  - (ii) Project Co has provided a Countdown Notice in accordance with Section 25.6 to HMQ Entities that states that the Anticipated Substantial Completion Date (and, therefore, the date Project Co has achieved Readiness for Revenue Service) will be on the Scheduled Substantial Completion Date, and Project Co fails to achieve the Scheduled Substantial Completion Date; or
  - (iii) HMQ Entities have established a date for the commencement of Revenue Service (after Substantial Completion) based on the Countdown Notice provided in accordance with Section 25.4(a)(i) or Section 25.4(a)(ii), which date shall be no later than 90 days after Substantial Completion, and Project Co is not in a state of Readiness for Revenue Service on such date established by HMQ Agencies for commencement of Revenue Service,

Project Co shall pay to HMQ Entities an amount equal to \$[REDACTED] as liquidated damages in respect of damage suffered by HMQ Entities related to Project Co's failure to achieve Readiness for Revenue Service by the date established pursuant to Section 25.4(a)(i), Section 25.4(a)(ii) or 25.4(a)(iii). Such amount of liquidated damages shall constitute HMQ Entities' sole recourse against Project Co in respect of HMQ Entities' mobilization costs, and other preparation costs, incurred in anticipation of achieving Revenue Service by the date established in accordance with Section 25.4(a)(i), Section 25.4(a)(ii) or 25.4(a)(iii), but shall not limit HMQ Entities' recourse against Project Co for failing to meet the Scheduled Substantial Completion Date.

- (b) In the event that Project Co provides a further Substantial Completion Notice pursuant to Section 25.3(e), HMQ Entities shall establish a revised date for the commencement of Revenue Service (each a **"Revised Date for Revenue Service"**) which date shall be no earlier than the applicable revised date for Substantial Completion and no later than 90 days after the revised date for Substantial Completion.
- (c) For clarity, notwithstanding the establishment of a Revised Date for Revenue Service pursuant to Section 25.4(b) that is after the revised date for Substantial Completion set out in a Substantial Completion Notice provided pursuant to Section 25.3(e), Project Co must still demonstrate that Project Co is capable of achieving Readiness for Revenue Service as a condition of achieving Substantial Completion.
- (d) If Project Co fails to achieve Readiness for Revenue Service on a Revised Date for Revenue Service, if any, Project Co shall pay to HMQ Entities, for each failure to achieve Readiness for Revenue Service on a Revised Date for Revenue Service, an amount equal to \$[REDACTED] as

liquidated damages in respect of damage suffered by HMQ Entities related to Project Co's failure to achieve Readiness for Revenue Service on the Revised Date for Revenue Service.

- (e) In the event that there is a Dispute concerning Substantial Completion or Readiness for Revenue Service and such Dispute is ongoing, HMQ Entities shall not be entitled to payment of liquidated damages pursuant to this Section 25.4 unless and until such Dispute is resolved in accordance with the Dispute Resolution Procedure outlined in Schedule 27 – Dispute Resolution Procedure and, if resolved in favour of HMQ Entities, the provisions, respecting liquidated damages contained in this Section 25.4 shall apply with retroactive effect, except that there shall be added to the amount payable by Project Co on account of liquidated damages, interest at the rate of [REDACTED] percent per annum from the date the liquidated damages were required to be paid in the absence of the Dispute to the date of payment.
- (f) The payment of any amount of liquidated damages pursuant to Section 25.4 shall not reduce the maximum amount of liability of Project Co as provided for in Section 57.4 of the Project Agreement.

### 25.5 HMQ Commissioning

- (a) The Parties acknowledge that HMQ Entities may perform HMQ Commissioning both before and after the Substantial Completion Date. Prior to Substantial Completion, Project Co shall not restrict HMQ Entities, 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 HMQ Entities to undertake any HMQ Commissioning in accordance with the Commissioning Program. HMQ Entities 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 HMQ Commissioning.
- (b) HMQ Entities acknowledge that, during the HMQ 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 HMQ Entities 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 HMQ Commissioning Period, Project Co and its Subcontractors shall cooperate with HMQ Entities 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 HMQ Commissioning activities are able to be completed in the timeframe for completion set out in the Commissioning Program.

### 25.6 Countdown Notice

- (a) Project Co shall deliver a Notice (a “**Countdown Notice**”) to HMQ Entities and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled

Substantial Completion Date) on which Project Co anticipates that Substantial Completion will be achieved (the “**Anticipated Substantial Completion Date**”).

- (b) The Countdown Notice shall be delivered not less than 180 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the 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 22.4(a), any Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date, without the prior written consent of HMQ Entities, in their sole discretion.

### **25.7 Minor Deficiencies**

- (a) In the event that Minor Deficiencies exist when Project Co gives a Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and HMQ Entities, shall, within 15 Business Days of Project Co’s application, prepare a list of all Minor Deficiencies (the “**Minor Deficiencies List**”) identified at that time and an estimate of the cost and the time for rectifying such Minor Deficiencies.
- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. In determining the relevant time for rectifying Minor Deficiencies, 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 HMQ Entities, 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 before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) HMQ Entities may, in their sole discretion, waive any requirement for Substantial Completion, and the failure to meet any such requirement shall constitute a Minor Deficiency.

### **25.8 Rectification of Minor Deficiencies**

- (a) Project Co shall, in consultation with the HMQ 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 HMQ Entities, 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 within 180 days of the issuance of the applicable Minor Deficiencies List or such other period as the Independent Certifier may specify 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 has failed to complete and rectify any Minor Deficiency specified in the Minor Deficiencies List
- (i) within 210 days of the issuance of the Minor Deficiencies List for all Minor Deficiencies where no time for rectification or completion has been specified by the Independent Certifier, or
  - (ii) within 30 days after the time for completion and rectification of any Minor Deficiency where such a time has been specified in the Minor Deficiencies List by the Independent Certifier,

HMQ Entities may:

- (iii) withhold from the next payment or payments otherwise due to Project Co a holdback amount that is [REDACTED]% of the amount estimated by the Independent Certifier for HMQ Entities to complete and rectify all such Minor Deficiencies (to the extent then outstanding), which holdback shall be held in an interest bearing account; and
  - (iv) engage others to perform the work necessary to complete and rectify any such Minor Deficiency, at the risk and cost of Project Co, and HMQ Entities may deduct such cost from the holdback amount and interest earned thereon.
- (b) Upon completion and rectification of each Minor Deficiency, HMQ Entities shall release to Project Co the amount of the holdback related to such Minor Deficiency. Upon completion and rectification of all Minor Deficiencies, HMQ Entities shall release to Project Co then remaining amount of the holdback, together with all interest accrued thereon. If the cost of such completion and rectification exceeds the amount of such holdback and interest, then Project Co shall reimburse HMQ Entities for all such excess cost.

### 25.10 Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the HMQ 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 HMQ 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 HMQ Entities 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) HMQ Entities shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with HMQ Entities’ opinion as to whether the conditions for issuance of Final Completion Certificate have been satisfied and, if applicable, any reasons as to why they consider that the Final Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co’s receipt of HMQ Entities’ 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 HMQ Entities, and to issue to HMQ Entities 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 HMQ 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, HMQ Entities 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 HMQ Entities the costs incurred by HMQ Entities to complete such seasonal work within 10 Business Days of presentation of an invoice for such costs.

#### **25.11 Effect of Certificates/Use**

- (a) The issue of a Substantial Completion Certificate or the Final Completion Certificate, the commencement of use by HMQ Entities 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 HMQ Entities of the Works or the way in which they have been carried out.

#### **25.12 Post-Completion Survey**

- (a) Not more than 90 days after the Final Completion Date, Project Co, at its own cost and expense, shall prepare and submit to HMQ Entities a reference plan of survey for the Project Co System Infrastructure built:
  - (i) on or within the City Road Allowance, identifying the location of the Project Co System Infrastructure together with a certain distance calculated from the outer boundary of such Project Co System Infrastructure as advised by Metrolinx, as well as all encumbrances and encroachments; and
  - (ii) at the Interchange Stations, identifying the location of the Project Co System Infrastructure, as well as all encumbrances and encroachments.
- (b) The reference plan of survey set out in Section 25.12(a) shall be prepared by a duly qualified Ontario Land Surveyor.

- (c) The reference plans of survey prepared and submitted by Project Co in accordance with Sections 25.12(a) and 25.12(b) that pertain to any below grade Project Co System Infrastructure on the City Road Allowance or at the Interchange Stations (as the case may be) shall be a strata plan showing such Project Co System Infrastructure as three dimensional parts on such reference plan. The reference plans of survey shall be sufficient for conveyancing purposes and be in registrable form. Project Co, at its expense, shall correct or amend the reference plans if required by HMQ Entities for purposes of depositing them on title, which corrections and amendments shall be made by Project Co within thirty (30) days after receipt of a Notice from HMQ Entities.

**25.13 Inspection, Commissioning and Handover of New City Infrastructure, New Metrolinx Infrastructure and the New Salvation Army Infrastructure**

- (a) Project Co acknowledges and agrees that New City Infrastructure, New Metrolinx Infrastructure and the New Salvation Army Infrastructure will be inspected, Commissioned and handed over to the City, GO Transit or Salvation Army, as applicable, on a component by component basis and from time to time during the Construction Period.
- (b) No later than 5 days prior to the anticipated completion of New City Infrastructure, New Metrolinx Infrastructure or the New Salvation Army Infrastructure, Project Co shall provide Notice to HMQ Entities, and to the City, GO Transit or Salvation Army, as applicable, of the date on which the New City Infrastructure, the New Metrolinx Infrastructure or the New Salvation Army Infrastructure will be completed and ready for inspection. HMQ Entities shall inspect the New City Infrastructure, New Metrolinx Infrastructure or the New Salvation Army Infrastructure no later than 90 days after the date of completion of such New City Infrastructure, New Metrolinx Infrastructure or New Salvation Army Infrastructure. Such inspection, shall be for the purposes of,
- (i) assessing whether the New City Infrastructure, the New Metrolinx Infrastructure or the New Salvation Army Infrastructure, as applicable, has been constructed in accordance with the Output Specifications; and
  - (ii) identifying any defects or deficiencies that Project Co must correct before Project Co completes the Commissioning of the New City Infrastructure, the New Metrolinx Infrastructure or the New Salvation Army Infrastructure and/or before the Handover of the New City Infrastructure, New Metrolinx Infrastructure, or the New Salvation Army Infrastructure to the City, GO Transit or Salvation Army, as applicable.
- (c) For the purposes of this Section 25.13, HMQ Entities shall be deemed to have delegated the responsibility for carrying out interim and final inspections, and Commissioning and Handover activities, on behalf of HMQ Entities, to,
- (i) the City, in respect of the New City Infrastructure;
  - (ii) to GO Transit, in respect of the New Metrolinx Infrastructure; and
  - (iii) to Salvation Army, in respect of the New Salvation Army Infrastructure.

HMQ Entities may, in its sole discretion, revise such delegation by Notice to Project Co. Project Co acknowledges and agrees that, for the purposes of this Section 25.13, Project Co shall Handover all New City Infrastructure directly to the City, shall Handover all New Metrolinx Infrastructure directly to GO Transit, and shall Handover all the New Salvation Army Infrastructure directly to Salvation Army.

- (d) After the inspection of the New City Infrastructure, New Metrolinx Infrastructure or the New Salvation Army Infrastructure, pursuant to Section 25.13(b), Project Co shall make all arrangements in respect of the applicable New City Infrastructure, New Metrolinx Infrastructure or the New Salvation Army Infrastructure to,
- (i) correct all defects or deficiencies;
  - (ii) complete Commissioning of the applicable New City Infrastructure, New Metrolinx Infrastructure or the New Salvation Army Infrastructure in accordance with Schedule 14 – Commissioning;
  - (iii) complete Handover of the New City Infrastructure, the New Metrolinx Infrastructure or the New Salvation Army Infrastructure to the City, GO Transit or Salvation Army, as applicable; and
  - (iv) seek, receive, and document confirmation from the City, GO Transit or Salvation Army, as applicable, that such Commissioning and Handover has been completed.
- (e) Project Co shall provide Notice to HMQ Entities when the New City Infrastructure, New Metrolinx Infrastructure or the New Salvation Army Infrastructure has been Commissioned and has achieved Handover to the City, GO Transit or Salvation Army, as applicable. Such Notice shall include,
- (i) a clear identification of that portion or component of the New City Infrastructure, New Metrolinx Infrastructure or the New Salvation Army Infrastructure that is the subject of the Notice;
  - (ii) the date of Handover of the applicable New City Infrastructure, New Metrolinx Infrastructure or the New Salvation Army Infrastructure (as set out in the written confirmation required by Section 25.13(e)(iii)); and
  - (iii) a written confirmation, signed by an authorized representative of the City, authorized representative of GO Transit or authorized representative of Salvation Army, as applicable, that Commissioning and Handover of the applicable New City Infrastructure, New Metrolinx Infrastructure or the New Salvation Army Infrastructure has been completed, including the confirmed date of Handover.
- (f) The City, GO Transit or Salvation Army, as applicable, and HMQ Entities, may,
- (i) carry out interim inspections of the New City Infrastructure, the New Metrolinx Infrastructure or the New Salvation Army Infrastructure; and

- (ii) carry out warranty inspections in respect of the New City Infrastructure, New Metrolinx Infrastructure or the New Salvation Army Infrastructure following final completion of the New City Infrastructure, New Metrolinx Infrastructure or the New Salvation Army Infrastructure, for the purpose of identification of any defects or deficiencies.
- (g) Project Co shall arrange, schedule, and facilitate all inspections, and Commissioning and Handover activities, in respect of the New City Infrastructure, New Metrolinx Infrastructure or the New Salvation Army Infrastructure directly with the City, GO Transit and Salvation Army pursuant to Sections 25.13(c). Project Co shall report to HMQ Entities 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 Final Inspection, Commissioning and Handover of New TTC Infrastructure**

- (a) Project Co acknowledges and agrees that New TTC Infrastructure may be inspected, Commissioned and handed over to the Toronto Transit Commission on a component by component basis and from time to time during the Construction Period.
- (b) No later than 5 days prior to the anticipated completion of New TTC Infrastructure, Project Co shall provide Notice to HMQ Entities, and to the Toronto Transit Commission, of the date on which the New TTC Infrastructure will be completed and ready for inspection. HMQ Entities shall inspect the New TTC Infrastructure no later than 90 days after the date of completion of the New TTC Infrastructure. Such inspection shall be for the purposes of,
  - (i) assessing whether the New TTC Infrastructure has been constructed in accordance with the Output Specifications; and
  - (ii) identifying any defects or deficiencies that Project Co must correct before Project Co completes the Commissioning of the New TTC Infrastructure and/or before Project Co completes the Handover of the New TTC Infrastructure to the Toronto Transit Commission.
- (c) For the purposes of this Section 25.14, HMQ Entities shall be deemed to have delegated the responsibility for carrying out interim and final inspections, and Commissioning and Handover activities, on behalf of HMQ Entities, to the Toronto Transit Commission. HMQ Entities may, in their sole discretion, revise such delegation by Notice to Project Co. For clarity, for the purposes of this Section 25.14 Project Co shall Handover all New TTC Infrastructure directly to the Toronto Transit Commission.
- (d) After the inspection of the New TTC Infrastructure, pursuant to Section 25.14(b), Project Co shall make all arrangements in respect of the applicable New TTC Infrastructure to,
  - (i) correct all defects or deficiencies;
  - (ii) complete Commissioning in accordance with Schedule 14 – Commissioning and Handover to the Toronto Transit Commission; and

- (iii) seek, receive, and document confirmation from the Toronto Transit Commission that such Commissioning and Handover has been completed.
- (e) Project Co shall provide Notice to HMQ Entities when the New TTC Infrastructure has been Commissioned and has achieved Handover to the Toronto Transit Commission. Such Notice shall include,
  - (i) a clear identification of that portion or component of the New TTC Infrastructure that is the subject of the Notice;
  - (ii) the date of Handover of the applicable New TTC Infrastructure (consistent with the written confirmation required by Section 25.14(e)(iii)); and
  - (iii) a written confirmation, signed by an authorized representative of the Toronto Transit Commission, that Commissioning and Handover of the applicable New TTC Infrastructure has been completed including the confirmed date of Handover.
- (f) The Toronto Transit Commission may,
  - (i) carry out interim inspections of the New TTC Infrastructure and any construction activity within the TTC Zone of Influence and to identify any defects or deficiencies that the Toronto Transit Commission finds in an interim inspection; and
  - (ii) carry out warranty inspections in respect of the New TTC Infrastructure following completion of any New TTC Infrastructure for the purpose of identification of any defects or deficiencies.
- (g) Project Co shall arrange, schedule, and facilitate all interim inspection, Commissioning and Handover activities in respect of the New TTC Infrastructure and shall report to HMQ Entities on the status of all such inspections, Commissioning and Handover in accordance with this Section 25.14 and on a regular basis as part of the Works Report.

**25.15 Warranties on New City Infrastructure, New Metrolinx Infrastructure, the New Salvation Army Infrastructure and New TTC Infrastructure**

- (a) Project Co warranties on the New City Infrastructure, New Metrolinx Infrastructure, the New Salvation Army Infrastructure and the New TTC Infrastructure shall be as follows:
  - (i) Project Co warrants that all New City Infrastructure, New Metrolinx Infrastructure, the New Salvation Army Infrastructure and all New TTC 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 Infrastructure, New Metrolinx Infrastructure or New Salvation Army Infrastructure, on the date of Handover of the New City

Infrastructure, New Metrolinx Infrastructure, or the New Salvation Army Infrastructure, or a portion thereof, to the City, GO Transit or Salvation Army, as applicable, in accordance with Section 25.13, and ending on the date that is 2 years after such date of Handover of the New City Infrastructure, New Metrolinx Infrastructure, or the New Salvation Army Infrastructure or a portion thereof; and

- (B) in the case of the New TTC Infrastructure, on the date of Handover of the New TTC Infrastructure, or a portion thereof, to the Toronto Transit Commission in accordance with Section 25.14 and ending on the date that is 2 years after such date of Handover of the New TTC 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. Neither warranty 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 Infrastructure, New Metrolinx Infrastructure or the New Salvation Army Infrastructure, assign to the City, GO Transit or Salvation Army, as applicable, all such extended warranties as the City, GO Transit or Salvation Army, as applicable, may direct; and
    - (B) in the case of the New TTC Infrastructure, assign to the Toronto Transit Commission all such extended warranties as the Toronto Transit Commission may direct.
  - (iii) HMQ Entities may, in their sole discretion, assign the Project Co warranties set out in Section 25.15(a) to the City (in the case of the New City Infrastructure), Salvation Army (in the case of the New Salvation Army Infrastructure) or the Toronto Transit Commission (in the case of the New TTC Infrastructure) and shall provide Notice to Project Co of any such assignment of the Project Co warranties.
  - (iv) On the commencement of the first warranty period for each of, the New City Infrastructure, the New Metrolinx Infrastructure, the New Salvation Army Infrastructure and the New TTC Infrastructure, or any component thereof, Project Co shall provide at least two copies of each of three compilations of all warranty certificates, one compilation for each of the New City Infrastructure, the New Metrolinx Infrastructure, the New Salvation Army Infrastructure and the New TTC Infrastructure. Project Co shall update all copies of each of the three compilations from time to time as each new warranty period commences. Each of the three compilations shall indicate the start and completion date of each 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) and Section 25.15(a)(i)(B) and Project Co shall also Make Good any damage to Project Co System Infrastructure, New City Infrastructure, New Metrolinx Infrastructure, the New Salvation Army Infrastructure or New TTC 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 HMQ Entities may have, HMQ Entities may correct such New City Infrastructure, New Metrolinx Infrastructure, the New Salvation Army Infrastructure or New TTC Infrastructure and HMQ Entities 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 HMQ Entities.
- (iii) Project Co acknowledges that the timely performance of Warranty Work is critical to the ability of the City to maintain effective operations of the New City Infrastructure, the ability of GO Transit to maintain the New Metrolinx Infrastructure, the ability of Salvation Army to maintain the New Salvation Army Infrastructure, and the ability of the Toronto Transit Commission to maintain the effective operations of the New TTC Infrastructure. Project Co shall use commercially reasonable efforts to respond to any requirement by the City, GO Transit, Salvation Army, or the Toronto Transit Commission to correct defective, deficient or non-compliant items in the New City Infrastructure, New Metrolinx Infrastructure, the New Salvation Army Infrastructure or the New TTC Infrastructure, respectively, within the time periods required by the City, GO Transit, Salvation Army, or the Toronto Transit Commission. 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.
- (iv) Project Co further acknowledges that if the City, GO Transit, Salvation Army, or the Toronto Transit Commission 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), the City, GO Transit, Salvation Army or the Toronto Transit Commission, as applicable, may take such emergency steps as are reasonable and appropriate to correct such defects, deficiencies or failures to comply with Schedule 15 – Output Specifications, at Project Co’s sole cost and expense. Except in the case of damage caused by the City, GO Transit, Salvation Army or the Toronto Transit Commission to the New City Infrastructure, New Metrolinx Infrastructure, the New Salvation Army Infrastructure, or New TTC Infrastructure, as applicable, such emergency steps shall not invalidate any Project Co warranties in respect of the New City Infrastructure, New Metrolinx Infrastructure, the New Salvation Army Infrastructure or the New TTC Infrastructure.

- (v) After the Handover of the New City Infrastructure, New Metrolinx Infrastructure, New Salvation Army Infrastructure or New TTC Infrastructure, or any component thereof, Project Co shall be solely responsible for obtaining access from the City, GO Transit, Salvation Army or the Toronto Transit Commission, as applicable, for the purpose of carrying out Warranty Work. Project Co acknowledges that such access to the New City Infrastructure, New Metrolinx Infrastructure, the New Salvation Army Infrastructure, and New TTC Infrastructure and may be subject to such limitations as may be imposed by the City, GO Transit, Salvation Army, or the Toronto Transit Commission and that Project Co may be required to obtain a Permit, Licence or Approval to access the New City Infrastructure, New Metrolinx Infrastructure, New Salvation Army Infrastructure or the New TTC 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 Infrastructure, the New Metrolinx Infrastructure, the New Salvation Army Infrastructure or the New TTC Infrastructure, Project Co shall refer the matter to HMQ Entities.
- (c) Remedies Not Exclusive
- (i) The express warranties set out in this Section 25.15 shall not deprive the City, Salvation Army or the Toronto Transit Commission of any action, right or remedy otherwise available to the City, Salvation Army or the Toronto Transit Commission 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 the City, Salvation Army or the Toronto Transit Commission may pursue such other action, right or remedy.

**25.16 Disputes Regarding Handover of the New City Infrastructure, New Metrolinx Infrastructure, New Salvation Army Infrastructure, or New TTC Infrastructure**

- (a) In the event of a dispute between Project Co and HMQ Entities (including HMQ Entities as representatives of the interests of the City, GO Transit, Salvation Army and the TTC) with respect to final inspection, Commissioning or Handover of the New City Infrastructure, the New Metrolinx Infrastructure, the New Salvation Army Infrastructure or the New TTC Infrastructure pursuant to Section 25.13 or Section 25.14, as applicable, the following shall apply:
- (i) Project Co shall make commercially reasonable efforts to resolve all outstanding concerns of the City, GO Transit, Salvation Army and the TTC 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) or 25.14(b), as applicable, 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 Countdown Notice issued pursuant to Section 25.6(a); or

- (B) arises after the issuance of the 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. MAINTENANCE AND REHABILITATION SERVICES

### 26.1 Overall Responsibility

- (a) Project Co shall, following the Substantial Completion Date, perform the Maintenance and Rehabilitation 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 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 and the Eglinton Crosstown Tunnels;
  - (vi) in accordance with any other reasonable requirements of the manufacturer or supplier of the Vehicles or the Eglinton Crosstown Tunnels including any warranty or guarantee requirements so as not to void, breach or adversely affect any warranty or guarantee claims; and
  - (vii) in accordance with the other terms of this Project Agreement.
- (b) During the Maintenance Period, HMQ Entities 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 Licencee**"). HMQ Entities' granting of a licence for temporary use of any Station Plaza by a Station Plaza Licencee shall be in accordance with the following:
- (i) HMQ Entities 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 HMQ Entities intend to grant a Station Plaza Licence, HMQ Entities shall give Project Co Notice setting out the proposed terms of such Station Plaza Licence. Project Co may provide comments, if any, to HMQ Entities for its consideration but HMQ Entities shall advise Project Co if in HMQ Entities opinion, acting reasonably, any such Station Plaza

Licence is likely to significantly impede Project Co from the performance of its obligations during the Maintenance Period or adversely affect safety and security;

- (iii) In respect of Maintenance and Rehabilitation Services provided by Project Co exclusively in respect of Station Plaza Licences, HMQ Entities 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 Maintenance and Rehabilitation Services**

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

#### **26.3 Equipment for Maintenance and Rehabilitation Services**

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

#### **26.4 No Closure of the Project Co System Infrastructure**

- (a) During the Maintenance Period, Project Co shall not close all or a portion of the Project Co System Infrastructure in any circumstances other than as directed or approved by HMQ Entities, acting reasonably.

#### **26.5 Maintenance Plans**

- (a) No later than 90 days prior to the Substantial Completion Date, Project Co shall submit to HMQ Entities for review pursuant to Schedule 10 - Review Procedure, the Maintenance Plan for the first Contract Year, and shall update such plans as provided for in the Output Specifications annually thereafter.

**26.6 Revisions to Maintenance Plan**

- (a) No later than 30 days prior to the commencement of any calendar quarter, Project Co may submit to HMQ Entities a revision to the applicable Maintenance Plan for the Contract Year in which the relevant calendar quarter falls showing the effect of the proposed changes. If Project Co is entitled to proceed with such changes pursuant to Schedule 10 - Review Procedure, then the Maintenance Plan as so amended shall become the Maintenance Plan in respect of that calendar quarter.

**26.7 Operator Transition**

- (a) Project Co acknowledges that the entity or entities performing the Operator Tasks may change from time to time during the Maintenance Period and that the Operator Tasks may be performed by a single entity or multiple entities as determined by HMQ Entities. Project Co acknowledges and agrees that, in the event of a change in the entity or entities performing the Operator Tasks (an “**Operator Transition**”), it shall cooperate with HMQ Entities in ensuring a smooth transition to a new entity that will perform some or all of the Operator Tasks (a “**Replacement Operator**”). Project Co acknowledges that upon an Operator Transition, Project Co will be required to carry out certain tasks to complete the transition to the new entity that will perform Operator Tasks as set out in the Output Specifications (the “**Project Co Operator Transition Services**”). Project Co shall be entitled to a Variation in respect of the delivery of the Project Co Operator Transition Services,
- (i) for each Operator Transition; and
  - (ii) in respect of any change to Project Co’s scope of responsibilities as set out in the Project Agreement arising out of the change of Operators.
- (b) HMQ Entities shall provide the Project Co Representative with no less than 180 days’ Notice of an Operator Transition (an “**Operator Transition Notice**”), which Notice shall set out the start date of the Replacement Operator and the start date of the Project Co Operator Transition Services. Project Co shall, upon receipt of an Operator Transition Notice, commence the delivery of the Project Co Operator Transition Services on a timetable to be established by Project Co and HMQ Entities.

**27. PRE-SUBSTANTIAL COMPLETION (EGLINTON CROSSTOWN TUNNELS) MAINTENANCE AND SECURITY OBLIGATIONS**

- (a) Project Co shall carry out maintenance and security obligations in respect of the Eglinton Crosstown Tunnels in accordance with Schedule 15 – Output Specifications and Schedule 38 – Tunnels.

**28. HUMAN RESOURCES****28.1 Admittance of Personnel**

- (a) HMQ Entities 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 HMQ Entities is likely to have an adverse effect on the Other Works or the Governmental Activities or who, in the reasonable opinion of HMQ Entities 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 HMQ Entities policy or any immediate obligation of HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 Works Schedule and to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in the Maintenance and Rehabilitation 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 HMQ 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 Maintenance and Rehabilitation Services as required by any provincial or federal regulatory body, including but not limited to training of personnel regarding the 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 HMQ Entities 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 HMQ Entities' request, provide training program materials to HMQ Entities 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Services, without the prior written consent of HMQ Entities, in their sole discretion.
- (c) To the extent permitted by Applicable Law, Project Co shall ensure that HMQ Entities are 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 Maintenance and Rehabilitation 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 HMQ Entities as contemplated in this Section 28.6.

### **28.7 Disciplinary Action**

- (a) HMQ Entities, 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 HMQ Entities 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 HMQ Entities consider may potentially compromise (i) HMQ Entities' reputation or integrity, or (ii) the nature of the public transit system in the City of Toronto so as to affect public confidence in the public transit system in the City of Toronto 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 HMQ Entities 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 HMQ 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 HMQ Entities on a timely basis.

### **28.9 Management Organizations**

- (a) Project Co shall provide, and shall ensure that all Project Co Parties provide, to HMQ Entities, 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, equipment, consumables and materials used or supplied by it or any Contractor or Subcontractor in connection with the Project Operations 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 HMQ Representative, supply to the HMQ Representative evidence to demonstrate its compliance with this Section 29.1(a).

**29.2 Stocks**

- (a) Project Co shall cause sufficient stocks of goods, consumables, equipment and materials to be held in compliance with its obligations under this Project Agreement.

**30. DAMAGE AND DESTRUCTION****30.1 Restoration and Reinstatement of Damage or Destruction**

- (a) Unless this Project Agreement is terminated in accordance with its terms (including under Section 45.3, Section 47.1, Section 47.2 or Section 47.3), if all or any part of,
- (i) the Project Co System Infrastructure; or
  - (ii) the New Third Party Infrastructure, prior to Handover of the New Third Party Infrastructure,

is damaged or destroyed, Project Co shall, at its own cost and expense, repair or replace, as applicable, the Project Co System Infrastructure, or the New Third Party Infrastructure or any part, as applicable, (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 HMQ Entities. For clarity, after Handover of New Third Party Infrastructure, damage or destruction shall be dealt with pursuant to the Project Agreement as damage or destruction to the property of third parties.

- (b) 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 New City Infrastructure, New Metrolinx

Infrastructure, New Salvation Army Infrastructure or New TTC Infrastructure, shall be planned and implemented by Project Co in consultation with the applicable third party.

### 30.2 Reinstatement Plan

(a) If the Reinstatement Work in respect of the Project Co System Infrastructure, the New City Infrastructure, New Metrolinx Infrastructure, New Salvation Army Infrastructure, and the New TTC Infrastructure is reasonably estimated to cost more than \$[REDACTED] (index linked) or in any other case where the HMQ 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 HMQ Representative acting reasonably considers that the continued application of the Design and 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 HMQ 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 HMQ 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 HMQ 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 restore, replace and reinstate 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 - Variations as if such plan were an Estimate;

and the Reinstatement Work must not be commenced until the HMQ 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 the Reinstatement Work in respect of the Project Co System Infrastructure, the New City Infrastructure, New Metrolinx Infrastructure, New Salvation Army Infrastructure, and the New TTC Infrastructure to be carried out in accordance with the Output Specifications and all other applicable requirements under this Project Agreement and, where applicable, in accordance with the Reinstatement Plan consented to by the HMQ 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 Certification Procedure. If requested by the HMQ Representative, the persons (and if applicable, a suitable parent entity thereof acceptable to HMQ Entities) 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 HMQ Entities 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 in respect of the Project Co System Infrastructure, the New City Infrastructure, New Metrolinx Infrastructure, New Salvation Army Infrastructure, and the New TTC Infrastructure, 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 HMQ Entities reasonably believe that Project Co is in breach of its obligations with respect to Maintenance and Rehabilitation Services, including:
  - (i) under Sections 26 and 27;
  - (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 HMQ Entities may cause to be performed, by an arm's length consultant appointed by HMQ Entities, 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) HMQ Entities shall notify Project Co in writing at least 10 Business Days prior to the date that HMQ Entities wish to cause a Performance Audit to be undertaken. HMQ Entities 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 HMQ Entities, on the basis that performing the Performance Audit on the date originally requested by HMQ Entities would materially prejudice Project Co's ability to provide the Maintenance and Rehabilitation Services.
- (c) When causing any Performance Audit to be undertaken, HMQ Entities shall use commercially reasonable efforts to minimize any disruption caused to the provision of the Maintenance and Rehabilitation Services. The cost of a Performance Audit, except where Section 31.1(d) applies, shall be borne by HMQ Entities. Project Co shall provide HMQ Entities, at no additional cost or charge, with any reasonable assistance required by HMQ Entities 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, HMQ Entities shall:
- (i) provide Project Co with a written Notice of non-compliance;
  - (ii) provide Project Co with instructions regarding rectification or Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Services, as the case may be, required by HMQ Entities within a reasonable period of time specified by HMQ Entities, and be responsible for any costs incurred in performing such rectification or Maintenance and Rehabilitation Services, as the case may be; and
  - (ii) pay or reimburse HMQ Entities for the costs of the Performance Audit and any administrative costs incurred by HMQ Entities in relation to the Performance Audit.
- (f) Nothing in this Section 31.1 shall limit or restrict HMQ Entities' rights hereunder to perform any other performance audits, inspections and surveys at their own cost and expense.
- (g) HMQ Entities' 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 Maintenance and Rehabilitation 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 HMQ Entities, provide the HMQ Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.
- (b) HMQ Entities may, at any and all reasonable times, observe, inspect, monitor, audit and take any steps reasonably necessary to satisfy themselves as to the adequacy of the monitoring, including performing sample checks.

- (c) HMQ Entities may, in their sole discretion and notwithstanding anything else to the contrary in this Project Agreement, share all performance monitoring information in respect of the Maintenance and Rehabilitation Period with the Operator.

### 31.3 Failure Points

- (a) In each Payment Period, Project Co shall measure the performance of the Maintenance and Rehabilitation Services, and based on the performance of the Maintenance and Rehabilitation 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 HMQ Entities' 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 HMQ Entities 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 Vehicle Kilometres Availability Failures;
  - (ii) [REDACTED] Failure Points in respect of Passenger Facility Availability Failures;
  - (iii) [REDACTED] Failure Points in respect of Quality Failures and Service Failures, combined; or
  - (iv) [REDACTED] Failure Points in respect of Room Availability Failures.

### 31.5 Monitoring Notices

- (a) Without prejudice to HMQ Entities' 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, HMQ Entities 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 HMQ Entities that it is performing, and is capable of continuing to perform, its obligations under this Project Agreement in respect of the relevant Maintenance and Rehabilitation Services:
- (i) [REDACTED] Failure Points in respect of Vehicle Kilometres Availability Failures;
  - (ii) [REDACTED] Failure Points in respect of Passenger Facility Availability Failures;
  - (iii) [REDACTED] Failure Points in respect of Quality Failures and Service Failures, combined; or
  - (iv) [REDACTED] Failure Points in respect of Room Availability Failures.

- (b) HMQ Entities 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 HMQ Entities were not entitled to give the Monitoring Notice, Project Co shall, within 3 Business Days of the receipt of the Monitoring Notice, provide Notice to HMQ Entities' 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 HMQ Entities 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 HMQ Entities' 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, HMQ Entities 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 HMQ Entities were entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse HMQ Entities for any reasonable costs and expenses incurred by or on behalf of HMQ Entities in relation to the giving of such Monitoring Notice; and
  - (vi) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that HMQ Entities were not entitled to give the applicable Monitoring Notice, HMQ Entities shall bear their 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 HMQ Entities 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 Maintenance and Rehabilitation Services, as applicable, Project Co may apply for the withdrawal of such Monitoring Notice. If HMQ Entities are satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, they 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 HMQ Entities were not entitled to give any Monitoring Notice, HMQ Entities 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. HMQ ENTITIES' REMEDIAL RIGHTS

### 32.1 Exercise of Remedial Rights

- (a) HMQ Entities may exercise all rights set out in this Section 32 at any time and from time to time if:
- (i) HMQ Entities, acting reasonably, consider 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 Maintenance and Rehabilitation 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) HMQ Entities' reputation or integrity, or (II) the nature of the public transit system in the City of Toronto so as to affect public confidence in the public transit system in the City of Toronto 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), HMQ Entities shall not exercise their 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 HMQ Entities 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), HMQ Entities shall not exercise their 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 HMQ Entities 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 Vehicle Kilometres Availability Failures;
  - (B) **[REDACTED]** Failure Points in respect of Passenger Facility Availability Failures;
  - (C) **[REDACTED]** Failure Points in respect of Quality Failures and Service Failures, combined; or
  - (D) **[REDACTED]** Failure Points in respect of Room Availability Failures;
- (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 Maintenance and Rehabilitation Services, as the case may be;
- (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 Maintenance and Rehabilitation 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) HMQ Entities have received a notice under the Maintenance and Rehabilitation Contractor’s Direct Agreement that entitles HMQ Entities to exercise step-in rights thereunder;
- (vii) Project Co has failed to comply with any written direction issued by or on behalf of HMQ Entities; or
- (viii) Project Co has not caused the Construction Contractor to perform its obligations with respect to its Health and Safety Certification in accordance with Section 9.6 or Project Co has not caused the Construction Contractor to perform its obligations to rectify any non-compliance noted in any H&S Inspection Report in accordance with Section 13(b).



**32.2 Emergency**

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

**32.3 Rectification**

- (a) Without prejudice to HMQ Entities' 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, HMQ Entities may, by written Notice, require Project Co to take such steps as HMQ Entities, acting reasonably, consider necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of Subcontractors, and Project Co shall use commercially reasonable efforts to comply with HMQ Entities' requirements as soon as reasonably practicable.
- (b) If HMQ Entities give 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 HMQ Entities are entitled to exercise step-in rights under the Maintenance and Rehabilitation Contractor's Direct Agreement that it is willing to take the steps required in such Notice or present an alternative plan to HMQ Entities to mitigate, rectify and protect against such circumstances that HMQ Entities 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 HMQ Entities, acting reasonably, shall think fit,

then HMQ Entities may take such steps as they consider to be appropriate, acting reasonably, including, if applicable, exercising step-in rights under the Maintenance and Rehabilitation Contractor's Direct Agreement and requiring the termination and replacement of Subcontractors, either themselves or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant Maintenance and Rehabilitation 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 HMQ Entities 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 HMQ Entities consider it to be necessary to do so, the steps which HMQ Entities 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 HMQ Entities' option, include the partial or total suspension of Project Co's right and obligation to perform any

Maintenance and Rehabilitation Services having regard to the circumstances in question (without any extension of the Project Term or suspension of any other Maintenance and Rehabilitation Services, and the provisions of Section 42, including Section 42.1(a)(iv) and Section 42.1(a)(ix), 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 Maintenance and Rehabilitation Services, until such time as Project Co shall have demonstrated to the reasonable satisfaction of HMQ Entities 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 Maintenance and Rehabilitation 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 HMQ Entities' 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 HMQ Entities' rights pursuant to this Section 32; and
  - (ii) Project Co shall reimburse HMQ Entities for all reasonable costs and expenses incurred by HMQ Entities in relation to the exercise of HMQ Entities' 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 HMQ Entities either take steps themselves or require Project Co to take steps in accordance with this Section 32 as a result of a Reimbursement Event:
  - (i) HMQ Entities shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of HMQ Entities' 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), HMQ Entities shall bear all costs and expenses incurred by HMQ Entities in relation to the exercise of HMQ Entities' rights pursuant to this Section 32.
- (c) If, in exercising their rights pursuant to this Section 32, HMQ Entities perform any part of the Maintenance and Rehabilitation Services either themselves or by engaging others, HMQ Entities shall be entitled to deduct from any Monthly Service Payment the reasonable cost of performing such Maintenance and Rehabilitation Services. If HMQ Entities make 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 HMQ Entities exercise their rights pursuant to this Section 32, but HMQ Entities were not entitled to do so, HMQ Entities 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 HMQ Entities issued as a result of HMQ Entities having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not HMQ Entities are entitled to exercise its rights pursuant to this Section 32 before taking any such action that HMQ Entities may require and Project Co shall comply with all of HMQ Entities' requirements. Only concurrently with or after complying with HMQ Entities' 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 shall comply with the obligations with respect to Vehicles set out in Schedule 36 – Vehicles.

## **34. PAYMENT**

### **34.1 Construction Period Payments**

- (a) HMQ Entities shall pay to Project Co the Construction Period Payments, plus, for clarity, applicable HST in accordance with Schedule 21 – Construction Payments and this Project Agreement.
- (b) HMQ Entities shall pay to Project Co the Substantial Completion Payment plus, for clarity, applicable HST, less any Lane Closure Adjustment or Door Closure Adjustment on the Substantial Completion Payment Commencement Date in accordance with Schedule 21 – Construction Payments and this Project Agreement.

**34.2 Monthly Service Payments**

- (a) Subject to and in accordance with this Project Agreement, including this Section 34 and Schedule 20 - Payment Mechanism, HMQ Entities 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 HMQ Entities to recover or to cause such adjustment to be enforceable, such Change in Law (only to the extent that it permits HMQ Entities 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, HMQ Entities 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 HMQ Entities an invoice for the amount of the Monthly Service Payment owing by HMQ Entities 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 HMQ Entities 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 HMQ Entities;
  - (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 HMQ Entities under this Project Agreement;
  - (v) any amount owing to Project Co under this Project Agreement;
  - (vi) the net amount owing by HMQ Entities to Project Co, or by Project Co to HMQ Entities, as applicable; and
  - (vii) a statutory declaration in form and in substance satisfactory to HMQ Entities with respect to CLA compliance and payment to all lien claimants:
    - (A) from Project Co, and
    - (B) upon request by HMQ Entities, from any Project Co Party.
- (d) The invoices issued to HMQ Entities in respect of the first Monthly Service Payment following the Payment Commencement Date (or the first invoice following expiry of the 45 days period referred to below in the event that Section 20.19 applies) 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 CLA.
- (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 HMQ Representative shall review each invoice submitted in accordance with this Section 34.6. HMQ Entities 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) HMQ Entities 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, HMQ Entities 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), HMQ Entities' 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 HMQ Entities.

- (i) Within 5 Business Days following the end of each Payment Period, Project Co shall also submit to HMQ Entities:
  - (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 HMQ Entities to Project Co in respect of the Payment Period just ended and the amount that was paid by HMQ Entities 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; and
    - (D) 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 HMQ Entities of the Payment Adjustment Report, the HMQ Representative shall:
  - (i) determine and advise Project Co that the Payment Adjustment Report is approved by HMQ Entities, 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 HMQ Entities dispute 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 HMQ Entities are reasonably able to quantify it) which HMQ Entities dispute and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, HMQ Entities 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 HMQ Entities, 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 HMQ Entities' 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, HMQ Entities shall estimate, acting reasonably, the adjustments to the Monthly Service Payments for each such Payment Period. HMQ Entities 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 HMQ Entities of the applicable Payment Adjustment Report for each of the final 3 Payment Periods, the HMQ Representative shall either:
- (i) determine and advise Project Co that the Payment Adjustment Report is approved by HMQ Entities and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount HMQ Entities previously paid in respect of the applicable Payment Period. Based on such reconciliation, either HMQ Entities or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation; or
  - (ii) if HMQ Entities dispute 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 HMQ Entities are reasonably able to quantify it) which HMQ Entities dispute and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the HMQ Representative shall perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount HMQ Entities previously paid in respect of the applicable Payment Period. Based on such reconciliation, either HMQ Entities or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation, provided that HMQ Entities 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 HMQ Entities, acting in good faith, dispute all or any part of a Payment Adjustment Report and/or the Monthly Service Payments payable thereunder, they shall notify Project Co in writing of that part of the amounts (insofar as at the time of such Notice HMQ Entities are reasonably able to quantify it) which HMQ Entities dispute 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 HMQ Entities that is determined not to have been payable shall be paid forthwith by Project Co to HMQ Entities, and Project Co shall indemnify and hold harmless HMQ Entities from and against any damages suffered or incurred resulting from such overpayment by HMQ Entities as provided for at Section 56.1(e) on the basis that the due date was the date of the overpayment by HMQ Entities. Following resolution of the Dispute, any amount which has been withheld by HMQ Entities that is determined to have been payable shall be paid forthwith by HMQ Entities to Project Co and HMQ Entities shall indemnify and hold harmless Project Co from and against any damages suffered or incurred resulting from such withholding by HMQ Entities 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 CLA and shall only release holdbacks on being satisfied that no claims for lien can be claimed in respect of the Subcontracts for which holdbacks are to be released.

#### **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) HMQ Entities to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, any amounts (including any amounts payable in accordance with Section 56) which are due to HMQ Entities by Project Co pursuant to the terms of this Project Agreement; and
  - (ii) Project Co to set off against any amounts otherwise due to HMQ Entities pursuant to the terms of this Project Agreement, any amounts (including any amounts payable in accordance with Section 56) which are due to Project Co by HMQ Entities pursuant to the terms of this Project Agreement.



**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 HMQ Entities' 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, HMQ Entities may give Notice to Project Co requiring an audit of any matter relating to performance of the Project Operations and payments by or to HMQ Entities 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) HMQ Entities shall appoint an auditor to perform and complete such audit at HMQ Entities' cost and expense and pursuant to terms of reference determined by HMQ Entities.
- (c) Within a reasonable time following receipt of a Notice referred to in Section 34.14(a), Project Co shall make available to HMQ Entities' auditor, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments.
- (d) HMQ Entities shall notify Project Co of the results of the audit, and if HMQ Entities' 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 HMQ Entities, reimburse HMQ Entities 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 HMQ Entities, Project Co shall reimburse HMQ Entities for the amount of such overpayment and, further, shall indemnify and hold harmless HMQ Entities from and against any damages suffered or incurred resulting from such

overpayment by HMQ Entities as provided for at Section 56.1(e) on the basis that the due date was the date of the overpayment by HMQ Entities; and

- (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment by HMQ Entities, whether or not material, HMQ Entities 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 HMQ Entities as provided for at Section 56.2(c) on the basis that the due date was the date of the underpayment by HMQ Entities.

### 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 by HMQ Entities. For clarity, HMQ Entities 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. Except as specified in Sections 35.1(c) and 35.1(d), if Project Co is required by Applicable Law to collect any such Taxes from HMQ Entities, HMQ Entities shall pay such Tax to Project Co simultaneously with the amount to which such applicable Tax relates or applies.
- (b) HMQ Entities 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) Within 3 weeks after the end of the month in which Substantial Completion occurs, HMQ Entities shall pay to Project Co any and all HST exigible in accordance with paragraph 168(3)(c) of the *Excise Tax Act* (Canada) in respect of the design and construction of the Project Co System Infrastructure and the New Third Party Infrastructure (the “**Section 35.1(c) Payment**”), which amount shall reflect the capital cost of the Project Co System Infrastructure and the New Third Party Infrastructure as set out in the Financial Model, or as otherwise agreed between HMQ Entities and Project Co and will be set out in an invoice issued by Project Co to HMQ Entities no later than the Substantial Completion Date. For clarity, the calculation of the amount of the Section 35.1(c) Payment, if any, to be made by HMQ Entities to Project Co in accordance with the foregoing shall have deducted from it the HST amounts already paid by HMQ Entities to Project Co on account of the design and construction of the Facility.
- (d) Subject to Section 35.1(e), in each Monthly Service Payment invoice provided by Project Co to HMQ Entities, if applicable, Project Co shall show on a distinct line of the invoice the Monthly

Previously Paid HST Amount used to determine the amount of unpaid HST payable by HMQ Entities on such Monthly Service Payment. For clarity, if applicable, a Monthly Previously Paid HST Amount must be credited to HMQ Entities on each Monthly Service Payment invoice.

- (e) HMQ Entities shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by HMQ Entities upon and in connection with payments by HMQ Entities to Project Co under this Project Agreement.

### 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, HMQ Entities 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) HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities’ request and cost, assist HMQ Entities in applying for and obtaining all remissions and credits of Taxes to which HMQ Entities are entitled.
- (b) HMQ Entities 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 HMQ Entities' cost, assist HMQ Entities in making any applications for such global or general exemption, waiver, remission or refund and shall provide HMQ Entities with such documentation as HMQ Entities may reasonably require to support such application and, in any event, shall provide such consent as HMQ Entities may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by HMQ Entities through such application shall accrue to the sole benefit of HMQ Entities.

- (c) Project Co will provide HMQ Entities with any information reasonably requested by HMQ Entities from time to time in relation to any Taxes chargeable in accordance with this Project Agreement and payable by HMQ Entities 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 HMQ Entities' prior written consent, which consent may be withheld in HMQ Entities' sole discretion.

### **35.6 Taxes – General**

- (a) Project Co shall not, without the prior written consent of HMQ Entities (which consent may be withheld in their sole discretion), undertake any action or transaction that, if undertaken, would cause HMQ Entities or any HMQ Party to have (or result in HMQ Entities or any HMQ 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) HMQ Entities or any HMQ Party are or become 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 HMQ Entities or any HMQ Party under this Project Agreement or under any of the Project Documents,

then HMQ Entities or any HMQ 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) HMQ Entities or any HMQ Party are 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 HMQ Entities or any HMQ 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) HMQ Entities or any HMQ Party are or become 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 HMQ Entities or any HMQ Party under this Project Agreement or under any of the Project Documents,

Project Co shall, in each case, indemnify and hold harmless HMQ Entities and the HMQ Parties for:

- (iii) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by HMQ Entities or any HMQ Party in respect of any amounts paid or credited by HMQ Entities or any HMQ 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 HMQ Entities or any HMQ 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 HMQ Entities make written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by HMQ Entities shall be conclusive evidence, absent manifest error, of the amount due from Project Co to HMQ Entities. HMQ Entities shall be entitled to exercise their 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 Financial Close, 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 HMQ Entities and the Custodian to be held in custody on terms to be agreed by the Parties.
- (b) Following the approval by HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities shall not be liable to Project Co for, and Project Co shall not seek to recover from HMQ Entities or any HMQ 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 HMQ Entities 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 HMQ Entities may reasonably require from time to time for any purpose in connection with this Project Agreement, other than 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 HMQ Entities, and shall require each Subcontractor, including the Contractors, to provide to HMQ Entities (at HMQ Entities' 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 HMQ Entities may reasonably require from time to time to enable HMQ Entities 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 Sensitive Information.

- (c) Project Co shall promptly after receipt provide HMQ Entities 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 HMQ Entities 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 HMQ Entities hereunder, shall be subject and open to inspection and audit by HMQ Entities 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 HMQ Entities and Project Co otherwise agree. HMQ Entities 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 HMQ Entities monitoring and auditing such parts of the Project Operations, including providing them with access and copies (at HMQ Entities' 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 HMQ Entities' costs for the inspections, audits and monitoring shall be borne by HMQ Entities.
- (f) In conducting an audit of Project Co under Section 37.2(e) or as otherwise provided under this Project Agreement, HMQ Entities shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at HMQ Entities' reasonable cost) of all books and records of Project Co required to be provided to or available to HMQ Entities hereunder, upon reasonable Notice and at reasonable times. Project Co shall fully cooperate with HMQ Entities and their 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 HMQ Entities all matters arising from such audits, including the refunding of monies to HMQ Entities where applicable. At the reasonable request of HMQ Entities' auditors, Project Co shall provide such information, reports, documents and records as HMQ Entities' auditors may reasonably require, other than Sensitive Information.

- (g) HMQ Entities' 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) HMQ Entities' 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. HMQ Entities' 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 HMQ Entities.
- (i) Without limiting the generality of Section 37.2(a) and subject to Section 52.1(a) and 52.3, in the event that HMQ Entities are 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 HMQ Entities as HMQ Entities may reasonably require in order to comply with their corporate or financial reporting obligations. Project Co acknowledges and agrees that such information may include Sensitive Information.

### **37.3 Delivery of Reports to HMQ Entities**

- (a) During the Maintenance Period, in addition to Project Co's obligations pursuant to this Section 37, Project Co shall provide HMQ Entities 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 Joint Insurance Cost Report and any other reports which are required to be delivered to HMQ Entities pursuant to this Project Agreement and which are requested by HMQ Entities.

## **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) HMQ Entities 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) HMQ Entities 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) HMQ Entities 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) HMQ Entities 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 HMQ Entities 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.

### 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 HMQ Entities 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Services.

#### 39.2 Innovation and Value Engineering

- (a) Project Co acknowledges that HMQ Entities at all times desire to reduce the Monthly Service Payments and the overall cost to HMQ Entities of the Works and the Maintenance and Rehabilitation Services, and Project Co agrees to cooperate, explore and work with HMQ Entities 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 HMQ Entities.

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- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
- (i) any Variation Enquiry initiated by HMQ Entities;
  - (ii) any Variation resulting from a Change in Law; or
  - (iii) any change to the HMQ Activities.
- (d) The Innovation Proposal must:
- (i) set out sufficient detail to enable HMQ Entities to evaluate the Innovation Proposal in full;
  - (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;
  - (iii) request HMQ Entities to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes HMQ Entities 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 HMQ Entities;
  - (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 HMQ Entities 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 HMQ Entities to fully evaluate and consider the Innovation Proposal.
- (e) HMQ Entities 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 Maintenance and Rehabilitation Services, or the likelihood of successful completion of the Works or performance of the Maintenance and Rehabilitation 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 HMQ Entities and third parties;

- (v) the financial strength of Project Co is sufficient to deliver the changed Works or perform the changed Maintenance and Rehabilitation 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 HMQ Entities are exposed; or
  - (ix) any other matter HMQ Entities consider relevant.
- (f) HMQ Entities may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) HMQ Entities may, in their sole discretion, accept or reject any Innovation Proposal.
- (h) If HMQ Entities accept 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 HMQ Entities specifically agree 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 HMQ Entities, and HMQ Entities' 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 HMQ Entities to decrease, the net savings in the costs of HMQ Entities will be shared as follows:
- (i) equally by Project Co and HMQ Entities for the first 5 years following the implementation of the Innovation Proposal; and
  - (ii) thereafter, HMQ Entities 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 HMQ Entities' sole option, be reflected in either a lump sum payment or in an increase in the Monthly Service Payments.

**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 HMQ Entities of any of HMQ Entities’ obligations under this Project Agreement (including any delay by HMQ Entities in giving access to the Metrolinx Lands pursuant to Section 14.1, any obstruction of the rights afforded to Project Co under Section 14.1, or any delay by HMQ Entities in carrying out their obligations set forth in Schedule 10 - Review Procedure), 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 HMQ Entities 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(c)(i) or 16.2(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 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 HMQ Entities are 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 Metrolinx Lands by Additional Contractors, as applicable, in the circumstances described in Section 9.8(f);
- (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 HMQ Entities 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 unknown Utility Infrastructure or Mislocated Utility Infrastructure 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 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 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;
- (xv) HMQ Entities' failure to ensure that the Tunnel Contractors vacate a Station Parcel or HMQ Entities' failure to handover the Metrolinx Parcel, in accordance with Section 2.2 of Schedule 38 – Tunnels;
- (xvi) HMQ Entities' failure to establish a Tunnel Section Security and Maintenance Handover Date on or before the last day of the applicable Tunnel Section Completion Period, or failure to carry out Tunnel Section Security and Maintenance Handover on the Tunnel Section Security and Maintenance Handover Date;
- (xvii) HMQ Entities' failure to provide, to Project Co, one or more Tunnel Section before or on the last day of the applicable Tunnel Section Completion Period, in accordance with Section 10.1 of Schedule 38 - Tunnels;
- (xviii) 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;
- (xix) HMQ Entities' failure to provide the Revenue Vehicles as set out in Section 2.1(a)(ii) of Schedule 36 – Vehicles and subject to Section 9.1(c) of Schedule 36 – Vehicles;
  - (xx) 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;
  - (xxi) the 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(d);
  - (xxii) the City's delay, refusal or application of conditions to a City Road Allowance PLA, to the extent that Project Co can demonstrate to HMQ Entities, in accordance with Section 14.1(k), that such delay, refusal or application of conditions is a Discriminatory Condition, Delay or Refusal;
  - (xxiii) a requirement for Project Co to perform any alteration, addition, demolition, extension or variation in the Underground Station Construction Activities as a result of the Underground Station Works Unknown Geotechnical Conditions for which HMQ Entities are responsible pursuant to Section 16.7(a) and which would not otherwise be required under this Project Agreement;
  - (xxiv) an event arising from an error or omission in the Tunnel Design subject to and in accordance with Section 13.2(a) of Schedule 38 – Tunnels;
  - (xxv) HMQ Entities' failure to provide a Tunnel Section that was Built to Design subject to and in accordance with Section 13.3 of Schedule 38 – Tunnels;
  - (xxvi) failure by a Category 1 Utility Company to perform its 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 Baseline Utility 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 Baseline Utility 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 event does not arise (directly or indirectly) as a result of any act or omission of the Party claiming relief and (i) in the case of Project Co claiming relief, as a result of any act or omission of any Project Co Party or (ii) in the case of HMQ Entities claiming relief, as a result of any act or omission of any Province Person. For clarity, for the purposes of determining whether a failure of a Category 1 Utility Company described in Section 40.1(a)(xxvi)(A), Section 40.1(a)(xxvi)(B) or Section 40.1(a)(xxvi)(C) has caused a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, the Parties shall have regard to the cumulative effect of all failures by the Category 1 Utility Company in accordance with Sections 40.1(a)(xxvi)(A), 40.1(a)(xxvi)(B) and 40.1(a)(xxvi)(C).

(xxvii) the City issues a Project Co Permit, Licence or Approval that requires Project Co to meet more onerous lane opening or lane width requirements than those explicitly set out in Table 7-1.2 - Minimum Lane and Width Requirements During Construction of Schedule 15-2 Part 7 – Output Specifications; and

(xxviii) pursuant to an explicit provision in a permit, licence or approval granted by the City to a third party developer in respect of an Adjacent Property, that third party developer,

- (A) constructs a physical barrier on the City Road Allowance that prevents Project Co from carrying out its Construction Activities; or
- (B) creates a significant physical impediment that prevents Project Co from carrying out its Construction Activities for a period greater than or equal to 30 consecutive days,

provided that,

- (C) if HMQ Entities have provided a reasonable opportunity, taking into account any prescribed timelines for review and comment, to Project Co to object to the applicable Adjacent Development and the associated permits, licences or approvals to be granted by the City and Project Co has failed to object to the matters permitted pursuant to Section 40.1(a)(xxviii)(A) or Section 40.1(a)(xxviii)(B);
- (D) if the interference set out in Section 40.1(a)(xxviii)(A) or Section 40.1(a)(xxviii)(B) arises (directly or indirectly) from Project Co's failure to carry out the Construction Activities in accordance with the Project Agreement, including, for clarity, in accordance with the Works Schedule; or
- (E) if HMQ Entities provided Background Information to Project Co with respect to an Adjacent Development prior to the Financial Submission Deadline, including, for clarity, Background Information in respect to the Yonge-Eglinton (Basis)

Adjacent Development, and Project Co failed to take such Background Information into account in the preparation and submission of its proposal in response to the RFP,

Project Co shall not be eligible to claim a Delay Event pursuant to this Section 40.1(a)(xxviii).

- (b) For clarity, in respect of Section 40.1(a)(xxvi), a failure by a Category 1 Utility Company to perform the obligations set out in Section 40.1(a)(xxvi)(A), 40.1(a)(xxvi)(B), or 40.1(a)(xxvi)(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 Baseline Utility Document;
  - (ii) properly coordinated the work being performed by the applicable Category 1 Utility Company with the Works; and
  - (iii) provided sufficient access to 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)(xxvi) does not apply in respect of,
- (i) Category 1 Utility Companies in circumstances other than those specifically set out in Section 40.1(a)(xxvi)(A), Section 40.1(a)(xxvi)(B) and 40.1(a)(xxvi)(C);
  - (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 goods or services provided by Project Co or Project Co Parties to the Utility Companies; or
  - (iv) New City Infrastructure, New TTC Infrastructure, New Metrolinx Infrastructure, or the New Salvation Army Infrastructure.

#### **40.2 Consequences of a Delay Event**

- (a) Project Co shall provide written Notice to the HMQ Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of Delay Event or of the occurrence of an event to which Section 40.2(g) applies. Project Co shall, within 10 Business Days after such notification, provide further written details to the HMQ Representative and the Independent Certifier which shall include:
- (i) a statement of which Delay Event (or event pursuant to Section 40.2(g)) the claim is based upon;
  - (ii) details of the circumstances from which the Delay Event (or event pursuant to Section 40.2(g)) 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(g);
  - (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;
  - (v) a delay analysis in accordance with *AACE International Recommended Practice No.29R-03– Forensic Schedule Analysis*; and
  - (vi) 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(g).
- (b) 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, Project Co shall submit further particulars based on such information to the HMQ Representative and the Independent Certifier.
- (c) The HMQ Representative shall, after receipt of written details under Section 40.2(a), or of further particulars under Section 40.2(b), be entitled by written Notice to require Project Co to provide such further supporting particulars as the HMQ Representative may reasonably consider necessary. Project Co shall afford the HMQ Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including on-site inspection.
- (d) Subject to the provisions of this Section 40, the HMQ 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 HMQ Representative of Project Co's Notice given in accordance with Section 40.2(a) and the date of receipt of any further particulars (if such are required under Section 40.2(c)), whichever is later; and
  - (ii) the date of receipt by the HMQ Representative of any supplemental information supplied by Project Co in accordance with Section 40.2(b) and the date of receipt of any further particulars (if such are required under Section 40.2(c)), whichever is later.
- (e) 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.
- (f) If:
- (i) the HMQ 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(g)) has occurred; or
- (iv) there is a dispute as to whether Project Co is entitled to the relief set out in Section 40.2(g),

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.

- (g) 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), excluding Sections 40.1(a)(xvi) and 40.1(a)(xix), 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 Door Closure is directly caused or extended by one or more of the events set out in Section 40.1(a), excluding Sections 40.1(a)(xvi) and 40.1(a)(xix), whether or not such event constitutes a Delay Event, such Door Closure or extension thereof shall not be included in the Aggregate Actual Door Closures or the Aggregate Actual Door Closures Cost for the relevant Station Area for the purposes of calculating the Door Closure Adjustment in accordance with the process set out in Schedule 40 – Door Access Matters; and
  - (iii) a Construction Period Quality Failure,
    - (A) has been assessed in accordance with Schedule 21 – Construction 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 Payments.

- (iv) For clarity, Sections 40.2(g)(i) and 40.2(g)(ii) shall apply only to the extent that a Lane Closure or Door Closure was not contemplated by the Aggregate Target Door Closures or Aggregate Target Lane Closures and not merely because a Lane Closure or Door Closure has been deferred.

### 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(g), 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 or event pursuant to Section 40.2(g); and
  - (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event (or event pursuant to Section 40.2(g)) 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(g).

## 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)(xv), 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), 40.1(a)(xxiii), 40.1(a)(xxiv), 40.1(a)(xxv), 40.1(a)(xxvii) and 40.1(a)(xxviii) 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.
- (b) For clarity, if Section 40.1(a)(xxviii)(C), Section 40.1(a)(xxviii)(D) or Section 40.1(a)(xxviii)(E) is applicable, Project Co shall not be eligible for a Compensation Event in respect of Section 40.1(a)(xxviii).

### 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 41.5(b) in the case of a Delay Event referred to in Section 40.1(a)(xxvi).
- (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 HMQ Entities to Project Co. Project Co shall promptly provide the HMQ Representative with any information the HMQ Representative may require in order to determine the amount of such compensation.
- (c) If HMQ Entities are required to compensate Project Co pursuant to this Section 41.2, then HMQ Entities 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, HMQ Entities 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.

#### **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 Special Compensation Regarding Category 1 Utility Company**

- (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 41.5, notwithstanding that,
    - (A) the Delay Event referred to in Section 40.1(a)(xxvi) is not a Compensation Event; and
    - (B) the event referred to in Section 41.5(c) is neither a Delay Event nor a Compensation Event; and
  - (ii) For the purposes of Section 41.5(b)(i), “**Special Senior Debt Amount**” means the Senior Debt Service Amount accrued and paid or which became payable in accordance with the Lending Agreements during the period of the applicable Delay Event, 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 HMQ Default Termination Sum, Non-Default Termination Sum or Prohibited Acts 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.
- (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)(xxvi), Project Co shall be entitled to the following:
- (i) an amount in respect of Senior Debt Service Amount calculated as follows:
    - (A) if the applicable Delay Event delays Substantial Completion for 30 or fewer days, HMQ Entities shall pay to Project Co an amount equal to **[REDACTED]** per cent of the Special Senior Debt Amount;
    - (B) if the applicable Delay Event delays Substantial Completion for 60 or fewer days, HMQ Entities shall pay to Project Co an amount equal to,
      - (I) **[REDACTED]** per cent of the Special Senior Debt Amount in respect of the first 30 days of delay, plus,
      - (II) **[REDACTED]** per cent of the Special Senior Debt Amount for the number of days of delay exceeding 30 days of delay; and
    - (C) if the applicable Delay Event delays Substantial Completion for more than 60 days, HMQ Entities shall pay to Project Co an amount equal to,
      - (I) **[REDACTED]** per cent of the Special Senior Debt Amount in respect of the first 30 days of delay, plus,

- (II) [REDACTED] per cent of the Special Senior Debt Amount in respect of the next 30 days of delay, plus,
  - (III) [REDACTED] per cent of the Special Senior Debt Amount in respect of the number of days exceeding 60 days of delay; plus,
- (ii) an amount, excluding any amounts payable in respect of Senior Debt Service pursuant to Section 41.5(b)(i) and, for clarity, excluding any increase in price by the Category 1 Utility Company compensated pursuant to Schedule 21 – Construction Payments, calculated in accordance with the following:
- (A) For the purpose of this Section 41.5(b)(ii) “**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 relevant Compensation Event not occurred;
  - (B) If the applicable Delay Event delays Substantial Completion for 30 or fewer days, HMQ Entities shall pay to Project Co an amount equal to [REDACTED] per cent of the Compensation Amount;
  - (C) If the applicable Delay Event delays Substantial Completion for 60 or fewer days, HMQ Entities shall pay to Project Co an amount equal to,
    - (I) [REDACTED] per cent of the Compensation Amount in respect of the first 30 days of the delay, plus,
    - (II) [REDACTED] per cent of the Compensation Amount for the number of days of delay exceeding 30 days of delay;
  - (D) If the applicable Delay Event delays Substantial Completion for 180 or fewer days, HMQ Entities shall pay to Project Co an amount equal to,
    - (I) [REDACTED] per cent of the Compensation Amount in respect of the first 30 days of delay, plus,
    - (II) [REDACTED] per cent of the Compensation Amount in respect of the next 30 days of delay, plus,
    - (III) [REDACTED] per cent of the Compensation Amount in respect of the number of days exceeding 60 days of delay; and
  - (E) If the applicable Delay Event delays Substantial Completion for more than 180 days, HMQ Entities shall pay to Project Co an amount equal to,
    - (I) [REDACTED] per cent of the Compensation Amount in respect of the first 30 days of delay, plus,



- (II) [REDACTED] per cent of the Compensation Amount in respect of the next 30 days of delay, plus,
  - (III) [REDACTED] per cent of the Compensation Amount in respect of the next 120 days of delay, plus,
  - (IV) [REDACTED] per cent of the Compensation Amount in respect of the number of days exceeding 180 days of delay.
- (c) Subject to Section 41.5(d), if 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) and it is agreed, or determined in accordance with Schedule 27 - Dispute Resolution Procedure, that a Category 1 Utility Company has failed to carry out the Utility Work in accordance with either the explicit length of time for the completion of Utility Work set out in the applicable Final Utility Baseline Document, or, in accordance with the deadline for completion of Utility Work set out in the applicable Final Utility Baseline Document, Project Co shall be entitled to the following:
- (i) an amount, excluding any amounts payable pursuant to Section 41.5(b)(i), Section 41.5(b)(ii) and, for clarity, excluding any increase in price by the Category 1 Utility Company compensated pursuant to Schedule 21 – Construction Payments, calculated in accordance with the following:
    - (A) For the purposes of this Section 41.5(c), “**Delay Amount**” means an amount that would place Project Co in no better and no worse position than it would have been in had the relevant delay not occurred;
    - (B) If the applicable delay lasts for 30 or fewer days, HMQ Entities shall pay to Project Co an amount equal to [REDACTED] per cent of the Delay Amount;
    - (C) If the applicable delay lasts for 60 or fewer days, HMQ Entities shall pay to Project Co an amount equal to,
      - (I) [REDACTED] per cent of the Delay Amount in respect of the first 30 days of the delay, plus,
      - (II) [REDACTED] per cent of the Delay Amount for the number of days of delay exceeding 30 days of delay;
    - (D) If the applicable delay lasts for 180 or fewer days, HMQ Entities shall pay to Project Co an amount equal to,
      - (I) [REDACTED] per cent of the Delay Amount in respect of the first 30 days of delay, plus,

- (II) [REDACTED] per cent of the Delay Amount in respect of the next 30 days of delay, plus,
- (III) [REDACTED] per cent of the Delay Amount in respect of the number of days exceeding 60 days of delay; and
- (E) If the applicable delay lasts for more than 180 days, HMQ Entities shall pay to Project Co an amount equal to,
  - (I) [REDACTED] per cent of the Delay Amount in respect of the first 30 days of delay, plus,
  - (II) [REDACTED] per cent of the Delay Amount in respect of the next 30 days of delay, plus,
  - (III) [REDACTED] per cent of the Delay Amount in respect of the next 120 days of delay, plus,
  - (IV) [REDACTED] per cent of the Delay Amount in respect of the number of days exceeding 180 days of delay.
- (d) Project Co shall not be eligible to make a claim pursuant to Section 41.5(c) unless Project Co has,
  - (i) complied in all material respects with its obligations pursuant to the applicable Utility Agreement and the applicable Final Baseline Utility Document;
  - (ii) properly coordinated the work being performed by the applicable Category 1 Utility Company with the Works; and
  - (iii) provided sufficient access to Site to the applicable Category 1 Utility Company for the purposes of carrying out the Category 1 Utility Company's work.

## 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 Maintenance and Rehabilitation Services:
  - (i) the implementation of a Variation to the extent Project Co has identified any impact on the Maintenance and Rehabilitation Services in its Estimate and such impact has been documented in the Variation Confirmation;
  - (ii) any breach by HMQ Entities of any of HMQ Entities' 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 HMQ Entities 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 Maintenance and Rehabilitation 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 HMQ Entities, or any suspension of Project Co's obligation to deliver all or any part of the Maintenance and Rehabilitation Services, or the compliance by Project Co with instructions given by HMQ Entities, 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 HMQ Entities 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 HMQ Entities are responsible pursuant to Section 16.2;
  - (viii) the discovery of any Species-at-Risk for which HMQ Entities are responsible pursuant to Section 16.4;
  - (ix) a derailment, collision, or any other accident involving both the exterior of a Revenue Vehicle and a System User, road vehicle, pedestrian, or spillage on the Guideway, 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;
  - (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;

- (xi) a Revenue Vehicle Deficiency on one or more Revenue Vehicles that:
  - (A) can be reasonably demonstrated by Project Co to be caused by design or manufacturing in a discrete element, system, or component on the Revenue Vehicle;
  - (B) was not caused or contributed to by any act or omission of Project Co or any Project Co Party;
  - (C) could not have been prevented or mitigated by the proper performance of Project Co's obligations under the Project Agreement;
  - (D) has incurred additional unreimbursed Project Co expenditures for corrective maintenance of:
    - (I) greater than \$[REDACTED] in Direct Costs on a single Revenue Vehicle from one or more Revenue Vehicle Deficiency;
    - (II) greater than \$[REDACTED] in Direct Costs from one Revenue Vehicle Deficiency that has occurred on more than one Revenue Vehicle; or
    - (III) greater than \$[REDACTED] in Direct Costs from one or more Revenue Vehicle Deficiencies across all Revenue Vehicles in aggregate; and
  - (E) where the Revenue Vehicle Deficiency or Revenue Vehicle Deficiencies occur before the end of,
    - (I) Contract Year 15 for a fault or faults on bogies, carbody, underframe, and flooring; and
    - (II) Contract Year 8 for a fault or faults excluding bogies, carbody, underframe, and flooring; and
- (xii) the discovery of a failure by HMQ Entities to provide a Tunnel Section that is Built to Design, in the circumstances set out in Section 13.3 of Schedule 38 – Tunnels, and subject to the provisions of Section 13.3 of Schedule 38 – Tunnels.

#### 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 Maintenance and Rehabilitation Services shall not constitute a breach of this Project Agreement by Project Co, no Failure Points shall accrue in respect of such failure and Project Co shall be relieved of its obligations to perform such Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Services in accordance with the Performance Monitoring Program, which shall be operated as though the relevant Maintenance and Rehabilitation 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 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 Maintenance and Rehabilitation 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 HMQ Entities' entitlement to reimbursement pursuant to Section 32.4;
  - (v) HMQ Entities 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,
    - (A) 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); and
    - (B) as a result of the Excusing Cause referred to in Section 42.1(a)(xi), provided that only those incremental Direct Costs in excess of the amounts set out in Section 42.1(a)(xi)(D) shall be reimbursed by HMQ Entities,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 HMQ Entities shall be reduced by any savings in Direct Costs arising from Project Co being relieved of its obligations to perform the Maintenance and Rehabilitation 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.
- (b) For clarity, in the case of the Excusing Cause set out in Section 42.1(a)(xi), the consequences of an Excusing Cause set out in Section 42.2(a),

- (i) shall only be applicable if the requirements of Sections 42.1(a)(xi)(A), 42.1(a)(xi)(B) and 42.1(a)(xi)(C) have been met and the expenditure thresholds for corrective maintenance in Section 42.1(a)(xi)(D) have been exceeded; and
- (ii) shall only be applicable during the period set out in Section 42.1(a)(xi)(E).

### 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 or the construction or facility maintenance industry (or a significant sector of that industry) 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, HMQ Entities 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 HMQ Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 - Compensation on Termination, HMQ Entities 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 HMQ Default Termination Sum, Non-Default Termination Sum or Prohibited Acts 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,

HMQ Entities 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 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

- (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 HMQ Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 - Compensation on Termination, HMQ Entities 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 HMQ Default Termination Sum, Non-Default Termination Sum or Prohibited Acts 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 HMQ Entities 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 Maintenance and Rehabilitation 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 Door Closure that is directly caused or extended by the occurrence of an event of Force Majeure shall not be included in the Aggregate Actual Door Closures or the Aggregate Actual Door Closures Cost for the relevant Station Area for the purposes of calculating the Door Closure Adjustment in accordance with the process set out in Schedule 40 – Door Access Matters; and
  - (iii) a Construction Period Quality Failure that,
    - (A) has been assessed in accordance with Schedule 21 – Construction 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 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,

HMQ Entities 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 HMQ Entities 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 HMQ Entities of their 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, HMQ Entities, an HMQ 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;
- (ii) Project Co failing to achieve Substantial Completion within 548 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
  - (iii) Project Co either:
    - (A) failing to deliver a rectification plan under Section 22.3(a)(iii)(B);
    - (B) delivering a rectification plan under Section 22.3(a)(iii)(B) which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
    - (C) delivering a rectification plan under Section 22.3(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 22.3(a)(iii)(B)(II);
  - (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) HMQ Entities' reputation or integrity, or (B) the nature of the public transit system in the City of Toronto so as to affect public confidence in the public transit system in the City of Toronto 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 HMQ Entities;
  - (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 HMQ Entities of their 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 HMQ Entities and the Governmental Activities or the availability of the Project Co System Infrastructure to System Users;
  - (II) put forward, within 5 Business Days of receipt of Notice of such breach from HMQ Entities, 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 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 HMQ Entities and the Governmental Activities or the availability of the Project Co System Infrastructure to System Users;
  - (II) Project Co shall, within 3 Business Days after Notice from HMQ Entities, submit a plan and schedule, which HMQ Entities shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to HMQ Entities, in their 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 HMQ Entities, in their 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 HMQ Entities of their obligations under this Project Agreement;
- (vii) Project Co ceasing to perform any Maintenance and Rehabilitation 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 HMQ Entities of their 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 due to an act or omission of Project Co or any Project Co Party (other than any Encumbrance derived through HMQ Entities) 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 HMQ Entities under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 27 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) **[\$REDACTED]** (index linked), and such failure continues for 30 days from receipt by Project Co of a Notice of non-payment from HMQ Entities;
- (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 HMQ Entities of their 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 HMQ Entities of their obligations under this Project Agreement) which results in a criminal conviction or a conviction under the *Occupational Health and Safety Act* (Ontario) against Project Co or any Project Co Party or HMQ Entities (an “**H&S Conviction**”) provided however that:
- (A) an H&S Conviction against Project Co, a Project Co Party or HMQ Entities 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 HMQ Entities, in their 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), HMQ Entities 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) HMQ Entities 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 HMQ Entities are 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 HMQ Entities may have exercised their rights under Section 45.5(a)), on and after the day following the Substantial Completion Payment Commencement Date, HMQ Entities may exercise any such rights.

#### **45.2 Notification of Occurrence**

- (a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify HMQ Entities 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 HMQ Entities become 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), HMQ Entities 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), HMQ Entities 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 5 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 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 HMQ Entities, 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 30 days from the Notice of default, HMQ Entities shall have 5 Business Days from receipt of the same within which to notify Project Co that HMQ Entities do not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which HMQ Entities 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 HMQ Entities 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 30 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 HMQ Entities 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 HMQ Entities may give the Notice referred to in Section 45.4(a), and without prejudice to the other rights of HMQ Entities in this Section 45.4, at any time during which a Project Co Event of Default is continuing, HMQ Entities may, at Project Co's risk and expense, take such steps as HMQ Entities consider appropriate, either themselves 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 HMQ Entities 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 Maintenance and Rehabilitation Contractor**

- (a) HMQ Entities may, acting reasonably, require Project Co to terminate the Maintenance and Rehabilitation Contractor and ensure that a replacement Maintenance and Rehabilitation

Contractor is appointed in accordance with Section 59.3 to provide the Maintenance and Rehabilitation 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 HMQ Entities could exercise such right of termination, if the Project Co Event of Default was caused, or contributed to, by the Maintenance and Rehabilitation Contractor or otherwise relates to the Maintenance and Rehabilitation Services; or
  - (ii) if Project Co accrues, in any rolling 6 Payment Periods more than:
    - (A) **[REDACTED]** Failure Points in respect of Vehicle Kilometres Availability Failures;
    - (B) **[REDACTED]** Failure Points in respect of Passenger Facility Availability Failures;
    - (C) **[REDACTED]** Failure Points in respect of Quality Failures and Service Failures, combined; or
    - (D) **[REDACTED]** Failure Points in respect of Room Availability Failures,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 HMQ Entities exercise their 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 Maintenance and Rehabilitation Services until such time as a replacement Maintenance and Rehabilitation Contractor 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 Maintenance and Rehabilitation Services and the Parties cannot agree within a further 3 Business Days to a plan for the interim management or performance of the Maintenance and Rehabilitation Services, then, without prejudice to the other rights of HMQ Entities in this Section 45.5, HMQ Entities themselves may perform, or engage others (including a third party) to perform, the Maintenance and Rehabilitation Services and Section 32.4 shall apply, *mutatis mutandis*, to the Maintenance and Rehabilitation Services. Any Dispute in respect of the interim management or provision of the Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contract and to secure a replacement Maintenance and Rehabilitation Contractor in accordance with this Section 45.5, HMQ Entities shall be entitled to exercise their termination rights in accordance with Sections 45.3 and 45.4, as applicable.
- (d) Subject to Section 45.5(e), where a replacement Maintenance and Rehabilitation Contractor 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.

- (e) Where Maintenance and Rehabilitation Contractor that is primarily responsible for Vehicle Services is replaced by a replacement Maintenance and Rehabilitation Contractor which is appointed in accordance with this Section 45.5 to be primarily responsible for Vehicle Services, [REDACTED]% of the Failure Points accrued by Project Co prior to such replacement shall be cancelled.

#### 45.6 HMQ Entities' Costs

- (a) Project Co shall reimburse HMQ Entities 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 HMQ Entities in exercising their rights under this Section 45, including any relevant increased administrative expenses. HMQ Entities shall take commercially reasonable steps to mitigate such costs.

#### 45.7 No other Rights to Terminate

- (a) HMQ Entities 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. HMQ ENTITIES' DEFAULT

#### 46.1 HMQ Events of Default

- (a) For the purposes of this Project Agreement, "HMQ Event of Default" means any one or more of the following events or circumstances:

- (i) HMQ Entities failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed by HMQ Entities in accordance with Schedule 27 - Dispute Resolution Procedure 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 HMQ Entities to Project Co under this Project Agreement, such failure continues for 90 days,

in any such case, from receipt by HMQ Entities of a Notice of non-payment from or on behalf of Project Co;

- (ii) HMQ Entities committing a material breach of their 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 an HMQ Event of Default and while the same is continuing, Project Co may give Notice to HMQ Entities of the occurrence of such HMQ Event of Default, which Notice will specify the details thereof. If Project Co gives such Notice and the applicable HMQ Event of Default has not been remedied within 30 days of receipt by HMQ Entities of Notice of the occurrence of such HMQ 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 Maintenance and Rehabilitation Services until such time as HMQ Entities have remedied such HMQ 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) HMQ Entities 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) HMQ Entities shall, in their 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 HMQ Entities in accordance with this Section 47.3, HMQ Entities 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 Maintenance and Rehabilitation Services, or any element of the Maintenance and Rehabilitation Services, where such Works or Maintenance and Rehabilitation 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.

**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 HMQ Entities of their 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 HMQ Entities as shall not already have been transferred to HMQ Entities pursuant to Section 55.1, Project Co shall transfer to, and there shall vest in, HMQ Entities, free from all Encumbrances (other than the Encumbrances caused or consented to by HMQ Entities), such part of the Works, the Project Co System Infrastructure, the New City Infrastructure, New Metrolinx Infrastructure, New Salvation Army Infrastructure, and the New TTC Infrastructure as shall have been constructed and such items of plant, infrastructure and equipment as shall have been procured by Project Co, and, if HMQ Entities so elect:
- (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 HMQ Entities for the purposes of completing the Works; and



- (B) all construction plant and equipment shall remain available to HMQ Entities for the purposes of completing the Works, subject to payment by HMQ Entities of the Construction Contractor's reasonable charges;
- (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to HMQ Entities (to the extent such items have not already been delivered to HMQ Entities) 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 Infrastructure, New Metrolinx Infrastructure, New Salvation Army Infrastructure and the New TTC Infrastructure;
- (iii) in so far as title shall not have already passed to HMQ Entities pursuant to Section 55.1 or Section 48.4(a)(i), Project Co shall hand over to, and there shall vest in, HMQ Entities, free from all Encumbrances (other than any Encumbrances caused or consented to by HMQ Entities), the Project Co System Infrastructure, the New City Infrastructure, New Metrolinx Infrastructure, the New Salvation Army Infrastructure and the New TTC 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 Appendix C (Expiry Date Requirements) of the Maintenance and Rehabilitation Requirements, and to the extent that any such assets or rights are not capable of being transferred by Project Co to HMQ Entities, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by HMQ Entities in order to enable them, or their 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;
- (iv) if HMQ Entities so elect, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Construction Contract and the Maintenance and Rehabilitation 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 HMQ Entities or their 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 HMQ Entities 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 HMQ Entities so elect, execute such sale) to HMQ Entities 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 HMQ Entities), 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 HMQ Entities in connection with the operation of the Project Co System Infrastructure or the performance of the Maintenance and Rehabilitation Services;

- (vi) Project Co shall deliver to HMQ Entities (to the extent such items have not already been delivered to HMQ Entities) one complete set of:
  - (A) the most recent Record Drawings in the format that HMQ Entities, acting reasonably, consider 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 HMQ Entities, free from all Encumbrances (other than any Encumbrances caused or consented to by HMQ Entities), 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 Infrastructure, New Metrolinx Infrastructure, the New Salvation Army Infrastructure and the New TTC Infrastructure;
- (viii) Project Co shall deliver to HMQ Entities 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 HMQ Entities);
- (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 Appendix C 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 HMQ Entities and upon termination of this Project Agreement shall be provided or returned to HMQ Entities, as applicable, in electronic format acceptable to HMQ Entities, 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 HMQ Entities shall be in a position to exercise their 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 Maintenance and Rehabilitation Services pursuant to Sections 3.2 and 3.3 of Schedule 23 - Compensation on Termination if applicable:
- (i) cooperate fully with HMQ Entities and any successors providing services in the nature of any of the Maintenance and Rehabilitation Services and any part of the Maintenance and Rehabilitation Services in order to achieve a smooth transfer of the manner in which the Maintenance and Rehabilitation Services is 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 HMQ Entities pursuant to Section 48.4 or otherwise, and, if Project Co has not done so within 60 days after any Notice from HMQ Entities requiring it to do so, HMQ Entities 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 HMQ 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 HMQ Entities' 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 HMQ Entities wish to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to the Maintenance and Rehabilitation Services or any part of the Maintenance and Rehabilitation Services, following the expiry of this Project Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with HMQ Entities fully in such competition process, including by:
  - (i) providing any information which HMQ Entities may reasonably require to conduct such competition, including all information contained in any asset management system maintained by Project Co not otherwise transferred to HMQ Entities, other than Sensitive Information; and
  - (ii) assisting HMQ Entities 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 HMQ Entities 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), 24.6, 25.11, 25.15, 26.7, 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), 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 – 2.7, 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 HMQ Entities 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 HMQ Entities, 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 HMQ Entities 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 HMQ Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum, Prohibited Acts 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 HMQ Entities 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 HMQ Entities.

**50. EXPIRY TRANSITION PROCEDURE****50.1 Expiry Transition**

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

**51. INTELLECTUAL PROPERTY****51.1 Ownership of Intellectual Property**

- (a) Subject to Section 51.4, the Ownership of Intellectual Property shall be as set out in Schedule 37 – Intellectual Property. Project Co and HMQ Entities shall each comply with the requirements of Schedule 37 – Intellectual Property.

**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 HMQ Entities that:
- (i) Project Co has and shall have the full and unencumbered right to provide all rights and licenses granted to HMQ Entities 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 licenses to HMQ Entities 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 the 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 HMQ Entities to the exclusion of any other party pursuant to this Project Agreement or in relation to the Project Co System Infrastructure, New Metrolinx Infrastructure, the Metrolinx Lands or Project Operations (the “**HMQ Jointly Developed Materials**”);
  - (ii) Project Co or any Subcontractor and the City to the exclusion of any other party in relation to the New City Infrastructure or the City Lands (the “**City Jointly Developed Materials**”);
  - (iii) Project Co or any Subcontractor and the Toronto Transit Commission to the exclusion of any other party in relation to the New TTC Infrastructure or the TTC Lands (the “**TTC Jointly Developed Materials**”); or
  - (iv) Project Co or any Subcontractor and Salvation Army to the exclusion of any other party in relation to the New Salvation Army Infrastructure (the “**Salvation Army Jointly Developed Materials**”),

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

- (v) HMQ Entities shall be the sole and exclusive owner of all right, title and interest in and to the HMQ Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and Project Co shall, at the request of HMQ Entities, 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;
- (vi) the City shall be the sole and exclusive owner of all right, title and interest in and to the City 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, 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;
- (vii) the Toronto Transit Commission shall be the sole and exclusive owner of all right, title and interest in and to the TTC Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and that Project Co shall, at the request of the Toronto Transit Commission, 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

- (viii) Salvation Army shall be the sole and exclusive owner of all right, title and interest in and to Salvation Army Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and that Project Co shall, at the request of Salvation Army, 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) HMQ Entities hereby grant Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Subcontractor, to use the HMQ 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 Jointly Developed Materials, Salvation Army Jointly Developed Materials, or TTC 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) HMQ Entities, in the case of the HMQ Jointly Developed Materials;
  - (ii) the City, in the case of the City Jointly Developed Materials;
  - (iii) the Toronto Transit Commission, in the case of the TTC Jointly Developed Materials; and
  - (iv) to Salvation Army, in the case of Salvation Army 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 HMQ Entities, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable HMQ Entities or their nominee to access and otherwise use, subject to the payment by HMQ Entities 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 HMQ



Representative Project Co's proposals for the back-up and storage in safe custody of such data, materials and documents and HMQ Entities 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 HMQ 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 HMQ 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 HMQ Trade-Marks**

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

#### **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 HMQ Entities' ability to use this Project Agreement in any manner desired by HMQ Entities.
- (b) Project Co hereby consents to the use by HMQ Entities of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by HMQ Entities (in consultation with Project Co) of any information supplied in confidence to HMQ Entities 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 HMQ Entities, the Intellectual Property of any HMQ Party or any third party provided by HMQ Entities, the Intellectual Property of the Vehicle Manufacturer, the

Confidential Information of HMQ Entities, the Confidential Information of any HMQ Party or any third party provided by HMQ Entities, or the Confidential Information of the Vehicle Manufacturer, 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 HMQ Entities, the Intellectual Property of any HMQ Party or any third party provided by HMQ Entities, the Intellectual Property of the Vehicle Manufacturer, the Confidential Information of HMQ Entities, the Confidential Information of any HMQ Party or any third party provided by HMQ Entities, or the Confidential Information of the Vehicle Manufacturer, 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 HMQ Entities, the Intellectual Property of any HMQ Party provided by HMQ Entities, the Intellectual Property of the Vehicle Manufacturer, the Confidential Information of HMQ Entities, the Confidential Information of any HMQ Party provided by HMQ Entities, or the Confidential Information of the Vehicle Manufacturer, 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, HMQ Entities have 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 each of HMQ Entities, in their sole discretion, may consider appropriate. In exercising its discretion, HMQ Entities will be guided by the principles set out in Sections 52.1(b) and 52.1(c).
- (b) HMQ Entities 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), HMQ Entities may disclose such information.

### **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), HMQ Entities 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 HMQ Entities 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, HMQ Entities will be free to use, disclose or publish (including on websites) any information, including Confidential Information, on such terms and in such manner as HMQ Entities see 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 HMQ Entities.

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

- (a) The Parties acknowledge and agree that FIPPA applies to HMQ Entities, and that HMQ Entities are required to fully comply with FIPPA.
- (b) HMQ Entities 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 HMQ Entities' 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.
- (c) Project Co acknowledges that HMQ Entities may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of HMQ Entities' alternate procurement and financing policies and framework. HMQ Entities will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (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 HMQ Entities, which protocol shall prescribe limitations on the use, disclosure and storage of this Project Agreement and any other Confidential Information specified by HMQ Entities.

## 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 HMQ Entities upon a termination of this Project Agreement, pursuant to Section 48 or is otherwise required by HMQ Entities 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 HMQ Entities from exercising any right granted to the HMQ Entities pursuant to Schedule 37 – Intellectual Property. HMQ Entities 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 HMQ Entities 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 HMQ Entities.

- (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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities, whichever comes first, Project Co shall immediately cease all use of and return to HMQ Entities or, at the direction of HMQ Entities, 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 HMQ Entities 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) HMQ Entities 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 HMQ Entities, 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities of their respective liabilities and obligations under this Project Agreement.



**55. TITLE****55.1 Title**

- (a) 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 HMQ Entities (or as HMQ Entities 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 HMQ Entities (or as HMQ Entities 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 HMQ Entities**

- (a) Project Co shall indemnify and save harmless HMQ Entities 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 HMQ Entities; or
- (viii) in respect of Section 56.1(a)(i), deliberate or negligent act or omission of HMQ Entities 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 HMQ Entities 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 Maintenance and Rehabilitation 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 HMQ Entities 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 HMQ Entities and each of their 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 HMQ Entities and each of their 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 on, in or under, or migrating to or from, the Lands (or any lands formerly comprised in the Lands to the extent such Contamination was on, in or under, or migrated to or from, such lands while they were comprised in the Lands), except for Contamination for which HMQ Entities are responsible pursuant to Section 16.2(a); or

- (iii) the provision of assistance by HMQ Entities 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 HMQ Entities or by any act or omission of HMQ Entities or any HMQ Party.
- (d) Without prejudice to HMQ Entities' rights under Section 45 and any other rights under this Project Agreement, if HMQ Entities exercise their step-in rights under any Direct Agreement, Project Co shall indemnify HMQ Entities for all obligations of Project Co assumed by HMQ Entities under the Contracts, and for all reasonable costs and expenses incurred by HMQ Entities in relation to the exercise of HMQ Entities' rights.
- (e) Project Co shall indemnify HMQ Entities 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 HMQ Entities 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 HMQ Entities, or from the date identified (if any) applicable to an amount determined as payable by Project Co to HMQ Entities 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 – Door 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 – Door Access Matters; and
- (ii) to the extent that Project Co is obliged to pay a Door 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 Door Closure Adjustment amount shall be applied to decrease the quantum of Project Co's indemnity to HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities not in accordance with this Project Agreement or the applicable Technical Information; or
  - (B) the use of such Intellectual Property by HMQ Entities 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;
- (iii) any claim, suit, action or proceeding by the Revenue Vehicle Manufacturer alleging that Project Co or any Project Co Party or any Subcontractor has used the Intellectual Property of the Revenue Vehicle Manufacturer in breach of Section 3.1(e) of Schedule 37 – Intellectual Property; and
- (iv) any claim, suit, action or proceeding by any Licensor alleging that Project Co or any Project Co Party or any Subcontractor has used any HMQ Entities 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 HMQ Entities 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 HMQ Entities of the same; and
  - (ii) at its sole option and expense, either:
    - (A) procure for itself and HMQ Entities, 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.

**56.2 HMQ Entities Indemnities to Project Co**

- (a) HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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) HMQ Entities 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 HMQ Entities herein.
- (c) HMQ Entities shall indemnify Project Co for damages suffered or incurred on account of: (i) any payment not duly made by HMQ Entities pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by HMQ Entities; or (iii) an amount determined as payable by HMQ Entities 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 HMQ Entities to Project Co under Schedule 27 - Dispute Resolution Procedure, up to and including the date of payment.

- (d) HMQ 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 HMQ 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 HMQ Entities are the Beneficiary, HMQ Entities 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 HMQ Entities' 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, HMQ Entities' 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities expressly provided for in this Project Agreement; and
  - (ii) HMQ Entities' 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 HMQ Entities pursuant to this Project Agreement or has been taken into account to reduce any compensation payable by HMQ Entities pursuant to Section 49,

the sole remedy of HMQ Entities in respect of a failure to perform the Maintenance and Rehabilitation 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 HMQ Entities 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 HMQ Entities for Project Co's failure to deliver to HMQ Entities any of the documents referred to in Section 1 of Schedule 2 – Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by HMQ Entities of their obligations under Section 2.3(b)(ii)) if HMQ Entities do not waive such requirement;
  - (ii) the liquidated damages paid by Project Co pursuant to Section 10.4 shall be the sole remedy in respect of failure by Project Co to provide the Key Individuals named in Schedule 9 – Key Individuals (in respect of the Works) immediately after Commercial Close, but, for clarity, shall not be HMQ Entities' sole remedy with respect to damages that may otherwise be incurred by HMQ Entities with respect to the a delay to the Project caused by Project Co as a result of Project Co's contravention of Section 10.4;

- (iii) the liquidated damages paid by Project Co pursuant to Section 20.16 shall be the sole remedy of HMQ Entities in respect of the delay caused by Project Co's to GO Transit passenger trains in the applicable circumstances, but, for clarity, shall not be HMQ Entities' sole remedy with respect to damages that may otherwise be incurred by HMQ Entities with respect to other delays caused by Project Co;
- (iv) the liquidated damages paid by Project Co pursuant to Section 23.6 shall be the sole remedy in respect of Project Co's failure to obtain the minimum number of points required pursuant to Section 23.4(b) or obtain the LEED Silver Rating 24 months after the Substantial Completion Date (where such failure is not as a direct result of any act or omission of HMQ Entities or any HMQ Party);
- (v) the liquidated damages paid by Project Co pursuant to Section 25.4 shall be the sole remedy in respect of Project Co's failure to achieve Revenue Service by the date established pursuant to Section 25.4(a)(i), Section 25.4(a)(ii) or 25.4(a)(iii) with respect to HMQ Entities' mobilization costs, and other preparation costs, incurred in anticipation of achieving Revenue Service by the date established in accordance with Section 25.4(a)(i), Section 25.4(a)(ii) or 25.4(a)(iii), but, for clarity, shall not be HMQ Entities' sole remedy with respect to damages that may otherwise be incurred by HMQ Entities as a result of Project Co for failing to meet the Scheduled Substantial Completion Date;
- (vi) the amounts deducted from the Substantial Completion Payment pursuant to Schedule 7 – Mobility Matters and Schedule 40 – Door Access Matters shall not be HMQ Entities' sole remedy with respect to exceedances in Lane Closures or Door Closures, which exceedances are contemplated in Schedule 7 – Mobility Matters or Schedule 40 – Door Access Matters, respectively;
- (vii) the amounts deducted from the Substantial Completion Payment pursuant to Schedule 21 – Construction Payments shall not be HMQ Entities sole remedy in respect of Project Co's failure to perform in accordance with the Project Agreement;
- (viii) the amounts deducted from the Substantial Completion Payment pursuant to Section 20.18(d)(ii) as Global Adjustment Peak Demand Liquidated Damages shall be HMQ Entities' sole remedy in respect of the damages that HMQ Entities will sustain arising from the inability to use the Energy Toggling Function to minimize Actual Global Adjustment Peak Demand, provided that the inability to use the Energy Toggling Function is as a result of a CGP De-scoping; and
- (ix) Section 20.18 sets out the sole remedies of HMQ Entities and Project Co arising from a CGP De-scoping that is carried out pursuant to Section 20.18.

#### **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 during or are in respect of the Construction Period, not exceed \$[REDACTED] (the “Construction Period Limit”); and
- (ii) in respect of all claims under Section 56 which arise during or are in respect of the Maintenance Period, not exceed \$[REDACTED] (the “Maintenance Period Limit”),

provided that the Construction Period Limit and the claims associated therewith shall be exclusive of the Maintenance Period Limit and the claims associated therewith. The Construction Period Limit and Maintenance Period 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 Maintenance Period 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 HMQ Entities, as the Lane Closure Adjustments or the Door Closure Adjustments pursuant to Schedule 7 – Mobility Matters or Schedule 40 – Door Access Matters.

## 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 HMQ Entities, provided however 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) HMQ Entities’ reputation or integrity, or (ii) the nature of the public transit system in the City of Toronto so as to affect public confidence in the public transit system in the City of Toronto 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 HMQ Entities so require.

### 59.2 HMQ Entities Assignment

- (a) HMQ Entities 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 HMQ Entities 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 HMQ Entities under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of HMQ Entities' obligations hereunder and under the other Project Documents to which HMQ Entities are parties 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 HMQ Entities hereunder and under any agreement in connection with this Project Agreement to which Project Co and HMQ Entities are parties in respect of the period from and after the assignment.
- (b) HMQ Entities shall not be released of any of their obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of their 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) HMQ Entities' reputation or integrity, or (ii) the nature of the public transit system in the City of Toronto so as to affect public confidence in the public transit system in the City of Toronto 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 HMQ Entities.

- (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 HMQ Entities' prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor or Maintenance and Rehabilitation Contractor 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 HMQ Entities, 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) HMQ Entities' reputation or integrity, or (B) the nature of the public transit system in the City of Toronto so as to affect public confidence in the public transit system in the City of Toronto 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) Prior to the third anniversary following the Substantial Completion Date, HMQ Entities shall be entitled to receive a **[REDACTED]**% share of any Excess Equity Gain arising from a Change in Ownership of Project Co.
- (d) Project Co shall provide notice to HMQ Entities 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) in the case of a Change in Ownership of Project Co prior to the third anniversary following the Substantial Completion Date, 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), 59.4(b), and 59.4(c), no Change in Control of Project Co or of any Control Party shall be permitted without the prior written consent of HMQ Entities, not to be unreasonably withheld or delayed.
- (f) Project Co shall provide notice to HMQ Entities 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) in the case of a Change in Control of Project Co prior to the third anniversary following the Substantial Completion Date, 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 HMQ Entities of the notice referred to in this Section 59.4(f), Project Co shall provide HMQ Entities with such other information pertaining to the proposed Change in Control as HMQ Entities may reasonably request.

- (g) Notwithstanding the definition of “Control Parties” set out Schedule 1 – Definitions and Interpretation, this Section 59.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities or units evidencing ownership or any other ownership interests are listed on a recognized stock exchange.

## 59.5 HMQ Entities’ Due Diligence

- (a) Project Co shall promptly reimburse HMQ Entities for HMQ Entities’ reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of HMQ Entities pursuant to, or HMQ Entities’ determination of Project Co’s compliance with, Sections 59.1, 59.3 or 59.4, whether or not such consent is granted.

## 60. PROHIBITED ACTS

### 60.1 Definition

- (a) The term “**Prohibited Act**” means:
  - (i) offering, giving or agreeing to give to HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with HMQ Entities 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 HMQ Entities 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 HMQ Entities, 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities believe 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, HMQ Entities 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 HMQ Entities 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]

Attn.: [REDACTED]

Fax No.: [REDACTED]

With a copy to:

[REDACTED]

Attn.: [REDACTED]

Fax No.: [REDACTED]

[REDACTED]

Attn.: [REDACTED]

Fax No.: [REDACTED]

[REDACTED]

Attn.: [REDACTED]

Fax No.: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]

If to IO:

Infrastructure Ontario  
777 Bay Street, 6th Floor  
Toronto, Ontario M5G 2C8

Attn.: [REDACTED]  
Fax No.: [REDACTED]

If to Metrolinx:

Metrolinx  
5160 Yonge Street, Suite 300  
Toronto, Ontario M2N 6L9

Attn.: [REDACTED]  
Fax No.: [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 HMQ 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]

Attn.: [REDACTED]  
Fax No.: [REDACTED]

With a copy to:

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]

If to the HMQ Representative: Metrolinx  
5160 Yonge Street, Suite 300  
Toronto, Ontario M2N 6L9

Attn.: [REDACTED]  
Fax No.: [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 HMQ Entities**

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

## **62. EMERGENCY MATTERS**

### **62.1 Emergency**

- (a) From Financial Close until Substantial Completion Date, upon the occurrence of an Emergency, Project Co shall comply with the Emergency Response Plan.
- (b) From and after Substantial Completion Date, upon the occurrence of an Emergency, Project Co shall comply with its Emergency Response Plan in accordance with the Output Specifications.
- (c) If, in respect of any Emergency, HMQ Entities notify Project Co that they require compliance with any additional or overriding procedures as may be determined by HMQ Entities 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) or (b)).

## **63. HMQ ENTITIES' 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 HMQ Entities under this Project Agreement (including review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to HMQ Entities 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 HMQ Entities, 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 Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

### **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 HMQ Entities 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 HMQ Entities 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) HMQ Entities 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 HMQ Entities 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 HMQ Entities, their directors, officers and senior management, and the HMQ 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 HMQ Entities 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 HMQ Entities and Project Co are parties shall enure to the benefit of, and be binding on, HMQ Entities 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) HMQ Entities 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 HMQ Entities or Project Co, as applicable, that they have the requisite authority to execute this Project Agreement on behalf of and to bind HMQ Entities 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 an HMQ Party, as applicable, are:
- (i) intended for the benefit of each Province Person, or HMQ Party, as applicable and, if so set out in the relevant Section, each Province Person's or HMQ 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 HMQ Party, the **"HMQ 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) HMQ Entities 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 HMQ Party, as applicable, in trust for and on behalf of the Province Person Third Party Beneficiaries or HMQ Third Party Beneficiaries, as applicable, and HMQ Entities hereby accept 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 HMQ Third Party Beneficiaries, as applicable.

**64.18 Copyright Notice**

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

**[SIGNATURE PAGES IMMEDIATELY FOLLOW]**

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

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

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

Signature Page to Project Agreement

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**METROLINX**

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation.

**CROSSLINX TRANSIT SOLUTIONS GENERAL  
PARTNERSHIP, [REDACTED]**

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

12794142.2

Signature Page to Project Agreement

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## SCHEDULE 1

## DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
  - 1.1 “**6-Month Works Schedule**” means the schedule to be prepared and submitted by Project Co in accordance with Section 22.2 of the Project Agreement.
  - 1.2 “**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.
  - 1.3 “**Account Trustee**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
  - 1.4 “**Actual Global Adjustment Peak Demand**” has the meaning given in Schedule 8 – Energy Matters.
  - 1.5 “**Actual Relevant Insurance Cost**” has the meaning given in Section 7.1(a) of Schedule 25 - Insurance and Performance Security Requirements.
  - 1.6 “**Additional Contractor**” means any independent contractor (not being, for the avoidance of doubt, any of the Third Party Contractors or Project Co) or HMQ Entities’ own forces, engaged by HMQ Entities to carry out the Additional Works. For clarity, the Tunnel Contractor shall be considered to be an Additional Contractor except,
    - (a) in circumstances where the Tunnel Contractor is carrying out work in a Tunnel Section after the Tunnel Section Security and Maintenance Handover Date in respect of that Tunnel Section; or
    - (b) to the extent that the relationship between Project Co (and the Project Operations) and the Tunnel Contractor (and the work being carried out by the Tunnel Contractor) is dealt with in Schedule 38 – Tunnels.
  - 1.7 “**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 Maintenance and Rehabilitation 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.
  - 1.8 “**Adjacent Developments**” means any development works or like activity carried out during the Project Term by or on behalf of any third party adjacent to the Lands, Project Co System Infrastructure or New Third Party Infrastructure or which otherwise affects or may potentially affect any part of the Works, the Maintenance and Rehabilitation Services, the Lands or the Project Co System Infrastructure or New Third Party Infrastructure.
  - 1.9 “**Adjudicator**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.

- 1.10 “**Adjusted Estimated Fair Value**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.11 “**Adjusted Highest Qualifying Tender Price**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.12 “**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.
- 1.13 “**Aggregate Actual Door Closure Cost**” or “**AADCC**” has the meaning given in Schedule 40 – Door Access Matters.
- 1.14 “**Aggregate Actual Door Closures**” or “**AADC**” has the meaning given in Schedule 40 – Door Access Matters”.
- 1.15 “**Aggregate Actual Lane Closure Cost**” or “**AALCC**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.16 “**Aggregate Actual Lane Closures**” or “**AALC**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.17 “**Ancillary Documents**” means the Construction Contract; the Maintenance and Rehabilitation Contract; [REDACTED]; and [REDACTED].
- 1.18 “**Annual Service Payment**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.19 “**Anticipated Substantial Completion Date**” has the meaning given in Section 25.6(a) of the Project Agreement.
- 1.20 “**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, HMQ Entities, any HMQ Party or any Province Person.
- 1.21 “**Apprenticeship Plan**” has the meaning given in Section 20.14 of the Project Agreement.
- 1.22 “**Approved Request for Contract Amendments**” has the meaning given in Schedule 36 - Vehicles.

- 1.23 “**Approved Request for Waivers**” has the meaning given in Schedule 36 - Vehicles.
- 1.24 “**Arbitration Act, 1991 (Ontario)**” means the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended from time to time.
- 1.25 “**Archaeological Reports**” means the reports set out in Appendix A to this Schedule 1 – Definitions and Interpretation.
- 1.26 “**Architect**” means an architect licensed by the Ontario Association of Architects to practice in the Province of Ontario.
- 1.27 “**Asset Management Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.28 “**Associated Facilities**” has the meaning given in Schedule 15 – Output Specifications.
- 1.29 “**Associated Liabilities**” has the meaning given in Section 35.6(b)(iv) of the Project Agreement.
- 1.30 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- 1.31 “**Availability Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.32 “**Background Information**” means any and all drawings, reports (including the Environmental Reports, the Archaeological Reports, the Geotechnical Reports and the Environmental Assessments), studies, data, documents, or other information, including all information relating to the Eglinton Crosstown Tunnels, given or made available to Project Co or any Project Co Party by HMQ Entities or any HMQ Party, or which was obtained from or through any other sources prior to Commercial Close.
- 1.33 “**Backup Operations Control Centre**” or “**BOCC**” has the meaning given in Schedule 15 – Output Specifications.
- 1.34 “**Bank**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.35 “**Bank Act (Canada)**” means the *Bank Act*, S.C. 1991, c. 46, as amended from time to time.
- 1.36 “**Bankruptcy and Insolvency Act (Canada)**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended from time to time.
- 1.37 “**Base Case Equity IRR**” means [REDACTED] %, which for greater certainty, is calculated on a pre-tax basis.
- 1.38 “**Base Relevant Insurance Cost**” has the meaning given in Section 7.1(b) Schedule 25 - Insurance and Performance Security Requirements.

- 1.39 “**Bayview Developer**” means the developer responsible for the development of the Bayview Development.
- 1.40 “**Bayview Development**” means a mixed use residential or commercial development comprising up to 28 storeys, to be constructed on lands that include the Bayview Station site.
- 1.41 “**Beneficiary**” has the meaning given in Section 56.3(a) of the Project Agreement.
- 1.42 “**Built to Design**” has the meaning given in Schedule 38 – Tunnels.
- 1.43 “**Business Corporations Act (Ontario)**” means that *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended from time to time.
- 1.44 “**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.
- 1.45 “**Business Opportunities**” has the meaning given in Section 4.1(a) of the Project Agreement.
- 1.46 “**CaGBC**” means the Canadian Green Building Council.
- 1.47 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.48 “**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.
- 1.49 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.50 “**Category 1 Utility Company**” means any one of [REDACTED].
- 1.51 “**Category 2 Utility Company**” means any Utility Company that is not defined as a Category 1 Utility Company.
- 1.52 “**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.
- 1.53 “**Certification Services**” has the meaning given in Schedule 6 - Independent Certifier Agreement.



- 1.54 “**Certification Services Variation**” has the meaning given in Schedule 6 - Independent Certifier Agreement.
- 1.55 “**Certified H&S Inspector**” means an individual having 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.
- 1.56 “**CGP Commissioning**” means the completion and commissioning of the CGP as certified by the Independent Certifier.
- 1.57 “**CGP Construction Costs**” shall equal,
- (a) Project Co’s costs for all equipment, labour, materials and supplies for the construction of the CGP incurred by Project Co after achieving all CGP PLAs; plus
  - (b) Project Co’s costs for all equipment, labour materials and supplies for the construction of the CGP incurred by Project Co before achieving all CGP PLAs, to which HMQ Entities have, in their sole discretion, consented to.

For clarity, CGP Construction Costs shall exclude CGP Design and PLA Costs.

- 1.58 “**CGP De-scoping**” has the meaning given in Section 20.18(a) of the Project Agreement.
- 1.59 “**CGP Design and PLA Costs**” shall equal Project Co’s costs for carrying out all design and for carrying out Project Co’s obligations with respect to CGP PLA’s.
- 1.60 “**CGP Energy Opportunity**” means a business opportunity to sell or otherwise use any energy from the CGP that is, (i) in excess of the amount of energy required by Project Co for the execution of the Project Operations under the Project Agreement, and (ii) for a use that is different than the use for the execution of the Project Operations under the Project Agreement.
- 1.61 “**CGP Holdback**” has the meaning given in Section 20.19(b)(ii) of the Project Agreement.
- 1.62 “**CGP PLA Dates**” means the dates which appear in the column entitled “Date of Application Submittal” in the following chart:

Item	PLA	Date of Application Submittal
1.	Environmental Compliance Approval (ECA)	Mar 31, 2016
2.	Site Plan Approval	Oct 31, 2015
3.	Site Servicing	Oct 31, 2015
4.	Structural Building Permit	Jan 31, 2016

5.	Architectural Building Permit	Feb 28, 2016
6.	HVAC/Plumbing/Electrical Services Permit	Apr 30, 2016

- 1.63 “**CGP PLAs**” has the meaning given in Section 20.17(a)(ii) of the Project Agreement.
- 1.64 “**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.
- 1.65 “**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.
- 1.66 “**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.
- 1.67 “**City**” means the City of Toronto.
- 1.68 “**City Jointly Developed Materials**” has the meaning given in Section 51.4(a)(ii) of the Project Agreement.
- 1.69 “**City Lands**” has the meaning given in Schedule 35 – Lands.
- 1.70 “**City Road Allowance**” has the meaning given in Schedule 35 – Lands.
- 1.71 “**City Road Allowance PLA**” means,
- (a) the Road Cut Permit – Major Construction (Civil Works and Utility Relocation); and
  - (b) the Temporary Street Occupancy Permit.

- 1.72 “**City 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 the City, carried out in connection with or as part of the Project Operations.
- 1.73 “**Civil Remedies Act (Ontario)**” means the *Civil Remedies Act*, S.O. 2001, c.28, as amended from time to time.
- 1.74 “**CLA**” means the *Construction Lien Act (Ontario)*.
- 1.75 “**Cogeneration Plant**” or “**CGP**” has the meaning given in Schedule 15 – Output Specifications.
- 1.76 “**Collateral Trustee**” has the meaning given in the Common Terms and Intercreditor Agreement.
- 1.77 “**Commercial Close**” means the date of the Project Agreement.
- 1.78 “**Commissioning**” has the meaning given in Schedule 14 – Commissioning.
- 1.79 “**Commissioning Brief**” has the meaning given in Schedule 14 – Commissioning.
- 1.80 “**Commissioning Manuals**” has the meaning given in Schedule 14 – Commissioning.
- 1.81 “**Commissioning Plan**” has the meaning given in Schedule 14 – Commissioning.
- 1.82 “**Commissioning Program**” has the meaning given in Schedule 14 – Commissioning.
- 1.83 “**Commissioning Schedule**” has the meaning given in Schedule 14 – Commissioning.
- 1.84 “**Commissioning Submittals**” has the meaning given in Schedule 14 – Commissioning.
- 1.85 “**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 HMQ Commissioning Agent or the HMQ Representative pursuant to Section 25.2 of the Project Agreement.
- 1.86 “**Common Terms and Intercreditor Agreement**” means the common terms and intercreditor agreement dated on or about the date hereof between, *inter alia*, Project Co, as borrower and project party, the financial institutions from time to time party thereto as

lenders and hedge providers, [REDACTED], in its capacity as indenture trustee and Collateral Trustee, and [REDACTED], in its capacity as administrative agent.

- 1.87 “**Community Benefits and Liaison Plan**” has the meaning given in Section 20.15 of the Project Agreement.
- 1.88 “**Companies’ Creditors Arrangement Act (Canada)**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended from time to time.
- 1.89 “**Compensation Amount**” has the meaning given in Section 41.5(b)(ii)(A) of the Project Agreement.
- 1.90 “**Compensation Event**” has the meaning given in Section 41.1(a) of the Project Agreement.
- 1.91 “**Complaint Protocol**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.92 “**Confidant**” has the meaning given in Section 52.6(a)(i) of the Project Agreement.
- 1.93 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after Commercial Close.
- 1.94 “**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, 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 HMQ Entities; or
  - (d) comprises Construction Clearing and Grubbing.
- 1.95 “**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).
- 1.96 “**Construction Contract**” means the construction contract between Project Co and the Construction Contractor dated on or about Financial Close.

- 1.97 “**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.
- 1.98 “**Construction Contractor’s Direct Agreement**” means the direct agreement between HMQ Entities, Project Co, the Construction Contractor and the Construction Guarantors in the form set out in Schedule 5-1 - Construction Contractor’s Direct Agreement.
- 1.99 “**Construction Document Submittals**” has the meaning given in Section 20.3(d)(ii) of the Project Agreement.
- 1.100 “**Construction Guarantee**” means the performance guarantee given by each Construction Guarantor in favour of Project Co in respect of the relevant Construction Party’s obligations under the Construction Contract.
- 1.101 “**Construction Guarantor**” means [REDACTED], and “**Construction Guarantors**” means [REDACTED].
- 1.102 “**Construction Lien Act (Ontario)**” means the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended from time to time.
- 1.103 “**Construction Party**” means each of [REDACTED].
- 1.104 “**Construction Period**” means the period of time commencing on Financial Close to and including the Final Completion.
- 1.105 “**Construction Period Deduction**” has the meaning given in Schedule 21 – Construction Payments.
- 1.106 “**Construction Period Lands**” has the meaning given in Schedule 35 – Lands.
- 1.107 “**Construction Period Limit**” has the meaning given in Section 57.4(a)(i) of the Project Agreement.
- 1.108 “**Construction Period Payment**” has the meaning given in Schedule 21 – Construction Payments.
- 1.109 “**Construction Period Quality Failure**” has the meaning given in Schedule 21 – Construction Payments.
- 1.110 “**Construction Quality Manager**” has the meaning given in Schedule 11 – Quality Management.
- 1.111 “**Construction Safety Management Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.112 “**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.

- 1.113 “**Contract Month**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.114 “**Contract Year**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.115 “**Contractors**” means the Construction Contractor and the Maintenance and Rehabilitation Contractor.
- 1.116 “**Contracts**” means the Construction Contract and the Maintenance and Rehabilitation Contract.
- 1.117 “**Control Party**” means
- (a) any person with any form of direct ownership interest in Project Co; and
  - (b) [REDACTED].
- 1.118 “**Copyrights**” means all copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by multinational treaties or conventions.
- 1.119 “**COR Certification**” means, in respect of a person, receipt by such person of its: (i) Certificate of Recognition; and (ii) Letter of Good Standing.
- 1.120 “**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 HMQ Entities.
- 1.121 “**Countdown Notice**” has the meaning given in Section 25.6(a) of the Project Agreement.
- 1.122 “**CPI**” means CPI-XFET, as published by Statistics Canada from time to time, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 - Dispute Resolution Procedure, which most closely resembles such index.
- 1.123 “**CPI<sub>n</sub>**” 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.
- 1.124 “**CPI<sub>0</sub>**” 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.

- 1.125 “**Crisis Communications Plan**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.126 “**Crown**” means Her Majesty the Queen in right of Ontario.
- 1.127 “**Crown Agency Act (Ontario)**” means the *Crown Agency Act*, R.S.O. 1990, c.48, as amended from time to time.
- 1.128 “**CSA**” means the Canadian Standards Association.
- 1.129 “**CSA Standards**” means, at the applicable time, the Canadian Standards Association standards.
- 1.130 “**Cultural Heritage Reports**” means the reports set out in Appendix D to this Schedule 1 – Definitions and Interpretation.
- 1.131 “**Currency Act (Canada)**” means the *Currency Act*, R.S.C., 1985, c. C-52, as amended from time to time.
- 1.132 “**Custodian**” means the person appointed as Custodian pursuant to the Custody Agreement and as may be permitted pursuant to the Project Agreement.
- 1.133 “**Custody Agreement**” means the custody agreement between Project Co, HMQ Entities, the Custodian and the Collateral Trustee in the form set out in Schedule 3 - Custody Agreement.
- 1.134 “**Daily Performance Report**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.135 “**De-scoping by Agreement**” has the meaning given in Section 20.18(a)(iii) of the Project Agreement.
- 1.136 “**De-scoping Deadline Trigger**” has the meaning given in Section 20.18(a)(ii) of the Project Agreement.
- 1.137 “**Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.138 “**Default Notice**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.139 “**Delay Amount**” has the meaning given in Section 41.5(c)(i)(A) of the Project Agreement.
- 1.140 “**Delay Event**” has the meaning given in Section 40.1(a) of the Project Agreement.
- 1.141 “**Design and Bid Fee**” has the meaning given in the Request for Proposals.
- 1.142 “**Design and Certification Procedure**” means the procedure for design and certification of the Project Co System Infrastructure and the New Third Party Infrastructure set forth in Schedule 15 - Output Specifications and Section 20 of the Project Agreement.

- 1.143 “**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.
- 1.144 “**Design and Construction Specifications**” means Schedule 15-2 – Output Specifications – Design and Construction Requirements.
- 1.145 “**Design Brief**” means a narrative document to accompany Works Submittals with contents described in Schedule 10 – Review Procedure.
- 1.146 “**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, 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.
- 1.147 “**Design Development Submittals**” has the meaning given in Section 20.3(d)(i) of the Project Agreement.
- 1.148 “**Design Quality Manager**” has the meaning given in Schedule 11 – Quality Management.
- 1.149 “**Design Review Meetings**” has the meaning given in Section 20.5(a) of the Project Agreement.
- 1.150 “**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.
- 1.151 “**Designated Substances Survey Reports**” means the reports listed in Appendix C to this Schedule 1 – Definitions and Interpretation.
- 1.152 “**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.
- 1.153 “**Differential Amount**” has the meaning given in Section 20.19(b)(i)(A) of the Project Agreement.
- 1.154 “**Direct Agreements**” means the Construction Contractor’s Direct Agreement and the Maintenance and Rehabilitation Contractor’s Direct Agreement.
- 1.155 “**Direct Cost**” has the meaning given in Schedule 22 -Variation Procedure.
- 1.156 “**Direct Cost Basis**” means calculated in accordance with the definition of Direct Costs set out in Section 1.1 and 1.2 of Appendix A to Schedule 22 – Variation, subject to the deletion of Sections 1.2 (xvi), (xvii), (xviii), (xix), and (xx). For clarity, calculation on a



Direct Cost Basis shall exclude any costs incurred by Project Co for CGP Design and PLA Costs.

- 1.157 “**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.
- 1.158 “**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 [REDACTED] 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 [REDACTED] 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.
- 1.159 “**Discount Rate**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.160 “**Discriminatory Change in Law**” means any Change in Law the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:
- (a) transit systems, including light rail transit systems whose design, construction, financing, maintenance and rehabilitation and facilities management are procured by a contract similar to the Project Agreement in relation to other similar transit systems;
  - (b) the Project Co System Infrastructure or New Third Party Infrastructure in relation to other transit systems, including light rail transit systems;
  - (c) Project Co in relation to other persons; or
  - (d) Persons undertaking projects for design, construction, financing, maintenance and rehabilitation and facilities management that are procured by a contract similar to the Project Agreement in relation to other persons undertaking similar projects procured on a different basis,

except that such Change in Law shall not be a Discriminatory Change in Law:

- (e) where it is in response to any act or omission on the part of 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 is a change in Taxes that affects companies generally.
- 1.161 “**Discriminatory Condition, Delay or Refusal**” means a delay or refusal or the imposition of a condition, by the City, in respect of a Project Co Permit, Licence or Approval if such condition, delay or refusal is contrary to the Applicable Law, except that such condition, delay or refusal shall not be a Discriminatory Condition, Delay or Refusal where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law.
- 1.162 “**Dispute**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.163 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 - Dispute Resolution Procedure.
- 1.164 “**Distribution**” has the meaning given in Schedule 28 - Refinancing.
- 1.165 “**Door Closure**” has the meaning given in Schedule 40 – Door Access Matters.
- 1.166 “**Door Closure Adjustment**” has the meaning given in Schedule 40 – Door Access Matters.
- 1.167 “**Door Closure Target Letter**” has the meaning given in Schedule 40 – Door Access Matters.
- 1.168 “**Dust Control Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.169 “**Earned Value**” has the meaning given in Schedule 21 – Construction Payments.
- 1.170 “**East Portal**” has the meaning given in Schedule 15 – Output Specifications.
- 1.171 “**ECLRT System**” means the integrated passenger light rail transit system between Mount Dennis and Kennedy, including: (a) Project Co System Infrastructure; (b) New Third Party Infrastructure used for the passenger light rail transit system; and (c) associated operation and maintenance of the passenger light rail transit system.
- 1.172 “**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.

- 1.173 “**Eglinton Crosstown East Tunnels**” means approximately 3.3 km of new below grade (twin tunnel) sections along Eglinton Avenue from the East Portal (east of Brentcliffe Road) to Yonge Street.
- 1.174 “**Eglinton Crosstown LRT**” or “**ECLRT**” means the infrastructure of the passenger light rail transit system between Mount Dennis and Kennedy, including Guideway, Structures, Tunnels, Systems, Facilities, and all associated data, records, drawings, plans, reports and systems as described in Schedule 15 - Output Specifications.
- 1.175 “**Eglinton Crosstown Tunnels**” means the Eglinton Crosstown West Tunnel and the Eglinton Crosstown East Tunnels.
- 1.176 “**Eglinton Crosstown West Tunnels**” means approximately 6.2 km of new below grade (twin tunnel) sections along Eglinton Avenue from the West Portal (east of Black Creek Drive) to Yonge Street.
- 1.177 “**Eglinton Maintenance and Storage Facility**” or “**EMSF**” has the meaning given in Schedule 15 – Output Specifications.
- 1.178 “**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 HMQ Representative or HMQ Entities (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 HMQ Entities, 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.
- 1.179 “**Emergency Response Plan**” means the plan to be prepared, submitted and implemented by Project Co in accordance with Schedule 15 - Output Specifications.

- 1.180 “**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.
- 1.181 “**EMSF Facilities Management Services**” means facilities management services to be delivered by Project Co at the Eglinton Maintenance and Storage Facility as specified in Schedule 15 - Output Specifications.
- 1.182 “**EMSF Site**” means, certain lands in the City of Toronto, in the Province of Ontario, being,
- FIRSTLY: PIN 10334-0603(LT)** - Part of Lots B and C, Plan 285 and Part of Block C, Plan 2562, now designated as Parts 1, 2, 3 and 4, Plan 66R-25280;
- Together with and subject to TB936548;
- Subject to TB652811.
- SECONDLY: PIN 10334-0604(LT)** - Part Lots A, B and C, Plan 285; Part Blocks C and D, Plan 2562; Lots 5, 8, 9, 10, 11, 12, 16 and 17, Plan 2415 and part Lots 1, 2, 3, 4, 6, 7, 13 and 15, Plan 2415, now designated as Parts 5, 7, 9, 10, 11, 12, 13, 14,15, 17, 18 and 19, Plan 66R-25280;
- Subject to and Together with CA328734;
- Subject to TB651705, TB652811.
- THIRDLY: PIN 10334-0606(LT)** - Part of Lots 13 and 14, Plan 2415, now designated as Part 16, Plan 66R-25280.
- FOURTHLY: PIN 10334-0607(LT)** - Part of Block C, Plan 2562, now designated as Parts 6 and 8, Plan 66R-25280;
- Together with TB936548;
- Subject to TB652811.
- 1.183 “**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.
- 1.184 “**Energy Analysis Report**” has the meaning given in Schedule 8 – Energy Matters.
- 1.185 “**Energy Source Direction**” has the meaning given in Schedule 8 – Energy Matters.
- 1.186 “**Energy Source Direction Payment**” has the meaning given in Section 20.20(a) of the Project Agreement.

- 1.187 “**Energy Target Letter**” has the meaning given in Schedule 8 – Energy Matters.
- 1.188 “**Energy Toggling Function**” has the meaning given in Schedule 8 – Energy Matters.
- 1.189 “**Environmental Approvals**” means:
- (a) any authorization(s) issued by the Ontario Ministry of the Environment relating to the Environmental Assessments;
  - (b) the Fisheries Act Authorizations; and
  - (c) any Permits, Licences and Approvals relating to environmental matters.
- 1.190 “**Environmental Assessments**” means:
- (a) Eglinton Crosstown Light Rail Transit (LRT), Transit Project Assessment Study Environmental Project Report (March 2010);
  - (b) Eglinton Crosstown Light Rail Transit (LRT) Contract #ECLC1-15 Environmental Project Report (EPR) Addendum, Keelestdale Park to Yonge Street (November 2012);
  - (c) Eglinton Crosstown Light Rail Transit (LRT), Transit Project Assessment Process Environmental Project Report Addendum, Jane Street to Keelestdale Park and Black Creek Maintenance and Storage Facility (October 2013);
  - (d) Eglinton Crosstown Light Rail Transit (LRT) Contract #ECLC1-17 Environmental Project Report (EPR) Addendum, Yonge Street to Brentcliffe Drive (August 2013); and
  - (e) Scarborough Rapid Transit, Transit Project Assessment Study, Environmental Project Report (September 2010) (as related to Kennedy Station).
- 1.191 “**Environmental Law**” means all Applicable Law relating to public health or the protection of the environment or Species-at-Risk.
- 1.192 “**Environmental Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.193 “**Environmental Quality Manager**” has the meaning given in Schedule 11 – Quality Management.
- 1.194 “**Environmental Reports**” means Cultural Heritage Reports, Phase 1 and Phase 2 Environmental Site Assessment Reports, Designated Substances Survey Reports, Archaeological Reports and Environmental Assessments.
- 1.195 “**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.

- 1.196 “**Equity IRR**” means the projected internal rate of return to the Equity Provider over the full term of the Project Agreement, taking into account the aggregate of all its investments and of all Distributions made and projected to be made.
- 1.197 “**Equity Sale IRR**” means the Equity IRR calculated to the date of any sale of Equity Capital and calculated by taking into account the full Implied Equity Value, together with all Distributions paid in respect of the Equity Capital, and the actual timing of payment of all such amounts.
- 1.198 “**ESA**” means the *Endangered Species Act, 2007 (Ontario)*.
- 1.199 “**Escrow Account**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.200 “**Estimate**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.201 “**Estimated Fair Value**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.202 “**Event of Vandalism**” has the meaning given in Schedule 15 – Output Specifications.
- 1.203 “**Excess 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 Financial Close) sold in a particular sale of Equity Capital; and
  - (b) the Threshold Equity Sale Amount.
- 1.204 “**Excise Tax Act (Canada)**” means the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended from time to time.
- 1.205 “**Excusing Cause**” has the meaning given in Section 42.1(a) of the Project Agreement.
- 1.206 “**Executive Council Act (Ontario)**” means the *Executive Council Act*, R.S.O. 1990, c. E. 25, as amended from time to time.
- 1.207 “**Existing Third Party Infrastructure**” means existing public realm, road, highway, subway, Utility Infrastructure, bus and railway infrastructure, or any other infrastructure situated on the Lands, owned by the City, the Toronto Transit Commission, Utility Companies, Railway Companies, or any other third party.
- 1.208 “**Existing TTC Infrastructure**” means any asset, improvement, facility or infrastructure operated by the TTC, including but not limited to subway stations, subway tunnels, bus

terminals, signals and electrical equipment, entrances, ventilation shafts and commuter parking lots.

- 1.209 “**Expert**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.210 “**Expiry Date**” means the 30<sup>th</sup> anniversary of the Scheduled Substantial Completion Date and in no event will the Expiry Date be adjusted.
- 1.211 “**Expiry Rehabilitation Costs**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.212 “**Expiry Transition Amount**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.213 “**Expiry Transition Procedure**” means the procedure for expiry transition described in Schedule 24 - Expiry Transition Procedure.
- 1.214 “**Expiry Transition Requirements**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.215 “**Expiry Transition Security**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.216 “**Expiry Transition Works**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.217 “**Expiry Transition Works Costs**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.218 “**Extension Contractor**” has the meaning given in Schedule 39 – System Extension.
- 1.219 “**External Quality Audit**” has the meaning given in Schedule 11 – Quality Management.
- 1.220 “**Facilities**” has the meaning given in Schedule 15 – Output Specifications.
- 1.221 “**Failure Points**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.222 “**Final Completion**” means the completion of the Works in accordance with the Project Agreement, including completion of all Minor Deficiencies, other than any minor work that is seasonal in nature and cannot be completed by the Final Completion Date.
- 1.223 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.10 of the Project Agreement.
- 1.224 “**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.
- 1.225 “**Final Completion Notice**” has the meaning given in Section 25.10(b) of the Project Agreement.

- 1.226 “**Final Project Co System Infrastructure Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.227 “**Final Utility Baseline Documents**” means the Final Utility Baseline Documents submitted by Project Co in its proposal in the RFP process that preceded this Project Agreement and attached as Appendix G.
- 1.228 “**Financial Administration Act (Ontario)**” means the *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended from time to time.
- 1.229 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.230 “**Financial Close Target Date**” means July 24, 2015, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.231 “**Financial Model**” means the computer spreadsheet model for the Project incorporating statements of Project Co’s cashflows 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.
- 1.232 “**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.
- 1.233 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 1.234 “**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.
- 1.235 “**Fixed Infrastructure**” has the meaning given in Schedule 15 – Output Specifications.
- 1.236 “**Force Majeure**” has the meaning given in Section 44.1(a) of the Project Agreement.
- 1.237 “**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.
- 1.238 “**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.
- 1.239 “**Future Known Expansions**” means
- (a) the following GO Transit expansions:



- (i) expansion of the Georgetown Line and Union Pearson Express at Mount Dennis Station;
  - (ii) expansion of the Barrie Line at Caledonia Station; and
  - (iii) expansion of the Stouffville Line at Kennedy Station; and
- (b) the Bloor Danforth Subway expansion at Kennedy Station.
- 1.240 “**Gainshare Adjustment**” has the meaning given in Schedule 8 – Energy Matters.
- 1.241 “**Geotechnical Reports**” means the reports listed in Appendix E to this Schedule 1 – Definitions and Interpretation.
- 1.242 “**Global Adjustment Peak Demand Liquidated Damages**” means an amount equal to \$[REDACTED] which, on the occurrence of a CGP De-scoping, is to be deducted by HMQ Entities from the Substantial Completion Payment as liquidated damages, and not as a penalty, in respect of the damages that HMQ Entities will sustain arising from an inability to use the Energy Toggling Function to minimize Actual Global Adjustment Peak Demand.
- 1.243 “**GO Transit**” means GO Transit, an operating division of Metrolinx, or UP Express, as applicable, and its successors.
- 1.244 “**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.
- 1.245 “**Government Sensitive Information**” means any information which is designated as such by HMQ Entities 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 HMQ Entities.
- 1.246 “**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 HMQ Activities.
- 1.247 “**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 HMQ Entities, any aspect of the performance of the Project Agreement, the operation of the Eglinton Crosstown 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, including for clarity, the Toronto Transit Commission.

- 1.248 “**Green Roof By-Law**” means the Toronto Municipal Code Chapter 492, Green Roofs.
- 1.249 “**Guarantors**” means the Construction Guarantors and the Maintenance and Rehabilitation Guarantors.
- 1.250 “**Guideway**” has the meaning given in Schedule 15 – Output Specifications.
- 1.251 “**H&S Certification Default Event**” has the meaning given in Section 9.6(b)(i) of the Project Agreement.
- 1.252 “**H&S Conviction**” has the meaning given in Section 45.1(a)(xix) of the Project Agreement.
- 1.253 “**H&S Inspection**” has the meaning given in Section 13(b) of the Project Agreement.
- 1.254 “**H&S Inspection Report**” has the meaning given in Section 13(b) of the Project Agreement.
- 1.255 “**Handover**” means, as applicable, the successful handover, by Project Co,
- (a) the New City Infrastructure, or a component thereof, to the City, in accordance with Section 25.13 of the Project Agreement including, for clarity, the receipt of the City’s confirmation that Handover has been successfully achieved and the provision of the Notice to HMQ Entities in accordance with Section 25.13 (d) of the Project Agreement;
  - (b) the New Metrolinx Infrastructure, or a component thereof, to GO Transit, in accordance with Section 25.13 of the Project Agreement including, for clarity, the receipt of GO Transit’s confirmation that Handover has been successfully achieved and the provision of that confirmation to HMQ Entities in accordance with Section 25.13 (d) of the Project Agreement;
  - (c) the New TTC Infrastructure, or a component thereof, to the Toronto Transit Commission, in accordance with Section 25.14 of the Project Agreement including, for clarity, the receipt of the City’s confirmation that Handover has been successfully achieved and the provision of that confirmation to HMQ Entities in accordance with Section 25.14(d) of the Project Agreement; or
  - (d) the New Utility Company Infrastructure and New Railway Company Infrastructure to the Utility Companies or Railway Companies, as applicable, and in accordance with the requirements agreed to between Project Co and the Utility Companies or the Railway Companies, as applicable.
- 1.256 “**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.

- 1.257 “**Health and Safety Certification**” means, in respect of a person, such person having received its COR Certification or its OHSAS 18001 Accreditation.
- 1.258 “**Health and Safety Certification Maintenance Plan**” has the meaning given in Section 9.6(b)(iv)(B) of the Project Agreement.
- 1.259 “**Health and Safety Certification Reinstatement Plan**” has the meaning given in Section 9.6(b)(iii)(B) of the Project Agreement.
- 1.260 “**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.
- 1.261 “**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.
- 1.262 “**Heritage Impact Assessments**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.263 “**HMQ**” means Her Majesty the Queen in Right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. c. 9, Schedule 32, as amended.
- 1.264 “**HMQ Commissioning**” means the commissioning activities to be carried out by HMQ Entities or any other Person on behalf of HMQ Entities in accordance with the Commissioning Program.
- 1.265 “**HMQ Commissioning Agent**” means the person appointed by HMQ Entities as their commissioning agent.
- 1.266 “**HMQ Commissioning Period**” means the period during which HMQ Entities, or any other person on behalf of HMQ Entities, are performing the HMQ Commissioning.
- 1.267 “**HMQ Default Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.268 “**HMQ Design Team**” means any of HMQ Entities, their 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 HMQ Activities, but excluding Project Co and any Project Co Party.
- 1.269 “**HMQ Entities**” means, collectively (i) HMQ and (ii) Metrolinx.
- 1.270 “**HMQ Entities Discretionary Trigger**” has the meaning given in Section 20.18(a)(i) of the Project Agreement.

- 1.271 “**HMQ Event of Default**” has the meaning given in Section 46.1(a) of the Project Agreement.
- 1.272 “**HMQ HR Policy**” means HMQ Entities’ human resources policies and guidelines, as they may be amended from time to time and provided to Project Co in writing.
- 1.273 “**HMQ Jointly Developed Materials**” has the meaning given in Section 51.4(a)(i) of the Project Agreement.
- 1.274 “**HMQ Party**” means any of HMQ Entities’ 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 “**HMQ Parties**” shall be construed accordingly.
- 1.275 “**HMQ 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 HMQ Entities to obtain as set out Schedule 34 – HMQ 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 – HMQ Permits, Licenses and Approvals but required by the terms of any such item set out in such Schedule.
- 1.276 “**HMQ Representative**” means the person designated as such by HMQ Entities on or prior to Commercial Close and any permitted replacement.
- 1.277 “**HMQ Taxes**” means taxes, or payments in lieu of taxes, imposed on HMQ Entities and HST and property taxes for which HMQ Entities are responsible pursuant to Section 35 of the Project Agreement.
- 1.278 “**HMQ Third Party Beneficiaries**” has the meaning given in Section 64.17(a)(i) of the Project Agreement.
- 1.279 “**HMQ Trade-Marks**” means any and all Trade-Marks used by HMQ Entities in any manner whatsoever.
- 1.280 “**HOV/Bus Lane**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.281 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.282 “**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.

- 1.283 “**Implied Equity Value**” means the amount paid in consideration of a percentage of Equity Capital divided by the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital.
- 1.284 “**Income Tax Act (Canada)**” means the *Income Tax Act*, R.S.C., 1985, c. 1, as amended from time to time.
- 1.285 “**Income Tax Act (Ontario)**” means the *Income Tax Act*, R.S.O. 1990, c. I.2, as amended from time to time.
- 1.286 “**Indemnifiable Taxes**” has the meaning given in Section 35.6(b)(iii) of the Project Agreement.
- 1.287 “**Indemnifier**” has the meaning given in Section 56.3(a) of the Project Agreement.
- 1.288 “**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.
- 1.289 “**Independent Certifier Agreement**” means the contract entered into between Project Co, HMQ Entities and the Independent Certifier in substantially the form attached hereto as Schedule 6 - Independent Certifier Agreement.
- 1.290 “**Independent Inspector**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.291 “**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.
- 1.292 “**Indirect Losses**” has the meaning given in Section 57.1(a) of the Project Agreement.
- 1.293 “**Inflation Base Date**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.294 “**Injurious Affection**” has the meaning given in the *Expropriations Act*, R.S.O. 1990, c. E. 26, as amended from time to time.
- 1.295 “**Innovation Proposal**” has the meaning given in Section 39.2(b) of the Project Agreement.
- 1.296 “**Inspection and Test Plan**” has the meaning given in Schedule 11 - Quality Management.
- 1.297 “**Insurance Adjustment**” has the meaning given in Section 7.3 of Schedule 25 - Insurance and Performance Security Requirements.

- 1.298 “**Insurance Cost Differential**” has the meaning given in Section 7.1(c) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.299 “**Insurance Policies**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.300 “**Insurance Proceeds**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.301 “**Insurance Review Date**” has the meaning given in Section 7.1(d) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.302 “**Insurance Review Period**” has the meaning given in Section 7.1(e) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.303 “**Insurance Trust Account**” means Account No. [REDACTED] at [REDACTED].
- 1.304 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between HMQ Entities, the Collateral Trustee, Project Co and the Account Trustee in the form set out in Schedule 30 - Insurance Trust Agreement.
- 1.305 “**Integrated System Extension**” has the meaning given in Schedule 39 – System Extension.
- 1.306 “**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; (xiv) 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.
- 1.307 “**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 Maintenance and Rehabilitation Services, including the maintenance, improvement, testing and rehabilitation of the Project Co System Infrastructure;
- (c) any other Project Operations; or
- (d) the Project Agreement.

- 1.308 “**Interchange Stations**” has the meaning given in Schedule 15 – Output Specifications.
- 1.309 “**Internal Quality Audit**” has the meaning given in Schedule 11 – Quality Management.
- 1.310 “**IO**” or “**Infrastructure Ontario**” means Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended and includes any successors thereto.
- 1.311 “**Joint Insurance Cost Report**” has the meaning given in Section 7.2 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.312 “**Jointly Developed Materials**” has the meaning given in Section 51.4(a) of the Project Agreement.
- 1.313 “**Junior Debt Amount**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.314 “**Junior Debt Makewhole**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.315 “**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.
- 1.316 “**Junior Lenders**” Not applicable.
- 1.317 “**Key Individual**” means those Project Co Parties listed in Schedule 9 - Key Individuals.
- 1.318 “**Lands**” has the meaning given in Schedule 35 – Lands.
- 1.319 “**Lane Closure**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.320 “**Lane Closure Adjustment**” has the meaning given in Schedule 7 – Mobility Matters.

- 1.321 “**Lane Closure Target Letter**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.322 “**Late CGP Target Global Adjustment Peak Demand**” has the meaning given in Schedule 8 – Energy Matters.
- 1.323 “**LEED**” means Leadership in Energy & Environmental Design.
- 1.324 “**LEED Rating System**” means the CaGBC’s Leadership in Energy & Environmental Design (LEED) Green Building Rating System for New Construction and Major Renovations, LEED® Canada-NC 2009.
- 1.325 “**LEED Silver Rating**” means the achievement of a “Silver” certification from the CaGBC, with respect to the CaGBC’s Leadership in Energy & Environmental Design (LEED) Green Building Rating System For New Construction And Major Renovations, LEED® Canada-NC 2009.
- 1.326 “**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 the Junior 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.
- 1.327 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between HMQ Entities, the Collateral Trustee and Project Co in the form set out in Schedule 4 - Lenders’ Direct Agreement.
- 1.328 “**Lending Agreements**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.329 “**Letter of Credit Provider**” has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.330 “**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 ISHA, and that such person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program.
- 1.331 “**Limitations Act, 2002 (Ontario)**” means the *Limitations Act*, 2002, S.O. 2002, c. 24, Sch. B, as amended from time to time.
- 1.332 “**Liquid Market**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.333 “**Listed Project Co PLAs**” means those Project Co Permits, Licences and Approvals listed in Appendix F to this Schedule 1 – Definitions and Interpretation.
- 1.334 “**Longstop Date**” has the meaning given in Section 45.1(a)(ii) of the Project Agreement.
- 1.335 “**LRT Rules**” has the meaning given in Schedule 15 – Output Specifications.



- 1.336 “**Maintenance and Rehabilitation Contract**” means the agreement between Project Co and the Maintenance and Rehabilitation Contractor or such other party as shall be approved by HMQ Entities to perform the Maintenance and Rehabilitation Services with respect to the Project Co System Infrastructure.
- 1.337 “**Maintenance and Rehabilitation Contractor**” means [REDACTED], engaged by Project Co to perform the Maintenance and Rehabilitation Services and any substitute person engaged by Project Co to perform such work as may be permitted by the Project Agreement.
- 1.338 “**Maintenance and Rehabilitation Contractor’s Direct Agreement**” means the direct agreement to be entered into amongst HMQ Entities, the Maintenance and Rehabilitation Contractor and the Maintenance and Rehabilitation Guarantors, in the form set out in Schedule 5-2 – Maintenance and Rehabilitation Contractor’s Direct Agreement.
- 1.339 “**Maintenance and Rehabilitation Guarantee**” means the performance guarantee given by each Maintenance and Rehabilitation Guarantor in favour of Project Co in respect of the relevant Maintenance Partner’s obligations under the Maintenance and Rehabilitation Contract.
- 1.340 “**Maintenance and Rehabilitation Guarantor**” means [REDACTED], and “**Maintenance and Rehabilitation Guarantors**” means [REDACTED].
- 1.341 “**Maintenance and Rehabilitation Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.342 “**Maintenance and Rehabilitation Requirements**” means Schedule 15-3 – Maintenance and Rehabilitation Requirements.
- 1.343 “**Maintenance and Rehabilitation Services**” means,
- (a) the maintenance and rehabilitation of Project Co System Infrastructure;
  - (b) the provision of EMSF Facilities Management Services;
  - (c) the provision of Vehicle Services; and
  - (d) subject to a CGP De-scoping, the operations, maintenance and rehabilitation of the CGP and the Redundant THESL Solution;
- as described Schedule 15 – Output Specifications, as such work and services may from time to time be varied in accordance with the Project Agreement, but specifically excluding Governmental Activities.
- 1.344 “**Maintenance and Rehabilitation Specifications**” means Schedule 15-3 – Maintenance and Rehabilitation Requirements.
- 1.345 “**Maintenance and Rehabilitation Submittals**” has the meaning given in Section 11.1 of Schedule 10 – Review Procedure.

- 1.346 “**Maintenance Committee**” has the meaning given in Section 12.1(a) of the Project Agreement.
- 1.347 “**Maintenance Partner**” means each of [REDACTED].
- 1.348 “**Maintenance Period**” means the period from the Substantial Completion Date and expiring at midnight on the Termination Date.
- 1.349 “**Maintenance Period Lands**” has the meaning given in Schedule 35 – Lands.
- 1.350 “**Maintenance Period Limit**” has the meaning given in Section 57.4(a)(ii) of the Project Agreement.
- 1.351 “**Maintenance Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.352 “**Maintenance Vehicles**” has the meaning given in Schedule 15 – Output Specifications”.
- 1.353 “**Major Existing Third Party Infrastructure**” means,
- (a) TTC Yonge Station existing structure;
  - (b) TTC Eglinton West Station existing structure;
  - (c) TTC Kennedy station existing structure;
  - (d) West Don River Bridge;
  - (e) IBM/Celestica Bridge;
  - (f) Wynford Bridge;
  - (g) East Don River Bridge;
  - (h) Wilson Brook Culvert;
  - (i) Massey Creek Culvert;
  - (j) Eglinton Avenue over Black Creek Bridge;
  - (k) Kodak Building;
  - (l) the existing heritage building at 256-258 Eglinton Avenue East; and
  - (m) the existing fire hall at 625-641-643 Eglinton Avenue West.
- 1.354 “**Make Good**”, “**Made Good**” and derivatives thereof, means repairing, restoring, refurbishing, rehabilitating or performing filling operation on the Works as required under the Project Agreement or any existing components disturbed due to the Works, 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.

- 1.355 “**Mandatory Refinancing**” has the meaning given in Schedule 28 - Refinancing.
- 1.356 “**Master Agreement**” means the agreement between Metrolinx, the City and Toronto Transit Commission, dated November 28, 2012, with respect to the implementation of the Toronto light rail transit program, as amended from time to time.
- 1.357 “**Maximum Service Payment**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.358 “**MEDEI**” means Her Majesty The Queen in right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.359 “**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.
- 1.360 “**Metrolinx Act, 2006 (Ontario)**” means the *Metrolinx Act, 2006*, S.O. 2006, c.16, as amended from time to time.
- 1.361 “**Metrolinx Lands**” has the meaning given in Schedule 35 – Lands.
- 1.362 “**Metrolinx Lands Discrete Parcels**” means all Metrolinx Lands, other than those Metrolinx Lands that are located on the City Road Allowance.
- 1.363 “**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 HMQ Entities’ 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 HMQ Commissioning);
  - (b) the performance of the Governmental Activities;
  - (c) the performance of the Maintenance and Rehabilitation Services by Project Co;  
or
  - (d) safety, security, or traffic flow on the Project Co System Infrastructure or New Third Party Infrastructure in any relevant respect.
- 1.364 “**Minor Deficiencies List**” has the meaning given in Section 25.7(a) of the Project Agreement.

1.365 “**Minor System User Contamination**” means damage arising out of or resulting from any solid, liquid, gaseous or thermal pollutant, irritant or contaminant including but not limited to smoke, vapors, odors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, waste materials, including medical, infectious and pathological wastes, electromagnetic fields, low-level radioactive waste material and mould matter, provided that the costs of clean up or remediation shall not exceed \$[REDACTED] on a per occurrence basis (and not in the aggregate).

1.366 “**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 Report;
- (b) Utility Infrastructure that is discovered more than 15mm vertically from the provided surveyed point via any Quality Level A investigation in a Subsurface Utility Engineering Report;
- (c) Utility Infrastructure that is discovered more than 1500mm horizontally from the location provided via any Quality Level B investigation in a Subsurface Utility Engineering Report;
- (d) Utility Infrastructure that is discovered more than 2000mm horizontally from the location provided in the Quality Level C investigation in a Subsurface Utility Engineering Report;
- (e) Utility Infrastructure that is discovered more than 3000mm horizontally from the location provided in the Quality Level D investigation in a Subsurface Utility Engineering Report; or
- (f) Utility Infrastructure that is owned by the City that is discovered more than 600mm vertically from the location provided in a Subsurface Utility Engineering Report,

provided, however, that the following shall be excluded from the definition of “Mislocated Utility Infrastructure”:

- (g) any Utility Infrastructure that is a service connection;
- (h) any Utility Infrastructure that is above-ground, aerial, or at-grade;
- (i) any of the following Utility Infrastructure that is owned by the City:
  - (i) watermains of nominal diameter less than 200mm;
  - (ii) combined sewers or storm sewers of nominal diameter less than 450mm; and
  - (iii) sanitary sewers of nominal diameter less than 300mm; and

- (j) any Utility Infrastructure relocations carried out at the Site following the initiation of HMQ Entities' investigation to obtain subsurface utility engineering information, including with respect to,
    - (i) the Works;
    - (ii) the Preparatory Activities;
    - (iii) the Tunnels Contracts; and
    - (iv) Third Party Works and Additional Works.
- 1.367 “**Modification**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.368 “**Monitoring Notice**” has the meaning given in Section 31.5(a) of the Project Agreement.
- 1.369 “**Monthly Performance Monitoring Report**” has the meaning given in Schedule 11 – Quality Management.
- 1.370 “**Monthly Previously Paid HST Amount**” means, if applicable, a monthly HST amount to be determined as provided for below which in the aggregate is equal to the amount of the Section 35.1(c) Payment. The amount of each Monthly Previously Paid HST Amount shall be:
- (a) the amount of the Section 35.1(c) Payment amortized on a straight line basis over the Monthly Service Payments due over the remainder of the Maintenance Period following the payment of the Section 35.1(c) Payment subject to an alternative basis on which to amortize the remaining unapplied Section 35.1(c) Payment as provided for by Applicable Law in which case HMQ Entities shall determine the Monthly Previously Paid HST Amount in accordance with such Applicable Law, provided that HMQ Entities may, at any time, proceed to obtain an advance ruling under the *Excise Tax Act* (Canada) (or rely upon an existing advance ruling under the *Excise Tax Act* (Canada)) in respect to some other basis for amortizing the remaining unapplied Section 35.1(c) Payment over the Monthly Service Payments due over the remainder of the Maintenance Period, and in such event, the remaining unapplied Section 35.1(c) Payment may be amortized over the Monthly Service Payments in a manner provided for in the advance ruling if HMQ Entities so determine in their sole discretion;
  - (b) communicated by HMQ Entities to Project Co in writing at the same time that HMQ Entities pay Project Co the Section 35.1(c) Payment; and
  - (c) credited to HMQ Entities in each Monthly Service Payment invoice sent by Project Co to HMQ Entities following the payment of the Section 35.1(c) Payment.
- 1.371 “**Monthly Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.

- 1.372 “**New Agreement**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.373 “**New City Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, reinstated, restored, downsized, designed and/or built by Project Co for the City in accordance with the Project Agreement and, for clarity, includes the New City Utility Infrastructure. For the purposes of Sections 25.13, 25.14, 25.15 and 25.16 of the Project Agreement, “New City Infrastructure” means “New City Infrastructure or a component thereof”.
- 1.374 “**New City Utility Infrastructure**” means the Utility Infrastructure to be installed, relocated, upgraded, reinstated, downsized, restored, designed and/or built by Project Co for the City in accordance with the Project Agreement and the City’s specifications in its capacity as a Utility Company with reference to the applicable City standard as of August 2013.
- 1.375 “**New Metrolinx Infrastructure**” means the New Third Party Infrastructure, to be designed and built by Project Co for GO Transit in accordance with the Project Agreement. For the purposes of Sections 25.13, 25.14, 25.15 and 25.16 of the Project Agreement, “New Metrolinx Infrastructure” means “New Metrolinx Infrastructure or a component thereof”.
- 1.376 “**New Railway Company Infrastructure**” means the New Third Party Infrastructure to be designed and built by Project Co in accordance with the Project Agreement and the specifications of the Railway Companies as of the Technical Submission Deadline.
- 1.377 “**New Salvation Army Infrastructure**” means the New Third Party Infrastructure to be designed and built by Project Co for the Salvation Army in accordance with the Project Agreement. For the purposes of Sections 25.13, 25.14, 25.15 and 25.16 of the Project Agreement, “New Salvation Army Infrastructure” means the “New Salvation Army Infrastructure or a component thereof.”
- 1.378 “**New Third Party Infrastructure**” means new public realm, highway, subway, utility, bus and railway infrastructure, as described in Schedule 15 - Output Specifications, to be installed, relocated, upgraded, abandoned, reinstated, restored, designed and/or built by Project Co, for third parties,
- (a) in accordance with the Project Agreement; and
  - (b) in the case of the New Railway Company Infrastructure and the New Utility Company Infrastructure, the specifications of the Railway Companies and the specifications of the Utility Companies, respectively and as of the Technical Submission Deadline.

For clarity, New Third Party Infrastructure includes New TTC Infrastructure, New Metrolinx Infrastructure, New City Infrastructure, New Salvation Army Infrastructure, New Utility Company Infrastructure and New Railway Company Infrastructure.

- 1.379 “**New TTC Infrastructure**” means the New Third Party Infrastructure to be designed and built by Project Co for the Toronto Transit Commission in accordance with the Project Agreement. For the purposes of Sections 25.13, 25.14, 25.15 and 25.16 of the Project Agreement, “New TTC Infrastructure” means “New TTC Infrastructure or a component thereof”.
- 1.380 “**New Utility Company Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, abandoned, reinstated, restored, designed and/or built by Project Co in accordance with the Project Agreement and the specifications of the Utility Companies as of the Technical Submission Deadline or, with respect to the New City Utility Infrastructure, the City’s specifications in its capacity as a Utility Company with reference to the applicable City standard as of August 2013.
- 1.381 “**Noise and Vibration Control Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.382 “**Noise and Vibration Survey**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.383 “**Non-Affiliate Contractor**” means a Subcontractor (of the Construction Contractor) that is not an Affiliate of Project Co, the Construction Contractor or the Maintenance and Rehabilitation Contractor and that is responsible for one or more parcel(s) of Works identified for Non-Affiliate Contractors in the Non-Affiliate Contractor Plan.
- 1.384 “**Non-Affiliate Contractor Plan**” means the plan set out in Schedule 42 – Non-Affiliate Contractor Plan.
- 1.385 “**Non-Conformance**” has the meaning given in Schedule 11 – Quality Management.
- 1.386 “**Non-Conformance Tracking System**” has the meaning given in Schedule 11 - Quality Management.
- 1.387 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.388 “**Non-Disclosure Agreement**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.389 “**Non-Project Co Cause**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.390 “**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).
- 1.391 “**Notice**” has the meaning given in Section 61.1(a) of the Project Agreement.
- 1.392 “**Notice of Dispute**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.393 “**Notice Period**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.

- 1.394 “**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.
- 1.395 “**Off-Peak Period**” has the meaning given in Schedule 15 – Output Specifications.
- 1.396 “**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.
- 1.397 “**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.
- 1.398 “**Ontario Heritage Act (Ontario)**” means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended from time to time.
- 1.399 “**Ontario Infrastructure and Lands Corporation Act, 2011 (Ontario)**” means the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Sch. 32, as amended from time to time.
- 1.400 “**Operations Control Centre**” or “**OCC**” has the meaning given in Schedule 15 – Output Specifications.
- 1.401 “**Operator**” means any person directly engaged by Metrolinx to carry out the Operator Tasks.
- 1.402 “**Operator Tasks**” means all of the tasks to be performed by the Operator in connection with the operation of the ECLRT System.
- 1.403 “**Operator Transition**” has the meaning given in Section 26.7(a) of the Project Agreement.
- 1.404 “**Operator Transition Notice**” has the meaning given in Section 26.7(b) of the Project Agreement.
- 1.405 “**Order**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.406 “**Other Contractor**” means an Additional Contractor or a Third Party Contractor.
- 1.407 “**Other Works**” means the Additional Works and the Third Party Works.
- 1.408 “**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 – Maintenance and Rehabilitation Requirements.
- 1.409 “**Overbuild Specifications**” means the specifications related to the Bayview Development set out in Article 3.14(a)(ix)(A) of Schedule 15-2, Part 5.



- 1.410 “**Ownership**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.411 “**PA Parties**” or “**PA Party**” has the meaning given in Schedule 6 - Independent Certifier Agreement.
- 1.412 “**Painshare Adjustment**” has the meaning given in Schedule 8 – Energy Matters.
- 1.413 “**Party**” means either the HMQ Entities or Project Co, and “**Parties**” means collectively the HMQ Entities and Project Co, but, for greater certainty, such definitions do not include MOI.
- 1.414 “**Party Representative**” and “**Party Representatives**” have the meanings given in Schedule 27 - Dispute Resolution Procedure.
- 1.415 “**Passenger**” means a natural person using any segment of the Eglinton Crosstown LRT.
- 1.416 “**Passenger Facility Availability Failure Hours**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.417 “**Passenger Facility Event**” had the meaning given in Schedule 20 – Payment Mechanism.
- 1.418 “**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.
- 1.419 “**Payment Adjustment Report**” has the meaning given in Section 34.6(i)(ii) of the Project Agreement.
- 1.420 “**Payment Commencement Date**” means the date that is two (2) Business Days after the Substantial Completion Date.
- 1.421 “**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 the Bank of Nova Scotia 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.
- 1.422 “**Payment Mechanism**” means the payment mechanism set out in Schedule 20 - Payment Mechanism.
- 1.423 “**Payment Periods**” means the payment periods of one calendar month (as adjusted in this definition) established by HMQ Entities 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.

- 1.424 “**Peak Period**” has the meaning given in Schedule 15 – Output Specifications.
- 1.425 “**Performance Audit**” has the meaning given in Section 31.1(a) of the Project Agreement.
- 1.426 “**Performance Criteria**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.427 “**Performance Guarantees**” means, collectively, the Construction Guarantees and the Maintenance and Rehabilitation Guarantees. “**Performance Guarantee**” means any one of them.
- 1.428 “**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.
- 1.429 “**Performance Security**” means the performance security required pursuant to Article 19 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.430 “**Permits, Licences and Approvals**” means the HMQ Permits, Licences and Approvals and the Project Co Permits, Licences and Approvals.
- 1.431 “**Permitted Borrowing**” means:
- (a) any advance to Project Co under the Lending Agreements;
  - (b) any additional financing approved by HMQ Entities 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 HMQ Entities’ liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.432 “**Permitted CGP PLA Date Revision**” has the meaning given in Section 20.17(a)(ii) of the Project Agreement.
- 1.433 “**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 HMQ Entities in respect of the Project.

- 1.434 “**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.
- 1.435 “**Phase 1 and Phase 2 Environmental Site Assessment Reports**” means the reports set out in Appendix B to this Schedule 1 – Definitions and Interpretation.
- 1.436 “**Police Service**” means the Royal Canadian Mounted Police, the Ontario Provincial Police, the Toronto Police Service and any other law enforcement agency with jurisdiction pursuant to Applicable Law, as applicable.
- 1.437 “**Pre-Existing Environmental Site Conditions**” means the environmental condition of the Lands as set out in the Environmental Reports.
- 1.438 “**Preparatory Activities**” has the meaning given in Schedule 15 – Output Specifications.
- 1.439 “**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.
- 1.440 “**Procurement Monitoring and Implementation Plan**” means the plan set out in Schedule 41 – Procurement Monitoring and Implementation Plan.
- 1.441 “**Product**” or “**Products**” means material, machinery, equipment and fixtures forming the New City Infrastructure, New Metrolinx Infrastructure or the New TTC Infrastructure, as applicable, but does not include machinery and equipment used to prepare, fabricate, convey or erect the New City Infrastructure, New Metrolinx Infrastructure, or the New TTC Infrastructure, as applicable, which is referred to as construction machinery and equipment.
- 1.442 “**Professional Engineer**” means a professional engineer licensed by Professional Engineers Ontario to practice in the Province of Ontario.
- 1.443 “**Prohibited Act**” has the meaning given in Section 60.1(a) of the Project Agreement.
- 1.444 “**Prohibited Acts Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.445 “**Project**” has the meaning given in the recitals to the Project Agreement.
- 1.446 “**Project Agreement**” has the meaning given in the recitals to the Project Agreement.
- 1.447 “**Project Agreement Arbitration**” has the meaning given in Schedule 27- Dispute Resolution Procedure.
- 1.448 “**Project Co**” means [REDACTED] and any successor or permitted assign.
- 1.449 “**Project Co Communications Protocol**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.

- 1.450 “**Project Co Construction Communications Plan**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.451 “**Project Co Event of Default**” has the meaning given in Section 45.1(a) of the Project Agreement.
- 1.452 “**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.
- 1.453 “**Project Co Operator Transition Services**” has the meaning given in Section 26.7(a) of the Project Agreement.
- 1.454 “**Project Co Party**” means:
- (a) the Construction Contractor;
  - (b) the Maintenance and Rehabilitation Contractor;
  - (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); 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.
- 1.455 “**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 – HMQ 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 HMQ Permits, Licences and Approvals.
- 1.456 “**Project Co Proposal Extracts**” means the documents attached as Schedule 13 - Project Co Proposal Extracts.
- 1.457 “**Project Co Representative**” means the person designated as such by Project Co on or prior to Commercial Close and any permitted replacement.
- 1.458 “**Project Co System Infrastructure**” means the Eglinton Crosstown LRT, excluding, for clarity, the New Third Party Infrastructure.

- 1.459 “**Project Co System Infrastructure Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.460 “**Project Co System Infrastructure Performance Demonstration**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.461 “**Project Co Variation Notice**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.462 “**Project Co’s Expiry Transition Process Asset Preservation Work Schedule**” has the meaning given in Schedule 15 – Output Specifications.
- 1.463 “**Project Data**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.464 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.
- 1.465 “**Project Insurance Change**” has the meaning given in Section 7.1(f) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.466 “**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 HMQ Entities, 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 Maintenance and Rehabilitation Services, including the maintenance, rehabilitation, improvement and testing of the Project Co System Infrastructure;
  - (c) any other Project Operations; or
  - (d) the Project Agreement.
- 1.467 “**Project Operations**” means:
- (a) the performance of the Works;
  - (b) the performance of the Maintenance and Rehabilitation Services; and
  - (c) the performance of all other obligations of Project Co under the Project Agreement.
- 1.468 “**Project Term**” means the period commencing on Commercial Close and expiring at midnight on the Termination Date.
- 1.469 “**Proponent**” has the meaning given in the Request for Proposals.
- 1.470 “**Proprietor**” has the meaning given in Section 52.6(a) of the Project Agreement.

- 1.471 “**Protesters**” has the meaning given in Section 9.7(a) of the Project Agreement.
- 1.472 “**Province**” means Her Majesty the Queen in right of Ontario.
- 1.473 “**Province Person Third Party Beneficiaries**” has the meaning given in Section 64.17(a)(i) of the Project Agreement.
- 1.474 “**Province Persons**” means HMQ Parties, including for clarity the Operator, 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; or
  - (b) contractors of HMQ Entities 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.
- 1.475 “**Qualifying Tender**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.476 “**Quality Audit**” has the meaning given in Schedule 11 – Quality Management.
- 1.477 “**Quality Documentation**” means all documentation to be prepared, submitted (where applicable) and implemented by Project Co in accordance with Schedule 11 – Quality Management.
- 1.478 “**Quality Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.479 “**Quality Management System**” has the meaning given in Schedule 11 – Quality Management.
- 1.480 “**Quality Plans**” means (i) the Quality Manual; (ii) the Design Quality Management Plan; (iii) the Construction Quality Management Plan; (iii) the Maintenance and Rehabilitation Quality Management Plan; (iv) the Traffic Quality Management Plan; (v) the Environmental Quality Management Plan; and the Audit of Temporary Traffic Management (all as defined in Schedule 11 – Quality Management) to be prepared, submitted and implemented by Project Co in accordance with Schedule 11 – Quality Management.
- 1.481 “**Rail Transit Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the design, construction, maintenance or rehabilitation of rail transit systems
- 1.482 “**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.

- 1.483 “**Railway Company**” means the Canadian National Railway, the Canadian Pacific Railway, 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.
- 1.484 “**Railway Order**” means any order of the Canadian Transportation Agency:
- (a) granted in favour of HMQ Entities 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.
- 1.485 “**Readiness for Revenue Service**” has the meaning given in Schedule 14 – Commissioning.
- 1.486 “**Record Drawings**” has the meaning given by the Professional Engineers of Ontario as those drawings prepared and sealed by the reviewing engineer after verifying in detail the actual conditions of the completed project.
- 1.487 “**Recovery Amount**” has the meaning given in Section 56.3(g) of the Project Agreement.
- 1.488 “**Rectification Time**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.489 “**Redundant THESL Solution**” or “**RTS**” has the meaning given in Schedule 15 – Output Specifications.
- 1.490 “**Refinancing**” has the meaning given in Schedule 28 - Refinancing.
- 1.491 “**Reimbursement Event**” has the meaning given in Section 32.5(a) of the Project Agreement.
- 1.492 “**Reinstatement Plan**” has the meaning given in Section 30.2(a) of the Project Agreement.
- 1.493 “**Reinstatement Work**” has the meaning given in Section 30.1(a) of the Project Agreement.

- 1.494 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Rail Transit Specific Change in Law.
- 1.495 “**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 HMQ Entities from time to time, and that conviction remains in effect at that time and is one for which a pardon has not been granted.
- 1.496 “**Relevant Insurance**” has the meaning given in Section 7.1(g) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.497 “**Relevant Insurance Inception Date**” has the meaning given in Section 7.1(h) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.498 “**Relief Event**” has the meaning given in Section 43.1(a) of the Project Agreement.
- 1.499 “**Remedial Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.500 “**Replacement Operator**” has the meaning given in Section 26.7(a) of the Project Agreement.
- 1.501 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on December 19, 2013, as amended from time to time.
- 1.502 “**Response**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.503 “**Response Time**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.504 “**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, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under Provincial statute, other than offences under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder;



- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
  - (e) is subject to a material claim of HMQ Entities 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 HMQ Entities’ view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or
  - (f) has a material interest in the production of tobacco products.
- 1.505 “**Revenue Service**” has the meaning given in Schedule 15 – Output Specifications.
- 1.506 “**Revenue Service Hours**” has the meaning given in Schedule 15 – Output Specifications.
- 1.507 “**Revenue Service Vehicle Kilometres**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.508 “**Revenue Vehicle Deficiency**” means a defect or deficiency in a Revenue Vehicle such that the Revenue Vehicle does not meet those Revenue Vehicle Technical Specifications that are not Technical Specifications (Built to Specification).
- 1.509 “**Revenue Vehicle Design and Manufacturing Data**” has the meaning given in Schedule 36 - Vehicles.
- 1.510 “**Revenue Vehicle Manufacturer**” has the meaning given in Schedule 36 – Vehicles.
- 1.511 “**Revenue Vehicle NDA**” has the meaning given in Schedule 36 – Vehicles.
- 1.512 “**Revenue Vehicle Technical Specifications**” has the meaning given in Schedule 36 – Vehicles.
- 1.513 “**Revenue Vehicles**” has the meaning given in Schedule 15 – Output Specifications”.
- 1.514 “**Review Procedure**” means the procedure set out in Schedule 10 - Review Procedure.
- 1.515 “**Revised Project Co System Infrastructure Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.516 “**Road Cut Permit – Major Construction (Civil Works and Utility Relocation)**” means the utility cut permit as set out in City of Toronto By-law No. 359-2010, as it relates to those portions of the City Road Allowance required by Project Co for the Works.
- 1.517 “**Road Section**” has the meaning given in Schedule 7 – Mobility Matters.

- 1.518 “**Road Vehicles**” has the meaning given in Schedule 15 – Output Specifications”.
- 1.519 “**Room Availability Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.520 “**Safety and Security Management Committee**” has the meaning given in Schedule 15 – Output Specifications.
- 1.521 “**Safety Management Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.522 “**Salvation Army**” means the Governing Council of The Salvation Army in Canada and any successors thereto.
- 1.523 “**Salvation Army Jointly Developed Materials**” has the meaning given in Section 51.4(a)(iv) of the Project Agreement.
- 1.524 “**Schedule**” means a schedule to the Project Agreement.
- 1.525 “**Scheduled Final Completion Date**” means March 28, 2022.
- 1.526 “**Scheduled Passenger Facility Hours**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.527 “**Scheduled Revenue Service Vehicle Kilometres**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.528 “**Scheduled Substantial Completion Date**” means September 29, 2021, as such date may be amended pursuant to Section 40 of the Project Agreement.
- 1.529 “**Section 35.1(c) Payment**” has the meaning given in Section 35.1(c) of the Project Agreement.
- 1.530 “**Security**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.531 “**Security Documents**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.532 “**Security Management Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.533 “**Senior Debt Amount**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.534 “**Senior Debt Makewhole**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.535 “**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.

- 1.536 “**Senior Lenders**” means the financial institutions from time to time listed as Lenders in Schedule 1.1A to the Common Terms and Intercreditor Agreement and the registered or beneficial holders from time to time of the bonds issued by Project Co pursuant to the Bond Indenture and any supplemental indenture in relation thereto, together with their successors and permitted 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.
- 1.537 “**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.
- 1.538 “**Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.539 “**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.
- 1.540 “**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.
- 1.541 “**Site Conditions**” means the condition of the Lands, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.

- 1.542 “**Small Works**” means any works, including facilities and equipment, of a minor nature that are requested by HMQ Entities 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 Maintenance and Rehabilitation Work.
- 1.543 “**Special Senior Debt Amount**” has the meaning given in Section 41.5(a)(ii) of the Project Agreement.
- 1.544 “**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.
- 1.545 “**SRT**” has the meaning given in Schedule 15 – Output Specifications.
- 1.546 “**Stakeholders**” means individuals and organizations with an interest in the Project, including those listed in Schedule 15 - Output Specifications, but excluding HMQ Entities.
- 1.547 “**Standard Operating Procedures**” has the meaning given in Schedule 15 – Output Specifications.
- 1.548 “**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.
- 1.549 “**Standby Letter of Credit**” has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.550 “**Start-Up Meeting**” has the meaning given in Section 20.4(a) of the Project Agreement.
- 1.551 “**Station**” means a fully-enclosed passenger station with below-grade centre platforms for a light rail transit system as described in Schedule 15-2 Part 5 – Facilities, including the footprint of such station. For clarity, at Mt. Dennis and Kennedy, the grade referred to by “below-grade” in this definition is the ‘Bus Terminal’ level and the ‘existing parking lot’ level respectively, as opposed to the ‘Eglinton Avenue’ level.
- 1.552 “**Station Area**” has the meaning given in Schedule 40 – Door Access Matters.
- 1.553 “**Station Plaza**” has the meaning given in Schedule 15 – Output Specifications.
- 1.554 “**Station Plaza Licence**” has the meaning given in Section 26.1(b) of the Project Agreement.

- 1.555 “**Station Plaza Licencee**” has the meaning given in Section 26.1(b) of the Project Agreement.
- 1.556 “**Step-In Period**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.557 “**Stop**” means an at-grade passenger stop for a light rail transit system as described in Schedule 15-2 Part 5 – Facilities, including the footprint of such stop.
- 1.558 “**Structures**” has the meaning given in Schedule 15 – Output Specifications.
- 1.559 “**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.
- 1.560 “**Subcontractor Losses**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.561 “**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.
- 1.562 “**Submittal**” means a Works Submittal or a Maintenance and Rehabilitation Submittal.
- 1.563 “**Subsequent Indebtedness Notice**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.564 “**Substantial Completion**” means the point at which the Project Co System Infrastructure and the New Third Party Infrastructure have been completed in accordance with the Project Agreement; a certificate of substantial performance of the Works is published pursuant to Section 32(1) of the CLA; and 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.
- 1.565 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.3 of the Project Agreement.
- 1.566 “**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.
- 1.567 “**Substantial Completion Notice**” has the meaning given in Section 25.3(b) of the Project Agreement.
- 1.568 “**Substantial Completion Payment**” means \$[REDACTED].
- 1.569 “**Substantial Completion Payment Commencement Date**” means the date that is two Business Days after the Substantial Completion Date.

- 1.570 “**Substitute**” has the meaning given in the applicable Direct Agreement.
- 1.571 “**Subsurface Utility Engineering (SUE) Reports**” means:
- (a) Overall Project Report: Subsurface Utility Engineering Services Eglinton Crosstown LRT for Transit City, (October 2011), Prepared By: TSH/TBE Subsurface Utility Engineers;
  - (b) Report: Subsurface Utility Engineering Services - Keele Station - Eglinton Scarborough Crosstown LRT for Transit Expansion Department, (September 2012), Prepared By: T2 Utility Engineers;
  - (c) Subsurface Engineering Study - Eglinton Crosstown LRT for Hatch Mott MacDonald, (February 2013), Prepared By: Multiview Locates Inc.;
  - (d) Report: Subsurface Utility Engineering Services - Eglinton-Yonge LRT Station for Stantec/HDR, (April 2013), Prepared By: T2 Utility Engineers;
  - (e) Subsurface Utility Engineering Report - Eglinton Crosstown LRT and Sheppard LRT Subsurface Utility Engineering (SUE) Investigation for AFP Phase, (May 2014), Prepared By: Multiview Locates Inc.; and
  - (f) Subsurface Utility Engineering Report - Eglinton Crosstown LRT and Sheppard LRT Subsurface Utility Engineering (SUE) Investigation for AFP Phase, (November 2014), Prepared By: Multiview Locates Inc.
- 1.572 “**Subway**” has the meaning given in Schedule 15 – Output Specifications.
- 1.573 “**Suitable Substitute**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.574 “**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.
- 1.575 “**System Event**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.576 “**System Extension**” has the meaning given in Schedule 39 – System Extension.
- 1.577 “**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.
- 1.578 “**Systems**” has the meaning given in Schedule 15 – Output Specifications.
- 1.579 “**Target Global Adjustment Peak Demand**” is defined in Schedule 8 – Energy Matters.
- 1.580 “**Target Global Adjustment Peak Demand (Late Completion)**” is defined in Section 20.19(b)(i) of the Project Agreement.

- 1.581 “**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 HMQ Taxes.
- 1.582 “**Technical Reports**” means the Environmental Reports, the Geotechnical Reports and the Archaeological Reports.
- 1.583 “**Technical Specifications (Built to Specification)**” has the meaning given in Schedule 36 – Vehicles.
- 1.584 “**Temporary Street Occupancy Permit**” means the consent(s) and permit(s) to perform street work and for temporary street occupation as set out in City of Toronto By-law No. 375-2012, as such consent(s) and permit(s) are related to those portions of the City Road Allowance required by Project Co for the Works.
- 1.585 “**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.
- 1.586 “**Third Party Arbitration**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.587 “**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.
- 1.588 “**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).
- 1.589 “**Third Party Litigation**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.590 “**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.

- 1.591 “**Threshold Equity Sale Amount**” means the amount which, if paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital, would result in an Implied Equity Value that, if 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, would result in an Equity Sale IRR equal to the Threshold Equity Sale IRR.
- 1.592 “**Threshold Equity Sale IRR**” means [REDACTED] %.
- 1.593 “**Tier**” is defined in the Toronto Green Standard.
- 1.594 “**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.
- 1.595 “**Toronto Transit Commission**” or “**TTC**” means the Toronto Transit Commission and its successors.
- 1.596 “**Total CGP Capital Costs**” means the price bid by Project Co for the design and construction of the CGP, in the amount of \$[REDACTED].
- 1.597 “**Total CGP Operations and Maintenance Cost**” means the price bid by Project Co for the operations and maintenance of the CGP (including life cycle but excluding cost associated with the Energy Toggling Function), in the total amount of \$[REDACTED] million (to be paid through the life of the Maintenance Period).
- 1.598 “**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.
- 1.599 “**Traffic and Transit Management Plan**” or “**TTMP**” has the meaning given in Schedule 15 – Output Specifications.
- 1.600 “**Traffic Control Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.601 “**Traffic Quality Manager**” has the meaning given in Schedule 11 – Quality Management.
- 1.602 “**Trespasser**” has the meaning given in Section 9.7(a) of the Project Agreement.
- 1.603 “**TTC Jointly Developed Materials**” has the meaning given in Section 51.4(a)(iii) of the Project Agreement.
- 1.604 “**TTC Lands**” has the meaning given in Schedule 35 – Lands.



- 1.605 “**TTC Zone of Influence**” means all areas within 60 metres of any Existing TTC Infrastructure (other than minor surface infrastructure, including bus stops), within which all Works in respect of Existing TTC Infrastructure, New TTC Infrastructure, or Project Co System Infrastructure is subject to review and approval by the TTC in accordance with Schedule 10 – Review Procedure and Schedule 15 – Output Specifications.
- 1.606 “**Tunnel Contractor**” has the meaning given in Schedule 38 – Tunnels.
- 1.607 “**Tunnel Contracts**” has the meaning given in Schedule 38 – Tunnels.
- 1.608 “**Tunnel Design**” has the meaning given in Schedule 38 – Tunnels.
- 1.609 “**Tunnel Design and Construction Data**” has the meaning given in Schedule 38 – Tunnels.
- 1.610 “**Tunnel Inspection**” has the meaning given in Schedule 38 – Tunnels.
- 1.611 “**Tunnel Section Acceptance**” has the meaning given in Schedule 38 – Tunnels.
- 1.612 “**Tunnel Section Completion Period**” has the meaning given in Schedule 38 – Tunnels.
- 1.613 “**Tunnel Section Security and Maintenance Handover**” has the meaning given in Schedule 38 – Tunnels.
- 1.614 “**Tunnel Section Security and Maintenance Handover Date**” has the meaning given in Schedule 38 – Tunnels.
- 1.615 “**Tunnels**” has the meaning given in Schedule 15 – Output Specifications.
- 1.616 “**Underground Station Construction Activities**” means construction, modification, rehabilitation, reinstatement and/or rectification works that are carried out for deep excavation involving cut and cover method with shoring and struts/tiebacks and/or mining method in respect of a Station itself. For clarity, Underground Station Construction Activities do not include Construction Activities that are shallow open cut without the need of shoring or Construction Activities carried out in respect of Project Co System Infrastructure (such as existing utility diversion or new utility installation) other than the Stations themselves.
- 1.617 “**Underground Station Works Unknown Geotechnical Conditions**” is defined in Section 16.7(a) of the Project Agreement.
- 1.618 “**Uninsurable Event**” means any event which arises directly and solely from an Uninsurable Risk.
- 1.619 “**Uninsurable Risk**” has the meaning given in Schedule 25 - Insurance and Performance Security Requirements to the Project Agreement.
- 1.620 “**UP Express**” means Union Pearson Express, an operating division of Metrolinx, and its successors.

- 1.621 “**Utilities**” means energy/power supplies, communications, data transmission and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste and storm water.
- 1.622 “**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.
- 1.623 “**Utility Company**” means the owner or operator of any Utility Infrastructure.
- 1.624 “**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.
- 1.625 “**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 “City Utility Work”.
- 1.626 “**Variation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.627 “**Variation Confirmation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.628 “**Variation Directive**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.629 “**Variation Enquiry**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.630 “**Variation Procedure**” means the procedure set out in Schedule 22 - Variation Procedure.
- 1.631 “**Vehicle Contract**” has the meaning given in Schedule 36 - Vehicles.
- 1.632 “**Vehicle Contract Specifications**” has the meaning given in Schedule 36 - Vehicles.
- 1.633 “**Vehicle Kilometres Availability Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.634 “**Vehicle Manufacturer**” means Bombardier Transportation Canada Inc., as manufacturer of the Revenue Vehicles.
- 1.635 “**Vehicle Services**” means the maintenance and rehabilitation services in respect of the Vehicles as set out Schedule 15 - Output Specifications and Schedule 36 – Vehicles.

- 1.636 “**Vehicles**” means, collectively, the Revenue Vehicles and the Maintenance Vehicles but, for clarity, excludes the Road Vehicles.
- 1.637 “**Warning Notice**” has the meaning given in Section 31.4(a) of the Project Agreement.
- 1.638 “**Warranty Work**” is defined in Section 25.15(b) of the Project Agreement.
- 1.639 “**West Portal**” has the meaning given in Schedule 15 – Output Specifications.
- 1.640 “**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.
- 1.641 “**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.
- 1.642 “**Works**” means the design, construction, installation, testing, commissioning and completion of the Project Co System Infrastructure and the New Third Party Infrastructure, including rectification of any Minor Deficiencies, Warranty Work, and any other activities required to enable or facilitate the commencement of the Maintenance and Rehabilitation Services, and all other work under the Project Co Permits, Licences and Approvals, except for (i) all work which is expressly described in Schedule 34 – HMQ Permits, Licences and Approvals as being the responsibility of HMQ Entities, and (ii) any HMQ Commissioning.
- 1.643 “**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.
- 1.644 “**Works Committee**” has the meaning given in Section 11.1(a) of the Project Agreement.
- 1.645 “**Works Report**” has the meaning given in Section 22.5(a) of the Project Agreement.

- 1.646 “**Works Schedule**” means the schedule to be prepared and submitted by Project Co in accordance with Section 22.2 of the Project Agreement.
- 1.647 “**Works Submittal**” has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.
- 1.648 “**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 Maintenance and Rehabilitation 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 HMQ Entities' 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 HMQ Entities they shall be construed and interpreted as synonymous and to read “Project Co shall” or “HMQ Entities 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 HMQ Entities 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.

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**APPENDIX A**  
**ARCHAEOLOGICAL REPORTS**

1. Stage 1 Archaeological Assessment (AA) of: Proposed Eglinton Crosstown Light Rail Transit Corridor & Pearson Airport Surface Connection Study Area, (November, 2009), Prepared By: Archeoworks Inc.
2. Stage 2 Archaeological Assessment (AA) Report for: Proposed Eglinton Crosstown Light Rail Transit Corridor & Pearson Airport Surface Connection Study Area, (November, 2009), Prepared By: Archeoworks Inc.
3. Stage 1 Archaeological Assessment, Kennedy Station Redevelopment, (March 2010), Prepared By: Archaeological Services Inc.
4. Stage 2 Archaeological Assessment for Kennedy Station, December 2013), Prepared by: AECOM.
5. Stage 1 Archaeological Assessment 3500 Eglinton Avenue and 55 Ray Avenue, Toronto Ontario, (March, 2011), Prepared By: Golder Associates.
6. Stage 2 Archaeological Assessment 3500 Eglinton Avenue and 55 Ray Avenue, Toronto, Ontario, (August, 2014), Prepared By: AMEC.
7. Stage 2 Archaeological Assessment 3500 Eglinton Avenue and 55 Ray Avenue, Toronto, Ontario, Supplementary Documentation (N/A), Prepared By: AMEC.
8. Stage 3 Archaeological Assessment 3500 Eglinton Avenue, Toronto, ON (October 2014), Prepared By: AMEC.



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

1. Phase One Environmental Site Assessment, Keelestdale Park, Toronto, Ontario PIN 10499-0032 and PIN 10499-0276 – June 8, 2011
2. Phase Two Environmental Site Assessment, Proposed Construction Staging Areas Eglinton Transit Expansion Project, Keelestdale Park, Toronto, Ontario PIN 10499-0032 and PIN 10499-0276 – June 30, 2011
3. Phase One Environmental Site Assessment, Commercial Property, 1230 Weston Road, Toronto, Ontario, PIN 10509-0173, August 6, 2013
4. Phase Two Environmental Site Assessment 1230 and 1234 Weston Road, Toronto, Ontario, PIN 1059-0173, November 15, 2013
5. Phase One Environmental Site Assessment 1 Hollis Rd, Toronto, Ontario, PIN 10509-0421, July 16, 2014
6. Phase One Environmental Site Assessment, 3500 Eglinton Avenue West, Toronto, Ontario, July 2012
7. Phase Two Environmental Site Assessment, 3500 Eglinton Ave West, Toronto, Ontario, October 2012
8. Phase One Environmental Site Assessment, 36 Keelestdale Drive, Toronto, Ontario PIN 10334-0605, May 21, 2014
9. Phase Two Environmental Site Assessment, 36 Keelestdale Drive, Toronto, Ontario PIN 10334-0605, June 9, 2014
10. Phase One Environmental Site Assessment, Institutional Property, 2688-2690 Eglinton Avenue West, 2 Trethewey Drive, Toronto, Ontario PIN 10495-0050 - September 30, 2013
11. Intentionally deleted
12. Phase Two Environmental Site Assessment, Southeast Corner 2688 Eglinton Avenue West, Toronto, Ontario PIN 10495-0050 - October 11, 2013
13. Phase One Environmental Site Assessment, Metro Ambulance Station 19, 2660 Eglinton Avenue West, Toronto, Ontario PIN 10496-0077 – June 5, 2013
14. Phase Two Environmental Site Investigation, 2660 Eglinton Avenue West, Toronto, Ontario PIN 10496-0077 – June 12, 2013
15. Phase One Environmental Site Assessment, Laneway Behind 2660 Eglinton Ave West, Toronto, Ontario PIN 10496-0076 - June 16, 2014

16. Phase One Environmental Site Assessment, Commercial Property, 2643 Eglinton Avenue West, Toronto, Ontario PIN 10497-0196 - August 30, 2013
17. Phase Two Environmental Site Investigation, 2643 Eglinton Avenue West, Toronto, Ontario PIN 10497-0196 - September 9, 2013
18. Phase One Environmental Site Assessment, Commercial Property, 2641 Eglinton Avenue West, Toronto, Ontario PIN 10497-0197 - August 23, 2013
19. Phase Two Environmental Site Investigation, 2641 Eglinton Avenue West, Toronto, Ontario PIN 10497-0197 - September 3, 2013
20. Phase One Environmental Site Assessment, Commercial Property, 2615 Eglinton Avenue West, Toronto, Ontario PIN 10497-0240 – April 26, 2012
21. Phase Two Environmental Site Investigation, 2615 Eglinton Avenue West, Toronto, Ontario PIN 10497-0240 - April 2, 2012
22. Phase One Environmental Site Assessment, 1611 Eglinton Avenue West, Toronto, Ontario PIN 10451-0023 – October 6, 2014
23. Phase Two Environmental Site Assessment, 1611 Eglinton Avenue West, Toronto, Ontario PIN 10451-0023 – November 18, 2014
24. Phase One Environmental Site Assessment, 1435 Eglinton Ave W, Toronto, Ontario PIN 10459-0131, May 14, 2014
25. Phase One Environmental Site Assessment, 1350 Eglinton Ave W and Road ROW, Toronto, Ontario PIN 10466-0188 & 10446-0509, May 24 2014
26. Phase One Environmental Site Assessment, 1250 Eglinton Ave W, Toronto, Ontario PIN 10446-0580, June 4 2014
27. Phase One Environmental Site Assessment, Commercial Property, 111 Yore Road, Toronto, Ontario PIN 10496-0067 - April 27, 2012
28. Phase Two Environmental Site Assessment, 111 Yore Road, Toronto, Ontario PIN 10496-0067 - September 30, 2013
29. Phase One Environmental Site Assessment, 2 – 4 Croham Road, Toronto, Ontario, PIN 10491-0286, November 5, 2013
30. Phase One Environmental Site Assessment, Residential Property, 1858 Keele Street, Toronto, Ontario PIN 10496-0075 – October 10, 2013
31. Phase Two Environmental Site Assessment, 1858 Keele Street, Toronto, Ontario PIN 10496-0075 – October 11, 2013

32. Phase One Environmental Site Assessment, Commercial Property, 2116 Eglinton Avenue West, Toronto, Ontario PIN 10484-0257 – December 6, 2013
33. Phase Two Environmental Site Assessment, 2116 Eglinton Avenue West Toronto, Ontario PIN 10484-0257 – February 24, 2014
34. Phase One Environmental Site Assessment, Commercial Property, 1815 Eglinton Avenue West, Toronto, Ontario PIN 10450-0045 - March 8, 2013 (Final)
35. Phase One Environmental Site Assessment, Commercial Property, PIN 10451-0020, 1619 Eglinton Avenue West, Toronto, Ontario – November 18, 2013
36. Phase Two Environmental Site Assessment, PIN 10451-0020, 1619 Eglinton Avenue West, Toronto, Ontario – April 29, 2014
37. Phase One Environmental Site Assessment, Commercial Property, PIN 10448-0426, 1584 Eglinton Avenue West, Toronto, Ontario - November 14, 2013
38. Phase Two Environmental Site Assessment, PIN 10448-0426, 1584 Eglinton Avenue West, Toronto, Ontario – April 8, 2014
39. Phase One Environmental Site Assessment, 861 - 875 Eglinton Avenue West, Toronto, Ontario, PIN 10461-0263, 10461-0264 and 10461-0265 - March 11, 2014
40. Phase One Environmental Site Assessment Version Two, 861 - 875 Eglinton Avenue West, Toronto, Ontario, PIN 10461-0263, 10461-0264 and 10461-0265 - March 11, 2014
41. Phase Two Environmental Site Assessment, 861-875 Eglinton Ave West, Toronto, Ontario, PIN 10461-0263, 10461-0264 and 10461-0265 - April 4, 2014.pdf
42. Phase One Environmental Site Assessment, Commercial Property, 870 Eglinton Avenue West, Toronto, Ontario PIN 21166-0270 - April 26, 2012
43. Phase Two Environmental Site Investigation, 870 Eglinton Avenue West, Toronto, Ontario PIN 21166-0270 - April 2, 2012
44. Phase One Environmental Site Assessment, Commercial Property, 842 Eglinton Avenue West, Toronto, Ontario PIN 21167-0322 - July 19, 2013
45. Phase Two Environmental Site Assessment, 842 Eglinton Avenue West, Toronto, Ontario PIN 21167-0322 - July 31, 2013
46. Phase One Environmental Site Assessment, Fire Hall and Former Police Station, 625-641 Eglinton Avenue West, Toronto, Ontario PIN 21175-0040 - August 13, 2013
47. Phase Two Environmental Site Assessment, 625-641 Eglinton Avenue West, Toronto, Ontario PIN 21175-0040 - July 17, 2013

48. Phase One Environmental Site Assessment, Commercial Property, 574 Eglinton Avenue West, Toronto, Ontario PIN 21167-0200 - June 5, 2013
49. Phase Two Environmental Site Assessment, 574 Eglinton Avenue West, Toronto, Ontario PIN 21167-0200 - August 23, 2013
50. Phase One Environmental Site Assessment, Apartment Building, 321 Chaplin Crescent, Toronto, Ontario PIN 21180-0481 - August 9, 2013
51. Phase Two Environmental Subsurface Investigation, 321 Chaplin Crescent, Toronto, Ontario PIN 21180-0481 - July 17, 2013
52. Phase One Environmental Site Assessment, 276-278 Eglinton Ave West, Toronto, Ontario PIN 21169-0201, June 11 2014
53. Phase One Environmental Site Assessment, 274 Eglinton Ave West, Toronto, Ontario PIN 21169-0202, October 8, 2014
54. Phase One Environmental Site Assessment, 2190 Yonge Street, Toronto, Ontario PIN 21172-0309 – April 28, 2014
55. Interim Phase One Environmental Site Assessment - Yonge & Eglinton Station, Toronto, Ontario, PINs 21171-0363, 21171-0034, 21136-0414, 21136-0409 and 21134-0045 – August 29, 2014
56. Phase One Environmental Site Assessment, Part of 200 Hanna Road, Toronto, Ontario PIN 10386-0140 – October 7, 2013
57. Phase One Environmental Site Assessment, 282 Eglinton Ave East, Toronto, Ontario PIN 10363-0008 – August 20, 2014
58. Phase Two Environmental Site Assessment, 282 Eglinton Ave East, Toronto, Ontario PIN 10363-0008 – August 21, 2014
59. Phase One Environmental Site Assessment Version 2, 393 Eglinton Ave East, Toronto, Ontario PIN 21126-0096 - May 26, 2014
60. Phase Two Environmental Site Assessment, 393 Eglinton Ave East, Toronto, Ontario PIN 21126-0096 - November 12, 2014
61. Phase One Environmental Site Assessment, 656 Eglinton Avenue East, Toronto, Ontario PIN 10364-0168 - February 5, 2014
62. Phase Two Environmental Site Assessment, 656 Eglinton Avenue East, Toronto, Ontario, PIN 10364-0168, July 2, 2014
63. Phase One Environmental Site Assessment, 250-256 Laird Drive, Toronto, Ontario PIN 10385-0227, July 31, 2014

64. Phase One Environmental Site Assessment, Canada Post Property, 2439 Eglinton Avenue East, Toronto, Ontario PIN 06437-0253 - November 18, 2011
65. Phase Two Environmental Site Investigation, 2439 Eglinton Avenue East, Toronto, Ontario PIN 06437-0253 - March 22, 2012
66. Phase One Environmental Site Assessment, 2467 Eglinton Ave East, Toronto, Ontario, PIN 06493-0202, July 14, 2014
67. Phase One Environmental Site Assessment, Interim Report For Underground Stations in the West Section, ECLRT Project Corridor (Mt. Dennis Station to Yonge-Eglinton Interchange Station)- September 18, 2014 (Version 5)
68. Phase One Environmental Site Assessment, Interim Report For Underground Stations in the Central Section, ECLRT Project Corridor (Mt. Pleasant to Don Mills) –September 17, 2014 (Version 5)
69. Phase One Environmental Site Assessment, 15 Gervais Drive, Toronto, Ontario PIN 10113-0021, August 27, 2014
70. Phase One Environmental Site Assessment, Interim Report For At-Grade Stops in the East Section, ECLRT Project Corridor (Ferrand Stop to Ionview Stop) –September 12, 2014 (Version 5)
71. Phase Two Environmental Site Assessment Geo-Environmental Due Diligence Investigation For At-Grade Stops in the East Section (Ferrand Stop to Kennedy Station) of the ECLRT Corridor – October 30, 2014 (Version 5)
72. Phase Two Environmental Site Assessment Geo-Environmental Due Diligence Investigation For Underground Stations in the Central Section (Mt. Pleasant to Don Mills) of the ECLRT Project Corridor November 24, 2014 (Version 3)
73. Phase Two Environmental Site Assessment Geo-Environmental Due Diligence Investigation For Underground Stations in the West Section (Mt. Dennis to Yonge-Eglinton) of the ECLRT Project Corridor September 12, 2014 (Version 2)
74. Phase One Environmental Site Assessment, 320 Chaplin Crescent, Toronto, Ontario PIN 21167-0202 – December 3, 2014

**APPENDIX C  
DESIGNATED SUBSTANCE SURVEY REPORTS**

1. Designated Substances Survey Biennial Contract – Eglinton Avenue West, Toronto, Ontario – February 28, 2013
2. Designated Substances and Hazardous Materials Survey, 3500 Eglinton Ave West (Former Kodak Building) Toronto, ON.- PIN 06437-0253- May 14, 2014
3. Designated Substances and Hazardous Materials Survey, 1 Hollis, Toronto, ON, - PIN 10509-0388 – August 15, 2014
4. Designated Substances and Hazardous Materials Survey, 36 Keele Dale Drive, Toronto, ON, - PIN 10334-0605 – May 24, 2014
5. Designated Substances and Hazardous Materials Survey, 2660 Eglinton Avenue West, Toronto, ON – PIN – 10496-0077 – May 29, 2014
6. Designated Substances and Hazardous Materials Survey, 2643 Eglinton Avenue West, Toronto, ON – PIN 10497-0196 – October 3, 2013
7. Designated Substances and Hazardous Materials Survey, 2641 Eglinton Avenue West, Toronto, ON - PIN 10497-0197 - September 12, 2013
8. Designated Substances and Hazardous Materials Survey, 2615 Eglinton Avenue West, Toronto, ON - PIN 10497-0240 – October 3, 2013
9. Designated Substances and Hazardous Materials Survey, 1858 Keele Street, Toronto ON, PIN 10496-0075 – July 30, 2014
10. Designated Substances and Hazardous Materials Survey, 2/4 Croham Rd, Toronto, ON – PIN - 10491-0286 – October 3, 2013
11. Designated Substances and Hazardous Materials Survey, 1619 Eglinton Avenue West, Toronto, ON - PIN 10451-0020 - November 26, 2013
12. Designated Substances and Hazardous Materials Survey, 1615 Eglinton Avenue West, Toronto, ON - PIN 10451-0021 - October 3, 2013
13. Designated Substances and Hazardous Materials Survey, 1611 Eglinton Avenue West, Toronto, ON - PIN 10451-0023 - October 2, 2013
14. Asbestos Reassessment Services for Subway Stations and Tunnels, Eglinton West Subway Station, Eglinton Avenue, Toronto, Ontario – January 2013
15. Designated Substances and Hazardous Materials Survey, 1584 Eglinton Avenue West, Toronto, ON - PIN 10448-0426 - October 9, 2013

16. Designated Substances and Hazardous Materials Survey, 1300 Eglinton Avenue West, Toronto, ON – PIN 10446-0494 – February 7, 2014
17. Designated Substances and Hazardous Materials Survey, 868-870 Eglinton Avenue West, Toronto, ON - PIN 21166-0270 - September 12, 2013
18. Designated Substances and Hazardous Materials Survey, 861-875 Eglinton Ave West, Toronto, ON - PIN 10461-0263 – March 31, 2014
19. Designated Substances and Hazardous Materials Survey 842 Eglinton Ave West, Toronto ON - PIN 21167-0322 – March 10, 2014
20. Designated Substances and Hazardous Materials Survey, 625-641 Eglinton Avenue West, Toronto, ON - PIN 21175-0040 - September 19, 2013
21. Designated Substances and Hazardous Materials Survey, 276-278 Eglinton Avenue West, Toronto, ON - PIN 21169-0201 – May 26, 2014
22. Asbestos Reassessment Services for Subway Stations and Tunnels, Eglinton Subway Station, Yonge Street and Eglinton Avenue, Toronto, Ontario – January 2013
23. Designated Substances and Hazardous Materials Survey, 2190-2210 Yonge Street, Toronto, ON - PIN 21172-0309 - October 7, 2013
24. Designated Substances and Hazardous Materials Survey, 282 Eglinton Avenue East, Toronto, ON - PIN - 10363-0008 – July 31, 2014
25. Designated Substances and Hazardous Materials Survey, 250-256 Laird Dr., Toronto, ON - PIN 21169-0201 – August 26, 2014
26. Designated Substances and Hazardous Materials Survey – Condition Survey, Kennedy Station, 2455 Eglinton Avenue East, Toronto, Ontario – August 13, 2010
27. Designated Substances and Hazardous Materials Survey – Condition Survey, Kennedy Station and Substation, 2455 Eglinton Avenue East, Toronto, Ontario – May 7, 2012
28. Designated Substances and Hazardous Materials Survey, 2457 Eglinton Ave East, Toronto, ON – PIN 06437-0252 – March 12, 2014
29. Designated Substances and Hazardous Materials Survey, 2439 Eglinton Ave East, Toronto, ON - PIN 06437-0253 – June 9, 2014
30. Designated Substances and Hazardous Materials Survey, 2433 Eglinton Ave East, Toronto, ON - PIN 06437-0003 – June 9, 2014
31. Asbestos Reassessment Services for Subway Stations and Tunnels Kennedy Subway/SRT Station, Eglinton Ave. E., and Kennedy Rd., Toronto, Ontario – August 2012

32. Designated Substance and Hazardous Materials Survey, 574 Eglinton Ave W, Toronto, ON - PIN 21167-0200 - 574 Eglinton Ave W – February 26, 2014



**APPENDIX D  
CULTURAL HERITAGE REPORTS**

1. Cultural Heritage Resource Assessment Report: Built Heritage Resources & Cultural Heritage Landscapes, Preliminary Planning For a Transit Project Assessment Study Eglinton Crosstown Light Rail Transit (LRT) Martin Grove Road to Kennedy TTC Station, Lester B. Pearson International Airport Extension, (February 2010), Prepared by: Transit City Group
2. Cultural Heritage Assessment Report: Built Heritage Resources & Cultural Heritage Landscapes, Kennedy Station Re-development (April 2010), Prepared by: Archaeological Services Inc.
3. Cultural Heritage Assessment Report, Cultural Heritage Landscapes & Built Heritage Resources, Eglinton Crosstown LRT West Section Jane Station to Keele Street, City of Toronto, Ontario, (May, 2013), Prepared by: Unterman McPhail Associates
4. Eglinton Crosstown LRT Phase 1 Cultural Heritage Evaluation Report, (March 2013), Prepared by: Taylor Hazell Architects, Laurie Smith Heritage Consulting and Contentworks Inc.
5. Eglinton Crosstown LRT Phase 1 Cultural Heritage Evaluation Recommendations, (March 2013), Prepared by: Taylor Hazell Architects, Laurie Smith Heritage Consulting and Contentworks Inc.
6. Cultural Heritage Resource Evaluation Report – Weston Road & Eglinton Branch, Scotiabank 1151 Weston Road, PIN 10509-0380, Eglinton Crosstown LRT: West Section Jane Station to Keele Street, City of Toronto, Ontario, (June 2013), Prepared by: Unterman McPhail Associates
7. Metrolinx Heritage Committee Decision Form for Weston Road & Eglinton Branch of Scotiabank, 1151 Weston Road, PIN 10509-0380, (November 2013), Prepared by: Metrolinx
8. Cultural Heritage Evaluation Report, Kodak Building # 9, PIN 10334-0604, (July, 2012), Prepared by: Taylor Hazell Architects Inc.
9. Metrolinx Heritage Committee Decision Form for Kodak Building # 9, PIN 10334-0604, (September 2013), Prepared by: Metrolinx
10. Final Preliminary Heritage Impact Assessment for Adaptive Reuse, Kodak Building #9, PIN 10334-0604, (April 2014), Prepared by: ERA Architects Inc.
11. Cultural Heritage Resource Evaluation Report, Grade Separation: Eglinton Avenue West Eglinton Crosstown LRT: West Section Jane Station to Keele Street, City of Toronto, Ontario, (July 2013), Prepared by: Unterman McPhail Associates
12. Metrolinx Heritage Committee Decision Form for Grade Separation: Eglinton Avenue West, (November 2013), Prepared by: Metrolinx
13. Eglinton Crosstown Light Rail Transit: West Section Eglinton Avenue West Photography Drive Grade Separation Technical Evaluation and Analysis Memorandum, (July 2013), Prepared by: Unterman McPhail Associates

14. Cultural Heritage Documentation Report. Grade Separation: Eglinton Avenue West, Eglinton Crosstown LRT: West Section Jane Station to Keele Street, (November 2013), Prepared by: Unterman McPhail Associates
15. Cultural Heritage Evaluation Report for 2643 Eglinton Avenue West, PIN 10497-0196, (November 2013), Prepared by: ERA Architects Inc.
16. Metrolinx Heritage Committee Decision Form for 2643 Eglinton Avenue West, PIN 10497-0196, (November 2013), Prepared by: Metrolinx
17. Cultural Heritage Evaluation Report for 2641 Eglinton Avenue West, PIN 10497-0197, (November 2013), Prepared by: ERA Architects Inc.
18. Metrolinx Heritage Committee Decision Form for 2641 Eglinton Avenue West, PIN 10497-0197, (November 2013), Prepared by: Metrolinx
19. Cultural Heritage Evaluation Report for 1849 Eglinton Avenue West, PIN 10479-0327, (November 2013), Prepared by: ERA Architects Inc.
20. Metrolinx Heritage Committee Decision Form for 1849 Eglinton Avenue West, PIN 10479-0327, (November 2013), Prepared by: Metrolinx
21. Cultural Heritage Evaluation Report for 1845 Eglinton Avenue West, PIN 10479-0326, (November 2013), Prepared by: ERA Architects Inc.
22. Metrolinx Heritage Committee Decision Form for 1845 Eglinton Avenue West, PIN 10479-0326, (November 2013), Prepared by: Metrolinx
23. Cultural Heritage Evaluation Report for 1843 Eglinton Avenue West, PIN 10479-0326, (November 2013). Prepared by: ERA Architects Inc.
24. Metrolinx Heritage Committee Decision Form for 1843 Eglinton Avenue West, PIN 10479-0326, (November 2013), Prepared by: Metrolinx
25. Cultural Heritage Evaluation Report for 641 Eglinton Avenue West, PIN 21175-0040, (November 2013), Prepared by: ERA Architects Inc.
26. Metrolinx Heritage Committee Decision Form for 641 Eglinton Avenue West, PIN 21175-0040, (November 2013), Prepared by: Metrolinx
27. Heritage Impact Assessment for Adaptive Reuse, 641 Eglinton Ave. West, PIN 21175-0040, (June 2012), Prepared by: Taylor Hazel Architects Inc.
28. Final Preliminary Heritage Impact Assessment for Adaptive Reuse, 641 Eglinton Ave. West, PIN 21175-0040, (May 2014), Prepared by: ERA Architects Inc.
29. Cultural Heritage Resource Evaluation Report, Ontario Science Centre 770 Don Mills Road, PIN 10369-0143, Eglinton Crosstown LRT: East Section Laird Drive to Don Valley Parkway, City of Toronto, Ontario, (August 2013), Prepared by: Unterman McPhail Associates

30. Metrolinx Heritage Committee Decision Form for Ontario Science Centre 770 Don Mills Road, PIN 10369-0143, (January 2014), Prepared by: Metrolinx
31. Final Preliminary Heritage Impact Assessment for Ontario Science Centre 770 Don Mills Road, PIN 10369-0143, (May 2014), Prepared by: ERA
32. Cultural Heritage Resource Evaluation Report for 2439 Eglinton Ave East, PIN 6347-0253, (December 2013), Prepared by: ERA
33. Metrolinx Heritage Committee Decision Form for 2439 Eglinton Ave East, PIN 6347-0253, (January 2014), Prepared by: ERA
34. Cultural Heritage Resource Evaluation Report for Eglinton West Station, Parts 1 and 2, 1300 Eglinton Ave West , PIN 10446-0494, (March 2014), Prepared by: ERA
35. Metrolinx Heritage Committee Decision Form for Eglinton West Station, 1300 Eglinton Ave West , PIN 10446-0494, (March 2014), Prepared by: Metrolinx
36. Final Preliminary Heritage Impact Assessment for Eglinton West Station, 1300 Eglinton Ave West, PIN 10446-0494, (August, 2014), Prepared by: ERA
37. Cultural Heritage Resource Evaluation Report for Eglinton Interchange Station, Parts 1 and 2, 2190 Yonge Street, PIN 21172-0309, (March 2014), Prepared by: ERA
38. Metrolinx Heritage Committee Decision Form for Eglinton Interchange Station, 2190 Yonge Street, PIN 21172-0309, (March 2014), Prepared by: Metrolinx
39. Final Preliminary Heritage Impact Assessment for Eglinton Interchange Station, 2190 Yonge Street, PIN 21172-0309, (August, 2014), Prepared by: ERA
40. Cultural Heritage Resource Evaluation Report for 2690 Eglinton Ave West (York Collegiate), Parts 1 and 2, PIN 10495-0050, (February 2014), Prepared by: ERA
41. Metrolinx Heritage Committee Decision Form for 2690 Eglinton Ave West (York Collegiate), PIN 10495-0050, (March 2014), Prepared by: Metrolinx
42. Final Preliminary Heritage Impact Assessment for 2690 Eglinton Ave West (York Collegiate), PIN 10495-0050, (July, 2014), Prepared by: ERA
43. Cultural Heritage Resource Evaluation Report for 574 Eglinton Ave West, PIN 10479-0326, (November 2013), Prepared by: ERA
44. Metrolinx Heritage Committee Decision Form for 574 Eglinton Ave West, PIN 10479-0326, (January 2014), Prepared by: Metrolinx
45. Cultural Heritage Resource Evaluation Report for 256-258 Eglinton Ave East, PIN 21136-0191, (July 2014), Prepared by: ERA

46. Metrolinx Heritage Committee Decision Form for 256-258 Eglinton Ave East, PIN 21136-0191, (August 2014), Prepared by: Metrolinx
47. Final Preliminary Heritage Impact Assessment for 256-258 Eglinton Ave East, PIN 21136-0191, (August 2014), Prepared by: ERA
48. Cultural Heritage Resource Evaluation Report for 7 Eglinton Ave East, PIN 21134-005, (Date: TBD), Prepared by: ERA
49. Metrolinx Heritage Committee Decision Form for 7 Eglinton Ave East, PIN 21134-005, (Date: TBD), Prepared by: Metrolinx

**APPENDIX E  
GEOTECHNICAL REPORTS**

<b>Report Title</b>	<b>Author/Firm</b>	<b>Project Component</b>	<b>Report Date</b>	<b>Report Type &amp; Status</b>
Geotechnical Data Report-Phase 1 and Phase 2 Geotechnical Investigation for Eglinton-(Final GDR ECLRT-Keele to Yonge_V.3.)	Coffey Geotechnics	Eglinton Crosstown West Tunnel	October 29, 2012 (original report dated December 23, 2011)	final geotechnical data report geo-phase 1 & geo-phase 2
Final Geotechnical Data Report (GDR) and Hydrogeological Investigation Report Eglinton-Scarborough Crosstown Twin Tunnels (Keele to Yonge)	Coffey Geotechnics	Eglinton Crosstown West Tunnel	December 23, 2011	final geotechnical data report & hydrogeology report
Geo-Engineering Factual Data Report, TTC Eglinton Cross Town LRT West Portal , Toronto, ON Version 3	SPL Consultants Ltd.	West Portal	March 28, 2011	final geotechnical data report
Geo-Engineering Factual Data Report, TTC Eglinton Cross Town LRT Keele Bridge, Toronto, ON Version 4	SPL Consultants Ltd.	West Portal	June 20, 2011	final geotechnical data report
Geotechnical Data Report, Phase 1 Geotechnical Investigation for Twin Tunnels (Keele to Laird), Eglinton Crosstown LRT, Version 2.0	Coffey Geotechnics	Eglinton Crosstown Tunnel	July 8, 2011	final geotechnical data report
Geotechnical Data Report, Phase 1 and Phase 2 Geotechnical Investigation for Eglinton-Scarborough Crosstown Transit Yonge to Laird), Version 1.0	Coffey Geotechnics	Eglinton Crosstown East Tunnel	August 15, 2012 (issued June 25, 2013)	final geotechnical data report geo-phase 1 & geo-phase 2
Geo-Engineering Factual Data Report, Pre-AFP Design for East Alignment from Between DON Mills Station and Kennedy Station, Eglinton-Scarborough Crosstown(ESC), Rapid Transit Implementation with Metrolinx, Toronto, ON (Final Report Version 3)	SPL Consultants Ltd.	At-Grade	June 24, 2013	final geotechnical data report

Report Title	Author/Firm	Project Component	Report Date	Report Type & Status
Geo-Engineering Factual Data Report for Pre-AFP Design Mount Dennis Station Metrolinx/Rapid Transit Implementation with Metrolinx Toronto, Ontario (Final Report, Version 3)	SPL Consultants Ltd.	Mt. Dennis Station	July 12, 2013	final geotechnical data report geo-phase 2
Geo-Engineering Factual Data Report, TTC ECLRT Keele Station, Hydro Tower No. 15, Toronto, ON Final Report Version 2	SPL Consultants Ltd.	Keele Station	December 6, 2011	final geotechnical data report
Geotechnical Data Report, Preliminary Geotechnical Investigation for Proposed Keele Station, Eglinton Crosstown LRT, Version 1.0	Coffey Geotechnics	Keele Station	May 9, 2011 (issued June 25, 2013)	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report for 30% Design Target Keele Station TTC Transit Expansion, Eglinton Crosstown LRT Toronto, Ontario (Version 4)	SPL Consultants Ltd.	Keele Station	January 22, 2013	final geotechnical data report geo-phase 2
Geotechnical Data Report, Preliminary Geotechnical Investigation for Proposed Caledonia Station, Eglinton Crosstown LRT, Version 1.0	Coffey Geotechnics	Caledonia Station	May 24, 2011 (issued June 25, 2013)	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report for 30% Design Target Caledonia Station Metrolinx/TTC Transit Expansion, Toronto, Ontario (Final Report, Version 2)	SPL Consultants Ltd.	Caledonia Station	December 20, 2012	final geotechnical data report geo-phase 2
Geotechnical Data Report, Preliminary Geotechnical Investigation for Proposed Oakwood Station, Eglinton Crosstown LRT, Version 1.0	Coffey Geotechnics	Oakwood Station	June 27, 2011 (issued June 25, 2013)	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report for Pre-AFP Design Oakwood Station Rapid Transit Implementation Project Toronto, Ontario (Version 2)	SPL Consultants Ltd.	Oakwood Station	Aug 2, 2013	final geotechnical data report geo-phase 2

Report Title	Author/Firm	Project Component	Report Date	Report Type & Status
Geotechnical Data Report, Preliminary Geotechnical Investigation for Proposed Dufferin Station, Eglinton Crosstown LRT, Version 1.0	Coffey Geotechnics	Dufferin Station	June 6, 2011 (issued June 25, 2013)	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report for 30% Design Target Dufferin Station Metrolinx/TTC Transit Expansion, Toronto, Ontario (Final Report, Version 3)	SPL Consultants Ltd.	Dufferin Station	February 14, 2013	final geotechnical data report geo-phase 2
Geotechnical Data Report, Preliminary Geotechnical Investigation for Proposed Allen Station, Eglinton Crosstown LRT, Version 1.0	Coffey Geotechnics	Allen Station	April 24, 2011 (issued Aug 6, 2013)	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report for 30% Design Target Allen (Eglinton West) Station Metrolinx/TTC Transit Expansion, Toronto, Ontario (Final Report, Version 2)	SPL Consultants Ltd.	Allen Station	March 3, 2013	final geotechnical data report geo-phase 2
Geotechnical Data Report, Preliminary Geotechnical Investigation for Proposed Bathurst Station, Eglinton Crosstown LRT, Version 1.0	Coffey Geotechnics	Bathurst Station	June 16, 2011 (issued June 25, 2013)	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report for 30% Design Target Bathurst Station TTC Transit Expansion, Eglinton Crosstown LRT Toronto, Ontario (Version 2)	SPL Consultants Ltd.	Bathurst Station	January 22, 2013	final geotechnical data report geo-phase 2
Geotechnical Data Report, Preliminary Geotechnical Investigation for Proposed Chaplin Station, Eglinton Crosstown LRT, Version 1.0	Coffey Geotechnics	Chaplin Station	June 30, 2011 (issued June 25, 2013)	final geotechnical data report geo-phase 1

Report Title	Author/Firm	Project Component	Report Date	Report Type & Status
Geo-Engineering Factual Data Report for 30% Design Target Chaplin Station TTC Transit Expansion, Eglinton Crosstown LRT Toronto, Ontario (Final Report, Version 3)	SPL Consultants Ltd.	Chaplin Station	February 25, 2013	final geotechnical data report geo-phase 2
Geotechnical Data Report, Preliminary Geotechnical Investigation for Proposed Avenue Station, Eglinton Crosstown LRT, Version 1.0	Coffey Geotechnics	Avenue Station	December 15, 2011 (issued June 25, 2013)	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report for Pre-AFP Design Avenue Station Metrolinx/Rapid Transit Implementation with Metrolinx Toronto, Ontario (Final Report, Version 2)	SPL Consultants Ltd.	Avenue Station	July 12, 2013	final geotechnical data report geo-phase 2
Geotechnical Data Report, Preliminary Geotechnical Investigation for Proposed Yonge Station, Eglinton Scarborough Crosstown Transit, Version 1.0	Coffey Geotechnics	Yonge Station	May 23, 2013 (issued June 25, 2013)	final geotechnical data report geo-phase 1
Geotechnical Data Report, Preliminary Geotechnical Investigation for Proposed Mt. Pleasant Station, Eglinton Scarborough Crosstown Transit, Version 1.0	Coffey Geotechnics	Mt. Pleasant Station	June 18, 2012 (issued June 25, 2013)	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report for Pre-AFP Design Mount Pleasant Station Rapid Transit Implementation with Metrolinx Toronto, Ontario (Final Report, Version 2)	SPL Consultants Ltd.	Mt. Pleasant Station	June 11, 2013	final geotechnical data report geo-phase 2
Geotechnical Data Report on Preliminary Geotechnical Investigation for Proposed Bayview Station Eglinton Scarborough Crosstown Transit, Version 1.0	Coffey Geotechnics	Bayview Station	July 03, 2012 (issued June 25, 2013)	final geotechnical data report geo-phase 1



Report Title	Author/Firm	Project Component	Report Date	Report Type & Status
Geo-Engineering Factual Data Report for Pre-AFP Design Bayview Station Metrolinx/Rapid Transit Implementation with Metrolinx Toronto, Ontario (Final Report, Version 2)	SPL Consultants Ltd.	Bayview Station	July 12, 2013	final geotechnical data report geo-phase 2
Geotechnical Data Report on Preliminary Geotechnical Investigation for Proposed Laird Station Eglinton Scarborough Crosstown Transit	Coffey Geotechnics	Laird Station	July 27, 2012 (issued June 25, 2013)	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report for Pre-AFP Design Laird Station Metrolinx/Rapid Transit Implementation with Metrolinx Toronto, Ontario (Final Report, Version 3)	SPL Consultants Ltd.	Laird Station	June 5, 2013	final geotechnical data report geo-phase 2
Geo-Engineering Factual Data Report Preliminary Design Leslie Station Transit Expansion, Eglinton Crosstown LRT Toronto, Ontario (Final Report, Version 2)	SPL Consultants Ltd.	Leslie Stop	June 14, 2013	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report Preliminary Design Don Mills Station Transit Expansion, Eglinton Crosstown LRT Toronto, Ontario (Final Report, Version 2)	SPL Consultants Ltd.	Don Mills Station	June 14, 2013	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report for Pre-AFP Design Don Mills Station Metrolinx/Rapid Transit Implementation with Metrolinx Toronto, Ontario (Final Report, Version 3)	SPL Consultants Ltd.	Don Mills Station	July 5, 2013	final geotechnical data report geo-phase 2
Geo-Engineering Factual Data Report Preliminary Design Wynford Station Transit Expansion, Eglinton Crosstown LRT Toronto, Ontario (Final Report, Version 2)	SPL Consultants Ltd.	Wynford Stop	June 14, 2013	final geotechnical data report geo-phase 1

Report Title	Author/Firm	Project Component	Report Date	Report Type & Status
Geo-Engineering Factual Data Report Preliminary Design Bermondsey Station Transit Expansion, Eglinton Crosstown LRT Toronto, Ontario (Final Report, Version 2)	SPL Consultants Ltd.	Bermondsey Stop	June 14, 2013	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report Preliminary Design Victoria Park Station Transit Expansion, Eglinton Crosstown LRT Toronto, Ontario (Final Report, Version 2)	SPL Consultants Ltd.	Victoria Park Stop	June 14, 2013	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report, Preliminary Design, Warden Station, TTC Transit Expansion, Eglinton Cross Town LRT, Toronto, ON Final Report Version 2)	SPL Consultants Ltd.	Warden Stop	June 14, 2013	final geotechnical data report geo-phase 1
Geo-Engineering Factual Data Report, Preliminary Design, Birchmount Station, TTC Transit Expansion, Eglinton Cross Town LRT, Toronto, Ontario, (Final Report, Version 2)	SPL Consultants Ltd.	Birchmount Stop	June 14, 2013	final geotechnical data report geo-phase 1
Geotechnical Investigation Report, Eglinton Maintenance & Storage Facilities (MSF), 3500 Eglinton Avenue West, Toronto, Ontario	AMEC Environment & Infrastructure	Eglinton MSF	August 30, 2013	final geotechnical data report
Summary of Geo-Environmental Investigation Program, Eglinton Maintenance & Storage Facilities (MSF), 3500 Eglinton Avenue West, Toronto, Ontario	AMEC Environment & Infrastructure	Eglinton MSF	January 4, 2013	final geo-environmental
Geotechnical Data Report Eglinton - Scarborough Crosstown Twin Tunnels (Yonge to Brentcliffe) Ver 2	Coffey Geotechnics	Eglinton Crosstown East Tunnel	July 12, 2013	final geotechnical data report
Geo-Engineering Factual Data Report Deep Benchmark Installation Eglinton Crosstown LRT – West Stations Metrolinx/TTC Transit Expansion Toronto, Ontario (Draft Report, Version 1)	SPL Consultants Ltd.	Eglinton Crosstown West Tunnel	October 15, 2013	final deep benchmark

Report Title	Author/Firm	Project Component	Report Date	Report Type & Status
Preliminary Geotechnical Data report - Phase 1 Geotechnical Investigation for Eglinton Scarborough Crosstown Transit (Laird to Kennedy)	Coffey Geotechnics	At-Grade	September 27, 2012 (issued September 09, 2013)	final geotechnical data report
Geo-Engineering Factual Data Report - Eglinton Crosstown LRT - At-Grade Alignment from Brentcliffe Road to Ferrand Drive Metrolinx/Rapid Transit Implementation, Toronto, Ontario (Final Report, Version 2)	SPL Consultants Ltd.	At-Grade	November 18, 2013	final geotechnical data report
Slope Stability Assessment and Set-Back Considerations, Eglinton Black Creek -Maintenance & Storage Facility, 3500 Eglinton Avenue West, Toronto, Ontario	AMEC Environment & Infrastructure	Eglinton MSF	February 7, 2013	final slope stability
Hydrogeological Investigation Report Eglinton-Scarborough Crosstown Twin Tunnels (Keele To Yonge) Toronto Ontario Version 2	Coffey Geotechnics	Eglinton Crosstown West Tunnel	May 17, 2012	final hydrogeology report
Hydrogeological Investigation Report Eglinton-Scarborough Crosstown Twin Tunnels (Yonge To Donmills) Toronto Ontario Version 2	Coffey Geotechnics	Eglinton Crosstown East Tunnel	January 31, 2013 (revised March 15, 2013)	final hydrogeology report
Hydrogeological Investigation Report, Eglinton Scarborough Crosstown Twin Tunnels (Keele to Yonge) Toronto, Ontario	Coffey Geotechnics	Eglinton Crosstown West Tunnel	March 15, 2012	hydrogeology report
Hydrogeology Study in Support of A Permit to Take Water Application- TTC Keele Dale Park Bridge, Toronto, Ontario	Coffey Geotechnics	west portal	November 2, 2011	final hydrogeology report
Hydrogeological Assessment in Support of PTTW Watermain Relocation and Jet Grout Test Shaft, Caledonia Station, Toronto, Ontario	SPL Consultants Ltd.	Caledonia Station	April 19, 2013	final hydrogeology report
Hydrogeological Investigation Eglinton LRT - Pre-AFP Design Mount Pleasant Station Toronto, Ontario	SPL Consultants Ltd.	Mt. Pleasant Station	July 8, 2013	final hydrogeology report

Report Title	Author/Firm	Project Component	Report Date	Report Type & Status
Hydrogeological Investigation Eglinton LRT - Pre-AFP Design Bayview Station Toronto, Ontario	SPL Consultants Ltd.	Bayview Station	June 4, 2013	final hydrogeology report
Hydrogeological Investigation Eglinton LRT - Pre-AFP Design Laird Station Toronto, Ontario	SPL Consultants Ltd.	Laird Station	August 2, 2013	final hydrogeology report
Hydrogeological Investigation Eglinton LRT - Pre-AFP Design Don Mills Station Toronto, Ontario	SPL Consultants Ltd.	Don Mills Station	February 13, 2013	final hydrogeology report
Hydrogeological Investigation Report, Eglinton - Scarborough Crosstown Twin Tunnels (Yonge to Brentcliffe), Toronto, Ontario Version 3	Coffey Geotechnics	Eglinton Crosstown East Tunnel	June 10, 2013 (revised on July 22,) 2013	final hydrogeology report
Hydrogeological Investigation Program - Maintenance and Storage Facility (MSF), 3500 Eglinton Avenue West, Toronto, Ontario	AMEC Environment & Infrastructure	Eglinton MSF	August 2013	final hydrogeology report
Hydrogeological Investigation Eglinton LRT-Pre-AFP Design Avenue Station Toronto, Ontario	SPL Consultants Ltd.	Avenue Station	August 2013	final hydrogeology report
Hydrogeological Investigation Eglinton LRT-Pre-AFP Design Mt. Dennis Station Toronto, Ontario	SPL Consultants Ltd.	Avenue Station	October 29, 2013	final hydrogeology report
Geo-Engineering Factual Data Report - Eglinton Crosstown LRT - Black Creek Elevated Guideway Metrolinx/Rapid Transit Implementation, Toronto, Ontario (Final Report, Version 3)	SPL Consultants Ltd.	Elevated Guideway	November 13, 2013	final geotechnical data report
Hydrogeological Investigation Eglinton LRT - Pre-AFP Design Oakwood Station Toronto, Ontario	SPL Consultants Ltd.	Oakwood Station	December 12, 2013	final hydrogeology report
Borehole Inventory and groundwater Level Monitoring Report along Eglinton Avenue from Mt. Dennis to Don Mill Station, Toronto, Ontario	SPL Consultants Ltd.	Mt. Dennis Station to Don Mills Station	23-Dec-2013	final groundwater monitoring
Borehole Inventory and groundwater Level Monitoring Report along Eglinton Avenue from Mt. Dennis to	SPL Consultants Ltd.	Mt. Dennis Station to Don Mills	15-Jan-2014	final groundwater monitoring

Report Title	Author/Firm	Project Component	Report Date	Report Type & Status
Don Mill Station, Toronto, Ontario		Station		
Geo-engineering Factual Data Report Eglinton Crosstown LRT – At-Grade Alignment from Ferrand Drive to Kennedy Road Metrolinx/Rapid Transit Implementation Toronto Ontario (Final Report, Version 1)	SPL Consultants Ltd.	Ferrand Drive to Kennedy Station (At grade)	16-Jan-2014	final geotechnical data report
Geo-engineering Factual Data Report Allen Road Alternative Traffic Staging North of Eglinton Avenue West Metrolinx/Rapid Transit Implementation Toronto, Ontario (Final Report, Version 1)	SPL Consultants Ltd.	Eglinton Crosstown West Tunnel - Allen Road	20-Dec-2013	final geotechnical data report
ECLC1-15 Oakwood Station Jet Grout Core Sampling and In Situ Permeability Tests	SPL Consultants Ltd.	Eglinton Crosstown West Tunnel - Oakwood Station	27-Feb-2014	final report
Test Holes to Expose Foundations - 861-875 Eglinton Ave. W., North Facade (Peveril Hill Road North to Bathurst St.) Eglinton Cross Town LRT Project	SPL Consultants Ltd.	Bathurst Station	March 25, 2013	final testpit for foundation
Supplementary Geotechnical Investigation – Bedrock Characterization Contract TC85-20C Eglinton Cross Town LRT West Portal	SPL Consultants Ltd.	West Portal	May 24, 2011	final GER
Contamination overview study in support of Environmental Assessment for Eglinton Crosstown LRT (Renforth Avenue To Kennedy Road) and Airport Link (Alternative C) Toronto, Ontario	Coffey Geotechnics	Complete Corridor	March 3, 2010	final EA study
Borehole Inventory and Groundwater Level Monitoring Report along Eglinton Avenue from Mount Dennis to Don Mills Station, Toronto, ON	SPL Consultants Ltd.	Project Corridor	November 26, 2013	final groundwater monitoring

Report Title	Author/Firm	Project Component	Report Date	Report Type & Status
Geo-Engineering factual data report, supplementary geotechnical, investigation, Avenue Station, Metrolinx/Rapid Transit Implementation, Toronto, Ontario, (Final Report, Version 2)	SPL Consultants Ltd.	Avenue Station	December 10, 2013	final GDR
Geo-Engineering factual data report, supplementary geotechnical, investigation, Don Mills Station, Metrolinx/Rapid Transit Implementation, Toronto, Ontario, (Final Report, Version 2)	SPL Consultants Ltd.	Don Mills Station	December 10, 2013	final GDR
Reports on Geotechnical Investigation, RAY Avenue and Eglinton Avenue West, Bridge Widening, Georgetown South Line, Metrolinx-Go Transit, Toronto, Ontario	Thurber Engineering Limited	Mount Dennis	October 18, 2012	final geotechnical investigation
Geotechnical Data Report Supplementary Geotechnical Investigation for Proposed Mount Dennis Station Eglinton Crosstown Transit,	Coffey Geotechnics	Mt. Dennis Station	March 28, 2014	final GDR
Geo-Engineering Factual Data Report - Eglinton Crosstown LRT – Kennedy Station, Metrolinx/Rapid Transit Implementation, Toronto, Ontario, (Final Report, Version 1)	SPL Consultants Ltd.	Kennedy Station	June 10, 2014	final GDR
Geo-Engineering Factual Data Report Additional Geotechnical Investigation Yonge-Eglinton Interchange Station Metrolinx/Rapid Transit Implementation Toronto, Ontario (Final Report, Version 1)	SPL Consultants Ltd.	Yonge-Eglinton Interchange Station	May 13, 2014	final GDR
Environmental pre-screening site investigation Eglinton Crosstown LRT Project Transit Expansion Avenue LRT Station Eglinton Avenue East and Laird Drive Toronto, Ontario	SPL Consultants Ltd.	Avenue Station	September 27, 2012	final env pre-screening

Report Title	Author/Firm	Project Component	Report Date	Report Type & Status
Environmental pre-screening site investigation Eglinton Crosstown LRT Project Transit Expansion Mount Pleasant LRT Station Eglinton Avenue East and Mount Pleasant Road Toronto, Ontario	SPL Consultants Ltd.	Mt. Pleasant Station	September 27, 2012	final env pre-screening
Environmental pre-screening site investigation Eglinton Crosstown LRT Project Transit Expansion Bayview LRT Station Eglinton Avenue East and Bayview Avenue Toronto, Ontario	SPL Consultants Ltd.	Bayview Station	October 1, 2013	final env pre-screening
Eglinton LRT Asbestos Asphalt Coring, Designated Substances Survey Biennial Contract – Eglinton Avenue West, Toronto, Ontario	Coffey Geotechnics	West Tunnel	February 28, 2013	final-asphalt coring
Geo-Engineering Factual Data Report for Eglinton Crosstown Light rail Transit ECLE1-2H Eglinton-Yonge LRT Station, Yonge Station, Metrolinx rapid Transit Implementation Toronto, Ontario (Final Report, Version 2)	SPL Consultants Ltd.	Yonge Station	August 23, 2013	final GDR
Cross-hole seismic survey at eight (8) of the first twelve (12) stations for the proposed TTC Eglinton Rapid Transit, Toronto, Ontario	Geophysics GPR under Coffey Geotechnics Contract	8 Stations (West)	December 14, 2011	cross-hole seismic test
Baseline Environmental Investigation SRT Conversion– Temporary Bus Terminal 25 Borough Drive, Toronto, Ontario	AMEC Environment & Infrastructure	SRT	November 13, 2012	final baseline
Geotechnical Data Report Phase 1 and Phase 2 Geotechnical Investigation for Eglinton-Scarborough Crosstown Twin Tunnel (Yonge to Don Mills)	Coffey Geotechnics	East Tunnel	March 15, 2013	final GDR
Foundation Design Report - Keele Dale Park Bridge TTC Eglinton-Scarborough Crosstown	Coffey Geotechnics	East Tunnel	September 2, 2011	final GDR

Report Title	Author/Firm	Project Component	Report Date	Report Type & Status
Environmental Soil and Groundwater Investigation-Keelesdale Park, Toronto, Ontario	SPL Consultants Ltd.	Keelesdale park	June 28, 2013	final -audit env sampling
Final Letter Report - Bulk and Leachate Analysis, ECLC1-15 Strathearn/Flanders, Toronto, Ontario	AMEC Environment & Infrastructure	West Tunnel	August 7, 2013	final -audit env sampling
Environmental pre-screening site investigation Eglinton Crosstown LRT Project Transit Expansion Laird Station Eglinton Avenue East and Laird Drive Toronto, Ontario	SPL Consultants Ltd.	Laird Station	October 9, 2012	final env pre-screening
Geo-Engineering Factual Data Report Deep Benchmark Installation Eglinton Crosstown LRT – West Stations Metrolinx/TTC Transit Expansion Toronto, Ontario (Final Report, Version 2)	SPL Consultants Ltd.	West Tunnel	October 15, 2013	final DBM
Hydrogeological Investigation Report Eglinton-Scarborough Crosstown Twin Tunnels (Keele To Yonge) Toronto Ontario Version 2	Coffey Geotechnics	West Tunnel	May 17, 2012	final hydrogeology report
Hydrogeological Investigation Report Eglinton-Scarborough Crosstown Twin Tunnels (Yonge To Donmills) Toronto Ontario Version 2	Coffey Geotechnics	East Tunnel	January 31, 2013 (Revised March 15, 2013)	final hydrogeology report
Hydrogeological Investigation Report, Eglinton Scarborough Crosstown Twin Tunnels (Keele to Yonge) Toronto, Ontario	Coffey Geotechnics	West Tunnel	March 15, 2012	final hydrogeology report
Hydrogeology Study in Support of A Permit to Take Water Application- TTC Keelesdale Park Bridge, Toronto, Ontario	Coffey Geotechnics	West Portal	November 2, 2011	final hydrogeology report
Hydrogeological Investigation Program - Maintenance and Storage Facility (MSF), 3500 Eglinton Avenue West, Toronto, Ontario	AMEC Environment & Infrastructure	Eglinton MSF	August 1, 2013	final hydrogeology report



Report Title	Author/Firm	Project Component	Report Date	Report Type & Status
Hydrogeological Investigation Eglinton LRT-Pre-AFP Design Avenue Station Toronto, Ontario	SPL Consultants Ltd.	Avenue Station	August 1, 2013	final hydrogeology report
Hydrogeological Investigation Eglinton LRT-Pre-AFP Design Mt. Dennis Station Toronto, Ontario	SPL Consultants Ltd.	Avenue Station	October 29, 2013	final hydrogeology report
Borehole Inventory and Groundwater Level Monitoring Report along Eglinton Avenue from Mount Dennis to Don Mills Station, Toronto, ON	SPL Consultants Ltd.	Project Corridor	November 18, 2013	final groundwater monitoring
Final Hydrogeological Investigation Report-Oakwood Station	SPL Consultants Ltd.	Oakwood Station	December 12, 2013	final hydrogeology report
Borehole Inventory and groundwater Level Monitoring Report along Eglinton Avenue from Mt. Dennis to Don Mill Station, Toronto, Ontario	SPL Consultants Ltd.	Project Corridor	December 23 2013	final groundwater monitoring
Borehole Inventory and groundwater Level Monitoring Report along Eglinton Avenue from Mt. Dennis to Don Mill Station, Toronto, Ontario	SPL Consultants Ltd.	Project Corridor	January 15, 2014	final groundwater monitoring
Borehole Inventory and Groundwater Level Monitoring Report along Eglinton Avenue from Mount Dennis to Don Mills Station Toronto, Ontario	SPL Consultants Ltd.	Project Corridor	December 23, 2013	final groundwater monitoring
Borehole Inventory and Groundwater Level Monitoring Report along Eglinton Avenue from Mount Dennis to Don Mills Station Toronto, Ontario	SPL Consultants Ltd.	Project Corridor	January 15, 2014	final groundwater monitoring
Borehole Inventory and Groundwater Level Monitoring Report along Eglinton Avenue from Mount Dennis to Don Mills Station Toronto, Ontario	SPL Consultants Ltd.	Project Corridor	February 15, 2013	final groundwater monitoring
Hydrogeological Investigation for Proposed Mt. Dennis Station, Eglinton Crosstown Light Rail Transit (ECLRT) Project, Toronto, Ontario	Coffey Geotechnics	Mt. Dennis Station	March 7, 2014	final hydrogeology report
Borehole Inventory and Groundwater Level Monitoring Report along Eglinton Avenue from Mount Dennis	SPL Consultants Ltd.	Project Corridor	March 17, 2014	final groundwater monitoring

Report Title	Author/Firm	Project Component	Report Date	Report Type & Status
to Don Mills Station Toronto, Ontario				
Hydrogeological Assessment in Support of PTTW Watermain Relocation and Jet Grout Test Shaft, Caledonia Station, Toronto, Ontario	SPL Consultants Ltd.	Caledonia Station	April 19, 2013	final hydrogeology report
Hydrogeological Investigation Eglinton LRT - Pre-AFP Design Mount Pleasant Station Toronto, Ontario	SPL Consultants Ltd.	Mt. Pleasant Station	July 8, 2013	final hydrogeology report
Hydrogeological Investigation Eglinton LRT - Pre-AFP Design Bayview Station Toronto, Ontario	SPL Consultants Ltd.	Bayview Station	June 4, 2013	final hydrogeology report
Hydrogeological Investigation Eglinton Lrt - Pre-AFP Design Laird Station Toronto, Ontario	SPL Consultants Ltd.	Laird Station	August 2, 2013	final hydrogeology report
Hydrogeological Investigation Eglinton LRT - Pre-AFP Design Don Mills Station Toronto, Ontario	SPL Consultants Ltd.	Don Mills Station	February 2013	final hydrogeology report
Hydrogeological Investigation Report, Eglinton - Scarborough Crosstown Twin Tunnels (Yonge to Brentcliffe), Toronto, Ontario Version 3	Coffey Geotechnics	East Tunnel	6/10/2013 (revised on July 22,) 2013	final hydrogeology report
Hydrogeological Investigation Eglinton LRT - Pre-AFP Design Kennedy station	SPL Consultants Ltd.	Kennedy Station	September 4, 2014	final hydrogeology report
Borehole Inventory and Groundwater Level Monitoring Report along Eglinton Avenue from Mount Dennis to Don Mills Station Toronto, Ontario	SPL Consultants Ltd.	Project Corridor	August 18, 2014	final groundwater monitoring
Geo-Engineering Factual Data Report Additional Geotechnical Investigation Avenue Station and Laird Station (Version 2)	SPL Consultants Ltd.	Avenue and Laird Station	August 11, 2014	final GDR

<b>Report Title</b>	<b>Author/Firm</b>	<b>Project Component</b>	<b>Report Date</b>	<b>Report Type &amp; Status</b>
Borehole Inventory and Groundwater Level Monitoring Report along Eglinton Avenue from Mount Dennis to Don Mills Station Toronto, Ontario	SPL Consultants Ltd.	Project Corridor	September 19, 2014	final groundwater monitoring
Borehole Inventory and Groundwater Level Monitoring Report along Eglinton Avenue from Mount Dennis to Don Mills Station Toronto, Ontario	SPL Consultants Ltd.	Project Corridor	October 27, 2014	final groundwater monitoring

**APPENDIX F  
LISTED PROJECT CO PLAS**

Listed Project Co PLA	Number of Business Days for Final Determination by the City (City PLA Deadline)
<b>A1.0 – CITY PLANNING</b>	
A1.1 - Site Plan Review	[REDACTED]
A1.2 - Official Plan Amendment	[REDACTED]
A1.3 - Zoning By-Law Amendment	[REDACTED]
A1.4 - Minor Variance	[REDACTED]
A1.5 - Heritage Preservation Approval	[REDACTED]
A1.6 - Archaeological Assessment	[REDACTED]
<b>A2.0 – TORONTO BUILDING</b>	
A2.1 - Retaining Wall Permit and Shoring Permit	[REDACTED]
A2.2 - Building Permit - Major	[REDACTED]
A2.2 - Building Permit - Minor	[REDACTED]
A2.3 - Preliminary Project Review (PPR) or Zoning Compliance Certificate (ZCC)	[REDACTED]
A2.4 - Demolition Permit – non residential	[REDACTED]
A2.4 - Demolition Permit - residential	[REDACTED]
A2.5 - Site Services Permit (Optional; could be part of Building Permit)	[REDACTED]
A2.6 - Heating, Ventilation, Air Conditioning Permit (Optional; could be part of Building Permit)	[REDACTED]
A2.7 - Plumbing Permit (Optional; could be part of Building Permit)	[REDACTED]
A2.8 - Sign Permit/Sign Variance Permit	[REDACTED]

Listed Project Co PLA	Number of Business Days for Final Determination by the City (City PLA Deadline)
<b>A3.0 – PARKS, FORESTRY &amp; RECREATION</b>	
A3.1 - Injure or Remove City-Owned Tree Permit	[REDACTED]
A3.2 - Injure or Remove Trees on Private Property Permit	[REDACTED]
A3.3 - Injure or Remove Trees and/or Alter Grade in Ravine and Natural Features Protection bylaw area	[REDACTED]
A3.4 - Parks Access Agreement	[REDACTED]
<b>A4.0 – TRANSPORTATION SERVICES</b>	
A4.1 - Road Cut Permit – Major Construction (Civil Works and Utility Relocation)	[REDACTED]
A4.2 – Temporary Street Occupancy Permit, Site Access Permit	[REDACTED]
A4.3 – Permanent Closure of a Public Thoroughfare	[REDACTED]
<b>A5.0 – ENGINEERING &amp; CONSTRUCTION</b>	
A5.1 – Sewage Works Approval (Transfer of Review Program)	[REDACTED]
A5.2 – Watermain Approval (Drinking Water Works Permit)	[REDACTED]
<b>A6.0 – TORONTO WATER</b>	
A6.1 – Sewer Use Permit for Discharge of Groundwater in Sewer	[REDACTED]
A6.2 – Hydrant Use Permit	[REDACTED]
A6.3 – Temporary Unplanned Relocation of Distribution Watermains and All Sewers	[REDACTED]
A6.4 – Temporary Unplanned Relocation of Transmission Watermains	[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]

12794146.3

**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 HMQ Entities and in form and substance satisfactory to HMQ Entities, acting reasonably) is to be delivered by Project Co to HMQ Entities on or prior to the Financial Close Target Date:

- 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 Maintenance and Rehabilitation Contractor’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 the Construction Contract;
- 1.12 the Maintenance and Rehabilitation Contract;
- 1.13 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;
- 1.14 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;
- 1.15 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;
- 1.16 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
  - 1.17 a certificate of an officer of each Contractor substantially in the form attached as Appendix B to this Schedule 2;
  - 1.18 a certificate of an officer of each Guarantor substantially in the form attached as Appendix B to this Schedule 2;
  - 1.19 an original of the opinion from counsel to Project Co, each of the Contractors, each of the Guarantors and such other Project Co Parties as HMQ Entities may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to HMQ Entities and their counsel;
  - 1.20 a final Lane Closure Target Letter;
  - 1.21 a final Energy Target Letter;
  - 1.22 a final Door Closure Target Letter;
  - 1.23 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;
  - 1.24 evidence that the Construction Contractor has its Health and Safety Certification (or to the extent that the Construction Contractor does not have its Health and Safety Certification by Financial Close, evidence that the Construction Contractor has made an application to IHSA for its Health and Safety Certification); and
  - 1.25 such other documents as the Parties may agree, each acting reasonably.

## **2. DOCUMENTS TO BE DELIVERED BY HMQ ENTITIES**

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, where an HMQ Entity is a party to such document, executed by such HMQ Entity and, if applicable, any HMQ Party or Governmental Authority) is to be delivered by HMQ Entities to Project Co on or prior to the Financial Close Target Date:

- 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 Maintenance and Rehabilitation Contractor'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 HMQ 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; and
- 2.11 such other documents as the Parties may agree, each acting reasonably.

## APPENDIX A

## FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

- TO:** Ontario Infrastructure and Lands Corporation, as agent for Her Majesty The Queen in right of Ontario, as represented by the Minister of Economic Development, Employment and Infrastructure (“**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**”)  
collectively, the (“**HMQ Entities**”)
- TO:** The Minister of Economic Development, Employment and Infrastructure (the “**Minister**”)
- RE:** Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the [•] day of [•], 20• between the HMQ Entities and [•] (“**Project Co**”)
- 

1. The undersigned acknowledges that:
- (a) The Project will proceed as an alternative financing and procurement project under the MEDEI’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: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

**AND TO: THE MINISTER OF ECONOMIC DEVELOPMENT, EMPLOYMENT AND INFRASTRUCTURE**

**AND TO: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION AND METROLINX (collectively, the "HMQ ENTITIES")**

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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. Constatng 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 HMQ Entities 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 and maintain a new light rail transit system;
    - (2) a lenders' direct agreement between the Corporation, HMQ Entities and the Collateral Trustee;

(3) direct agreements between the Contractors, the Corporation, the Guarantors and HMQ Entities;

(4) **[Note: List other documents delivered at Financial Close.]**,

(collectively, the “**Documents**”); or

(ii) restrict or limit the authority of the directors or shareholders of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

## 2. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule “D”** are true and complete copies of the resolutions of the **[directors/shareholders]** of the Corporation (the “**Resolutions**”), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
- (i) the Articles, By-laws or the Unanimous Shareholders’ Agreement;
  - (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or **[Ontario]** governmental body by which it is bound;
  - (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound; or
  - (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination or award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there are no actions, suits, proceedings, or investigations pending or threatened in writing against the Corporation at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which the Corporation has received written notice and that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the Corporation or in any impairment of its ability to perform its obligations under the Documents, and the Corporation has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment.

- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or **[Ontario]** Governmental Authority which has not been obtained is required to permit the Corporation to execute and deliver the Documents.

**3. No Breach or Default**

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

**4. Specimen Signatures**

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

NAME	POSITION	SIGNATURE
		_____
		_____
		_____
		_____
		_____

**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 \_\_\_\_\_, 2015.

\_\_\_\_\_  
Name:

Title:



APPENDIX C

FORM OF PROJECT CO/PROJECT CO PARTY OPINION

[INSERT DATE]

Ontario Infrastructure and Lands Corporation  
777 Bay Street, 9th Floor  
Toronto, Ontario  
M5G 2C8

Metrolinx  
20 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario M5J 2W3

Blake, Cassels & Graydon LLP  
199 Bay Street, Suite 4000  
Commerce Court West  
Toronto, Ontario  
M5L 1A9

Dear Sirs/Mesdames:

**Re: Eglinton Crosstown LRT Project**

---

We have acted as counsel to [●] (“**Project Co**”), [●] (the “**Construction Contractor**”) and [●] (the “**Maintenance and Rehabilitation Contractor**”) in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into a design, build, finance and maintain agreement for a new light rail transit system in the City of Toronto, 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, as agent for Her Majesty the Queen in right of Ontario and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48 (collectively, the “**HMQ Entities**”) and their counsel pursuant to Section 1.19 of Schedule 2 to the project agreement made as of [●] between the HMQ Entities 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 Maintenance and Rehabilitation Contractor, 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 Maintenance and Rehabilitation Contract;
  - (c) the Lenders’ Direct Agreement;
  - (d) the Construction Contractor’s Direct Agreement;
  - (e) the Maintenance and Rehabilitation Contractor’s Direct Agreement;
  - (f) the Lending Agreements; and
  - (g) 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 Maintenance and Rehabilitation Contractor**], 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 Maintenance and Rehabilitation Contractor 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 Maintenance and Rehabilitation Contractor (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 “**Maintenance Contractor Opinion**”), a copy of which has been delivered to you. To the extent that the Maintenance Contractor 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 Maintenance Contractor 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 Maintenance and Rehabilitation Contractor) 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 Maintenance and Rehabilitation Contractor) 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 Maintenance and Rehabilitation Contractor) to Project Co, the Construction Contractor and the Maintenance and Rehabilitation Contractor.

### **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 Maintenance and Rehabilitation Contractor 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 Maintenance and Rehabilitation 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.

### **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 Maintenance and Rehabilitation 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.

**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 Maintenance and Rehabilitation Contractor 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 Maintenance and Rehabilitation Contractor is a party constitutes a legal, valid and binding obligation of the Maintenance and Rehabilitation Contractor, 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 Maintenance and Rehabilitation Contractor of the Documents to which it is a party does not, and the performance by the Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor 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 Maintenance and Rehabilitation Contractor 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 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 HMQ Entities for which it would be contrary to public policy to require Project Co to indemnify HMQ Entities 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: [PROJECT CO]

AND TO: [COUNSEL TO PROJECT CO]

AND TO: [COLLATERAL TRUSTEE]

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, as agent for Her Majesty The Queen in right of Ontario, as represented by the Minister of Economic Development, Employment and Infrastructure; 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 Eglinton Crosstown LRT 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 Economic Development, Employment and 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 Eglinton Crosstown LRT 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 \_\_\_\_\_, 2015.

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Name: [•]  
Title: Secretary

## APPENDIX D -2

## FORM OF CERTIFICATE

## OF AN OFFICER OF METROLINX (the “Corporation”)

TO: [PROJECT CO]

AND TO: [COUNSEL TO PROJECT CO]

AND TO: [LENDER’S AGENT]

AND TO: [LENDER’S COUNSEL]

**RE:** Project Agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the • day of •, 201• 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 and Her Majesty the Queen in right of Ontario, as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended 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 the Project Agreement and all necessary legal agreements and related documentation to give effect to the Resolution; and
3. the Resolution has been duly and validly passed and is in full force and effect and has not been superseded or amended as of the date hereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Name:

Title:

## APPENDIX E

## FORM OF DECLARATION OF MANAGEMENT

## ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

(the “Corporation”)

DECLARATION OF MANAGEMENT

**WHEREAS** Her Majesty The Queen in right of Ontario, as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by the Corporation; Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O 1990, c. 48; and [●] propose to enter into a Project Agreement relating to the Eglinton Crosstown LRT Project in Toronto, Ontario (the “**Eglinton Project**”);

**AND WHEREAS** the Corporation will from time to time enter into agreements for the design, construction and/or facilities management of the Eglinton Project assigned to the Corporation by the Minister of Economic Development, Employment and 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 Eglinton 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 Eglinton 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 Eglinton 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 \_\_\_\_\_, 2015.

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Name: [•]  
Title: Secretary

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## SCHEDULE 3

## CUSTODY AGREEMENT

THIS AGREEMENT is made as of the 21<sup>st</sup> day of July, 2015

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**, as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated 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 in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48

(collectively, “**HMQ Entities**”)

**AND: CROSSLINX TRANSIT SOLUTIONS GENERAL PARTNERSHIP**,  
[REDACTED]

(“**Project Co**”)

**AND: [REDACTED]**

(the “**Custodian**”)

**AND: [REDACTED]**

(the “**Collateral Trustee**”)

**WHEREAS:**

- A. HMQ Entities 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 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 and Metrolinx intend to enter into this Custody Agreement as agents of Her Majesty the Queen in right of Ontario, in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of HMQ Entities 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 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) “**Collateral Trustee**” means [REDACTED].
- (b) “**HMQ Signatories**” has the meaning given in Section 6(a)(i).
- (c) “**Material**” means hard and electronic copies of the Financial Model.
- (d) “**PA Parties**” means HMQ Entities and Project Co, and “**PA Party**” means HMQ Entities or Project Co, as the context requires.
- (e) “**Party**” means HMQ Entities, the Custodian, Project Co or the Collateral Trustee, and “**Parties**” means HMQ Entities, the Custodian, Project Co and the Collateral Trustee.
- (f) “**Project Agreement**” means the project agreement made on or about July 21, 2015 between HMQ Entities and Project Co.
- (g) “**Project Co**” means [REDACTED].
- (h) “**Project Co Signatory**” has the meaning given in Section 6(a)(ii).
- (i) “**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) HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 Collateral Trustee and the auditor retained by the Collateral Trustee 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) the President & CEO and designated signing officers of HMQ Entities or such other persons nominated by them and notified to the Custodian and Project Co in writing (the “**HMQ 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 HMQ Entities in writing (the “**Project Co Signatory**”);

and shall, subject to Section 6(b), upon receiving signed joint instructions from the HMQ 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 HMQ 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 HMQ Entities 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 HMQ Entities, HMQ Entities 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, HMQ Entities shall:
- (i) use the Material only for the purpose of understanding, maintaining and correcting the Financial Model exclusively on behalf of HMQ Entities;
  - (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 HMQ Entities;
  - (iii) hold all media containing the Material in a safe and secure environment when not in use; and
  - (iv) forthwith destroy the same should HMQ Entities cease to be entitled to use the Financial Model.

## **9. Intellectual Property Rights**

- (a) The release of the Material to HMQ Entities 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 HMQ Entities 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 HMQ Entities 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] (index-linked).
- (b) The Custodian shall in no circumstances be liable to Project Co or HMQ Entities 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 HMQ Entities, in writing, of such process and the Custodian's intended action in order to provide Project Co and HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities, 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 HMQ Entities of its intention to do so. In such circumstances, the Custodian shall not be or become liable in any way to Project Co or HMQ Entities 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 HMQ Entities.
  - (k) Each of Project Co and HMQ Entities 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 HMQ Entities, 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 HMQ Entities. In that event, Project Co and HMQ Entities 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) HMQ Entities 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 HMQ Entities, terminate this Custody Agreement by giving 30 days' prior written notice to the Custodian and HMQ Entities.
- (f) This Custody Agreement shall terminate upon release of the Material to HMQ Entities 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 HMQ Entities of Project Co's request and, failing receipt of any notice of objection from HMQ Entities within 30 days of the receipt of the notice by HMQ Entities, 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 HMQ Entities 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 HMQ Entities under this Custody Agreement, where HMQ Entities are in breach of the same; and
  - (iii) following notification by the Collateral Trustee (who at the same time shall provide a copy of any such notification to HMQ Entities), permit the Collateral Trustee 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 Collateral Trustee 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 Collateral Trustee.
- (b) Project Co consents to the performance or discharge of its obligations by HMQ Entities pursuant to Section 14(a)(i).
- (c) HMQ Entities consent to the performance or discharge of their 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 Collateral Trustee pursuant to Section 14(a)(iii).
- (e) HMQ Entities or the Collateral Trustee shall be entitled to terminate the Collateral Trustee's obligations pursuant to Section 14(a)(iii) on giving the Custodian prior notice (HMQ Entities or the Collateral Trustee 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 Collateral Trustee 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 Collateral Trustee 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 HMQ Entities 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) HMQ Entities may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom HMQ Entities assign, transfer or otherwise dispose of their 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 Collateral Trustee.

## 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 HMQ Entities:

Metrolinx  
5160 Yonge Street, Suite 300  
Toronto, Ontario M2N 6L9

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

With a copy to:

Infrastructure Ontario  
777 Bay Street, 6th Floor  
Toronto, Ontario M5G 2C8

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

If to Project Co:

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

With a copy to:

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]



If to the Custodian: [REDACTED]

Attn.: [REDACTED]

Fax No.: [REDACTED]

If to the Collateral Trustee: [REDACTED]

Attn.: [REDACTED]

Fax No.: [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 HMQ Entities under this Custody Agreement and Project Co, the Custodian and the Collateral Trustee 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 Collateral 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 Custodian and the Collateral Trustee 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 Collateral Trustee 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) HMQ Entities reserve the right to require any person executing this Custody Agreement on behalf of Project Co or the Collateral Trustee to provide proof, in a form acceptable to HMQ Entities, that such person has the requisite authority to execute this Custody Agreement on behalf of and to bind Project Co or the Collateral Trustee, 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 and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of HMQ Entities 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.

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

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

**METROLINX**

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation.

[REDACTED], acting in its capacity as Custodian

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED], acting in its capacity as Collateral  
Trustee under the Common Terms and Intercreditor  
Agreement

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

**CROSSLINX TRANSIT SOLUTIONS GENERAL  
PARTNERSHIP, [REDACTED]**

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

**[REDACTED]**

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

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

**[REDACTED]**

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

Name: **[REDACTED]**

Title: **[REDACTED]**

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

Name: **[REDACTED]**

Title: **[REDACTED]**

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 HMQ Entities 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, HMQ Entities 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.

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## SCHEDULE 4

## LENDERS' DIRECT AGREEMENT

THIS AGREEMENT is made as of the 21<sup>st</sup> day of July, 2015

## BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**, as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated 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 in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48

(collectively, “**HMQ Entities**”)

**AND: [REDACTED]**

(the “**Collateral Trustee**”)

**AND: CROSSLINX TRANSIT SOLUTIONS GENERAL PARTNERSHIP,**  
**[REDACTED]**

(“**Project Co**”)

## WHEREAS:

- A. HMQ Entities and Project Co have entered into the Project Agreement.
- B. The construction of the Project Co System Infrastructure and the New Third Party Infrastructure will have a positive impact on the City by (i) providing a core transit artery as part of an integrated, expandable, multi-mode transit network, (ii) providing a fast, convenient, safe, comfortable and appealing travel mode choice; (iii) facilitating higher-density urban development; (iv) increasing transit ridership, and reducing traffic congestion; (v) meeting infrastructure needs to address continued population and employment growth in the City, and (vi) improving quality of life for residents and travelers.
- C. 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 Collateral Trustee.
- D. The Collateral Trustee has agreed to enter into the Lenders' Direct Agreement with HMQ Entities 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.

- E. With a view to ensuring that HMQ Entities are able to properly and effectively discharge their duties, functions and responsibilities under Applicable Law, Project Co, the Collateral Trustee and the Lenders commit to working collaboratively, responsibly and cooperatively with HMQ Entities throughout the Project Term.
- F. IO and Metrolinx intend to enter into this Lenders' Direct Agreement as agents of Her Majesty the Queen in right of Ontario, in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of HMQ Entities 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 Collateral Trustee, 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 Collateral Trustee and/or any of the Lenders; or
  - (vi) any other person approved by HMQ Entities (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) “**Construction Period Payment**” has the meaning given in the Project Agreement.
- (i) “**Contractors**” has the meaning given in the Project Agreement.
- (j) “**Contracts**” has the meaning given in the Project Agreement.
- (k) “**Crown**” has the meaning given in the Project Agreement.
- (l) “**Deduction**” has the meaning given in the Project Agreement.
- (m) “**Default Notice**” has the meaning given in Section 7(b)(i).
- (n) “**Direct Agreements**” has the meaning given in the Project Agreement.
- (o) “**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.
- (p) “**Enforcement Event**” means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (q) “**Equity Capital**” has the meaning given in the Project Agreement.
- (r) “**Exercise Date**” has the meaning given in Section 12(b).
- (s) “**Failure Points**” has the meaning given in the Project Agreement.
- (t) “**Financial Close**” has the meaning given in the Project Agreement.
- (u) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (v) “**HMQ Project Documents**” means the Project Agreement and all other documents to which HMQ Entities and Project Co are parties pursuant to or in connection with the Project Agreement.
- (w) “**Indebtedness Notice**” has the meaning given in Section 7(b)(ii).
- (x) “**Lender Representative**” means a representative (which may be the Collateral Trustee) acting as agent or trustee for and on behalf of all of the lenders lending to a Suitable Substitute.
- (y) “**Lenders**” has the meaning given in the Project Agreement.
- (z) “**Lenders’ Direct Agreement**” has the meaning given in the Project Agreement.
- (aa) “**Lending Agreements**” has the meaning given in the Project Agreement.

- (bb) “**Lifecycle Payment**” has the meaning given in Schedule 20 – Payment Mechanism to the Project Agreement.
- (cc) “**Longstop Date**” has the meaning given in the Project Agreement.
- (dd) “**Monitoring Notice**” has the meaning given in the Project Agreement.
- (ee) “**New Third Party Infrastructure**” has the meaning given in the Project Agreement.
- (ff) “**Notice Period**” means the period starting on the date of delivery of a Default Notice and ending 120 days later.
- (gg) “**Novation Date**” has the meaning given in Section 10(a).
- (hh) “**Novation Notice**” has the meaning given in Section 10(a).
- (ii) “**Party**” means any of HMQ Entities, Project Co or the Collateral Trustee, and “**Parties**” means all of HMQ Entities, Project Co and the Collateral Trustee.
- (jj) “**Project**” has the meaning given in the Project Agreement.
- (kk) “**Project Agreement**” means the project agreement made on or about July 21, 2015 between HMQ Entities and Project Co.
- (ll) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (mm) “**Project Co Party**” has the meaning given in the Project Agreement.
- (nn) “**Project Co System Infrastructure**” has the meaning given in the Project Agreement.
- (oo) “**Project Operations**” has the meaning given in the Project Agreement.
- (pp) “**Refinancing**” has the meaning given in the Project Agreement.
- (qq) “**Restricted Person**” has the meaning given in the Project Agreement.
- (rr) “**Security**” means the security interests granted by Project Co to the Collateral Trustee pursuant to the Security Documents.
- (ss) “**Security Documents**” means all documents pursuant to which security is from time to time granted to the Common Terms Finance Parties (or any trustee or agent thereof, including the Collateral Trustee) pursuant to or in connection with the Lending Agreements, and as of the date hereof comprises:
  - (i) the general security agreement dated on or about the date hereof and granted by Project Co, [REDACTED] in favour of the Collateral Trustee;

- (ii) the limited recourse guarantee and pledge agreement dated on or about the date hereof and granted by [REDACTED] in favour of the Collateral Trustee;
  - (iii) the limited recourse guarantee and pledge agreement dated on or about the date hereof and granted by [REDACTED] in favour of the Collateral Trustee;
  - (iv) the limited recourse guarantee and pledge agreement dated on or about the date hereof and granted by [REDACTED] in favour of the Collateral Trustee;
  - (v) the limited recourse guarantee and pledge agreement dated on or about the date hereof and granted by [REDACTED] in favour of the Collateral Trustee;
  - (vi) the blocked accounts agreement dated on or about the date hereof and between Project Co, the Collateral Trustee and The Bank of Nova Scotia, as account bank; and
  - (vii) the Lenders' CC Direct Agreement and the Lenders' M&R Direct Agreement (each as defined in the Common Terms and Intercreditor Agreement).
- (tt) “**Step-In Date**” means the date on which HMQ Entities receive a Step-In Notice from the Collateral Trustee.
- (uu) “**Step-In Notice**” means the notice given by the Collateral Trustee to HMQ Entities pursuant to Section 8(a) stating that the Collateral Trustee is exercising its step-in rights under this Lenders’ Direct Agreement.
- (vv) “**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 HMQ Entities have complied with their obligations in Section 7);
  - (iii) the date that a transfer of Project Co’s rights and obligations under the HMQ 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.
- (ww) “**Step-Out Date**” means the date falling 30 days after the date on which HMQ Entities receive a Step-Out Notice.
- (xx) “**Step-Out Notice**” has the meaning given in Section 9(a).

- (yy) “**Subsequent Indebtedness Notice**” has the meaning given in Section 7(c).
- (zz) “**Substantial Completion Date**” has the meaning given in the Project Agreement.
- (aaa) “**Substantial Completion Payment**” has the meaning given in the Project Agreement.
- (bbb) “**Suitable Substitute**” means a person, approved in writing by HMQ Entities 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 HMQ 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 HMQ Project Documents.
- (ccc) “**Termination Date**” has the meaning given in the Project Agreement.
- (ddd) “**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 HMQ Entities have complied with their obligations in Section 7); and
  - (iii) the date that any transfer of Project Co's rights and obligations under the HMQ 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 Collateral Trustee shall provide notice to HMQ Entities of the date referred to in Section 4(a)(i).

**5. AGREEMENTS AND SECURITY**

- (a) Project Co and the Collateral Trustee 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 and HMQ Entities shall not amend or modify the HMQ Project Documents (other than in accordance with the terms of those agreements) without the prior written consent of the Collateral Trustee, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification shall not (i) materially adversely affect the ability of the Lenders to exercise their rights under the Security, (ii) materially adversely affect the value of the Security, or (iii) increase the liability of the Lenders or Project Co under the relevant agreement. The Collateral Trustee shall respond to any request for consent under this Section 5(c) within 30 days of receipt thereof.
- (d) 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.

- (e) The Collateral Trustee acknowledges having received a copy of the Project Agreement.
- (f) HMQ Entities acknowledge having received copies of the Lending Agreements, and confirm that they are in form and substance satisfactory to HMQ Entities as at the date of Financial Close.
- (g) HMQ Entities acknowledge notice of and consents to the Security, and confirm that they have not received notice of any other security interest granted over Project Co's rights under any of the HMQ Project Documents.
- (h) HMQ Entities agree that any enforcement by the Collateral Trustee of a security interest in the Equity Capital of Project Co granted in favour of the Collateral Trustee 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.
- (i) Project Co and the Collateral Trustee hereby authorize and instruct HMQ Entities (and HMQ Entities agree) to pay all sums payable to Project Co under the Project Agreement as follows:
  - (i) in the case of Construction Period Payments and the Substantial Completion Payment, to The Bank of Nova Scotia account number [REDACTED]; and
  - (ii) in the case of all other sums payable to Project Co under the Project Agreement, to The Bank of Nova Scotia account number [REDACTED];

and Project Co and HMQ Entities agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Collateral Trustee upon giving reasonable notice, HMQ Entities shall pay any sum which they are obliged to pay to Project Co under the Project Agreement to a bank account specified by the Collateral Trustee.

- (j) HMQ Entities shall provide the Collateral Trustee 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, HMQ Entities 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.

## 6. ENFORCEMENT OF SECURITY BY COLLATERAL TRUSTEE

- (a) The Collateral Trustee shall promptly notify HMQ Entities 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 Collateral Trustee 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) HMQ Entities' reputation or integrity, or (ii) the nature of the public transit system in the City of Toronto so as to affect public confidence in the public transit system in the City of Toronto 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 HMQ ENTITIES

- (a) Subject only to the rights expressly afforded to the Collateral Trustee pursuant to, and the restrictions set forth in, this Section 7, HMQ Entities may, at any time, serve notice terminating the Project Agreement if they are 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)), HMQ Entities shall not exercise any right they may have to terminate or serve notice terminating the Project Agreement for a Project Co Event of Default unless:
- (i) HMQ Entities promptly deliver written notice (a “**Default Notice**”) to the Collateral Trustee setting out the Project Co Event of Default in reasonable detail;
  - (ii) not later than 30 days after the date of a Default Notice, HMQ Entities deliver written notice (an “**Indebtedness Notice**”) to the Collateral Trustee setting out:
    - (A) all amounts owed by Project Co to HMQ Entities and any other existing liabilities and unperformed obligations of Project Co to HMQ Entities of which HMQ Entities are aware (having made reasonable enquiry), in each case, as of the date on which HMQ Entities sent the Default Notice; and
    - (B) all amounts which will become owing by Project Co to HMQ Entities and any other liabilities and obligations of Project Co to HMQ Entities of

which HMQ Entities are 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 Collateral Trustee has not delivered a Step-In Notice.
- (c) At any time after HMQ Entities send an Indebtedness Notice but before HMQ Entities receive a Step-In Notice, if HMQ Entities discover amounts that have become owing by Project Co to HMQ Entities or any other liabilities or obligations of Project Co to HMQ Entities that have come due but which were not included in the Indebtedness Notice, HMQ Entities shall deliver written notice (a “**Subsequent Indebtedness Notice**”) to the Collateral Trustee setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, HMQ Entities shall not terminate the Project Agreement on grounds:
  - (i) that the Collateral Trustee has served a Step-In Notice or enforced any Security Document; or
  - (ii) arising prior to the Step-In Date of which HMQ Entities were 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 HMQ Entities 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) HMQ Entities 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 HMQ Entities 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 date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Collateral Trustee; 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 Collateral Trustee to enforce the Security, the Collateral Trustee may give HMQ Entities 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 Collateral Trustee delivers a Step-In Notice, the Collateral Trustee shall deliver written notice (an “**Appointed Representative Notice**”) to HMQ Entities 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 HMQ Project Documents.
- (d) During the Step-In Period, HMQ Entities shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the HMQ Project Documents. Project Co agrees to be bound by all such dealings between HMQ Entities and the Appointed Representative to the same extent as if they had been between HMQ Entities 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 HMQ Entities 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 HMQ Entities under the HMQ 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) HMQ Entities will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the HMQ Project Documents; and
  - (iii) the Appointed Representative and HMQ Entities shall be and hereby are released from all obligations and liabilities to one another under the HMQ 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 Collateral Trustee may deliver to HMQ Entities and any Appointed Representative written notice (a “**Novation Notice**”) that it wishes to transfer Project Co’s rights and obligations under the HMQ Project Documents to a proposed transferee, together with all information reasonably necessary for HMQ Entities 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 HMQ Entities receive the Novation Notice (“**Novation Date**”) for the transfer of Project Co’s rights and obligations under the HMQ Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) HMQ Entities shall promptly notify the Collateral Trustee of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. HMQ Entities shall notify the Collateral Trustee, in writing, as to whether the person to whom the Collateral Trustee proposes to transfer Project Co’s rights and liabilities under

the HMQ Project Documents is approved by HMQ Entities as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by HMQ Entities of the Novation Notice and the date of receipt of any additional information requested by HMQ Entities. For greater certainty, if HMQ Entities fail to respond within such period, HMQ Entities shall be deemed not to have approved the proposed transferee.

- (c) HMQ Entities shall not unreasonably withhold or delay their approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for HMQ Entities to withhold their 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 HMQ Entities, 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 HMQ Project Documents or have the effect of increasing any liability of HMQ Entities, whether actual or potential.
- (d) If HMQ Entities withhold their approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Collateral Trustee 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 Collateral Trustee has good cause to believe will be acceptable to HMQ Entities, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
- (i) Project Co and HMQ Entities will be released from their obligations under the HMQ Project Documents to each other, and the Suitable Substitute and HMQ Entities will assume those same obligations towards each other;
  - (ii) each of the rights of Project Co against HMQ Entities under the HMQ Project Documents and the rights of HMQ Entities against Project Co under the HMQ Project Documents will be cancelled, and the Suitable Substitute and HMQ Entities will acquire those same rights against each other;
  - (iii) the Parties will enter into, and the Collateral Trustee 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 HMQ Entities and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
- (B) an agreement among HMQ Entities, 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 HMQ Entities were entitled to make Deductions under Schedule 20 - Payment Mechanism to the Project Agreement 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 HMQ Entities of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

## 11. TRANSFERS

HMQ Entities shall, at Project Co's cost and expense, take whatever action the Collateral Trustee, 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 Collateral Trustee, the Appointed Representative or the Suitable Substitute reasonably requires.

## 12. DIRECT AGREEMENTS

- (a) Notwithstanding any provision in the Direct Agreements, HMQ Entities hereby undertake that they will not exercise any rights they 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, HMQ Entities shall from such date (the "**Exercise Date**") be entitled to exercise their rights under the Direct Agreements to step into and/or novate the Contracts in accordance with the Direct Agreements.
- (c) Following the Exercise Date, HMQ Entities shall not do anything to prejudice the rights which are not transferred to them 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 Collateral Trustee shall promptly release and discharge all Security in respect of any Contract assumed or novated by HMQ Entities 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, HMQ Entities 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 Collateral Trustee on a winding-up or other insolvency or bankruptcy of the applicable Contractor, nor claim to be subrogated to any rights of the Collateral Trustee or any Lender.

HMQ Entities agree and undertake that if they receive any amount in contravention of the provisions of this Section 12(f), they will immediately turn the same over to the Collateral Trustee for the account of the Collateral Trustee and the Lenders and, pending such payment, hold the same in trust for the Collateral Trustee and the Lenders.

### 13. 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 13.
- (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 HMQ Entities and the Collateral Trustee 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, HMQ Entities and the Collateral Trustee, each acting reasonably. HMQ Entities and the Collateral Trustee shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) HMQ Entities may assign, transfer or otherwise dispose of the benefit of the whole or part of this Lenders' Direct Agreement to any person to whom HMQ Entities assign,

transfer or otherwise dispose of their interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement, and shall provide written notice to Project Co and the Collateral Trustee of such assignment, transfer or other disposition.

- (d) The Collateral Trustee 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 HMQ Entities of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lender's Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Collateral Trustee, 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 HMQ Entities on substantially the same terms as this Lenders' Direct Agreement and Project Co and HMQ Entities shall enter into such new agreement with the assignee. Project Co and HMQ Entities shall, at the Collateral Trustee's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

#### 14. 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 HMQ Entities:

Metrolinx  
5160 Yonge Street, Suite 300  
Toronto, Ontario M2N 6L9

Attn.: [REDACTED]

Fax No.: [REDACTED]

Email: [REDACTED]

With a copy to:

Infrastructure Ontario  
777 Bay Street, 6th Floor  
Toronto, Ontario M5G 2C8

Attn.: [REDACTED]

Fax No.: [REDACTED]

Email: [REDACTED]

If to Project Co:

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

With a copy to:

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

If to the Collateral Trustee: [REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]

- (b) Any Party to this Lenders' Direct Agreement may, from time to time, change any of its contact information set forth in Section 14(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 14(d) and 14(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 14.
- (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.

## 15. HMQ 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 HMQ Entities under this Lenders' Direct Agreement and Project Co and the Collateral 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 and the Collateral 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 and the Collateral Trustee 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 Collateral Trustee acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 15.

## 16. 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.

## 17. 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.

## **18. 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.

## **19. 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.

## **20. 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.

## **21. 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.

## **22. 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).

### **23. 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.

### **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 Lenders' Direct Agreement.

### **25. 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.

### **26. 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.

### **27. JOINT AND SEVERAL**

IO and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of HMQ Entities under this Lenders' Direct Agreement and for each covenant of the other under this Lenders' Direct Agreement.

### **28. CONFIDENTIALITY**

The Collateral Trustee 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 Collateral Trustee 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 Collateral Trustee to comply with Applicable Law.

### **29. 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.

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

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

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

**METROLINX**

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation.

[REDACTED], acting in its capacity as Collateral  
Trustee under the Common Terms and Intercreditor  
Agreement

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

**CROSSLINX TRANSIT SOLUTIONS GENERAL  
PARTNERSHIP, [REDACTED]**

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.



[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

12794150.2

**SCHEDULE 5-1**

**CONSTRUCTION CONTRACTOR’S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 21<sup>st</sup> day of July, 2015

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**, as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated 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 in accordance with the Crown Agency Act, R.S.O. 1990, c. 48

(collectively, “**HMQ Entities**”)

- AND -

**CROSSLINX TRANSIT SOLUTIONS GENERAL PARTNERSHIP, [REDACTED]**

(“**Project Co**”)

- AND -

**[REDACTED]**

(the “**Construction Contractor**”)

- AND -

**[REDACTED]**

(the “**Construction Guarantors**”)

**WHEREAS:**

- A. HMQ Entities 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 HMQ Entities.
- 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 HMQ Entities.
- C. IO and Metrolinx intend to enter into this Construction Contractor’s Direct Agreement as agents of Her Majesty the Queen in right of Ontario, in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of HMQ Entities 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) “**Business Day**” has the meaning given in the Project Agreement.
- (c) “**Construction Contract**” has the meaning given in the Project Agreement.
- (d) “**Construction Contractor's Direct Agreement**” has the meaning given in the Project Agreement.
- (e) “**Crown**” has the meaning given in the Project Agreement.
- (f) “**Default Notice**” has the meaning given in Section 5(a).
- (g) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (h) “**Lenders**” has the meaning given in the Project Agreement.
- (i) “**Lenders' Direct Agreement**” has the meaning given in the Project Agreement.
- (j) “**Party**” means HMQ Entities, the Construction Contractor, any of the Construction Guarantors or Project Co, and “**Parties**” means HMQ Entities, the Construction Contractor, the Construction Guarantors and Project Co.
- (k) “**Project**” has the meaning given in the Project Agreement.
- (l) “**Project Agreement**” means the project agreement made on or about July 21, 2015 between HMQ Entities and Project Co.
- (m) “**Step-In Notice**” has the meaning given in Section 6(a).
- (n) “**Substitute**” has the meaning given in Section 6(a).
- (o) “**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 HMQ Entities, 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 HMQ Entities, whether actual or potential. Project Co and the Construction Contractor shall provide to HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities,

provided that if, within such period of 5 Business Days, HMQ Entities agree 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) HMQ Entities may at any time:
  - (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of HMQ Entities receiving a Default Notice; or
  - (ii) if HMQ Entities have not received a Default Notice and if HMQ Entities' 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 HMQ Entities or a third party designated by HMQ Entities in the Step-In Notice (the "**Substitute**"), provided that HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities if HMQ Entities pay for the Construction Contractor's reasonable costs of continued performance pursuant to Section 5;
  - (iii) any guarantee, 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 HMQ Entities or the Substitute, as applicable, each acting reasonably, to HMQ Entities 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 HMQ Entities' request, the Construction Contractor shall enter into, and shall cause the Construction Guarantors and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and HMQ Entities 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 HMQ Entities or the Substitute, as applicable, and the Construction Contractor, acceptable to HMQ Entities 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 HMQ Entities and the Substitute in order to achieve a smooth transfer of the Construction Contract to HMQ Entities 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 HMQ Entities give 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 HMQ Entities 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 HMQ Entities, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
  - (ii) the appointment by HMQ Entities of any other person to review the progress of or otherwise report to HMQ Entities 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 HMQ Entities,

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 HMQ Entities deliver a Step-In Notice, the Construction Contractor shall have no greater liability to HMQ Entities 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 HMQ Entities 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 GUARANTORS AS PARTIES

Each Construction Guarantor agrees with HMQ Entities that each Construction Guarantor 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 HMQ Entities, and agrees that each 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 HMQ Entities, 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) HMQ Entities 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 HMQ Entities may assign or otherwise dispose of their 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 HMQ Entities 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 HMQ Entities:

Metrolinx  
5160 Yonge Street, Suite 300  
Toronto, Ontario M2N 6L9

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

With a copy to:

Infrastructure Ontario  
777 Bay Street, 6th Floor  
Toronto, Ontario M5G 2C8

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

If to Project Co:

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

With a copy to:

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

If to the Construction Contractor: [REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

With a copy to:

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

If to the Construction Guarantors: [REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

With a copy to:

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]

Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [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. HMQ 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 HMQ Entities 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 and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of HMQ Entities 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.

**IN WITNESS WHEREOF** the Parties have executed this Construction Contractor's Direct Agreement as of the date first above written.

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

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

### **METROLINX**

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation.

**CROSSLINX TRANSIT SOLUTIONS GENERAL  
PARTNERSHIP, [REDACTED]**

**[REDACTED]**

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

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

**[REDACTED]**

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

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

**[REDACTED]**

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

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

**[REDACTED]**

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]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**SCHEDULE 5-2**

**MAINTENANCE AND REHABILITATION CONTRACTOR'S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 21<sup>st</sup> day of July, 2015

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**, as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated 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 in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48

(collectively, “**HMQ Entities**”)

- AND -

**CROSSLINX TRANSIT SOLUTIONS GENERAL PARTNERSHIP [REDACTED]**

(“**Project Co**”)

- AND -

**[REDACTED]**

(the “**Maintenance and Rehabilitation Contractor**”)

- AND -

**[REDACTED]**

(the “**Maintenance and Rehabilitation Guarantors**”)

**WHEREAS:**

- A. HMQ Entities and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Maintenance and Rehabilitation Contractor and the Maintenance and Rehabilitation Guarantors to enter into, this Maintenance and Rehabilitation Contractor's Direct Agreement with HMQ Entities.
- B. Project Co and the Maintenance and Rehabilitation Contractor have entered into the Maintenance and Rehabilitation Contract, which requires the Maintenance and Rehabilitation Contractor and the Maintenance and Rehabilitation Guarantors to enter into this Maintenance and Rehabilitation Contractor's Direct Agreement with HMQ Entities.

- C. IO and Metrolinx intend to enter into this Maintenance and Rehabilitation Contractor’s Direct Agreement as agents of Her Majesty the Queen in right of Ontario, in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of HMQ Entities pursuant to this Maintenance and Rehabilitation Contractor’s Direct Agreement, save and except as provided for in this Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor’s Direct Agreement, unless the context otherwise requires:

- (a) “**Applicable Law**” has the meaning given in the Project Agreement.
- (b) “**Business Day**” has the meaning given in the Project Agreement.
- (c) “**Crown**” has the meaning given in the Project Agreement.
- (d) “**Default Notice**” has the meaning given in Section 5(a).
- (e) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (f) “**Lenders**” has the meaning given in the Project Agreement.
- (g) “**Lenders’ Direct Agreement**” has the meaning given in the Project Agreement.
- (h) “**Maintenance and Rehabilitation Contract**” has the meaning given in the Project Agreement.
- (i) “**Maintenance and Rehabilitation Contractor’s Direct Agreement**” has the meaning given in the Project Agreement.
- (j) “**Party**” means HMQ Entities, the Maintenance and Rehabilitation Contractor, any of the Maintenance and Rehabilitation Guarantors or Project Co, and “**Parties**” means HMQ Entities, the Maintenance and Rehabilitation Contractor, the Maintenance and Rehabilitation Guarantors and Project Co.
- (k) “**Project**” has the meaning given in the Project Agreement.
- (l) “**Project Agreement**” means the project agreement made on or about July 21, 2015 between HMQ Entities and Project Co.
- (m) “**Step-In Notice**” has the meaning given in Section 6(a).
- (n) “**Substitute**” has the meaning given in Section 6(a).

- (o) “**Variation**” has the meaning given in the Project Agreement.

## 2. INTERPRETATION

This Maintenance and Rehabilitation Contractor’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Maintenance and Rehabilitation Contractor’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Maintenance and Rehabilitation Contractor’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor’s Direct Agreement, the Project Agreement and the Maintenance and Rehabilitation Contract, this Maintenance and Rehabilitation Contractor’s Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Maintenance and Rehabilitation Contractor’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

### 4. AGREEMENTS

- (a) Project Co and the Maintenance and Rehabilitation Contractor shall not amend, modify, or depart from the terms of the Maintenance and Rehabilitation Contract without the prior written consent of HMQ Entities, 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

Maintenance and Rehabilitation Contractor's Direct Agreement and does not have the effect of increasing any liability of HMQ Entities, whether actual or potential. Project Co and the Maintenance and Rehabilitation Contractor 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 Maintenance and Rehabilitation Contract.
- (c) If the Maintenance and Rehabilitation Contractor gives Project Co any notice of any default(s) under the Maintenance and Rehabilitation Contract that may give the Maintenance and Rehabilitation Contractor a right to terminate the Maintenance and Rehabilitation Contract or to treat it as having been repudiated by Project Co or to discontinue the Maintenance and Rehabilitation Contractor's performance thereunder, then the Maintenance and Rehabilitation Contractor shall concurrently provide HMQ Entities with a copy of such notice and set out in reasonable detail the default(s).

#### 5. NO TERMINATION BY MAINTENANCE AND REHABILITATION CONTRACTOR WITHOUT DEFAULT NOTICE

The Maintenance and Rehabilitation Contractor shall not exercise any right it may have to terminate the Maintenance and Rehabilitation Contract or to treat it as having been repudiated by Project Co or to discontinue the Maintenance and Rehabilitation Contractor's performance thereunder unless:

- (a) the Maintenance and Rehabilitation Contractor first delivers a written notice (a "**Default Notice**") to HMQ Entities setting out in reasonable detail the default(s) on which the Maintenance and Rehabilitation Contractor intends to rely in terminating the Maintenance and Rehabilitation Contract or to treat it as having been repudiated by Project Co or to discontinue the Maintenance and Rehabilitation Contractor's performance thereunder; and
- (b) within the period ending 30 days after the Maintenance and Rehabilitation Contractor notifies HMQ Entities 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 HMQ Entities receiving Default Notice or the expiry of the applicable cure period under the Maintenance and Rehabilitation Contract:
  - (i) the default(s) on which the Maintenance and Rehabilitation Contractor intends to rely in terminating the Maintenance and Rehabilitation Contract or to treat it as having been repudiated by Project Co or to discontinue the Maintenance and Rehabilitation Contractor's performance thereunder have not been remedied; and
  - (ii) the Maintenance and Rehabilitation Contractor has not received a Step-In Notice from HMQ Entities,

provided that, until such time as HMQ Entities give the Maintenance and Rehabilitation Contractor a notice that HMQ Entities will not be exercising their step-in rights, HMQ

Entities shall pay the Maintenance and Rehabilitation Contractor's reasonable costs of continued performance.

## 6. STEP-IN RIGHTS

- (a) HMQ Entities may at any time:
- (i) within the period referred to in Section 5(b); or
  - (ii) if HMQ Entities have not received a Default Notice and if HMQ Entities' 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 Maintenance and Rehabilitation Contract either with HMQ Entities or a third party designated by HMQ Entities in the Step-In Notice (the "**Substitute**"), provided that HMQ Entities can demonstrate to the Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contract.

- (b) Subject to Section 6(d), upon receipt by the Maintenance and Rehabilitation Contractor of a Step-In Notice:
- (i) Project Co and the Maintenance and Rehabilitation Contractor will be deemed to be released from their existing and future obligations under the Maintenance and Rehabilitation Contract to each other (except with respect to any and all indemnities from Project Co or the Maintenance and Rehabilitation Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ Entities or the Substitute, as applicable, and the Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor under the Maintenance and Rehabilitation Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Maintenance and Rehabilitation Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ Entities or the Substitute, as applicable, and the Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor to HMQ Entities if HMQ Entities pay for the Maintenance and Rehabilitation Contractor's reasonable costs of continued performance pursuant to Section 5;
  - (iii) any guarantee, 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 Maintenance and Rehabilitation Contractor to be performed, observed or carried out by the Maintenance and Rehabilitation Contractor as contained in, referred to, or inferred from the Maintenance and Rehabilitation Contract shall be assigned, novated or granted, as required by HMQ Entities or the Substitute, as applicable, each acting reasonably, to HMQ Entities or the Substitute, as applicable, and the Maintenance and Rehabilitation 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 have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the Maintenance and Rehabilitation 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 HMQ Entities' request, the Maintenance and Rehabilitation Contractor shall enter into, and shall cause each Maintenance and Rehabilitation 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 HMQ Entities 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 HMQ Entities or the Substitute, as applicable, and the Maintenance and Rehabilitation Contractor, acceptable to HMQ Entities and the Maintenance and Rehabilitation Contractor, each acting reasonably, on substantially the same terms as the Maintenance and Rehabilitation Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with HMQ Entities and the Substitute in order to achieve a smooth transfer of the Maintenance and Rehabilitation Contract to HMQ Entities or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor receives a Step-In Notice, the Maintenance and Rehabilitation Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Maintenance and Rehabilitation Contract that it is or has validly exercised those step-in rights. If the Maintenance and Rehabilitation 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 HMQ Entities give a Step-In Notice within the time provided hereunder at any time after the Maintenance and Rehabilitation Contractor has terminated the Maintenance and Rehabilitation Contract or treated it as having been repudiated by Project Co or

discontinued the Maintenance and Rehabilitation Contractor's performance thereunder in accordance with the terms of this Maintenance and Rehabilitation Contractor's Direct Agreement, the Maintenance and Rehabilitation Contractor agrees that the Maintenance and Rehabilitation Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and HMQ Entities shall pay the Maintenance and Rehabilitation Contractor's reasonable costs for re-commencing the obligations it has under the Maintenance and Rehabilitation Contract and the Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

## **7. MAINTENANCE AND REHABILITATION CONTRACTOR LIABILITY**

- (a) The liability of the Maintenance and Rehabilitation 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 HMQ Entities, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
  - (ii) the appointment by HMQ Entities of any other person to review the progress of or otherwise report to HMQ Entities 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 HMQ Entities,

provided always that nothing in this Section 7 shall modify or affect any rights which the Maintenance and Rehabilitation Contractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event HMQ Entities deliver a Step-In Notice, the Maintenance and Rehabilitation Contractor shall have no greater liability to HMQ Entities or any Substitute than it would have had to Project Co under the Maintenance and Rehabilitation Contract, and the Maintenance and Rehabilitation Contractor shall be entitled in any proceedings by HMQ Entities or any Substitute to rely on any liability limitations in the Maintenance and Rehabilitation Contract.

## **8. PROJECT CO AS PARTY**

Project Co acknowledges and agrees that the Maintenance and Rehabilitation Contractor shall not be in breach of the Maintenance and Rehabilitation Contract by complying with its obligations hereunder.

## **9. MAINTENANCE AND REHABILITATION GUARANTORS AS PARTIES**

The Maintenance and Rehabilitation Guarantors agree with HMQ Entities that each of the Maintenance and Rehabilitation Guarantors 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 Maintenance and Rehabilitation Contractor of a Step-In Notice and without the requirement of any further action on the part of HMQ Entities, and agrees that each Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Guarantors enter into this Maintenance and Rehabilitation 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 HMQ Entities, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Maintenance and Rehabilitation Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) HMQ Entities may assign or otherwise dispose of the benefit of the whole or part of this Maintenance and Rehabilitation Contractor's Direct Agreement to any person to whom HMQ Entities may assign or otherwise dispose of their 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 Maintenance and Rehabilitation Contractor of such assignment or disposition.
- (c) The Maintenance and Rehabilitation Contractor shall not, without the prior written consent of HMQ Entities and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Maintenance and Rehabilitation Contractor's Direct Agreement, except as may be permitted under the Maintenance and Rehabilitation Contract.

## 11. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 HMQ Entities:

Metrolinx  
5160 Yonge Street, Suite 300  
Toronto, Ontario M2N 6L9

Attn.: [REDACTED]

Fax No.: [REDACTED]

Email: [REDACTED]

With a copy to:

Infrastructure Ontario  
777 Bay Street, 6th Floor  
Toronto, Ontario M5G 2C8

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

If to Project Co:

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

With a copy to:

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

If to the Maintenance and  
Rehabilitation Contractor:

[REDACTED]  
[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]

Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

If to the Maintenance and  
Rehabilitation Guarantors:

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor's Direct Agreement.

## 13. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor's Direct Agreement, of principal and agent.

#### **15. ENTIRE AGREEMENT**

Except where provided otherwise in this Maintenance and Rehabilitation Contractor's Direct Agreement, this Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor's Direct Agreement.

#### **16. SEVERABILITY**

Each provision of this Maintenance and Rehabilitation Contractor's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor's Direct Agreement. If any such provision of this Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor's Direct Agreement as near as possible to its original intent and effect.

#### **17. ENUREMENT**

This Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation

Contractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

- (c) Nothing in this Maintenance and Rehabilitation Contractor's Direct Agreement affects the rights protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

## 19. HMQ 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 HMQ Entities under this Maintenance and Rehabilitation Contractor's Direct Agreement and Project Co, the Maintenance and Rehabilitation Contractor and the Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor and the Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor and the Maintenance and Rehabilitation Guarantors in writing of any designation hereunder. The rights and obligations of the parties to Maintenance and Rehabilitation Contractor's Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Maintenance and Rehabilitation Contractor and the Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor's Direct Agreement.

## 21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Maintenance and Rehabilitation 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 déclare satisfaite.

## 22. COUNTERPARTS

This Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor's Direct Agreement which was so faxed.



**23. JOINT AND SEVERAL**

IO and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of HMQ Entities under this Maintenance and Rehabilitation Contractor’s Direct Agreement and for each covenant of the other under this Maintenance and Rehabilitation Contractor’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 Maintenance and Rehabilitation Contractor’s Direct Agreement.

IN WITNESS WHEREOF the Parties have executed this Maintenance and Rehabilitation Contractor’s Direct Agreement as of the date first above written.

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

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

**METROLINX**

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation.

**CROSSLINX TRANSIT SOLUTIONS GENERAL PARTNERSHIP, [REDACTED]**

[REDACTED].

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

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## SCHEDULE 6

## INDEPENDENT CERTIFIER AGREEMENT

**THIS AGREEMENT** is made as of the 21<sup>st</sup> day of July, 2015

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**, as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011* (Ontario)

**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, “**HMQ Entities**”)

**AND: CROSSLINX TRANSIT SOLUTIONS GENERAL PARTNERSHIP**,  
[REDACTED]  
  
 (“**Project Co**”)

**AND: [REDACTED]**  
  
(the “**Independent Certifier**”)

**WHEREAS:**

- A. HMQ Entities 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 and Metrolinx intend to enter into this Independent Certifier Agreement as agents of Her Majesty the Queen in right of Ontario, in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of HMQ Entities 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 things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
  - (ii) **“Certification Services Variation”** is any change to the Certification Services.
  - (iii) **“Contract Material”** means all material:
    - (A) provided to the Independent Certifier or created or required to be created by either 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).
  - (iv) **“Fee”** means the fees payable by HMQ Entities 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.
  - (v) **“IC Monthly Report”** has the meaning given in Appendix A to this Schedule 6.
  - (vi) **“IC Quarterly Report”** has the meaning given in Appendix A to this Schedule 6.
  - (vii) **“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.
  - (viii) **“PA Parties”** means both HMQ Entities and Project Co, and **“PA Party”** means either HMQ Entities or Project Co, as the context requires.



- (ix) “**Project Agreement**” means that certain project agreement made on or about the date hereof between HMQ Entities and Project Co with respect to the design, construction, financing, maintenance and rehabilitation of the Project Co System Infrastructure and the design, construction and financing of the New Third Party Infrastructure.

## 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; and
  - (v) 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 or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Commissioning Tests and the Commissioning Program shall:
  - (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, the Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
  - (ii) have demonstrated competence in the commissioning of comparable facilities and in having completed or monitored the commissioning of a comparable light rail transit system;
  - (iii) have an understanding of the appropriate standards, guidelines and policies related to commissioning for light rail transit systems, as well as other applicable transit commissioning standards; and
  - (iv) 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.
- (c) The Independent Certifier shall furnish HMQ Entities with evidence satisfactory to HMQ Entities of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Commissioning Tests, the Commissioning Schedule and the Commissioning Program.

**3.10 Minimize Interference**

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

**4. ROLE OF THE 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 HMQ 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 HMQ Entities, 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 HMQ Representative and the Project Co Representative;
  - (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the HMQ Representative and the Project Co Representative;
  - (iii) if satisfactory to each of the HMQ Representative and the Project Co Representative, implement such certification quality plan; and
  - (iv) if not satisfactory to each of the HMQ 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 HMQ Representative and the Project Co Representative, and implement it if satisfactory to each of the HMQ 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 HMQ 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 [REDACTED] 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 [REDACTED] 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 \$[REDACTED] 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 HMQ 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 HMQ 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 HMQ 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 HMQ 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 HMQ 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 HMQ Entities: Metrolinx

5160 Yonge Street, Suite 300  
Toronto, Ontario M2N 6L9

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

With a copy to:

Infrastructure Ontario  
777 Bay Street, 6th Floor  
Toronto, Ontario M5G 2C8

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

If to Project Co:

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

With a copy to:

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

If to the Independent Certifier: [REDACTED]

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Emails: [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 HMQ 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 HMQ Entities 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 and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of HMQ Entities 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.

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

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

**METROLINX**

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation.

**CROSSLINX TRANSIT SOLUTIONS GENERAL  
PARTNERSHIP, [REDACTED]**

**[REDACTED]**

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

Name: **[REDACTED]**  
Title: **[REDACTED]**

I have authority to bind the corporation.

**[REDACTED]**

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

Name: **[REDACTED]**  
Title: **[REDACTED]**

I have authority to bind the corporation.

**[REDACTED]**

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

Name: **[REDACTED]**  
Title: **[REDACTED]**

I have authority to bind the corporation.

**[REDACTED]**

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

Name: **[REDACTED]**  
Title: **[REDACTED]**

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

Name: **[REDACTED]**  
Title: **[REDACTED]**

I/We have authority to bind the corporation.

[REDACTED]

Per:

\_\_\_\_\_  
Name: [REDACTED]

Title: [REDACTED]

Per:

\_\_\_\_\_  
Name: [REDACTED]

Title: [REDACTED]

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) Receive and monitor drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Works and to provide an opinion in the event of a Dispute related to the development of the design.
- (b) Receive and monitor progress reports for the Independent Certifier to be informed as to the progress of the Works, including review of the Works Report.
- (c) Review information relating to Construction Period Quality Failures, Delay Events 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.
- (f) 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 City Infrastructure, New Metrolinx Infrastructure, the New Salvation Army Infrastructure and New TTC Infrastructure.
- (g) Review the draft Commissioning Submittals and the detailed test, test methodology and expected test results proposed by Project Co, including any review comments from HMQ Entities, and provide a report on the effectiveness of the Commissioning Program, to identify any errors or omissions and to report any risks.
- (h) Monitor 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.
- (i) Monitor and report on, at a minimum on a monthly basis as part of the IC Monthly Report or more regularly as deemed necessary, the requirements, progress and results of all Commissioning and any HMQ Commissioning.
- (j) 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.
- (k) Prior to any certification, consider the views and comments of Project Co, HMQ Entities (including their consultants and advisors) and the Independent Safety Assessor, as applicable in relation to the satisfaction of the conditions for certification.
- (l) Conduct regular inspections of the Works 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.
- (m) Review relevant documentation, including the final Design Development Submittals, Construction Document Submittals, design certificates, construction certificates and approvals, Permits, Licences and Approvals, certifications, third party acceptance, shop drawings, site instructions, mock ups, Record Drawings, all quality management plans, sustainability requirements, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules (including the Works Schedule) and reports (including the Works Report) provided to the Independent Certifier pursuant to the Project Agreement.
  - (n) Upon receipt of notice from Project Co requesting the issuance of an IC Initial Capital Investment Certificate, Substantial Completion Certificate or 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:
    - (i) issue the applicable certificate; or
    - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.
  - (o) 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 (n) of this Appendix A until the issuance of the applicable certificate.
  - (p) Prepare, in consultation with Project Co and HMQ Entities, as soon as reasonably practicable and, in any event within, the time period specified in Section 25.7(a) of the Project Agreement, the Minor Deficiencies List, which Minor Deficiencies List will include an estimate of the cost and the time for rectifying the Minor Deficiencies and a schedule for the completion and rectification of the Minor Deficiencies.
  - (q) After Substantial Completion, reconcile Project Co invoices for expenditure recovery against the budgets of HMQ Entities.
  - (r) 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 HMQ Entities or any agent or contractor of HMQ Entities either before or after Substantial Completion and provide a report to HMQ Entities 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 HMQ Entities, their contractors and/or agents.
  - (s) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 - Dispute Resolution Procedure to the Project Agreement.



- (t) 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.
- (u) Provide periodic reports to the PA Parties, as follows:
  - (i) a progress report on the progress of the Works no later than fifteen 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**”); 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; and,
  - (ii) accompanying 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 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup> 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.
- (v) Receive the assessment information, reports and safety notices from the Independent Safety Assessor to be informed as to the progress of the Works.
- (w) Acknowledge receipt of all Design and Construction Certificates delivered by Project Co in accordance with Schedule 10 – Review Procedure to the Project Agreement.
- (x) Provide the Certification Services with respect to Construction Period Payments set out in Schedule 21 – Construction Payments including cooperating with PA Parties (including their consultants and advisors) to establish the Earned Value Measurement Techniques to be used in the Certification Services, including review of the measurement methods proposed by Project Co for the purposes of measuring Earned Value, and agreement of any proposed changes to the Credit Rules, in accordance with Attachment F to Schedule 21.
- (y) Provide the Certification Services set out in Schedule 36 – Vehicles to the Project Agreement.
- (z) Provide the Certification Services set out in Schedule 38 – Tunnels to the Project Agreement.
- (aa) Provide advice on other matters that may arise that both PA Parties may jointly require.

- (bb) In implementing the Certification Services, identify any risks that may impede the issuance of the Substantial Completion Certificate or the Final Completion Certificate and inform the PA Parties thereof. Following the identification of any risks, monitor and report to the PA Parties on the progress as part of the IC Monthly Report until such risks are fully resolved.
- (cc) 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.

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**APPENDIX B****INDEPENDENT CERTIFIER FEE**

“**Total Fixed Fee**” means the maximum amount, indicated in Canadian funds in this Appendix B to the Independent Certifier Agreement, that shall be paid by the PA Parties to the Independent Certifier for the provision of the Certification Services, and is all-inclusive and includes all taxes (except for HST), overheads and profit, all labor 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 outside of the total fixed fee for any travel, hospitality, food or incidental expenses incurred.

“**Hourly Rate**” means the blended hourly rate in Canadian funds for a professional in the noted position providing Certification Services contemplated in item (aa) of Appendix A to this Independent Certifier Agreement. The Hourly Rates are all-inclusive and include all taxes (except for HST), overheads and profit, all labor 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.

“**Monthly Rate**” means the blended monthly rate in Canadian funds for the Independent Certifier to provide Certification Services should there be extensions in the schedule during those periods such that a Certification Services Variation becomes applicable. The Monthly Rate is 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.

**TOTAL FIXED FEE**

Total Fixed Fee for the Independent Certifier Services for Eglinton Crosstown LRT Project:

[\$[REDACTED] Canadian Dollars (excluding HST)

**HOURLY RATES**

Position	Hourly Rate (\$)
Respondent Team Leader	[REDACTED]
Back Up Team Leader	[REDACTED]
Dispute Resolution Specialist	[REDACTED]
Cost Estimator	[REDACTED]
Commissioning Specialist	[REDACTED]
Rail Systems and Vehicles Engineer	[REDACTED]
Architect	[REDACTED]
Civil Engineer	[REDACTED]
Tunnels Engineer	[REDACTED]
Mechanical Engineer	[REDACTED]
Electrical and Communications Engineer	[REDACTED]
Structural Engineer	[REDACTED]
Utilities Engineer	[REDACTED]
Environmental Specialist	[REDACTED]
Safety Assessor	[REDACTED]
Construction Specialist	[REDACTED]
Transit Engineer	[REDACTED]
Quality Management Specialist	[REDACTED]
EMSF Engineer	[REDACTED]

**MONTHLY RATE**

	Certification Services Description	Rate (\$)
Part A	Any month of work prior to the Substantial Completion Date but excluding work starting from receipt of the Countdown Notice to the achievement of Substantial Completion	[REDACTED]
Part B	Any month of work after the Substantial Completion Date	[REDACTED]

## APPENDIX C

## INDEPENDENT CERTIFIER PERSONNEL

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

Name	Position
[REDACTED]	Respondent Team Leader
[REDACTED]	Back Up Team Leader
[REDACTED]	Dispute Resolution Specialist
[REDACTED]	Cost Estimator
To be named after the effective date of this agreement as agreed between the Independent Certifier and the PA Parties and in accordance with Section 3.9(b) and (c) of this agreement.	Commissioning Specialist
To be named after the effective date of this agreement as agreed between the Independent Certifier and the PA Parties and in accordance with Section 3.9(b) and (c) of this agreement.	Rail Systems and Vehicles Engineer
[REDACTED]	Architect
[REDACTED]	Civil Engineer
[REDACTED]	Tunnels Engineer
To be named after the effective date of this agreement as agreed between the Independent Certifier and the PA Parties and in accordance with Section 3.9(b) and (c) of this agreement.	Mechanical Engineer
To be named after the effective date of this agreement as agreed between the Independent Certifier and the PA Parties and in accordance with Section 3.9(b) and (c) of this agreement.	Electrical and Communications Engineer
[REDACTED]	Structural Engineer
[REDACTED]	Utilities Engineer
[REDACTED]	Environmental Specialist
To be named after the effective date of this agreement as agreed between the Independent Certifier and the PA Parties and in accordance with Section 3.9(b) and (c) of this agreement.	Safety Assessor
[REDACTED]	Construction Specialist
[REDACTED]	Transit Engineer
[REDACTED]	Quality Management Specialist
To be named after the effective date of this agreement as agreed between the Independent Certifier and the PA Parties and in accordance with Section 3.9(b) and (c) of this agreement.	EMSF Engineer
[REDACTED]	Payment Certifier

## 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 HMQ Entities 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 HMQ Entities are the Beneficiary, HMQ Entities 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  
777 Bay Street, 6<sup>th</sup> floor  
Toronto, ON M5G 2C8  
Attention: [•]

Metrolinx  
20 Bay Street, 6<sup>th</sup> Floor  
Toronto, ON M5J 2W3  
Attention: [•]

and to:

[Project Co]  
[Project Co address]  
Attention: [•]

Dear [•],[•] and [•]:

This report, for the quarter ending [•], is delivered to you pursuant to Section (u)(ii) of Appendix A of the Independent Certifier Agreement between Ontario Infrastructure and Lands Corporation, Metrolinx, [Project Co] and us 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 **[Project Co]**. 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]**

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## SCHEDULE 7

## MOBILITY MATTERS

## 1. DEFINITIONS

In this Schedule 7, the following definitions shall have the following meanings:

- 1.1 “**Aggregate Actual Lane Closures**” or “**AALC**” means the actual number of Lane Closures.
- 1.2 “**Aggregate Actual Lane Closures Cost**” or “**AALCC**” means the total cost of Lane Closures.
- 1.3 “**Aggregate Target Lane Closures**” or “**ATLC**” means the total target Lane Closures, which,
- (a) are set forth in the Lane Closure Target Letter; and
  - (b) include and account for all requirements of Schedule 15 - Output Specifications.
- 1.4 “**Aggregate Target Lane Closure Cost**” or “**ATLCC**” means the total cost of the target Lane Closures, as set forth in the Lane Closure Target Letter submitted by Project Co at Commercial Close and which has been accepted by HMQ Entities.
- 1.5 “**Arterial**” has the meaning given in the City of Toronto’s Road Classification System (City of Toronto).
- 1.6 “**Blocks**” are the physical units upon which Lane Closure Costs are to be calculated for the purposes of this Schedule 7, and,
- (a) for Eglinton Avenue, are delineated as shown on the map attached to this Schedule 7 as Appendix C and may encompass sections of Eglinton Avenue that span across two or more adjacent intersections; and
  - (b) for any streets proposed to be occupied by Project Co, other than Eglinton Avenue, are delineated between two adjacent intersections, irrespective of whether the intersections are signalized or unsignalized.
- For clarity, a laneway opening shall not constitute an intersection for the purposes of this Section 1.6.
- 1.7 “**Collector**” has the meaning given in the City of Toronto’s Road Classification System (City of Toronto).
- 1.8 “**HOV/Bus Lane**” means existing travelled lanes reserved for buses, taxis, or vehicles with multiple passengers, at the locations defined by the City of Toronto By-Law No 132-93, and any amendments thereto.
- 1.9 “**Lane Closure**” means any restriction or closure of a lane in any Block, as a result of Works, to bus or vehicular traffic or parking and loading between two intersecting streets, including tapers.

All partial closures within any Block will be considered as a full Lane Closure. Lane Closures will be measured on a per Block, per hour basis. For clarity,

- (a) lanes that have limited openings such as “local traffic only” shall be considered not available for use for the purpose of this Section 1.9; and
- (b) any restriction or closure of a lane that is solely as a result of,
  - (i) a Category 1 Utility Company carrying out the design and construction of Utility Infrastructure in contravention of the applicable Final Utility Baseline Document and in circumstances in which the applicable Final Utility Baseline Document specifies that such design and construction must be carried out by the Category 1 Utility Company itself (by the Category 1 Utility Company’s own forces or by a subcontractor retained by the Category 1 Utility Company);
  - (ii) 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; or
  - (iii) a Tunnel Contractor carrying out warranty work after the Tunnel Section Security and Maintenance Handover Date pursuant to Schedule 38 – Tunnels,

shall be deemed not to constitute a Lane Closure or contribute to any Lane Closure for the purposes of this Schedule 7.

- 1.10 “**Lane Closure Adjustment**” or “**LCA**” means the deduction which may be made by HMQ Entities from Project Co (which amount will be deducted from the Substantial Completion Payment) as calculated pursuant to Section 5.
- 1.11 “**Lane Closure Analysis Report**” has the meaning given to it in Section 2.2.
- 1.12 “**Lane Closure Measurement and Verification Plan**” has the meaning given to it in Part 7 of Schedule 15-2 – Design and Construction Requirements – Traffic Management and Construction Access of the Project Agreement.
- 1.13 “**Lane Closure Target Letter**” means the letter set out in Appendix D.
- 1.14 “**Laneway**” has the meaning given in City of Toronto’s Road Classification System (City of Toronto).
- 1.15 “**Left Turn Lane Closure**” means any restriction of an exclusive left turn lane within the Road Sections, of Arterial or Collector road classification, at the Site, such that the lane is not available for use by the public due to the Works. For clarity, lanes that have limited openings such as “local traffic only” shall be considered not available for use by the public for the purposes of this Section 1.15.
- 1.16 “**Local**” has the meaning given in City of Toronto’s Road Classification System (City of Toronto).

- 1.17 “**Mobility Matters Review Meeting**” has the meaning given in Section 3.8.
- 1.18 “**Monthly Lane Closure Adjustment Contribution**” means the value for any given month that shall contribute to the Lane Closure Adjustment as calculated pursuant to Section 5.
- 1.19 “**Night**” means the hours between 2200h - 0500h.
- 1.20 “**Off Peak**” means all other hours not defined as “**Peak**” or “**Night**”.
- 1.21 “**Peak**” means Monday through Friday between the hours of 0700h - 1000h, or 1600h - 1900h, excluding statutory holidays.
- 1.22 “**Right Turn Lane Closure**” means any restriction of an exclusive right turn lane within the Road Sections, of Arterial or Collector road classification, at the Site, such that it is not available for use by the public due to the Works. For clarity, lanes that have limited openings such as “local traffic only” shall be considered “not available for use by the public” for the purposes of this Section 1.22.
- 1.23 “**Road Sections**” means the defined portions of the Site where Works are to be undertaken in which the Unit Rate Prices for Lane Closure are to be applied for any Lane Closure, Left Turn Lane Closure or Right Turn Lane Closure. Each of the Road Sections has a unique Unit Price structure for Lane Closure costs per Block, defined in Appendix B to this Schedule. The Road Sections are delineated as follows:
- (a) Road Section 1 - Ennerdale Road to Westover Hill Road;
  - (b) Road Section 2 - Lascelles Boulevard to Falcon Street;
  - (c) Road Section 3 - All other Blocks from the west limit of the Project to Brentcliffe Road that are not listed in Road Section 1 or Road Section 2; and
  - (d) Road Section 4 - Brentcliffe Road to the east limit of the Project.
- 1.24 “**Unit Rate Price**” for each Lane Closure, Left Turn Lane Closure or Right Turn Lane Closure means the prices for each Block of each Road Section, and for each type of lane, as set out in Appendix B. The prices are hourly rates.

## 2. CONTENT AND FORMAT OF THE LANE CLOSURE ANALYSIS REPORT

- 2.1 Project Co shall quantify its projected occupation of lanes on Eglinton Avenue and other streets on the basis of the formulae and procedures contained in this Schedule 7. Project Co shall monitor its occupation of the lanes on a monthly basis.
- 2.2 Project Co shall deliver to HMQ Entities a report summarizing the findings of AALC (the “**Lane Closure Analysis Report**”), on a monthly basis, no later than 5 Business Days after the end of each month.

- 2.3 Project Co shall include copies of all documents to fully support the Lane Closure Analysis Report.
- 2.4 The Lane Closure Analysis Report shall, at a minimum, include the following information for the relevant month:
- (a) using the template shown in Appendix A to this Schedule, a summary of target and actual Lane Closures by Road Section and breakdown by road classifications (HOV/Bus Lane, Arterial, Collector, Local, Laneway), locations, times, dates and duration indicating Peak, Off Peak or Night, including any exceptional changes forecasted for the upcoming monthly period (being changes of plus or minus [REDACTED]%)
  - (b) projected Lane Closures for the remaining duration of the Construction Period along with trends and potential risks associated with these Lane Closures;
  - (c) accurate and precise data in support of the items set out in Sections 2.4(a) and 2.4(b);
  - (d) presentation of AALC and the AALCC for the applicable month, and on a cumulative basis as of the applicable month;
  - (e) establishment of a basis for continued monitoring of Lane Closures and adjustments to the AALC;
  - (f) outline of any outstanding issues from any previous Lane Closure Analysis Reports and mitigating strategies to address those issues;
  - (g) adjustments to the ATLC and the ATLCC for the applicable month, and on a cumulative basis as of the applicable month;
  - (h) Project Co's estimate of the Monthly Lane Closure Adjustment Contribution;
  - (i) measurement and verification of lane closures in accordance with Lane Closure Measurements and Verification Plan in Section 3.7; and
  - (j) summary tables from all previous Lane Closure Analysis Reports delivered by Project Co to HMQ Entities.
- 2.5 Following the review of the final Lane Closure Analysis Report by the HMQ Representative, the data set out in the Lane Closure Analysis Report will be used by HMQ Entities to determine the Monthly Lane Closure Adjustment Contribution.

### **3. PROCEDURES FOR DETERMINING MONTHLY LANE CLOSURE ADJUSTMENT CONTRIBUTIONS**

- 3.1 HMQ Entities shall not consider the following closures of lanes to be Lane Closures for the purposes of this Schedule 7, and such closures of lanes shall not contribute to the Monthly Lane Closure Adjustment Contribution,

- 
- (a) where an existing lane width is less than the minimum lane width requirements during construction, specified in Table 7-1.2 of Part 7 to Schedule 15-2 – Design and Construction Requirements – Traffic Management and Construction Access of the Project Agreement, maintaining the lane as open for traffic operations at its existing width; and
- (b) where any lane is closed by the Tunnel Contractor prior to the,
- (i) Station Parcel dates set out in Section 11.1 of Schedule 38 – Tunnels for Lane Closures located on the Station Parcels identified in Schedule 38 – Tunnels; or
- (ii) last day of the Tunnel Section Completion Period set out in Section 10.1 of Schedule 38 - Tunnels for Lane Closures for the applicable Tunnel Section identified Schedule 38 - Tunnels.
- 3.2 HMQ Entities shall assign Lane Closures to Project Co for lanes that are closed as part of either the east or west Tunnels Contracts.
- 3.3 Project Co shall not use the lane configuration of Eglinton Avenue that will remain after Substantial Completion to determine Lane Closures.
- 3.4 HMQ Entities shall assess Project Co for the cost of Lane Closures based on the total Lane Closures that occur during Peak, Off Peak, and Night hours. All Lane Closures shall be included in the calculation of the Monthly Lane Closure Adjustment Contribution as provided in Section 5.
- 3.5 The ATLC shall form the benchmark for calculating the Lane Closure cost with respect to the AALC. The AALCC shall be used to calculate the Monthly Lane Closure Adjustment Contribution. The Lane Closure Target shall not be amended, altered or adjusted except by the process described in Section 4.
- 3.6 No later than 30 days prior to the first Lane Closure, Project Co shall deliver to HMQ Entities the Traffic Control Plans that address the Lane Closure(s) associated with the initial areas of the Site at which it plans to commence Works. No later than 60 days following the delivery of these initial Traffic Control Plans, Project Co shall deliver to HMQ Entities the Traffic and Transit Management Plan (TTMP).
- 3.7 No later than 30 days prior to the initial Lane Closure within any Road Section, Project Co shall provide HMQ Entities with a Lane Closure Measurement and Verification Plan. All subsequent Lane Closure Analysis Reports are to be based on this plan.
- 3.8 No later than five Business Days following the submission of the Lane Closure Analysis Report (or as agreed to between the Parties), Project Co and HMQ Entities shall convene a review meeting (the “**Mobility Matters Review Meeting**”) to be attended by the Project Co Representative and HMQ Representative. At the Mobility Matters Review Meeting, Project Co shall present the Lane Closure Analysis Report to HMQ Entities. HMQ Entities and Project Co shall discuss the Aggregate Actual Lane Closure for the preceding period. Project Co’s

measurement and verification of Lane Closure(s) shall be reviewed and confirmed by the HMQ Representative.

- 3.9 Project Co shall assist the HMQ 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. HMQ Entities shall promptly give Notice to Project Co of the details of any disagreement with respect to all or any aspect of the Lane Closure Analysis Report, and the Parties shall then seek to agree to any matters in dispute. The process shall be as follows:
- (a) AALC and AALCC shall be determined at the Mobility Matters Review Meeting.
  - (b) No later than 20 Business Days following each Mobility Matters Review Meeting, or within such period as may be otherwise agreed between the HMQ Representative and the Project Co Representative, acting reasonably:
    - (i) HMQ Entities shall confirm their acceptance of all or any aspect of the Lane Closure Analysis Report; and
    - (ii) Subject to Section 4, Project Co and HMQ Entities shall agree to any adjustments to the ATLC and ATLCC.
  - (c) If HMQ Entities dispute Project Co's estimate of the Monthly Lane Closure Adjustment Contribution in the Lane Closure Analysis Report, HMQ Entities shall, no later than 10 Business Days following receipt of the Lane Closure Analysis Report, or within such other period as may be agreed by the HMQ Representative and Project Co, acting reasonably, submit an account to Project Co setting out their calculations and justifying the quantification of Project Co's estimate of the Monthly Lane Closure Adjustment Contribution. If either Project Co or HMQ Entities wish to dispute any account presented pursuant this Section 3.9(c), they must do so by written Notice to the other Party no later than ten Business Days following receipt of such account. The HMQ Representative and the Project Co Representative shall use reasonable efforts to resolve the dispute for an additional ten Business Days. If there is no agreement within a further 10 Business Days, then either Party may refer the matter to the Dispute Resolution Procedure.
  - (d) If neither Party objects in accordance with Section 3.9(c), or, following final determination of the disputed account in accordance with Section 3.9(c), Project Co shall use the relevant Monthly Lane Closure Adjustment Contribution to determine the Lane Closure Adjustment. The Lane Closure Adjustment shall be shown as a separate item within the invoice for the Substantial Completion Payment.
- 3.10 For the purpose of calculating the Lane Closure Adjustment, the calculation shall be completed 180 days prior to the Scheduled Substantial Completion Date (or at a later date as mutually agreed to by the HMQ Representative and Project Co), comparing the total AALCC of each Road Section for the entire Construction Period to the total ATLCC for that same Road Section for the entire Construction Period. For clarity, over-performance of any one Road Section cannot be added to underperformance of any other.



#### 4. PROCESS FOR AMENDING THE AGGREGATE TARGET LANE CLOSURE AND ASSOCIATED COST

- 4.1 In all cases, corrections to the ATLC and ATLCC must be consistent with the principles outlined in the TTMP.
- 4.2 Project Co and HMQ Entities shall, acting reasonably, agree to make any adjustments to the ATLC, ATLCC, AALC and AALCC, 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 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 ATLC. Both HMQ Entities and Project Co shall agree to the amended ATLC no later than 20 Business Days following receipt of amended TTMP. If there is no agreement within a further 10 Business Day period, then either Party may refer the matter to the Dispute Resolution Procedure.

#### 5. CALCULATION OF MONTHLY LANE CLOSURE ADJUSTMENT CONTRIBUTION AND LANE CLOSURE ADJUSTMENT

- 5.1 Comparing Aggregate Actual Lane Closures Costs to Aggregate Target Lane Closure Costs:
- (a) After the acceptance of the final Lane Closure Analysis Report described in Section 2 and no later than 30 Business Days before the Scheduled Substantial Completion Date, Project Co shall compare the total AALCC for each Road Section to the total ATLCC for each Road Section, and if the AALCC is more than [REDACTED]% greater than the ATLCC, for any Road Section, then Project Co shall calculate the Monthly Lane Closure Adjustment Contribution set out in Section 5.2 and deduct the amount of the Lane Closure Adjustment from the Substantial Completion Payment to be made in accordance with the Project Agreement. For clarity, 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.
- (b) If the AALCC is greater than [REDACTED]% of the ATLCC for any monthly period for any Road Section, then Project Co shall submit a detailed remediation plan no later than 10 Business Days following the end of the month to explain how it will reduce the AALCC for the Road Section in subsequent period(s), such that the variance will not exceed the [REDACTED]% for the subsequent periods. Project Co shall present progress and achievements of the remediation plan at subsequent Mobility Matters Review Meeting(s).
- 5.2 The formulae to calculate the Monthly Lane Closure Adjustment Contribution are set out in this Section 5.2. For the avoidance of doubt, if the AALCC falls within a set band of the relevant ATLCC for any Road Section (i.e. no more than [REDACTED]% above this benchmark), no Monthly Lane Closure Adjustment Contribution will be made for that Road Section.

- 
- (a) For the purposes of Section 5.2(b), in respect of each Road Section:
- A = the AALCC for each Road Section in the relevant month
- B = the ATLCC for each Road Section in the relevant month
- (b) In respect of any given month during the period leading up to Substantial Completion for each Road Section:
- (i) Monthly Lane Closure Adjustment Contribution =  $(A - [\text{REDACTED}]B)$ ;
- (ii) if the sum of all Monthly Lane Closure Adjustment Contributions in each month prior to Substantial Completion  $< \$[\text{REDACTED}]$ , then Lane Closure Adjustment for that Road Section =  $[\text{REDACTED}]$ ; and
- (iii) if the sum of all Monthly Lane Closure Adjustment Contributions in each month prior to Substantial Completion  $> \$[\text{REDACTED}]$ , then Lane Closure Adjustment for that Road Section = the sum of all Monthly Lane Closure Adjustment Contributions in each month prior to Substantial Completion.
- 5.3 For the purposes of calculating the Lane Closure Adjustment in accordance with this Schedule 7, the Parties shall have regard to Sections 40.2(g) and 44.2(e) of the Project Agreement.

## 6. APPLICATION

- 6.1 The Lane Closure provisions of this Schedule 7 will no longer be in effect once Substantial Completion has been achieved.

APPENDIX A

LANE CLOSURE REPORT SUBMITTAL REQUIREMENTS

Total Lane Closure Summary	Lane Closure Target		Actual Lane Closures		Percent Variance between iv and ii	Monthly Lane Closure Adjustment Contribution
	Number of Target Closures	Cost of Lane Closure for monthly period (calculated based on number of closures multiplied by Unit Price Rate, multiplied by number of hours)	Usage	Cost of Lane Closures for monthly period (calculated based on number of closures multiplied by Unit Price Rate, multiplied by number of hours)		
	i	ii	iii	iv	v	vi
Road Section 1 Peak						
Road Section 1 Off Peak						
Road Section 1 Night						
<i>Sub-total:- Road Section 1</i>						

Road Section 2 Peak						
Road Section 2 Off Peak						
Road Section 2 Night						
<i>Sub-total:- Road Section 2</i>						
Road Section 3 Peak						
Road Section 3 Off Peak						
Road Section 3 Night						
<i>Sub-total: Road Section 3</i>						
Road Section 4 Peak						
Road Section 4 Off Peak						
Road Section 4 Night						
<i>Sub-total: Road Section 4</i>						
<b>Substantial Completion Peak</b>						
<b>Substantial</b>						

<b>Completion Off Peak</b>						
<b>Substantial Completion Night</b>						
<i>Total: Substantial Completion</i>						

APPENDIX B

UNIT RATES FOR EACH LANE CLOSURE, LEFT TURN LANE CLOSURE AND RIGHT TURN LANE CLOSURE

1. UNIT RATE PRICES FOR LANE CLOSURES (Price per Hour per Block)

	Road Section 1			Road Section 2			Road Section 3			Road Section 4		
	Peak*	Off-Peak**	Night***	Peak*	Off-Peak**	Night***	Peak*	Off-Peak**	Night***	Peak*	Off-Peak**	Night***
HOV/Bus	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
Eglinton	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
Arterial	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
Collector	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
Local / Laneway	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

\* As defined in Section 1.20

\*\* As defined in Section 1.19

\*\*\* As defined in Section 1.18

**2. UNIT RATES PRICE FOR EXCLUSIVE LEFT TURN LANE CLOSURES AND EXCLUSIVE RIGHT TURN LANE CLOSURES  
(Price per Hour per Block)**

	Road Section 1			Road Section 2			Road Section 3			Road Section 4		
	Peak*	Off-Peak**	Night***	Peak*	Off-Peak**	Night***	Peak*	Off-Peak**	Night***	Peak*	Off-Peak**	Night***
Arterial	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
Collector	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

\* As defined in Section 1.20

\*\* As defined in Section 1.19

\*\*\* As defined in Section 1.18

## APPENDIX C

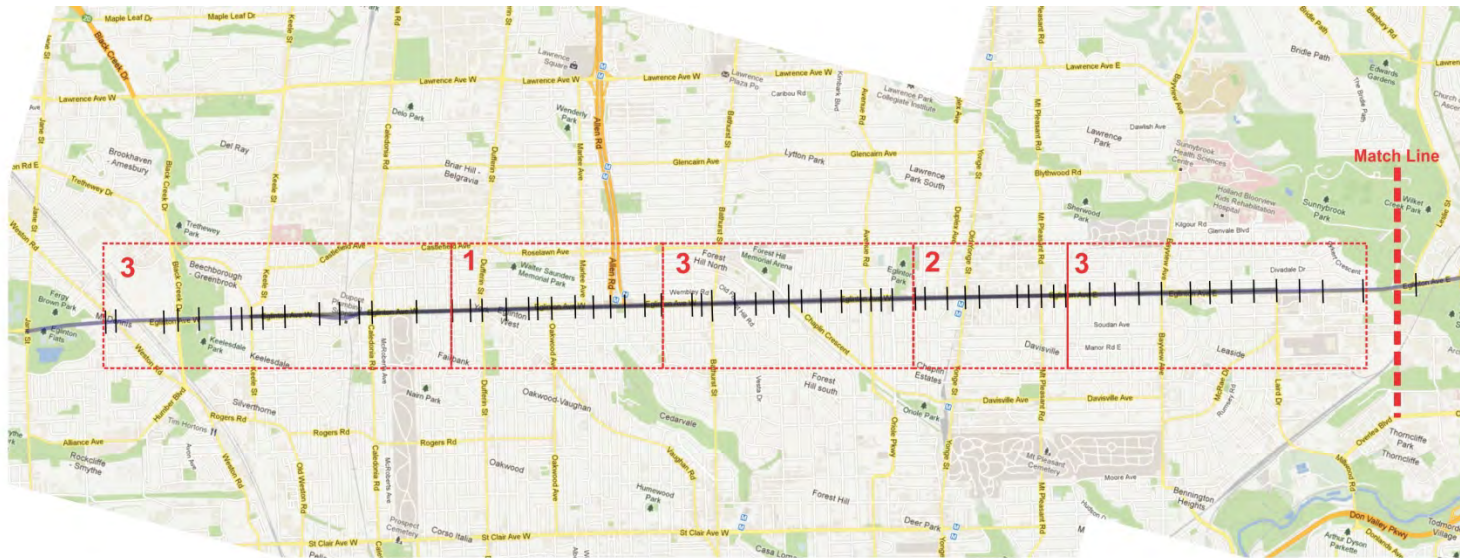
## LANE CLOSURE COSTING BLOCK DELINEATION ALONG EGLINTON AVENUE

BLOCK DELINEATION	BLOCK DELINEATION
Guestville Avenue to Weston Road	Edith Drive/ Colin Avenue to Duplex Avenue
Weston Road to No Frills Entrance/Exit	Duplex Avenue to Yonge Street
No Frills Entrance/Exit to Black Creek Drive	Yonge Street to Holly Street
Black Creek Drive to Keelesdale Park Entrance/Exit	Holly Street to Redpath Avenue
Keelesdale Park Entrance/Exit to Municipal Drive/ Bicknell Avenue	Redpath Avenue to Brownlow Avenue
Municipal Drive/ Bicknell Avenue to Yarrow Road	Brownlow Avenue to Mt Pleasant Road
Yarrow Road to Trethewey Drive/ Keele Street	Mt Pleasant Road to Taunton Road
Trethewey Drive/ Keele Street to Keele Street	Taunton Road to Falcon Street
Keele Street to Richardson Avenue	Falcon Street to Petman Avenue
Richardson Avenue to Gabian Way	Petman Avenue to Banff Road
Gabian Way to Blackthorn Avenue	Banff Road to Hoyle Avenue
Blackthorn Avenue to Gilbert Avenue	Hoyle Avenue to Bayview Avenue
Gilbert Avenue to Caledonia Road	Bayview Avenue to Bessborough Drive
Caledonia Road to Ronald Avenue / Harvie Avenue	Bessborough Drive to Hanna Road
Ronald Avenue / Harvie Avenue to Ennerdale Road	Hanna Road to Rumsey Road
Ennerdale Road to Shortt Street	Rumsey Road to Sutherland Drive
Shortt Street to Dufferin Street	Sutherland Drive to Laird Drive
Dufferin Street to Northcliffe Boulevard	Laird Drive to Don Avon Drive
Northcliffe Boulevard to Glenholme Avenue	Don Avon Drive to Brentcliffe Road
Glenholme Avenue to Times Road	Brentcliffe Road to Private Entrance East of Brentcliffe Road
Times Road to Oakwood Avenue	Private Entrance East of Brentcliffe Road to Leslie Street
Oakwood Avenue to Alameda Avenue	Leslie Street to Celistica West Entrance/Exit
Alameda Avenue to Fairleigh Crescent	Celistica West Entrance/Exit to Celistica East Entrance/Exit
Fairleigh Crescent to Allen Road Southbound Off-Ramp	Celistica East Entrance/Exit to



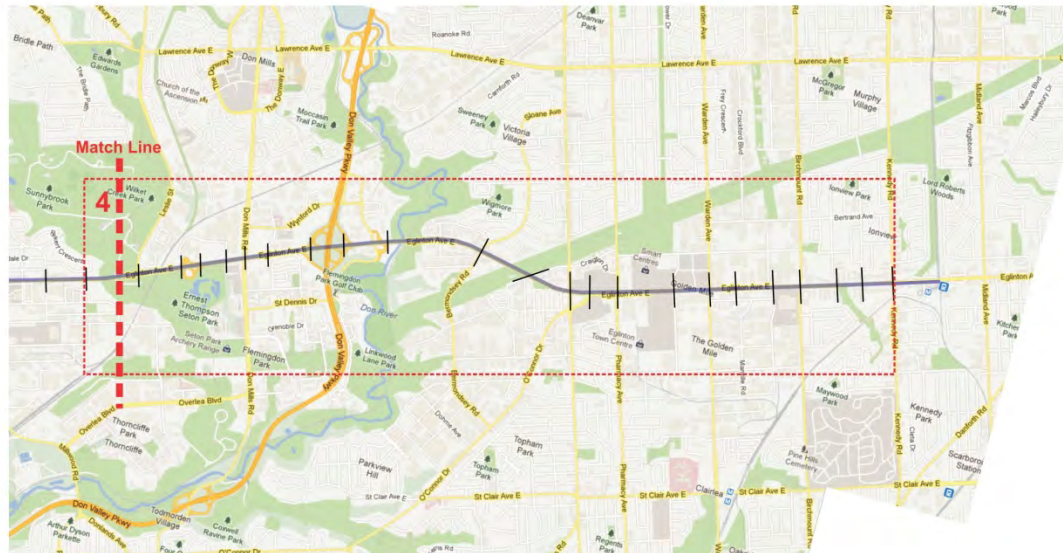
BLOCK DELINEATION	BLOCK DELINEATION
	Celistica Right in/Right out
Allen Road Southbound Off-Ramp to Allen Road Northbound On-Ramp	Celistica Right in/Right out to Don Mills Road
Allen Road Northbound On-Ramp to Glenarden Road/Westover Hill Road	Don Mills Road to Gervais Drive
Glenarden Road/Westover Hill Road to Old Park Road / Glen Cedar Road	Gervais Drive to Don Valley Parkway Southbound On/Off-Ramp
Old Park Road / Glen Cedar Road to Hilltop Road / Chiltern Hill Road	Don Valley Parkway Southbound On/Off-Ramp to Don Valley Parkway Northbound On/Off-Ramp
Hilltop Road / Chiltern Hill Road to Peveril Hill North	Don Valley Parkway Northbound On/Off-Ramp to Wynford Drive EB On/Off-Ramp
Peveril Hill North to Bathurst Street	Wynford Drive EB On/Off-Ramp to Bermondsey Road
Bathurst Street to Old Forest Hill Road	Bermondsey Road to Jonesville Crescent
Old Forest Hill Road to Vesta Drive	Jonesville Crescent to Victoria Park Avenue
Vesta Drive to Spadina Road	Victoria Park Avenue to Eglinton Square
Spadina Road to Chaplin Crescent	Eglinton Square to Pharmacy Avenue
Chaplin Crescent to Latimer Avenue	Pharmacy Avenue to Hakimi Avenue/ Lebovic Avenue
Latimer Avenue to Heddington Avenue	Hakimi Avenue/ Lebovic Avenue to Warden Avenue
Heddington Avenue to Castle Knock Road	Warden Avenue to Prudham Gate
Castle Knock Road to Braemar Avenue	Prudham Gate to Sinnott Road
Braemar Avenue to Avenue Road	
Avenue Road to Highbourne Road	Sinnott Road to Birchmount Road
Highbourne Road to Oriole Parkway (signalized intersection)	Birchmount Road to Rosemount Drive
Oriole Parkway (signalized intersection) to Lascelles Boulevard	Rosemount Drive to Ionview Road
Lascelles Boulevard to Edith Drive/ Colin Avenue	Ionview Road to Kennedy Road

Note: Blocks for streets other than Eglinton Avenue are as defined in this Schedule 7.



**LEGEND**

- Lane Closure Costing Blocks
- - - Lane Closure Costing Road Sections



**APPENDIX C: Lane Closure Costing Block Delineation Along Eglinton Avenue**

**Note:** Blocks for streets other than Eglinton Avenue are as defined in this Schedule 7

**APPENDIX D**

**LANE CLOSURE TARGET LETTER**

**[REDACTED]**

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## SCHEDULE 8

## ENERGY MATTERS

PART A - EGLINTON MAINTENANCE AND STORAGE FACILITY (EMSF), TRACTION  
POWER, AND STATIONS

## 1. DEFINITIONS

The following definitions shall have the following meanings:

- 1.1 “**Actual Global Adjustment Peak Demand**” means the sum of the actual Hydro Use demand for power fed from the THESL metered connections, measured in megawatts, that occurs during the five highest coincident peaks of the year as established by the Independent Electricity System Operator.
- 1.2 “**AET Model**” means the collection of energy models that support the Energy Target Letters, both contained in Appendix A of Part B. For clarity, this includes the individual energy simulation models for each of Stations, Traction Power, and EMSF that are included in Appendix A of Part B.
- 1.3 “**Aggregate Energy Service Actual Consumption**” or “**AEC**” means the sum of the consumption of the following Energy Utilities as reported by the Utility Company, converted to gigajoules, for each Contract Year,
- (a) electricity from the THESL grid;
  - (b) gas services attributable to the CGP multiplied by **[REDACTED]**; and
  - (c) gas services not attributable to the CGP.
- 1.4 “**Aggregate Energy Target**” or “**AET**” means the target total energy consumption, set forth in the Energy Target Letters contained in Appendix A of Part B. The AET shall include and account for all requirements of Schedule 15 – Output Specifications including standard HVAC and lighting loads, and any systems that are installed by Project Co as part of the Works and that will be maintained by Project Co as part of the Project Operations.
- 1.5 “**Annual Maintenance Work Schedule**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.6 “**Auxiliary Facilities Occupants**” has the meaning given in Schedule 15-1 – Output Specifications.
- 1.7 “**Auxiliary Power**” means power used for electrical system other than Propulsion of the revenue vehicle and Process Loads for Traction Power. Example includes lighting, heating, air conditioning, air compressor etc.
- 1.8 “**Calibrated Aggregate Energy Target**” means the energy use output from Project Co’s AET Model after the calibration process outlined in Section 3 of this Part A, which has been accepted by HMQ Entities.

- 1.9 “**Calibrated Revenue Vehicle Parameters**” means the inputs used in Project Co’s AET Model that are calibrated during the calibration process outlined in Section 3.5 of this Part A.
- 1.10 “**Calibrated Target Global Adjustment Peak Demand**” means Target Global Adjustment Peak Demand after the calibration process outlined in Section 3 of this Part A, which has been accepted by HMQ Entities.
- 1.11 “**CGP**” has the meaning given in Schedule 15-1 – Output Specifications.
- 1.12 “**CGP Energy Opportunity**” has the meaning given in Schedule 1 – Definitions.
- 1.13 “**Contract Month**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.14 “**Contract Year**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.15 “**Corrected Aggregate Energy Target**” or “**CoAET**” means the Aggregate Energy Target for all Energy Services corrected for each Contract Year in accordance with Section 5 of this Part A.
- 1.16 “**Corrected Target Global Adjustment Peak Demand**” or “**CoTGAPD**” means the Target Global Adjustment Peak Demand that has been corrected in accordance with Section 5 of this Part A.
- 1.17 “**Driver**” has the meaning given in Schedule 15-1 – Output Specifications.
- 1.18 “**EMSF Signalling System**” means, the signalling system for the EMSF to support yard operations. The EMSF signalling system will be interfaced to the mainline signalling system to support efficient fleet build-up and ramp-down operations.
- 1.19 “**EMSF**” has the meaning given to it in Schedule 1 – Definitions and Interpretation.
- 1.20 “**Energy Protocol**” means the contents of Appendix B to Part A.
- 1.21 “**Energy Service**” means any metered provision of Energy Utilities in respect of the Regulated Load and Process Load.
- 1.22 “**Energy Target Letters**” means the energy target letters attached as Appendix A of Part B.
- 1.23 “**Energy Toggle**” has the meaning given in Part C.
- 1.24 “**Energy Toggling Function**” means the infrastructure and process of performing an Energy Toggle.
- 1.25 “**Energy Utilities**” means energy or power including electricity, natural gas, fuel, oil and any other energy source used, including sustainable or renewable energy.
- 1.26 “**Energy Utilities Management Subcommittee**” has the meaning set out in Section 2.3 of Appendix B to this Part A.
- 1.27 “**Excusing Cause**” has the meaning given in Schedule 1 – Definitions and Interpretation.

- 1.28 “**Force Majeure**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.29 “**Gainshare Adjustment**” has the meaning given in Part B.
- 1.30 “**Hydro Use**” means electricity that is drawn from the THESL power grid.
- 1.31 “**Initial Period**” means the period beginning on the first day of the first full calendar month immediately after the Substantial Completion Date and ending three months thereafter.
- 1.32 “**International Performance Measurement and Verification Protocol**” or “**IPMVP**” means IPMVP Volume III: Concepts and Options for Determining Energy Savings in New Construction, 2003.
- 1.33 “**Maintenance Committee**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.34 “**Maintenance Period**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.35 “**Monthly Energy Report**” has the meaning given in Section 4.1 of Appendix B to this Part A.
- 1.36 “**Monthly Service Payment**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.37 “**Operations Service Plan**” has the meaning given in Schedule 15-1 – Output Specifications.
- 1.38 “**Painshare Adjustment**” has the meaning given in Part B.
- 1.39 “**Process Load**” means,
- (a) the metered provision of Energy Utilities other than Regulated Load as defined in this Schedule 8 including, vertical transportation, sump pumps, irrigation system pumps, security systems, built-in audio visual systems, building automation systems, central computer servers, communication and IT equipment, IT server room cooling, ventilation, retail tenant units, receptacle loads utilized by HMQ Entities and not by Project Co;
  - (b) the metered provision of Energy Utilities other than Propulsion and Auxiliary Power and not fed from the onboard vehicle power system, including but not limited to mainline signaling system, EMSF Signalling System, ATC system including equipment at the OCC and BOCC, any receptacle loads not utilized by Project Co;
  - (c) the metered provision of Energy Utilities other than Regulated Load as defined in this Schedule 8 including, but not limited to, elevators, sump pumps, irrigation system pumps, security systems, building automation systems, central computer servers, communication and IT equipment, IT server room cooling & ventilation, Station emergency ventilation or tunnel ventilation, any Auxiliary Facilities Occupants, receptacle loads for TVM, Presto, signage, way finding, PVIS, Fire/Life Safety System, SCADA, PA or PAI, energy consumption of Associated Facilities and any receptacle load or built-in-audio visual system utilized by HMQ Entities and not by Project Co;

- (d) the metered provisions of Energy Utilities for an Energy Toggle; and
  - (e) the metered provisions of Energy Utilities used for CGP Energy Opportunity.
- 1.40 “**Propulsion**” means the traction power energy used by the Vehicle for locomotion.
- 1.41 “**Quarterly Monitoring Meetings**” has the meaning set out in Section 2.2 of Appendix B to this Part A.
- 1.42 “**Regulated Load**” means,
- (a) 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) fans; (vii) lighting; (viii) domestic hot water; (ix) domestic hot water recirculation pumps (x) domestic water booster pumps (xi) all pumps except for those pumps that are classified as Process Loads, (xii) exterior lighting, (xiii) switch heaters, (xiv) workshop equipment, (xv) Escalators, and (xvi) tunnel lighting. It may also include loads which would otherwise fall under the definition of Process Loads, but are either reliably predictable (not sensitive to end user behaviour) or negligible; and
  - (b) the metered provision of Energy Utilities including the traction power for the main line and the traction power for the EMSF, as detailed in Appendix C.
- 1.43 “**Relief Event**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.44 “**Revenue Service Vehicle Kilometres**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.45 “**Revenue Vehicle Parameters**” means the inputs used in Project Co’s energy model that are eligible for calibration during the calibration process outlined in Section 3.1.
- 1.46 “**Revenue Vehicles**” has the meaning given in Schedule 1- Definitions and Interpretation.
- 1.47 “**Station**” has the meaning given to it in Schedule 1 – Definitions and Interpretation.
- 1.48 “**Substantial Completion Date**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.49 “**Target Global Adjustment Peak Demand**” means the simulated electricity demand (irrespective of the energy source) from the AET Model for each of the five highest coincident peaks of the year as established by the Independent Electricity System Operator. For clarity, this shall be the aggregate of the respective targeted energy use (taking into consideration the day and Service Level) for:
- (a) Stations as modeled in the energy model within the AET Model for Stations;
  - (b) EMSF as modeled in the energy model within the AET Model for EMSF; and
  - (c) Traction Power as modeled in the energy model within the AET Model for Traction Power,

for each of the five highest coincident peaks of the year as established by the Independent Electricity System Operator. For added clarity, Project Co's targeted energy consumption over these five hours are known only after the Independent Electricity System Operator determines the five coincident peak hours.

- 1.50 “**THESL**” has the meaning given in Schedule 15-1 – Output Specifications.
- 1.51 “**Traction Power**” means power used as metered at the primary side of the Traction Power transformer used for providing energy to the Vehicles for locomotion and any power drawn from the secondary side of the Traction Power transformer.
- 1.52 “**Vehicle Manufacturer**” has the meaning given in Schedule 1- Definitions and Interpretation.
- 1.53 “**Vehicles**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.54 “**Weather Data**” means the actual hour-by-hour meteorological data as reported by Environment Canada and provide in format CTMY2 for the location Pearson Airport, Toronto, Ontario in the Contract Year.

**2. INTENTIONALLY DELETED**

**3. CALIBRATION OF THE AGGREGATE ENERGY TARGET AND THE TARGET GLOBAL ADJUSTMENT PEAK DEMAND**

- 3.1 At Commercial Close, Project Co shall deliver to HMQ Entities its AET Model. A suitable proprietary load flow simulation software tools will be used to simulate or model annual energy consumption of traction power related for the ECLRT. However the energy simulation for Traction Power must be compliant with the “IEEE Guide for Rail Transit Traction Power Systems Modeling”, by IEEE Vehicular Technology Society; IEEE Standard 1653.3™ -2012. Project Co shall clearly show how any or all of the parameters are used in its calculation of Aggregate Energy Target and the Target Global Adjustment Peak Demand. Project Co shall provide calculations in accordance with good industry practice. Project Co shall use the AET Model with the following Revenue Vehicle Parameters to produce the Calibrated Aggregate Energy Target and the Calibrated Target Global Adjustment Peak Demand.

Parameter	Value
Vehicle Length	32m
Vehicle Width	2.65m
Vehicle Height	3.635m
Vehicle Load (W4)	65,150 kg
Train Consist	2 and 3-Revenue Vehicle consists
Maximum Gradient	6%



Parameter	Value
Rotating Mass Factor	7% of W4 weight
Max Speed (Exclusive ROW)	80 kph
Max Speed (Semi-Exclusive ROW)	60 kph
Auxiliary Power (per Vehicle)	102 kW
Diversification Factor	66%
Nominal/Full Load Voltage	750VDC
Maximum Supply Voltage	900VDC
Minimum Supply Voltage	525VDC
Maximum Regenerated Voltage	900VDC
Maximum Line Current per Car	800A
Maximum Regenerated Line Current	1100A
Maximum Tractive Effort (Torque)	84 kN
Max Acceleration at Max Tractive Effort	1.20 m/s <sup>2</sup>
Max Power (Per Vehicle)	514 kW
Service Braking Rate	0.9 m/s <sup>2</sup>
Torque Taper Point	18.5 kph
Power Efficiency	0.84
Vehicle Rolling Resistance	$R = 2197.440 + 0.883v^2$
Vehicle Rolling Resistance (tunnel)	$R = 2197.440 + 2.207v^2$

Acceleration time with W(x) load and 2/2 traction units active (seconds)					
Schedule 15-2 Part4 Appendix G	W1 Section 3.1	W2 Section 3.2	W3 Section 3.3	W4 Section 3.4	W5 Section 3.5

Acceleration time with W(x) load and 2/2 traction units active (seconds)					
Schedule 15-2 Part4 Appendix G	W1 Section 3.1	W2 Section 3.2	W3 Section 3.3	W4 Section 3.4	W5 Section 3.5
0 km/h up to 10.0 km/h	3.3	3.3	3.4	3.4	3.5
0 km/h up to 20.0 km/h	5.7	5.7	5.7	5.8	6.1
0 km/h up to 30.0 km/h	8.1	8.3	8.7	8.9	9.4
0 km/h up to 40.0 km/h	11.6	12.0	13.1	13.5	14.4
0 km/h up to 50.0 km/h	16.4	17.2	19.1	19.7	21.0
0 km/h up to 60.0 km/h	22.8	24.1	27.0	27.9	29.8
0 km/h up to 70.0 km/h	31.1	33.1	37.4	38.6	41.3
0 km/h up to 80.0 km/h	42.2	45.0	51.2	52.9	56.6

Acceleration time with W(x) load and 2/2 traction units active (seconds)					
Tunnel Operation					
0 km/h up to 10.0 km/h	3.3	3.4	3.4	3.4	3.6
0 km/h up to 20.0 km/h	5.7	5.7	5.7	5.8	6.1
0 km/h up to 30.0 km/h	8.2	8.3	8.7	9.0	9.5
0 km/h up to 40.0 km/h	11.8	12.2	13.3	13.7	14.6
0 km/h up to 50.0 km/h	16.8	17.7	19.8	20.5	21.7
0 km/h up to 60.0 km/h	24.0	25.6	29.0	30.1	32.1
0 km/h up to 70.0 km/h	34.5	37.2	43.0	44.6	47.8
0 km/h up to 80.0 km/h	52.3	57.2	69.0	71.2	78.0

- 3.2 The equipment used to measure the energy consumption (including Traction Power and Auxiliary Power) will be provided by Vehicle Manufacturer as per Technical Specification for Light Rail Vehicle (Appendix D of Part 4 to Schedule 15-2 – Design and Construction Requirements). The

energy consumption measurement can be viewed in all modes (including layover) on the maintenance mode screen of the Revenue Vehicle's dedicated diagnostic display (Appendix D of Part 4 to Schedule 15-2 – Design and Construction Requirements).

- 3.3 Since the consumption breakdown (Traction Power vs. Auxiliary Power) is not supported by the Revenue Vehicle, the total Revenue Vehicle energy consumption is to be used for all related AET Models and energy analysis reports that are referenced in this Schedule 8.
- 3.4 Project Co shall revise the AET Model prior to Substantial Completion to determine the Calibrated Aggregate Energy Target.
- 3.5 Project Co shall prepare and submit to HMQ Entities the detailed methodology to calibrate the Revenue Vehicle Parameters, in accordance with Schedule 10 – Review Procedures, to determine the calibrated values (the “**Calibrated Revenue Vehicle Parameters**”) through Commissioning. Project Co shall use all information available, including the metering, monitoring results, input from the Traction Power Systems Commissioning, and all processes contained in Schedule 36 – Vehicles to calibrate the AET Model.
- 3.6 HMQ Entities shall monitor all activities to calibrate the Revenue Vehicle Parameters.
- 3.7 Project Co shall provide HMQ Entities reasonable notice of all activities to calibrate the Revenue Vehicle Parameters.
- 3.8 Project Co shall afford HMQ Entities access to the Site for the purposes of monitoring all activities to calibrate the Revenue Vehicle Parameters.
- 3.9 Project Co shall replace the Revenue Vehicle Parameters from the AET Model with the Calibrated Revenue Vehicle Parameters and run the AET Model to produce the Calibrated Aggregate Energy Target and the Calibrated Target Global Adjustment Peak Demand.
- 3.10 Project Co shall submit the calibrated AET Model in accordance with Schedule 10 – Review Procedures for review by HMQ Entities.
- 3.11 This will be a one-time only calibration and no additional changes will be made in subsequent years except otherwise stated in this Schedule 8.
- 3.12 During each Contract Year the Calibrated Revenue Vehicle Parameters will be used into the AET Model.
- 3.13 Any changes to the AET Model and its inputs must be reviewed by HMQ Entities for acceptance.

#### **4. INTENTIONALLY DELETED**

#### **5. CORRECTED AGGREGATE ENERGY TARGET**

- 5.1 In all cases, corrections to energy targets must be consistent with the principles outlined in the IPMVP.

- 5.2 The procedure for determining the Corrected Aggregate Energy Target and Corrected Target Global Adjustment Peak Demand for the Energy Services will be calculated after the corrections with respect to the following are made, as applicable, excluding Process Loads (if any, with separate calculations to be conducted and provided for each Energy Service):
- (a) outcome of the Energy Protocol;
  - (b) any Relief Event, Force Majeure, or Excusing Cause;
  - (c) increased or decreased Revenue Service Vehicle Kilometres as compared to Operations Service Plan (including any changes made by HMQ Entities);
  - (d) increased or decreased deadhead kilometres beyond what is estimated in Schedule 15-3 - Output Specifications;
  - (e) training kilometres;
  - (f) differential between what Project Co can instruct, assume and model to simulate Driver's acceleration or deceleration profiles and habits, and actual Driver acceleration or deceleration profile and habits;
  - (g) any additional operator's request, additional train in service, special events, non-scheduled extra runs that are above and beyond the Operations Service Plan and affecting energy use and peak demand;
  - (h) deductions made pursuant to Schedule 20 – Payment Mechanism; and
  - (i) Project Co shall calculate the Corrected Aggregate Energy Target and the Corrected Target Global Adjustment Peak Demand for the Energy Services for the following list of items for which the Vehicle usage profile may affect the Traction Power consumption if they are different from that which was known at Commercial Close. The following list of items, which shall be considered inputs into Project Co's AET Model that predicts the energy consumption and peak demand. Project Co shall ensure innovative design to implement proper control and a monitoring system to track and document these listed inputs that are not controlled by Project Co:
    - (i) passenger loading; and
    - (ii) requirements of the Operations Service Plan.
- 5.3 Project Co shall calculate the Corrected Aggregate Energy Target and the Corrected Target Global Adjustment Peak Demand for the Aggregate Energy Service Actual Consumption for passenger loadings using the AET Model. Project Co shall submit all required data to support the Corrected Aggregate Energy Target and the Corrected Target Global Adjustment Peak Demand.

**APPENDIX A**

**INTENTIONALLY DELETED**

**APPENDIX B**  
**ENERGY PROTOCOL**

**1. PROTOCOL OBJECTIVES**

- 1.1 HMQ Entities 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 the EMSF, Traction Power, and Stations.

**2. ENERGY UTILITIES MANAGEMENT SUBCOMMITTEE AND CONTINUAL ADVICE**

- 2.1 Project Co shall provide an energy monitoring, energy targeting and energy management service to HMQ Entities in accordance with this Appendix B.
- 2.2 A joint working group responsible for the management of the energy provisions within this Schedule 8 shall meet each quarter throughout the Maintenance Period 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 Part A - Outline of Energy Monitoring Procedures) 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 HMQ Entities (the “**Energy Utilities Management Subcommittee**”). Project Co will propose a detailed format and agenda for such Quarterly Monitoring Meetings at least two weeks prior to each meeting (see Attachment 2 to this Part A for an example agenda). At the start of each Quarterly Monitoring Meeting, the Energy Utilities Management Subcommittee shall appoint one of its number to act as chairperson, ensuring that the position is held by a Project Co Representative and then an HMQ 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 twelve months. Such projections will then be used by HMQ Entities 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 Part A - Outline of Energy Monitoring Procedures.
- 2.6 Project Co shall ensure that representatives of the Maintenance and Rehabilitation Contractor 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 EMSF,

Traction Power, and Stations 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 Monthly Energy Reports.
- 2.9 Project Co will be proactive at the Quarterly Monitoring Meetings and shall undertake annual regular value management reviews for the EMSF, Traction Power, and Stations 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. HMQ Entities 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 B, such matter shall be determined using the Dispute Resolution Procedure as set out in Schedule 27 - Dispute Resolution Procedure.
- 2.11 Project Co (acting through the Energy Utilities Management Subcommittee) will advise HMQ Entities in relation to the following measures which it will expect HMQ Entities to implement and Project Co shall implement and shall procure that Project Co Parties implement the same:
  - (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) any energy awareness campaigns; and
  - (f) all other relevant energy consumption advice.

### 3. INITIAL MONITORING

- 3.1 Throughout the Initial Period, Project Co shall ensure that all necessary energy management procedures and energy optimization initiatives are undertaken in accordance with Attachment 1 hereto.
- 3.2 Project Co shall demonstrate, to HMQ Entities' satisfaction, that during the Initial Period systems are optimized to operate at peak efficiencies and that all energy reduction techniques designed and included within the job are functioning correctly.

- 3.3 Energy measurements and meter readings shall be undertaken by Project Co on a calendar month basis during the Initial Period and Project Co shall provide a report on the measurements and readings to HMQ Entities.

#### 4. REPORTING SERVICES

- 4.1 From the commencement of the Maintenance Period, Project Co shall provide to HMQ Entities 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 EMSF, Traction Power, and Stations shall include data on the thermal efficiency of the entire plant and equipment and 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 EMSF, Traction Power, and Stations shall be monitored using the building management system, capable of verification by HMQ Entities.

#### 6. COMPLIANCE

- 6.1 HMQ Entities is entitled from time to time to appoint an energy consultant of its choice and at its cost to monitor and check Project Co’s compliance with the provisions of this Appendix B. Project Co must co-operate with any such consultant and must allow such access to the EMSF, Traction Power, and Stations, all energy records and all facilities management maintenance data as such consultant may reasonably require.

#### 7. HMQ ENTITIES AND PROJECT CO’S UNDERTAKINGS

- 7.1 HMQ Entities shall assist, and shall encourage the HMQ 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 HMQ Entities staff. HMQ Entities will ensure that HMQ Parties involve management staff in energy efficiency focus in order to incorporate good practice as part of HMQ Entities and HMQ Parties’ overall activities.
- 7.2 HMQ Entities 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 HMQ Entities 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 HMQ Entities, HMQ Entities staff, Project Co and Project Co staff, 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 B to Part A; and
  - (i) distributing appropriate promotional and publicity material to raise awareness of energy efficiency measures and achievements.
- 7.3 The Parties shall, for consideration by the Energy Utilities Management Subcommittee, produce annual reports summarizing the above measures and including recommendations and suggestions received from staff to enhance energy efficiency at the EMSF, Traction Power, and Stations.
- 7.4 Project Co shall encourage representatives of the Maintenance and Rehabilitation Contractor to attend meetings of the Energy Utilities Management Subcommittee.
- 7.5 HMQ Entities 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 HMQ Entities at the Maintenance 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 the Variation Procedure.

- 7.7 Project Co undertakes that it shall not intentionally alter the proportions of different types of energy consumed from the agreed proportions referred to within this Appendix B without the prior agreement of the Energy Utilities Management Subcommittee.

**APPENDIX C**  
**ENERGY LOADS FOR ENERGY MODELS**

Appendix C: Summary of Energy Loads for Energy Models										
Energy Load	Load	EMSF	Traction Power System	Station	Electricity	Natural Gas	Description	Sub-Metering	Painshare / Gainshare	
Regulated Loads	Plug Loads	Yes		Yes	■		Personal Computers, Task Lighting, etc., Plug loads utilised by Project Co.	Included	Included	
	Interior Lighting	Yes		Yes	■		Luminaires and Lighting Controls	Included	Included	
	Space Heating	Yes		Yes		■	Boilers	Included	Included	
	Steam Plant (If any)	Yes				■	Boilers	Included	Included	
	Humidification	Yes		Yes	■	■	Electric Humidifiers/Gas Humidifier	Included	Included	
	Space Cooling (A/C, Chiller)	Yes		Yes	■		Chillers	Included	Included	
	Dehumidification	Yes		Yes	■		Chillers	Included	Included	
	Heat Rejection (CT, DC if any)	Yes		Yes	■		Cooling Tower Fans and Pumps	Included	Included	
	Ventilation Fans (RTU/ERV)	Yes		Yes	■	■	ERVs, AHUs, Exhaust Fans, etc./Gas fired units	Included	Included	
	Exterior Lighting	Yes		Yes	■		Luminaires and Lighting Controls	Included	Included	
	Tunnel Lighting	Yes		Yes	■		Tunnel Lighting			
	Escalators				Yes	■		Escalators		
	Switch Heaters and air blowers	Yes			Yes	■		Electrically powered switch heaters and air blowers	Included	Included
	Workshop equipment	Yes				■		Electrical Loads	Included	Included
	HVAC Pumps ((DCW, DHW, Heating and Cooling circulation)	Yes			Yes	■		Heating, Chilled Water and domestic watercirculation	Included	Included
	Service Water Heating	Yes			Yes	■	■	Water Heater	Included	Included
	Regulated Traction Power and on-board Auxilliary Power for Main Line			Yes		■		Traction Power for main line, including Propulsion Power, Lighting, Receptacle, heating, air conditioner, air compressor, Emergency Panel etc.	Included	Included
Regulated Traction Power and on-board Auxilliary Power for EMSF			Yes		■		Traction Power for EMSF including Propulsion Power, Lighting, Receptacle, heating, air conditioner, air compressor, Emergency Panel etc.	Included	Included	

Appendix C: Summary of Energy Loads for Energy Models									
Energy Load	Load	EMSF	Traction Power System	Station	Electricity	Natural Gas	Description	Sub-Metering	Painshare / Gainshare
Process Loads	Emergency Generators	Yes		Yes	■	■	Emergency Generators and Ancillary Equipment (Not Co-gen plant and its ancillary)	Included	Excluded
	Plug Loads Utilized by HMQ Agencies and not by ProjectCo.	Yes		Yes	■		Personal Computers, Task Lighting, etc., Plug loads utilized by HMQ Agencies and not by ProjectCo.	Included	Excluded
	Elevators/Vertical Transportation	Yes		Yes	■		Electric Motors	Included	Excluded
	Sump Pumps	Yes		Yes	■		Pump Motor	Included	Excluded
	Irrigation System pumps	Yes		Yes	■		Pump Motor	Included	Excluded
	Life safety/fire safety system energy	Yes		Yes	■		Electrical Loads	Included	Excluded
	Security system	Yes		Yes	■		Electrical Loads	Included	Excluded
	AV/Communication/BMS/ Signage/Emergency System	Yes		Yes	■		Electrical Loads	Included	Excluded
	AV/Communication/BMS/ Signage/Billboard/Pylon sign	Yes		Yes	■		Electrical loads	Included	Excluded
	Retail	Yes		Yes	■	■	Restaurant gas appliances +retail electric appliances	Included	Excluded
	Data Server, IT equipment, (e.g.UPS loads), cooling and ventilation electrical Loads for Data/IT Server Room airconditioning.	Yes		Yes	■		Electrical Loads	Included	Excluded
	Food service/kitchen/servery	Yes		Yes	■	■	Cafeteria/kitchen gas and electrical appliance	Included	Excluded
	Associated Facilities			Yes	■		Electrical Loads	Included	Excluded
	Stops			Yes	■		Electrical Loads	Included	Excluded
	Station Emergency Ventilation/Tunnel Ventilation			Yes	■		Electrical Loads	Included	Excluded
	Receptacle loads for TVM/Presto/signage/way finding/PVIS/SCADA/PA/PRESTO/PAI			Yes	■		Various electrical loads	Included	Excluded
	Process Load Traction Power - Not fed from the Vehicle Power Supply System			Yes		■	(Mainline & MSF signaling system, Automatic Train Control system including equipment at the OCC and backup OCC)	Included	Excluded
CGP Toggling Function (as applicable)	Yes	Yes	Yes	■		CGP Toggling Function (as applicable)	Included	Excluded	

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**ATTACHMENT 1 – OUTLINE OF ENERGY MONITORING PROCEDURES****1. INTRODUCTION**

The purpose of this Attachment 1 is to outline how energy consumption will be monitored and measured at the EMSF, Traction Power, and Stations.

**2. ENERGY MONITORING**

- 2.1 Project Co has provided, as a minimum, the metering required pursuant to Schedule 15 – Output Specifications and this Schedule 8 and the following metering within the EMSF, Traction Power, and Stations:
- (a) electrical consumption;
  - (b) natural gas consumption;
  - (c) cold water consumption; and
  - (d) other energy consumption as described in contract documents.
- 2.2 The metering 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**

Project Co will obtain external temperature profiles from the Environment Canada local weather office and the building management system in furtherance of Section 4.5 of this Attachment 1 to Part A. The temperature profiles will be used to assist in the evaluation of quarterly energy trends particularly in the event that excessive summertime temperatures have been experienced. However, the Environment Canada local weather office data will be the prime source of Weather Data. Any trends in climate change will be noted and included in the Monthly Energy Reports.

**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 Part A 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 to the Project Agreement;
  - (d) incidence of misuse of energy by HMQ Entities; 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**

Total energy consumption for the EMSF, Traction Power, and Stations excluding the energy consumption for Traction Power will be recorded on a monthly basis and will be included in the Monthly Energy Report. This will be identified separately as 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 – QUARTERLY MONITORING MEETING AGENDA**

Meeting Title: Quarterly Monitoring Meeting of the Energy Utilities Management  
Subcommittee

For The Period \_\_\_\_\_

Date of Meeting: \_\_\_\_\_

Venue: \_\_\_\_\_

Those Present: Project Co, HMQ Entities and Representative of the Maintenance and  
Rehabilitation Contractor

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 HMQ Entities Variations under Schedule 22 - Variation Procedure

Item 5 Actual energy consumption compared against target

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

**PART B****REPORTING OBLIGATIONS AND GAINSHARE/PAINSHARE ADJUSTMENT  
CALCULATIONS****1. DEFINITIONS**

- 1.1 “**Annual Review Meeting**” has the meaning set out in Section 2.10 of this Part B.
- 1.2 “**Average Passenger Loading**” means the average amount of passengers using the Project Co System Infrastructure as determined by Project Co.
- 1.3 “**Average Unit Rate Price**” means the weighted average price for each standard unit of all Energy Utility purchased by HMQ Entities during the relevant Contract Year as reported 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 8 of this Part B.
- 1.4 “**Business Day**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.5 “**Contract Month**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.6 “**Contract Year**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.7 “**Commercial Close**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.8 “**Developed Intellectual Property**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.9 “**Energy Analysis Report**” means the report detailed in Section 4 of this Part B.
- 1.10 “**Energy Model**” means the energy models that support the Energy Target Letters, including the Forecast Energy Model, and the Reference Building Energy Model.
- 1.11 “**Energy Target Letters**” means the energy target letters attached as Appendix A of Part B.
- 1.12 “**Forecast Energy Model**” or “**FEM**” means the energy model that is equal to the Proposed Building as defined in the LEED® Canada Reference Guide for Green Building Design and Construction 2009 Rating System for EMSF, and the energy model that is equal to the Proposed Building as defined in the Toronto Green Standard for the Stations that supports the Energy Target Letters.
- 1.13 “**Gainshare Adjustment**” means the amount payable by HMQ Entities 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) consumption for all Energy Services that fall outside the set bands set out in this Schedule 8. For clarity, the Gainshare Adjustment includes any gainshare attributable to the application of the Target Global Adjustment Peak Demand mechanism.



- 1.14 “**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.
- 1.15 “**Hydro Use**” means electricity that is drawn from the THESL power grid.
- 1.16 “**Initial Period**” means the period beginning on the first day of the first full calendar month immediately after the Substantial Completion Date and ending three months thereafter.
- 1.17 “**International Performance Measurement and Verification Protocol**” or “**IPMVP**” means IPMVP Volume III: Concepts and Options for Determining Energy Savings in New Construction, 2003.
- 1.18 “**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.
- 1.19 “**Measurement and Verification of Energy Use Plan**” has the meaning given in Section 2.6 of this Part B.
- 1.20 “**Monthly Energy Report**” means the reports produced by Project Co via Part A of this Schedule 8.
- 1.21 “**Monthly Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.22 “**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.
- 1.23 “**Painshare Adjustment**” means the deduction which may be claimed by HMQ Entities 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) consumption for all Energy Services which fall outside the bands set out in this Schedule 8. For clarity, the Target Global Adjustment Peak Demand regime shall have no application for the purposes of calculating Painshare Adjustment.
- 1.24 “**Planned Passenger Loadings**” means the assumptions used in the AET Model.
- 1.25 “**Process Load**” has the meaning given in Part A.
- 1.26 “**Reference Building Energy Model**” means the energy model that supports the Energy Target Letters for the “Reference Building” as defined in the LEED® Canada Reference Guide for Green Building Design and Construction 2009 Rating System.
- 1.27 “**Regulated Load**” has the meaning given in Part A.
- 1.28 “**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. Simple Payback = initial cost of energy retrofit / annual energy savings.

- 1.29 “**Station**” has the meaning given to it in Schedule 1 – Definitions and Interpretation.
- 1.30 “**Substantial Completion**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.31 “**Substantial Completion Date**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.32 “**THESL**” has the meaning given in Schedule 15-1 – Output Specifications.
- 1.33 “**Unit of Energy**” means one Megajoule.

## 2. PROCEDURES FOR DETERMINING ENERGY COST SHARING

- 2.1 At Commercial Close, Project Co shall deliver to HMQ Entities its Energy Model for the Traction Power System. Suitable proprietary load flow simulation software tools shall be used to simulate or model annual energy consumption of power related for the ECLRT. However the energy simulation for Traction Power shall be compliant with the “IEEE Guide for Rail Transit Traction Power Systems Modeling”, by IEEE Vehicular Technology Society; IEEE Standard 1653.3™ -2012 for Traction Power. Project Co shall clearly show how any or all of the parameters are used in its calculation of Aggregate Energy Target and Target Global Adjustment Peak Demand. Project Co shall provide calculations in accordance with good industry practice.
- 2.2 At Commercial Close, Project Co shall deliver to HMQ Entities its Energy Model for the EMSF. The energy simulation for the EMSF shall be compliant with the LEED® Canada Reference Guide for Green Building Design and Construction 2009 Rating System.
- 2.3 At Commercial Close, Project Co shall deliver to HMQ Entities its Energy Model for the Stations. The energy simulation for a Station shall be compliant with the Toronto Green Standard required for environmental performance measure of the Toronto Green Standard.
- 2.4 At Commercial Close, Project Co shall deliver to HMQ Entities Energy Target Letters. In addition, Project Co shall deliver to HMQ Entities for review in accordance with Schedule 10 – Review Procedure, updated Energy Target Letters together with a supporting Energy Model three months prior to Substantial Completion. Any changes to the Energy Target Letters after Commercial Close shall be approved by HMQ Entities and shall constitute a Variation. Any Variation during the Construction Period that has an impact on an Energy Target Letter, shall reserve the right to change the Energy Target Letter to take into account the changes, in accordance with Schedule 22 – Variation Procedure.
- 2.5 The Aggregate Energy Target and the Target Global Adjustment Peak Demand shall form the normalized 30 year benchmark for calculating the Energy Services cost sharing in respect of all Energy Services. The Corrected Aggregate Energy Target and the Corrected Target Global Adjustment Peak Demand for all metred connections for all Energy Services shall be used to calculate Painshare Adjustments and Gainshare Adjustments. The Aggregate Energy Target

and the Target Global Adjustment Peak Demand shall not be altered except by the processes described in Parts A.

- 2.6 Project Co shall prepare and submit a measurement and verification of energy use plan (the “**Measurement and Verification of Energy Use Plan**”). The Measurement and Verification of Energy Use Plan must adhere to the IPMVP. At Final Completion, Project Co shall submit a Measurement and Verification of Energy Use Plan in accordance with Schedule 10 – Review Procedure to HMQ Entities, as described in IPMVP Volume III, Section 3.2, including, without limitation, a metering schedule of all proposed energy end-uses. All subsequent Energy Analysis Reports are to be based on this plan.
- 2.7 Without prejudice to Schedule 15 – Output Specifications or anything else in this Schedule 8, Project Co shall measure the amount of Aggregate Energy Service Actual Consumption and the Actual Global Adjustment Peak Demand in respect of each Calendar Month beginning at the start of the Initial Period and ending on the expiry or earlier termination of the Project Agreement.
- 2.8 Without prejudice to Schedule 15 – Output Specifications or anything else in this Schedule 8, Project Co shall provide to HMQ Entities a summary of Aggregate Energy Service Actual Consumption and the Actual Global Adjustment Peak Demand in respect of each metered connection for each energy source, at the end of each Calendar Month, in the form of a certificate. The first such month shall begin on the first day of the Contract Year. For greater certainty, Regulated Loads, Process Loads, Auxiliary Power, and Propulsion should be set out separately in the certificate.
- 2.9 Project Co shall provide HMQ Entities with a draft Energy Analysis Report within sixty days following the end of each Contract Year, which report shall include copies of all working papers to fully support the draft Energy Analysis Report. The draft Energy Analysis Report shall be consistent with the format and content requirements set out in this Section 2.
- 2.10 As soon as practicable and in any event within 90 days following the end of each Contract Year (or such other date as may be agreed between HMQ Entities and Project Co), Project Co and HMQ Entities shall convene an annual review meeting to be attended by the Project Co Representative and HMQ Entities (the “**Annual Review Meeting**”). At the Annual Review Meeting Project Co shall present the draft Energy Analysis Report to HMQ Entities, and HMQ Entities and Project Co shall discuss the Aggregate Energy Service Actual Consumption and the Actual Global Adjustment Peak Demand for all metered connection for all Energy Services for the preceding Contract Year.
- 2.11 Project Co shall assist HMQ Entities and afford HMQ Entities such information and access to the EMSF records, Traction Power records, Station records, building management system records, utility meters, and by other means as may reasonably be required for HMQ Entities to confirm the draft Energy Analysis Report provided by Project Co to determine the Aggregate Energy Service Actual Consumption and the Actual Global Adjustment Peak Demand for each metered connection for each separate Energy Service at the EMSF, Traction Power, and Stations for the Contract Year.

- 2.12 The HMQ Entities shall promptly notify Project Co of the details of any disagreement of any aspect of the draft Energy Analysis Report, and the Parties shall then seek to agree to any matters in dispute, but where a matter cannot be resolved within such twenty Business Day period (or such other period as may be otherwise agreed by HMQ Entities, acting reasonably) it shall be dealt with in accordance with Schedule 27- Dispute Resolution Procedure.
- (a) No later than twenty Business Days following each Annual Review Meeting, or within such period as may be otherwise agreed between HMQ Entities and the Project Co Representative, acting reasonably:
    - (i) HMQ Entities shall confirm its acceptance of all aspects of the draft Energy Analysis Report; and
    - (ii) Project Co and HMQ Entities shall agree to any corrections to the Aggregate Energy Target and the Target Global Adjustment Peak Demand after taking into account load or usage changes as a result of any changes in occupancy, operating hours or due to any exceptional circumstances.
  - (b) Subject to Section 2.12(c) of this Part B, Project Co or HMQ Entities, 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 of this Part B.
  - (c) Claims made by either Project Co or HMQ Entities for a Gainshare Adjustment or a Painshare Adjustment shall be made at an Annual Review Meeting. If Project Co makes a claim for Gainshare Adjustment, Project Co shall within 10 Business Days after acceptance of the Energy Analysis Report by HMQ Entities or within such other period as may be agreed by HMQ Entities and Project Co, acting reasonably, submit an account to HMQ Entities setting out its calculation and justifying the quantification of the Gainshare Adjustment. If HMQ Entities makes a claim for a Painshare Adjustment, HMQ Entities shall, within 10 Business Days after acceptance of the Energy Analysis Report by HMQ Entities or within such other period as may be agreed by HMQ Entities and Project Co, acting reasonably, submit an account to Project Co setting out its calculations and justifying the quantification of the Painshare Adjustment.
  - (d) If either Project Co or HMQ Entities wishes to dispute any account presented pursuant to Section 2.12(c) of this Part B, it must do so by notice to the other Party within 10 Business Days of receipt of such account. The HMQ Entities and the Project Co Representative shall use reasonable efforts to resolve the dispute for an additional 10 Business Days. If there is no agreement within a further 10 Business Days then either Party may refer the matter to Schedule 27 - Dispute Resolution Procedure. If neither Party objects in accordance with this Section 2.12(d) or, following final determination of the disputed account in accordance with this Section 2.12(d), Project Co shall include the relevant Gainshare Adjustment or Painshare Adjustment as a separate item within the next invoice prepared by Project Co in accordance with Section 34.6 of the Project Agreement. No adjustments shall be made to the Monthly Service Payment for any claimed Gainshare Adjustment or Painshare Adjustment except in accordance with the procedure set out in Section 6 of this Part B.

**3. INTENTIONALLY DELETED****4. CONTENT AND FORMAT OF THE ENERGY ANALYSIS REPORT**

- 4.1 The Energy Analysis Report shall adhere to the IPMVP.
- 4.2 The Energy Analysis Report shall present findings of Aggregate Energy Service Actual Consumption and the Actual Global Adjustment Peak Demand for all metered connections for all Energy Services for the relevant Contract Year and shall include the following:
- (a) a summary of actual usage, and breakdown by utility in gigajoules, global adjustment peak demand or other utility rate units. The summary should also highlight any exceptional changes (being changes of plus or minus [REDACTED]% in consumption or pattern of use) in consumption or pattern of use since any previous survey in the past five years;
  - (b) accurate and precise consumption data, and global adjustment peak demand as provided by utility metering; and
  - (c) identification of potential cost savings in respect of Energy Utilities usage, other than the Traction Power 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 HMQ Entities of projected Energy Utilities usage, other than the Traction Power 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.
- 4.3 The objectives of the Energy Analysis Report are to confirm Aggregate Energy Service Actual Consumption and the Target Global Adjustment Peak Demand for all Energy Services in the relevant Contract Year and to provide data to calculate Corrected Aggregate Energy Target and the Corrected Target Global Adjustment Peak Demand for all Energy Services and Gainshare Adjustment or Painshare Adjustment for all Energy Services as well as for peak demand.
- 4.4 Consistent with the objectives set out in Section 4.3 of this Part B, Project Co shall ensure that the Energy Analysis Report has the following components (including the format in Appendix B for each metered connection and for each Service Level experienced in the Contract Year):
- (a) presentation of Aggregate Energy Service Actual Consumption, Actual Global Adjustment Peak Demand and calculation of Corrected Aggregate Energy Target and Corrected Target Global Adjustment Peak Demand;
  - (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 Aggregate Energy Target and/or the Target Global Adjustment Peak Demand;

- (d) utility data collected by Project Co and presented in the tables set out in Parts A;
- (e) detailed analysis of all sub-metered end-uses required by the Output Specifications;
- (f) an outline any outstanding issues from any previous Energy Analysis Report;
- (g) corrections to the Aggregate Energy Target and the Target Global Adjustment Peak Demand complete with detailed explanations of any changes made to the Energy Model;
- (h) a table showing the percentage variation in Aggregate Energy Service Actual Consumption against the Corrected Aggregate Energy Target;
- (i) a table showing the percentage variation in Actual Global Adjustment Peak Demand Consumption against each Corrected Target Global Adjustment Peak Demand;
- (j) tables and graphs showing the consumption, unit costs, and total costs for all purchased Energy Utilities for the previous twelve months, with a breakdown of Energy Utilities types and costs for each energy use described in Sections 4.3 and 4.4 of this Part B and any other major energy use for the previous 12 months;
- (k) appendices that include graphs, calculations and miscellaneous data that are relevant to the Energy Analysis Report; and
- (l) summary tables from the previous five years of Energy Analysis Reports delivered by Project Co to HMQ Entities.

## **5. PROCESS FOR AMENDING THE AGGREGATE ENERGY TARGET AND THE TARGET GLOBAL ADJUSTMENT PEAK DEMAND**

- 5.1 In all cases, amendments to energy consumption targets must be consistent with the principles outlined in the IPMVP.
- 5.2 Following the acceptance of the Energy Analysis Report by HMQ Entities in accordance with this Schedule 8, the data set out in the Energy Analysis Report will be used to determine the Painshare Adjustments or Gainshare Adjustments.
- 5.3 At any time commencing after the first anniversary of the Substantial Completion Date, Project Co and HMQ Entities shall, acting reasonably, agree to make any program and variation adjustments to the Aggregate Energy Target and the Target Global Adjustment Peak Demand only in the event of:
  - (a) changes implemented in accordance with the Project Agreement that would cause load changes or other changes in Energy Utilities usage; or
  - (b) changes in the utilization of the EMSF, Traction Power, or the Station from that described in the Project Agreement.

- 5.4 Project Co may elect to propose an amendment to the Aggregate Energy Target or the Target Global Adjustment Peak Demand in direct proportion to any substantial change in occupation of the EMSF or the Stations, or any substantial change in use of Traction Power.
- 5.5 The Party requesting an amendment to the Aggregate Energy Target or the Target Global Adjustment Peak Demand 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 energy auditor shall prepare a report making a recommendation regarding amendments to the Aggregate Energy Target or the Target Global Adjustment Peak Demand. Both HMQ Entities and Project Co must agree to the amended Aggregate Energy Target or the Target Global Adjustment Peak Demand 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.
- 5.6 Any amendment to the Aggregate Energy Target and the Target Global Adjustment Peak Demand shall only affect the Monthly Service Payment (as a result of any Painshare Adjustments or Gainshare Adjustments) from the date on which the amendment is effective and shall not, for greater certainty, have a retroactive effect on any other previous Monthly Service Payments except where the Schedule 27 - Dispute Resolution Procedure adjudicates in favour of Project Co, whereby the payments shall be prorated to 30 days after the energy auditor's report.

## **6. CALCULATION OF GAINSHARE ADJUSTMENT OR PAINSHARE ADJUSTMENT**

- 6.1 Following the acceptance of the Energy Analysis Report by HMQ Entities, the data set out in the Energy Analysis Report will be used to determine the Painshare Adjustments or Gainshare Adjustments.
- 6.2 For each Contract Year, the Gainshare Adjustment and Painshare Adjustment shall be calculated in accordance with this Section 6. For clarity, Process Loads will not be considered as part of:
- (a) the Corrected Aggregate Energy Target;
  - (b) the Aggregate Energy Service Actual Consumption;
  - (c) the Corrected Target Global Adjustment Peak Demand; or
  - (d) the Actual Global Adjustment Peak Demand,

for the purposes of calculating a Gainshare Adjustment or Painshare Adjustment.

- 6.3 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.

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 Global Adjustment Peak Demand and the Aggregate Energy Service Actual Consumption.

- 6.4 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.
- 6.5 Comparing Aggregate Energy Target and Target Global Adjustment Peak Demand
- (a) After the acceptance of the Energy Analysis Report for each Contract Year, for each individual metered connection to a supplier of Energy Utilities,
- (i) the Aggregate Energy Service Actual Consumption for all Energy Services shall be compared to the Corrected Aggregate Energy Target for all Energy Services; and
- (ii) the Actual Global Adjustment Peak Demand for Hydro Use shall be compared to the Corrected Target Global Adjustment Peak Demand for the respective Contract Year.
- (b) If,
- (i) the Aggregate Energy Service Actual Consumption in respect of the aggregate Energy Services is greater than [REDACTED]% of the Corrected Aggregate Energy Targets 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. For clarity, Target Global Adjustment Peak Demand shall be used solely for the purposes of calculating the Actual Global Adjustment Peak Demand contribution to the Gainshare Adjustment, and shall have no application for the purposes of calculating Painshare Adjustment
- (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 AEC variance from CoAET for the purposes of calculating Painshare Adjustment in the previous Contract Year was:	[REDACTED] to [REDACTED]%	[REDACTED]
If the AEC variance from CoAET for the purposes of calculating Painshare Adjustment in the previous Contract Year was:	[REDACTED]% > [REDACTED]%	[REDACTED]%
If the AEC variance from CoAET for the purposes of calculating Painshare Adjustment in the previous Contract Year was:	> [REDACTED]%	[REDACTED]%

- (d) If,
- (i) the Aggregate Energy Service Actual Consumption in respect of the aggregate Energy Services is less than [REDACTED]% of the Corrected Aggregate Energy Target in respect of all Energy Services for the relevant Contract Year; or
  - (ii) the Actual Global Adjustment Peak Demand is less than [REDACTED]% of the Corrected Target Global Adjustment Peak Demand in respect of such Energy Service for the relevant Contract Month immediately following the determination of the five coincident peak hours by the Independent Electricity Systems Operator.

then Project Co shall calculate the Gainshare Adjustment set out in this Section 6.5 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 to Project Co and HMQ Entities for all Energy Services.

Energy Service	Variance	Gainshare Adjustment then equals:
If the Actual Global Adjustment Peak Demand variance from CoTGAPD for the purposes of calculating the Actual Global Adjustment Peak Demand contribution to the Gainshare Adjustment in the year preceding the Calendar Month that immediately follows the determination of the five coincident peak hours by the Independent Electricity Systems Operator was:	[REDACTED] to [REDACTED]%	[REDACTED]
If the Actual Global Adjustment Peak Demand variance from CoTGAPD for the purposes of calculating the Actual Global Adjustment Peak Demand contribution to the Gainshare Adjustment in the year preceding the Calendar Month that immediately follows the determination of the five coincident peak hours by the Independent Electricity Systems Operator was:	> [REDACTED]%, to [REDACTED]%	[REDACTED]%
If the Actual Global Adjustment Peak Demand variance from CoTGAPD for the purposes of calculating the Actual Global Adjustment Peak Demand contribution to the Gainshare Adjustment in the year preceding the Calendar Month that immediately follows the determination of the five coincident peak hours by the Independent Electricity Systems Operator was:	> [REDACTED]%	[REDACTED]%
If the AEC variance from CoAET for the purposes of calculating the AEC contribution to the Gainshare Adjustment in the previous Contract Year was:	[REDACTED] to [REDACTED]%	[REDACTED]
If the AEC variance from CoAET for the purposes of calculating the AEC contribution to the Gainshare Adjustment in the previous	> [REDACTED]%, to	[REDACTED]%

Contract Year was:	[REDACTED]%	
If the AEC variance from CoAET for the purposes of calculating the AEC contribution to the 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 within fourteen days of the calculation of the Painshare Adjustment to explain how it will reduce the relevant Aggregate Energy Service Actual Consumption such that it will not exceed the [REDACTED]% threshold established in this Section 6.5, 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 Aggregate Energy Service Actual Consumption for the subsequent Contract Year, then the Painshare Adjustment set out in this Section 6.5 will be calculated and apply again in the subsequent year.

6.6 The formulae to calculate the Gainshare Adjustment and the Painshare Adjustment for AEC set out in this Section 6.6 are based on Section 6.5 of this Part B.

- (a) For the avoidance of doubt, if the Corrected Aggregate Energy Target in respect of all Energy Services fall within a set band above or below the relevant Aggregate Energy Target (i.e. no more than [REDACTED]% above or below the benchmark), 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 AET;

A = the Aggregate Energy Service Actual Consumption during the relevant year for all Energy Services in units e.g. gigajoules; and

B = the Corrected Aggregate Energy Target for the relevant year for the aggregate Energy Services in units e.g. 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 AEC for that year, where

if  $[\text{REDACTED}] < A < [\text{REDACTED}]$  then

$$GS = [\text{REDACTED}]([\text{REDACTED}] - A) * \left( \frac{\text{Average Unit Rate}}{\text{Price}} \right)$$

$$\text{but if } A < [\text{REDACTED}] \text{ then } GS = \left( ([\text{REDACTED}] - A) + \frac{B}{[\text{REDACTED}]} \right) * \left( \frac{\text{Average Unit Rate}}{\text{Price}} \right)$$

(In the above formula, a factor of [REDACTED] is used to divide B. This is obtained by multiplying the range of the 2<sup>nd</sup> band by the percentage of Project Co pain/gain. The range of the 2<sup>nd</sup> band is [REDACTED]%-[REDACTED] %= [REDACTED] % and the Project Co gain percentage is [REDACTED]%. The product is [REDACTED]% which results in the factor of [REDACTED])

But if:  $A > [\text{REDACTED}]$  then HMQ Entities shall be entitled to deduct a Painshare Adjustment ('PS') where

$$\text{if } [\text{REDACTED}] > A > [\text{REDACTED}] \text{ then } PS = [\text{REDACTED}](A - [\text{REDACTED}]) * \left( \frac{\text{Average Unit Rate}}{\text{Price}} \right)$$

$$\text{but if } A > [\text{REDACTED}] \text{ then } PS = \left( (A - [\text{REDACTED}]) + \frac{B}{[\text{REDACTED}]} \right) * \left( \frac{\text{Average Unit Rate}}{\text{Price}} \right)$$

(In the above formula, a factor of [REDACTED] is used to divide B. This is obtained by multiplying the range of the 2<sup>nd</sup> band by the percentage of Project Co pain/gain. The range of the 2<sup>nd</sup> band is [REDACTED]%- [REDACTED] %= [REDACTED] % and the Project Co pain percentage is [REDACTED]%. The product is [REDACTED]% which results in the factor of [REDACTED])

6.7 Intentionally left blank.

6.8 The formulae to calculate the Gainshare Adjustment for Global Adjustment Peak Demand set out in this Section 6.8 are based on the table in Section 6.5 of this Part B.

(a) For the purposes of calculating Gainshare Adjustment for Global Adjustment Peak Demand;

E = one fifth of the Global Adjustment Peak Demand during the relevant year for Hydro Use in MW; and

F = one fifth of the Corrected Target Global Adjustment Peak Demand for the relevant year for a Hydro Use in MW;

(b) In respect of every year following Substantial Completion:

if:  $E < [\text{REDACTED}]$  then Project Co shall be entitled to claim and be paid a Gainshare Adjustment ('GS') contribution for Actual Global Adjustment Peak Demand for that year, where

if  $[\text{REDACTED}] < E < [\text{REDACTED}]$  then  $GS = [\text{REDACTED}]([\text{REDACTED}] - E) * ([\text{REDACTED}]/MW)$

but if  $E < [\text{REDACTED}]$  then  $GS = ([\text{REDACTED}]([\text{REDACTED}] - E) + (F * [\text{REDACTED}])) * ([\text{REDACTED}]/MW)$

(In the above formula, a factor of  $[\text{REDACTED}]$  is obtained by multiplying the range of the 2nd band by the percentage of Project Co gain. The range of the 2nd band is  $[\text{REDACTED}] \% - [\text{REDACTED}] \% = [\text{REDACTED}] \%$  and the Project Co gain percentage is  $[\text{REDACTED}] \%$ . The product is  $[\text{REDACTED}] \%$ .)

- 6.9 If HMQ Entities issues a Variation to Project Co with instructions for Project Co to alter energy drawn from Toronto Hydro, then Project Co shall not be entitled to any Gainshare Adjustment contribution for Actual Global Adjustment Peak Demand for reduce energy consumption as a result of these instructions, unless agreed to by HMQ Entities acting in their sole discretion.

## 7. CALCULATION OF AGGREGATE ENERGY TARGET

### 7.1 Purpose

- (a) The Aggregate Energy Target shall be established from time to time in respect of the entire Project. The Aggregate Energy Target upon which any Painshare Adjustment or Gainshare Adjustment calculations for the AEC contribution are made shall be based upon subtracting metered Process Load consumption and making any amendments pursuant to Sections 5.3 and 5.4 of this Part B for the respective Contract Year.

### 7.2 Aggregate Energy Target

- (a) The initial Aggregate Energy Target and Target Global Adjustment Peak Demand are as set out in the Energy Target Letters.
- (b) At the end of the first year of the Initial Period, Project Co shall appoint a third party auditor to assess the energy performance relative to the Energy Models. Project Co shall take corrective action to improve the energy performance of the, if so required, to ensure that the Aggregate Energy Target as outlined in the Energy Model are met.
- (c) The Aggregate Energy Target shall be corrected in accordance with this Schedule 8.

### 7.3 Annual Corrections to the Aggregate Energy Target

- (a) No later than thirty days after the Contract Year, Project Co shall provide to HMQ Entities a certificate showing the Aggregate Energy Service Actual Consumption in each calendar month during the Contract Year expressed as a number of units of energy and measured in accordance with this Schedule 8.

- (b) Project Co and HMQ Entities shall obtain the Weather Data from Environment Canada. Project Co and HMQ Entities shall then adjust the Energy Models by revising the current weather .bin file or other weather data file for use with the Energy Model.
- (c) Project Co and HMQ Entities acknowledge that internal gains may increase or decrease through these changes, depending on the specific changes to the non-weather dependant Process Load. Project Co shall provide metering such that non-weather dependant Process Loads are on separate sub-meters from other loads. Project Co and HMQ Entities shall then adjust the Aggregate Energy Target accordingly.
- (d) Project Co shall provide HMQ Entities with the Process Load energy consumption from the metered data. If the Process Load energy consumption as per the metered data provided by Project Co increases or decreases from the assumed values for such consumption in the Energy Model for a given Contract Year, then the new Process Load energy consumption shall be entered into and shall adjust the Aggregate Energy Target. For greater certainty, in the event of a change in Process Load electricity consumption, the only input change to the Energy Model shall be the Process Load electricity consumption itself.
- (e) Any other modifications to the Energy Model are subject to the procedure outlined in this Schedule 8.
- (f) HMQ Entities may, in its sole discretion, appoint an auditor to audit Project Co's corrections (including all input data). If the audit concludes that Project Co has overestimated the corrections the Energy Model, then Project Co shall reimburse HMQ Entities for HMQ Entities' costs incurred in respect of the audit.
- 7.4 Any correction to the Aggregate Energy Target shall only affect the Monthly Service Payment (as a result of any Painshare Adjustments or Gainshare Adjustments contributions for AEC) from the date on which the amendment is effective and shall not, for greater certainty, have a retrospective effect on any other previous Monthly Service Payments.

## 8. CALCULATION OF AVERAGE UNIT RATE PRICE

- 8.1 The Average Unit Rate Price shall be calculated in accordance with the following formula:

$$\text{Average Unit Rate Price} = \frac{\text{SC} + \text{US}}{\text{U}}$$

SC is the aggregate of all standing charges, levies, taxes and all other sums invoiced to HMQ Entities by its suppliers in respect of the supply of Energy Utilities during the relevant Contract Year, being sums which do not vary solely according to the amount of Unit of Energy actually supplied;

US is the aggregate of all sums invoiced to HMQ Entities 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 excluding the sums related to transmission peak demand and global adjustment peak demand charges from THESL; and

U is the weighted Aggregate Energy Service Actual Consumption in the course of the relevant Contract Year.

## 9. SUPPLY OF ENERGY

- 9.1 The HMQ Entities 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.
- 9.2 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.
- 9.3 Any technology change, design alterations that will potentially change the proportions of Energy Utilities, increase the cost to HMQ Entities of purchasing Energy Utilities (i.e., natural gas, electricity etc.) and will have negative impact on lifecycle costing, increase maintenance issue, shall be approved by the HMQ Entities.

## 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 HMQ Entities or the Maintenance and Rehabilitation Contractor pursuant to this Schedule 8 shall be deemed to be Developed Intellectual Property.
  - (b) For greater certainty, Project Co acknowledges and agrees that HMQ Entities shall not be liable to Project Co for, and Project Co shall not seek to recover from HMQ Entities, any Governmental Authority or any HMQ Entities 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**

**ENERGY TARGET LETTERS AND AET MODEL**

**[REDACTED]**



APPENDIX B

ENERGY ANALYSIS REPORT SUBMITTAL REQUIREMENTS – ENERGY MATTERS

Total Energy Utilities Summary	Aggregate Energy Service Actual Consumption		Corrected Aggregate Energy Target		Percent Variance between ii and iv	Painshare Adjustment or Gainshare Adjustment contribution for AEC
	Usage (Unit of Energy)	Cost for Contract Year	Usage (Unit of Energy)	Corrected Cost for Contract Year (calculated based on Corrected Aggregate Energy Target for all of the Energy Utilities multiplied by the weighted average unit cost of Energy Utilities )		
	i	ii	iii	iv	v	vi
Aggregate (Unit of Energy)						

Total Energy Utilities Summary	Actual Global Adjustment Peak Demand		Corrected Target Global Adjustment Peak Demand		Percent Variance between ii and iv	Gainshare Adjustment contribution for Target Global Adjustment Peak Demand
	Usage (Unit of Demand)	Cost for Contract Year	Usage (Unit of Demand)	Corrected Cost for Contract Year (calculated based on Corrected Target Global Adjustment Peak Demand multiplied by \$[REDACTED])		
	i	ii	iii	iv	v	vi
Hydro Use						

	Planned Passenger Loading	Average Passenger Loading Contract Year	% variance between Planned Passenger Loading and Average Passenger Loading Contract Year
Passenger Loading Early Morning			
Passenger Loading Morning Peak			
Passenger Loading Midday			
Passenger Loading Afternoon Peak			
Passenger Loading Early Evening			

	<b>Planned Passenger Loading</b>	<b>Average Passenger Loading Contract Year</b>	<b>% variance between Planned Passenger Loading and Average Passenger Loading Contract Year</b>
<b>Passenger Loading Late Evening (M-Th)</b>			
<b>Passenger Loading Late Evening (Fri)</b>			
<b>Passenger Loading Night (M-Th)</b>			
<b>Passenger Loading Night (Fri)</b>			
<b>Passenger Loading Saturday Daytime</b>			
<b>Passenger Loading Saturday Evening</b>			
<b>Passenger Loading Saturday Night</b>			
<b>Passenger Loading Sunday Daytime</b>			
<b>Passenger Loading Sunday Evening</b>			

## PART C

## ENERGY SOURCE DIRECTIONS

## 1. ENERGY SOURCE DIRECTIONS

## 1.1 HMQ Entities Right to Issue Directions

- (a) HMQ Entities may, in their sole discretion and on an ongoing basis, issue a direction or directions requiring Project Co to switch from the CGP to the RTS (or vice versa) (each an “**Energy Source Direction**”).
- (b) Project Co shall operate the CGP and the RTS in accordance with the Energy Source Directions and at no additional cost to HMQ Entities.

## 1.2 Protocol for Energy Source Directions

- (a) The Parties shall, acting reasonably, establish a protocol for the efficient and effective communication and implementation of Energy Source Directions (the “Energy Source Directions Protocol”). The Energy Source Directions Protocol shall include the following provisions:
  - (i) Project Co shall be available and capable of receiving Notice of an Energy Source Direction (and the Energy Source Direction itself) 24 hours per day, 7 days per week, 365/6 days per year;
  - (ii) Project Co shall immediately confirm receipt of each Notice issued by HMQ Entities in respect of an Energy Source Direction; and
  - (iii) If HMQ Entities does not receive an immediate confirmation of receipt of a Notice, HMQ Entities shall issue a follow-up Notice within 15 minutes of the original Notice.
- (b) For clarity, HMQ Entities will be obliged to issue a follow-up Notice pursuant to Section 1.2(a)(iii) only once per Energy Source Direction Notice.

## 1.3 Notice Provisions Regarding Energy Source Directions

- (a) The following Notice provisions shall apply in respect of the issuance of Energy Source Directions:
  - (i) If HMQ Entities wish to implement a switch from the use of either the CGP or the RTS to the other energy source (each an “**Energy Toggle**”) during the hours of 10:00 a.m. to 8:00 p.m. on Monday to Friday, HMQ Entities shall provide at least 2 hours’ Notice to Project Co prior to the scheduled time for the Energy Toggle;
  - (ii) If HMQ Entities wish to implement an Energy Toggle during the hours of,
    - (A) 6:00 a.m. to 9:59 a.m., on Monday to Friday; or
    - (B) 8:01 pm to 10:00 p.m., on Monday to Friday,

HMQ Entities shall provide at least 4 hours' Notice to Project Co prior to the scheduled time for the Energy Toggle; and

- (iii) If HMQ Entities wish to implement an Energy Toggle at any time other than the times set out in Sections 1.3(a)(i) and 1.3(a)(ii) HMQ Entities shall provide at least 8 hours' Notice to Project Co prior to the scheduled time for such Energy Toggle;
  - (iv) For the purposes of meeting the Notice requirements, the timing of each HMQ Entities Notice of an Energy Source Direction will be measured starting from the time of the initial Notice and not the time of the follow-up Notice; and
  - (v) In an Emergency, HMQ Entities shall not be obliged to give Notice and Project Co shall be obliged to implement the Energy Source Direction as soon as practicable.
- (b) After Project Co has implemented an Energy Toggle as required by an Energy Source Direction, the energy source that is then in use must be used for at least 6 hours before the next Energy Toggle.
- (c) For clarity, there shall be no limit to the number of Energy Toggles HMQ Entities may direct.

#### 1.4 Maintenance of the CGP and the RTS

- (a) Project Co shall perform the Maintenance and Rehabilitation Services in respect of both the CGP and the RTS in accordance with the Output Specifications and such that both facilities are available for use at any time (subject to the HMQ Entities Notice obligations).
- (b) For clarity, Project Co shall be obligated to keep only 5 of the 6 CGP units available for use at any time.

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**SCHEDULE 9**

**KEY INDIVIDUALS**

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**

<b>Project Co Party</b>	<b>Position</b>	<b>Function</b>	<b>Multiple Key Individuals Allowed</b>	<b>Name and Contact Information</b>
Construction Contractor	Design Build Manager	The Design Build Manager shall be responsible for ensuring that all activities with respect to the Works are fully integrated with each other.	No.	[REDACTED]
Construction Contractor	Design Manager	The Design Manager shall be responsible for, <ul style="list-style-type: none"> <li>(i) coordinating all designs produced by the Design Team;</li> <li>(ii) ensuring the schedule for Design Development Submittals is reflected in each update of the Works Schedule;</li> <li>(iii) coordinating with the HMQ Representative, or its designate, to prioritize the review of each of the Works Submittals, if necessary; and</li> <li>(iv) ensuring obligations set out in Schedule 10 – Review Procedure are fulfilled for each Works Submittal.</li> </ul>	No.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Chief Safety & Security Officer	<p>The Chief Safety &amp; Security Officer shall be responsible for the safety and security of the Project, including,</p> <ul style="list-style-type: none"> <li>(i) the design, implementation and certification of the Works;</li> <li>(ii) the development and implementation of the Safety Management Plan, Security Management Plan, and Emergency Response Plan;</li> <li>(iii) safety and security performance;</li> <li>(iv) participation in the Safety and Security Management Committee ; and</li> <li>(v) acting as the point of contact with HMQ Entities and the Operator in respect of the system safety and security activities.</li> </ul>	No.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Systems and Systems Integration Manager	<p>The Systems and Systems Integration Manager shall be responsible for,</p> <ul style="list-style-type: none"> <li>(i) coordinating all aspects of the system design and the integration of the Project Co System Infrastructure with all other ECLRT systems and subsystems as required, including Vehicles;</li> <li>(ii) ensuring all obligations of Schedule 15-2 – Design and Construction Requirements are fulfilled for each systems element;</li> <li>(iii) ensuring all obligations in accordance with Article 20 of Part 1 to Schedule 15-2 – Design and Construction Requirements are fulfilled for systems integration; and</li> <li>(iv) acting as the point of contact with HMQ Entities and the Operator in respect of the integration of the ECLRT systems and the Operator’s OCC and systems.</li> </ul>	No.	[REDACTED]



Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Transportation Engineering Lead	The Transportation and Engineering Lead shall be responsible for, <ul style="list-style-type: none"> <li>(i) coordinating and reviewing the Traffic and Transit Management Plan (TTMP) and related sub-plans;</li> <li>(ii) ensuring that all obligations and submittals relevant to traffic and transportation design and management are in accordance to Schedule 10 – Review Procedure; and</li> <li>(iii) coordinating with the Transportation Management Committee and other relevant representatives from HMQ Entities, City, TTC, and Ontario Ministry of Transportation to ensure that all traffic and transportation engineering issues and requirements are taken into account.</li> </ul>	No.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Utilities Engineering Lead	The Utilities Engineering Lead shall be responsible for, <ul style="list-style-type: none"> <li>(i) leading the review of all Utility Infrastructure-related designs produced by the Design Team;</li> <li>(ii) leading the review of schedule for Utility Infrastructure-related Design Redevelopment Submittals and ensuring the review is reflected in any updates to the Works Schedule;</li> <li>(iii) coordinating with the HMQ Representative, or its designate, the Design Manager and others to prioritize the review of each Utility Infrastructure Works Submittals; and</li> <li>(iv) ensuring all obligations of Schedule 10 – Review Procedure are fulfilled for each Utility Infrastructure Works Submittal.</li> </ul>	No.	[REDACTED]
Construction Contractor	Design Architect(s)	The Design Architect(s) shall be responsible for all architectural design aspects of the Project, including but not limited to design, coordination, preparation of Works Submittals, and interface with Governmental Authorities.	Yes.	[REDACTED]
Construction Contractor	Landscape Architecture and Urban Design Lead	The Landscape Architecture and Urban Design Lead shall be responsible for all landscape and urban design aspects of the Project, including but not limited to design, coordination, preparation of Works Submittals, and interface with Governmental Authorities.	No.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Design Excellence Lead	The Design Excellence Lead shall be responsible for, <ul style="list-style-type: none"> <li>(i) ensuring the compliance of architectural, urban realm, and landscaping designs with the requirements set out in Appendix A to Part 1 of Schedule 15-2 – Design and Construction Requirements; and</li> <li>(ii) coordinating the design of system elements that are of concern to design excellence across all relevant disciplines.</li> </ul>	No.	[REDACTED]
Construction Contractor	Environmental Manager	The Environmental Manager shall have the responsibilities set out in Schedule 17 – Environmental Obligations.	No.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Permits, Licences, and Approvals Manager	The Permits, Licences, and Approvals Manager shall be responsible for, <ul style="list-style-type: none"> <li>(i) coordinating with the Design Team to ensure that the designs meet the requirements of Schedule 15 – Output Specifications;</li> <li>(ii) ensuring that external stakeholder agencies (including the City, Toronto and Region Conservation Authority (TRCA), etc.) are engaged when appropriate to obtain feedback as necessary;</li> <li>(iii) coordinating internal and external regulatory approval processes;</li> <li>(iv) managing relationships with external stakeholder agencies, including Government Authorities; and</li> <li>(v) leading the coordination and the scheduling of meetings with Stakeholders, as needed.</li> </ul>	No.	[REDACTED]
Construction Contractor	Property Access and Business Continuity Manager(s)	The Property Access and Business Continuity Manager(s) shall be responsible for all activities required to fulfill Project Co’s obligations as set out in Schedule 40 – Door Access Matters.	Yes.	[REDACTED]
Construction Contractor	Communications and Public Engagement Lead	The Communications and Public Engagement Lead shall be responsible for all activities required to fulfill Project Co’s obligations as set out in Schedule 18 – Communication and Public Engagement Protocol.	No.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Construction Manager(s)	The Construction Manager(s) shall be responsible for all Construction Activities and compliance of Construction Activities with the Project Agreement.	Yes.	[REDACTED]
Construction Contractor	Resident Construction Engineer(s)	The Resident Construction Engineer(s) shall be responsible for verifying that designs are in compliance with the Project Agreement.	Yes.	[REDACTED]
Construction Contractor	Design Quality Manager	The Design Quality Manager shall be responsible for the Design Quality Management Plan.	No.	[REDACTED]
Construction Contractor	Environmental Quality Manager	The Environmental Quality Manager shall be responsible for the Environmental Quality Management Plan.	No.	[REDACTED]
Construction Contractor	Construction Quality Manager	The Construction Quality Manager shall be responsible for the Construction Quality Management Plan.	No.	[●] Project Co shall propose the name and contact information of a qualified candidate for this Key Individual for review and approval by HMQ Entities no later than 30 days following Financial Close.
Construction Contractor	Traffic Quality Manager	The Traffic Quality Manager shall be responsible for the Traffic Quality Management Plan.	No.	[REDACTED]
Construction Contractor	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	Traffic Manager(s)	The Traffic Manager(s) shall have the responsibilities set out in Article 5.2 of Part 7 to Schedule 15-2 – Design and Construction Requirements.	Yes.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Traffic Control Supervisor(s)	The Traffic Control Supervisor(s) shall have the responsibilities set out in Article 5.4 of Part 7 to Schedule 15-2 – Design and Construction Requirements.	Yes.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Commissioning Manager	<p>The Commissioning Manager shall be responsible for,</p> <ul style="list-style-type: none"> <li>(i) coordinating all aspects of the Commissioning Program of the Project Co Infrastructure for ECLRT, including plan, schedule, coordination and execution of the commissioning of all Project Co System Infrastructure and Revenue Vehicles;</li> <li>(ii) ensuring Project Co Commissioning of all New Third Party Infrastructure in accordance with the approval procedures and design requirements of the Toronto Transit Commission, GO Transit, the City, and other third parties, as applicable;</li> <li>(iii) ensuring all obligations of Schedule 14 – Commissioning are fulfilled in accordance with Schedule 15 – Output Specifications; and</li> <li>(iv) coordinating with HMQ Representative(s), Independent Certifier and third parties to prioritize the review of each Commissioning Submittal.</li> </ul>	No.	[REDACTED]
Construction Contractor	Tunnel Manager	The Tunnel Manager shall be responsible for activities required to fulfill Project Co’s obligations as set out in Schedule 38 – Tunnels.	No.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Revenue Vehicle Manager	The Revenue Vehicle Manager shall be required to fulfill Project Co’s obligations as set out in Schedule 36 – Vehicles.	No.	[REDACTED]
Construction Contractor	Independent Safety Assessor	The Independent Safety Assessor shall have the responsibilities set out in Schedule 15 – Output Specifications.	No.	[REDACTED]

**B. Key Individuals – Maintenance and Rehabilitation Services**

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Maintenance and Rehabilitation Contractor	Maintenance Director	The Maintenance Director shall have the responsibilities set out in Article 1.3 of Schedule 15-3 – Maintenance and Rehabilitation Requirements.	No.	[REDACTED]
Maintenance and Rehabilitation Contractor	Substitute Maintenance Director	The Substitute Maintenance Director shall have the responsibilities as set out in Article 1.4 of Schedule 15-3 – Maintenance and Rehabilitation Requirements.	No.	[REDACTED]
Maintenance and Rehabilitation Contractor	Maintenance Manager for Revenue Vehicles	The Maintenance Manager for Revenue Vehicles shall be responsible for the planning and delivery of the Maintenance and Rehabilitation Services for the Revenue Vehicles during the Maintenance Period.	No.	[REDACTED]
[●]	Maintenance Manager for Fixed	The Maintenance Manager for Fixed Infrastructure shall be responsible for the planning and delivery of the Maintenance and Rehabilitation Services for the Fixed	No.	[●] Project Co shall propose a name and contact information for this Key Individual for



	Infrastructure	Infrastructure during the Maintenance Period.		review and approval by HMQ Entities no later than one year prior to the Scheduled Substantial Completion Date.
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**C. Key Individuals – Works and Maintenance and Rehabilitation Services**

<b>Project Co Party</b>	<b>Position</b>	<b>Function</b>	<b>Multiple Key Individuals Allowed</b>	<b>Name and Contact Information</b>
Project Co	Project Co Representative	The Project Co Representative shall have the responsibilities set out in the Project Agreement.	No.	[REDACTED]
Project Co	Quality Director	The Quality Director shall have the responsibilities set out in Article 3.2 of Schedule 11 – Quality Management.	No.	[REDACTED]
Construction Contractor	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]
Project Co	Environmental Director	The Environmental Director shall have the responsibilities set out in Article 3.1 of Schedule 17 – Environmental Obligations.	No.	[REDACTED]

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**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, including all Works Submittals listed in Appendix A to this Schedule 10, in respect of the Works to be submitted to, reviewed or otherwise processed by HMQ Entities in accordance with the Review Procedure prior to Substantial Completion, or after Substantial Completion in respect of the completion of Minor Deficiencies, 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).
- 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 or the TTC fails to meet the timelines set out in this Schedule 10 with respect to its review of any Submittal, such failure shall be deemed to be a failure by HMQ Entities to comply with the timelines set out in this Schedule 10.

**2. SCHEDULE FOR WORKS SUBMITTALS**

- 2.1** The Works Schedule shall provide for a progressive and orderly flow of Works Submittals from Project Co to the HMQ Representative to allow sufficient time for review of each Works Submittal by the HMQ Representative taking into account:
- (a) the resources necessary to be available to the HMQ Representative to conduct such review; and
  - (b) whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.
- 2.2** The Works Schedule and any amendment to the Works Schedule shall allow a period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt of a Works Submittal by HMQ Entities for review of and response, by HMQ Entities, to each Works Submittal for all Project Co System Infrastructure, provided that if Project Co has made major

changes to the grouping and volume of Works Submittals, such period of time shall be adjusted by Project Co, acting reasonably, taking into account the factors set forth in Section 2.1.

**2.3** The Works Schedule and any amendment to the Works Schedule shall allow:

- (a) a period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt for HMQ Entities' partial review of and response to each Works Submittal for all New City Infrastructure; and
- (b) concurrently, the period of time as set forth in the Appendix C, plus an additional 5 Business Days (or such longer period as may be agreed between HMQ Entities and Project Co), from the date of the City's determination that the Works Submittal is complete for HMQ Entities' complete review of and response (in concert with the City) to each Works Submittal for all New City Infrastructure,

provided that, in each case, if Project Co has made major changes to the grouping and volume of Works Submittals, such period of time shall be adjusted by Project Co, acting reasonably, taking into account the factors set forth in Section 2.1.

**2.4** The Works Schedule and any amendment to the Works Schedule shall allow:

- (a) a period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt for HMQ Entities' partial review of and response to each Works Submittal for all New TTC Infrastructure; and
- (b) concurrently, a period 30 Business Days from the date of receipt for HMQ Entities' complete review of and response (in concert with the TTC) to each Works Submittal for all New TTC Infrastructure, Bus Facilities, or Works within the TTC Zone of Influence, (or such longer period as may be agreed between the HMQ Entities and Project Co), plus an additional 5 Business Days, for delivery of comments from the TTC,

provided that, in each case, if Project Co has made major changes to the grouping and volume of Works Submittals, such period of time shall be adjusted by Project Co, acting reasonably, taking into account the factors set forth in Section 2.1.

**2.5** The Works Schedule and any amendment to the Works Schedule shall allow a period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Works Submittal for all New Metrolinx Infrastructure (as shown in Appendix E), provided that if Project Co has made major changes to the grouping and volume of Works Submittals, such period of time shall be adjusted by Project Co, acting reasonably, taking into account the factors set forth in Section 2.1.

**2.6** The Works Schedule and any amendment to the Works Schedule shall allow a period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt for review

of and response to each Works Submittal for all New Salvation Army Infrastructure (as shown in Appendix F), provided that if Project Co has made major changes to the grouping and volume of Works Submittals, such period of time shall be adjusted by Project Co, acting reasonably, taking into account the factors set forth in Section 2.1.

- 2.7** If the Works Schedule indicates that a large number of Works Submittals or highly complex Works Submittals will be made at one time, the HMQ Representative may, acting reasonably, request a longer period for review or a staggering of the Works Submittals, and Project Co shall review and revise the Works Schedule accordingly, taking into account:
- (a) the resources necessary to be available to the HMQ Representative to conduct such review; and
  - (b) whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.
- 2.8** Project Co shall submit all Works Submittals to HMQ Entities in accordance with the current Works Schedule.

### **3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS**

- 3.1** Unless otherwise specified by the HMQ Representative, Project Co shall issue 3 printed copies of all Works Submittals to HMQ Entities, together with an electronic copy in the format set out in Appendix A to this Schedule 10, or as prescribed by HMQ Entities acting reasonably (such as word-searchable pdf unlocked and searchable with detailed bookmarking and CAD files) and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2** Project Co shall compile and maintain a register of:
- (a) the submittal date and contents of all Works Submittals;
  - (b) the date of receipt and content of all returned Works Submittals; and
  - (c) status of comments on all Work Submittals in accordance with Section 4.1.
- 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 or architects) shall, where applicable, 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:

- (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 C of this Schedule 10 for process and approvals protocols (including design submission milestones) for items submitted to the City; and
- (c) the relevant provisions of Appendix D to this Schedule 10 for process and approvals protocols (including design submission milestones) for items submitted to the Toronto Transit Commission, including all items related to Works within the TTC Zone of Influence.

**3.7** Each Works Submittal shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, 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 Infrastructure, New TTC Infrastructure, New Metrolinx Infrastructure, New Salvation Army Infrastructure, and/or New Third Party Infrastructure;
- (c) identification of whether the Works Submittal is within the TTC Zone of Influence
- (d) the document number(s) or drawing number(s);
- (e) revision numbers (if applicable);
- (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 HMQ Entities; and

- (j) identification of any previous Works Submittal superseded by the current Works Submittal.

**3.8** To facilitate HMQ Entities distribution of Works Submittals to the City, TTC, GO Transit, or the Salvation Army, all Works Submittals that are to be reviewed by the TTC, the City, GO Transit, or the Salvation Army, shall be separated accordingly and submitted individually, to the extent possible.

**3.9** Each Works Submittal shall be organized and shall have indexes and sectional dividers. Each Work 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 Maintenance and Rehabilitation Requirements;
- (b) information that Design Development Submittals and Construction Document Submittals have taken into account the needs of the Maintenance and Rehabilitation Contractor; 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 Maintenance Period.

#### **4. COMMENTS**

**4.1** The HMQ Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.2. The HMQ Representative shall return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following 3 comments:

- (a) “REVIEWED”;
- (b) “REVIEWED AS NOTED”; or
- (c) “REJECTED”.

- 4.2 The comment “REVIEWED” will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, conform to the requirements of the Project Agreement. Project Co shall comply with and implement such Works Submittals.
- 4.3 The comment “REVIEWED AS NOTED” will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, generally conform to the requirements of the Project Agreement, but in which immaterial deficiencies have been found by the HMQ Representative’s review. Project Co shall correct these Works Submittals and provide a copy of the corrected Works Submittals to the HMQ Representative no later than 20 Business Days after the comment has been provided to Project Co, or such other time period as determined by the HMQ Representative, acting in its sole discretion and as set out in writing. Project Co shall comply with and implement such Works Submittals after correction, including in accordance with the comments. If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped “REVIEWED AS NOTED”, 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 HMQ Representative’s discretion, to resubmit relevant Works Submittals. In such circumstances the HMQ 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.
- 4.4 For Works Submittals that require approval from third parties, including, for clarity, approval from the City or the Toronto Transit Commission, the HMQ Representative may not issue a “REVIEWED” or “REVIEWED AS NOTED” comment if the applicable third party has not approved those Work Submittals.
- 4.5 The comment “REJECTED” will be assigned to those Works Submittals that, in the opinion of the HMQ 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 Works Submittals within 10 Business Days after the comment has been provided to Project Co, or such other time period, as determined by the HMQ Representative, acting in its sole discretion and as set out in writing. The HMQ Representative will then review such re-submitted Works Submittals and assign a comment to the corrected Works Submittal. The Works 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.
- 4.6 Where the HMQ Representative issues the comment “REVIEWED AS NOTED” or “REJECTED”, the HMQ 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 HMQ 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 HMQ Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of the Project Agreement, the HMQ 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 HMQ 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 HMQ Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Works Submittal with the appropriate comment, 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 “REVIEWED” by HMQ Entities.
- 4.10 In lieu of returning a Works Submittal, the HMQ Representative may by letter notify Project Co of the comment assigned to the Works Submittal and if such comment is “REVIEWED AS NOTED” or “REJECTED” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

## 5. DISPUTES

- 5.1 If Project Co disputes any act of HMQ Entities or the HMQ Representative in respect of a Works Submittal under this Part A, Project Co shall promptly notify the HMQ 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 HMQ 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 HMQ Representative confirms the original comment, Project Co may request the Independent Certifier to 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, HMQ Entities may direct that Project Co to revise the Works Submittals in accordance with the comments of HMQ Entities 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 HMQ Entities or the HMQ 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 HMQ Entities. 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 HMQ Entities' rights in respect of the Works under the Project Agreement.

## **7. WORKS SUBMITTAL EXPLANATION**

- 7.1** At any time, the HMQ 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 HMQ Entities, to explain to the HMQ Representative and HMQ Entities' 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.

## **8. REVISIONS**

- 8.1** Project Co shall ensure that Works Submittals keep 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. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.
- 8.3** All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the 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.

- 8.4** 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.
- 8.5** Works Submittals that are replacements in kind shall keep the original submittal number with the next sequential revision number.

## **9. AUDIT BY THE HMQ REPRESENTATIVE**

- 9.1** Without limiting any other right under the Project Agreement, the HMQ 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 HMQ Entities 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 HMQ 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 HMQ 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 HMQ Entities of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, HMQ Entities may, at their election, issue a Variation Enquiry and it 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 HMQ Entities of their rights under Section 5.3. Subject to the foregoing sentence, any failure by Project Co to notify HMQ Entities in accordance with this Section 10.2 that Project Co considers compliance with any comments of the HMQ Representative would amount to a Variation shall constitute an irrevocable acceptance by

Project Co that any compliance with the HMQ Representative's comments shall be without cost to HMQ Entities and without any extension of time.

**11. COMMENCEMENT OF CONSTRUCTION ACTIVITIES – TORONTO TRANSIT COMMISSION**

**11.1** Project Co shall not commence or permit the commencement of Works with respect to any part of the New TTC Infrastructure, Bus Facilities, or any infrastructure within the TTC Zone of Influence without the TTC's approval.

**11.2** Project Co shall not submit its application for the applicable building permit to the City for any part of the New TTC Infrastructure or any infrastructure within the TTC Zone of Influence, without the TTC's approval.

**SCHEDULE 10****REVIEW PROCEDURE****PART B – MAINTENANCE PERIOD – MAINTENANCE AND REHABILITATION SERVICES****12. MAINTENANCE AND REHABILITATION SUBMITTALS**

**12.1** 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) and the Maintenance and Rehabilitation Submittals listed in Appendix B, to be submitted to, reviewed or otherwise processed by HMQ Entities 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, “**Maintenance and Rehabilitation Submittal**” or “**Maintenance and Rehabilitation Submittals**” as applicable in Part B of this Schedule 10). 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.

**12.2** 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 review of and response to each Maintenance and Rehabilitation Submittal.

**12.3** Project Co shall, in scheduling Maintenance and Rehabilitation Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the Maintenance and Rehabilitation Submittals, for review of the Maintenance and Rehabilitation Submittals and for Project Co to make changes to Maintenance and Rehabilitation Submittals that may be required if comments are received on the Maintenance and Rehabilitation Submittals, such review and required changes to be in accordance with Part B of this Schedule 10.

**13. GENERAL REQUIREMENTS FOR MAINTENANCE AND REHABILITATION SUBMITTALS**

**13.1** Unless otherwise specified by the HMQ Representative, Project Co shall issue 3 printed copies of all Maintenance and Rehabilitation Submittals to HMQ Entities, together with an electronic copy in a format agreed by the Parties acting reasonably.

**13.2** Project Co shall compile and maintain a register of:

- (a) the date and contents of the submission of all Maintenance and Rehabilitation Submittals;

- (b) the date of receipt and content of all returned Maintenance and Rehabilitation Submittals; and
  - (c) comments on all Maintenance and Rehabilitation Submittals, which shall be provided to HMQ Entities upon request.
- 13.3** All Maintenance and Rehabilitation Submittals shall be in English.
- 13.4** All Maintenance and Rehabilitation 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.
- 13.5** All Maintenance and Rehabilitation Submittals shall:
- (a) include copies of all documents to be reviewed; and
  - (b) shall clearly identify the purpose of the Maintenance and Rehabilitation Submittal, Project Co's proposed course of action relating to the Maintenance and Rehabilitation Submittal and the Project Operations that are the subject of the Maintenance and Rehabilitation Submittal.
- 13.6** All Maintenance and Rehabilitation Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications and/or any other applicable Schedule to the Project Agreement.
- 13.7** All Maintenance and Rehabilitation Submittals shall be clearly identified as a Maintenance and Rehabilitation Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Maintenance and Rehabilitation Submittals and for each Maintenance and Rehabilitation Submittal:
- (a) the document number(s) or drawing number(s);
  - (b) revision numbers (if applicable);
  - (c) document or drawing title(s);
  - (d) name of entity that prepared the Maintenance and Rehabilitation Submittal;
  - (e) name and signature of the Maintenance Manager and other Key Individual(s) responsible for content of the Maintenance and Rehabilitation Submittal;
  - (f) the Maintenance and Rehabilitation Submittal history showing date and delivery information and/or log number of all previous submissions of that Maintenance and Rehabilitation Submittal; and

- (g) identification of any previous Maintenance and Rehabilitation Submittal superseded by the current Maintenance and Rehabilitation Submittal.

**13.8** All Maintenance and Rehabilitation Submittals shall be organized and shall have indexes and sectional dividers. The Maintenance and Rehabilitation 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.

#### **14. COMMENTS**

**14.1** The HMQ Representative shall review and respond to each Maintenance and Rehabilitation Submittal in accordance with the time periods specified in Section 12.2. The HMQ Representative shall return Maintenance and Rehabilitation Submittals to Project Co and assign one of the following 3 comments:

- (a) “REVIEWED”;
- (b) “REVIEWED AS NOTED”; or
- (c) “REJECTED”.

**14.2** The comment “REVIEWED” will be assigned to those Maintenance and Rehabilitation Submittals that, in the opinion of the HMQ Representative, conform to the requirements of the Project Agreement. Project Co shall comply with and implement such Maintenance and Rehabilitation Submittals.

**14.3** The comment “REVIEWED AS NOTED” will be assigned to those Maintenance and Rehabilitation Submittals that, in the opinion of the HMQ Representative, generally conform to the requirements of the Project Agreement, but in which immaterial deficiencies have been found by the HMQ Representative’s review. Project Co shall correct these Maintenance and Rehabilitation Submittals and provide a copy of the corrected Maintenance and Rehabilitation Submittals to the HMQ Representative no later than 20 Business Days after the comment has been provided to Project Co, or such other time period as determined by the HMQ Representative, acting in its sole discretion and as set out in writing. Project Co shall comply with and implement such Maintenance and Rehabilitation Submittals after correction, including in accordance with the comments. If at any time it is discovered that Project Co has not corrected the deficiencies on Maintenance and Rehabilitation Submittals stamped “REVIEWED AS NOTED”, then Project Co will be required to modify the Maintenance and Rehabilitation 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 HMQ Representative’s discretion, to resubmit relevant Maintenance and Rehabilitation Submittals. In such circumstances the HMQ 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.
- 14.4** For Maintenance and Rehabilitation Submittals that require approval from third parties, including, for clarity, approval from the Toronto Transit Commission or the City, the HMQ Representative may not issue a “REVIEWED” or “REVIEWED AS NOTED” comment if the applicable third party has not approved those Maintenance and Rehabilitation Submittals.
- 14.5** The comment “REJECTED” will be assigned to those Maintenance and Rehabilitation Submittals that, in the opinion of the HMQ 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 Maintenance and Rehabilitation Submittals within 10 Business Days after the comment has been provided to Project Co, or such other time period, as determined by the HMQ Representative, acting in its sole discretion and as set out in writing. The HMQ Representative will then review such re-submitted Maintenance and Rehabilitation Submittals and assign a comment to the corrected Maintenance and Rehabilitation Submittal. The Maintenance and Rehabilitation 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.
- 14.6** Where the HMQ Representative issues the comment “REVIEWED AS NOTED” or “REJECTED”, the HMQ Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of the Project Agreement that the Maintenance and Rehabilitation Submittal fails to satisfy, and, if requested by the Project Co Representative, the HMQ Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 14.7** If, at any time after assigning any comment to a Maintenance and Rehabilitation Submittal, the HMQ Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of the Project Agreement, the HMQ Representative may revise the comment assigned to any Maintenance and Rehabilitation Submittal. If the Parties agree or it is determined in accordance with Section 15 that the revised comment is correct, Project Co shall make all such corrections to the Maintenance and Rehabilitation 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.
- 14.8** For the purpose of facilitating and expediting the review and correction of Maintenance and Rehabilitation Submittals, the HMQ Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Maintenance and Rehabilitation Submittals and any comments thereon.
- 14.9** Where a Maintenance and Rehabilitation Submittal is voluminous, the HMQ Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Maintenance and

Rehabilitation 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 “REVIEWED” by HMQ Entities.

- 14.10** In lieu of returning a Maintenance and Rehabilitation Submittal, the HMQ Representative may by letter notify Project Co of the comment assigned to the Maintenance and Rehabilitation Submittal and if such comment is “REVIEWED AS NOTED” or “REJECTED” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

## **15. DISPUTES**

- 15.1** If Project Co disputes any act of HMQ Entities or the HMQ Representative in respect of a Maintenance and Rehabilitation Submittal under this Part B, Project Co shall promptly notify the HMQ 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 HMQ Representative shall review the Maintenance and Rehabilitation 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.

- 15.2** If after such review by the HMQ Representative Project Co disputes the comment on a Maintenance and Rehabilitation Submittal, subject to Section 20.1 Project Co may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

## **16. EFFECT OF REVIEW**

- 16.1** Any review and comment by HMQ Entities or the HMQ Representative of any Maintenance and Rehabilitation 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 HMQ Entities. Without limiting the generality of the foregoing any and all errors or omissions in Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Submittal or exclude or limit HMQ Entities’ rights under the Project Agreement in respect of matters related to the Maintenance and Rehabilitation Submittal.



**17. MAINTENANCE AND REHABILITATION SUBMITTAL EXPLANATION**

**17.1** At any time, the HMQ Representative may, acting reasonably, require Project Co or any Project Co Parties at no additional cost to HMQ Entities, to explain to the HMQ Representative and HMQ Entities' advisors the intent of Project Co's Maintenance and Rehabilitation Submittals, including as to its satisfaction of the Output Specifications and its impact on the Project Operations.

**18. REVISIONS**

**18.1** Project Co shall ensure that Maintenance and Rehabilitation Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Maintenance and Rehabilitation Submittal are identified by a sequential revision number. Correspondence related to such Maintenance and Rehabilitation Submittal shall reference the reference number and revision number.

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

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

**19. AUDIT BY THE HMQ REPRESENTATIVE**

**19.1** Without limiting any other right under the Project Agreement, the HMQ Representative shall have the right to audit all Maintenance and Rehabilitation Submittals, including comparing all Maintenance and Rehabilitation Submittals to previous Maintenance and Rehabilitation Submittals.

**19.2** If during an audit or at any other time it is discovered by HMQ Entities or Project Co that any Maintenance and Rehabilitation Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Maintenance and Rehabilitation Submittals and the Project Operations to which they relate and shall advise the HMQ Representative of all such corrections and modifications.

**20. VARIATIONS**

- 20.1** If, having received comments from the HMQ Representative on any Maintenance and Rehabilitation 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 HMQ Entities 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, HMQ Entities may at their 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 Maintenance and Rehabilitation Submittal. Any failure by Project Co to notify HMQ Entities in accordance with this Section 20.1 that Project Co considers compliance with any comments of the HMQ Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the HMQ Representative's comments shall be without cost to HMQ Entities and without any extension of time.

**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 in 3 hole ring binders.
- (b) Large format drawings (A0 or A1 size) shall be provided separately (bound) as well as reduced format (11” x 17”, fold-outs, folded to 8.5” x 11”) and included in a 3 hole ring binder. Unless otherwise noted below under the heading “Format”, all drawings shall to be provided in half size format. All other Works Submittals which are not drawings shall be submitted in 8.5” x 11” black and white format, unless otherwise specifically noted below.
- (c) In addition to hard copies, all Works Submittals shall be included in electronic format (text-searchable PDF and CAD-file in accordance with Metrolinx’s CADD/BIM Standards Manual for LRT Projects) on a DVD.
- (d) The CAD software for all infrastructure owned by a third party shall be to the third party’s standards.
- (e) Any Works Submittal based on Microsoft Excel shall be submitted in the native format.
- (f) All Works Submittals shall be uploaded to the Web Based Project Management System in text-searchable PDF format at the same time that the Submittals are forwarded to HMQ Entities.

**1.2** All Works Submittals shall also be provided in the format set forth in Appendix A.

## 2. SUBMITTALS

The following is a detailed list of the Works Submittals that Project Co is required to provide to HMQ Entities for review and comment in accordance with this Schedule 10. Additional Works Submittals may be requested by the HMQ Representative at any time in order to understand the Works, and Project Co shall be required to provide same to HMQ Entities for review in accordance with this Schedule 10. A description of the minimum content of each Work Submittal provided is set out in Section 2 of this Appendix A. 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 they are applied to.

[REDACTED]

**ATTACHMENT 1**

**Sample Design Certificates**

Certificate Ref No. [ ]

**DESIGN CERTIFICATE (GENERAL)**

**In respect of :..... (Provide submittal details e.g. Stations, Stop, EMSF, Civil and Guideway, Systems, Traffic, Tunnel, Drainage, Geotechnical, etc.)**

*Project Agreement between HMQ Entities 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 – 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:

- i. reviewed\*
- ii. reviewed as noted as follows\*
- iii. returned marked “rejected” as follows:\*

\* delete as appropriate

Signed: .....

HMQ Representative

Name: .....

Date: .....



Certificate Ref No. [ ]

**DESIGN CERTIFICATE (ENVIRONMENTAL)**

*Project Agreement between HMQ Entities 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 and the Environmental Manager 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:
  - (a) the said Design Data 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) the said Design Data complies with all applicable design requirements of the Project Agreement;
  - (c) the said Design Data complies with all applicable standards, codes and current Good Industry Practice; and

the said Design Data 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 Manager

Name: .....

Title: .....

Date: .....

Professional Registration Number: .....

Affix Professional Seal

This Design Certificate is:

- i. reviewed\*
- ii. reviewed as noted as follows\*
- iii. returned marked “rejected” as follows.\*

\* delete as appropriate

Signed: .....

HMQ Representative

Name: .....

Date: .....

**ATTACHMENT 2**

**Sample Construction Certificate**

Certificate Ref. No. [ ]

**CONSTRUCTION CERTIFICATE**

*Project Agreement between HMQ Entities 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, as applicable:

- (a) the substantial completion of construction activities in respect of those components of the Works set out in paragraph 1 of this Construction Certificate;
- (b) the Total Completion of construction activities in respect of the Works, including Minor Deficiencies; or
- (c) the total completion of construction activities in respect of any Reinstatement Work carried out by the Construction Contractor pursuant to Section 30 [**Damage and Destruction**] in accordance with a Reinstatement Plan.

in accordance with Schedule 15-2 – Design and Construction Requirements.

**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; 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.....

Construction Contractor representative

Name.....

Date.....

**Design Team’s Statement**

1. 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):

**[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. reviewed\*
- ii. reviewed as noted as follows\*
- iii. returned marked “rejected” as follows:\*

\* delete as appropriate

Signed: .....

HMQ Representative

Name: .....

Date: .....

**APPENDIX B****MINIMUM MAINTENANCE AND REHABILITATION****SUBMITTAL REQUIREMENTS****1. FORMAT FOR MAINTENANCE AND REHABILITATION SUBMITTALS**

The following is a breakdown of the contents of each Maintenance and Rehabilitation Submittal as well as the format for each. All Maintenance and Rehabilitation Submittals are to be submitted in 3 hole ring binders. Large format drawings (A0 or A1 size) are to be provided separately (bound) as well as reduced format (11" x 17", fold-outs, folded to 8.5" x 11") and included in a 3 hole ring binder. Unless otherwise noted below, all drawings are also to be provided in half size format. All other Maintenance and Rehabilitation Submittals which are not drawings are to be submitted in 8.5" x 11" black and white format, unless otherwise specifically noted below.

**1.1** Each Maintenance and Rehabilitation Submittal is to be submitted as:

- (a) one hard copy;
- (b) one or more electronic files on a portable electronic file medium, such as DVD or flash memory drive, with an index file listing the contents and filenames of the submission, where each submission shall be provided in both:
  - (i) text-searchable portable document format (pdf); and
  - (ii) native file format; and
- (c) uploaded to an internet-based document management system in portable document format (pdf) and native file format.

**1.2** For a Maintenance and Rehabilitation Submittal to have been completed, all of the requirements of Article 1.2 shall be met.

**2. SUBMITTALS**

The following is a detailed list of the Maintenance and Rehabilitation Submittals that Project Co is required to provide to HMQ Entities for review and comment in accordance with this Schedule 10. Additional Maintenance and Rehabilitation Submittals may be requested by the HMQ Representative at any time in order to understand the Maintenance and Rehabilitation Services, and Project Co shall be required to provide same to HMQ Entities for review in accordance with this Schedule 10. A description of the minimum content of each Maintenance and Rehabilitation Submittal provided is set forth in Section 2 of this Appendix B.

Unless otherwise specified in the table below, or an alternate date is mutually agreed with HMQ Entities and confirmed in writing by HMQ Entities 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; and
  - (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;
- (c) “**Monthly**” means submitted within seven (7) days of the end of each calendar month.
- (d) “**Quarterly**” means submitted within thirty (30) days of the final day of each consecutive period of three (3) calendar months, starting from Substantial Completion; and

[REDACTED]

**APPENDIX C**

**NEW CITY OF TORONTO INFRASTRUCTURE**

**SUBMITTAL REQUIREMENTS**

**[REDACTED]**

**APPENDIX D**

**TORONTO TRANSIT COMMISSION TECHNICAL REVIEW**

**SUBMITTAL REQUIREMENTS**

**[REDACTED]**

**APPENDIX E**

**NEW METROLINX INFRASTRUCTURE**

**MINIMUM WORKS SUBMITTAL REQUIREMENTS**

**[REDACTED]**

**APPENDIX F**

**NEW SALVATION ARMY INFRASTRUCTURE**

**SUBMITTAL REQUIREMENTS**

**[REDACTED]**

**APPENDIX G**

**DESIGN DEVELOPMENT (SUBMITTED AT THE 10% COMPLETION STAGE)**

[REDACTED]

12794220.2

**SCHEDULE 11**  
**QUALITY MANAGEMENT**

[REDACTED]

22786296.2

**SCHEDULE 12**  
**[INTENTIONALLY DELETED]**

22786382.1



**SCHEDULE 13**

**PROJECT CO PROPOSAL EXTRACTS**

**[REDACTED]**

12794190.2

**SCHEDULE 14**  
**COMMISSIONING**

[REDACTED]

22786289.2

**SCHEDULE 15**  
**OUTPUT SPECIFICATIONS**

**[REDACTED]**

22786258.1

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**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 HMQ Entities.
  - (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 HMQ Entities pursuant to the Construction Lien 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, HMQ Entities have, 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.

12794223.2

**SCHEDULE 17**

**ENVIRONMENTAL OBLIGATIONS**

[REDACTED]

22786083.2

## SCHEDULE 18

## COMMUNICATION AND PUBLIC ENGAGEMENT PROTOCOL

## 1. DEFINITIONS

- 1.1 “**Business Improvement Areas**” means eight locally designated neighborhoods along Eglinton Avenue West, from Mount Dennis to Mount Pleasant.
- 1.2 “**Communication 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 “**Crisis Communication Plan**” has the meaning given in Section 5.3(a).
- 1.8 “**HMQ Community Liaison Representative**” means the individual(s) employed by HMQ Entities as community liaison worker(s) for the Project who are stationed in the community offices along Eglinton Avenue or at Metrolinx’ offices during the Project Term.
- 1.9 “**Maintenance Period Complaints Protocol**” has the meaning given in Section 5.12(d)(ii).
- 1.10 “**MEDEI**” means the Ministry of Economic Development, Employment and Infrastructure.
- 1.11 “**MTO**” means the Ministry of Transportation – Ontario.
- 1.12 “**Project Co Communications Protocol**” has the meaning given in Section 3.1(a).
- 1.13 “**Project Co Communications Team**” has the meaning given in Section 3.1(a)(ii).
- 1.14 “**Project Co Construction Communications Plan**” has the meaning given in Section 3.2(a).
- 1.15 “**Project Co Maintenance Communications Plan**” has the meaning given in Section 3.2(c).

## 2. GENERAL

## 2.1 Communications Principles

- (a) The Project represents an important transit infrastructure commitment by HMQ Entities. 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 HMQ Entities’ communications requirements. These communications and Stakeholder relations plans will support effective timely, transparent

communications between Project Co and HMQ Entities, and Stakeholders, local businesses, residents, transit users and the public during the Project Term.

- (b) Project Co acknowledges that,
- (i) Project Co is HMQ Entities' and the Stakeholders' primary source of information with respect to all matters within Project Co's control in respect of the Project; and
  - (ii) HMQ Entities 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 Maintenance Period in order to communicate construction progress, Project highlights, potential traffic or transit system changes and other traffic or transit information to the public, 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.

HMQ Entities 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, Maintenance and Rehabilitation Activities, Project milestones, community and Stakeholder relations, media relations, media or governmental events, public information meetings, branded products, the Project website ([www.thecrosstown.ca](http://www.thecrosstown.ca)), 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 HMQ Entities, Stakeholders, and Governmental Authorities, and submit all such plans, protocols and documentation to HMQ Entities for review in accordance with Schedule 10 – Review Procedure;
  - (iii) in consultation with HMQ Entities, Stakeholders, and Governmental Authorities, implement and comply with all plans, protocols and other documentation that have been reviewed and approved by HMQ Entities in accordance with this Schedule 18;
  - (iv) provide all information, materials, support and consultation to HMQ Entities as HMQ Entities may require with respect to HMQ Entities' 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 HMQ Entities in responding to media, government and public enquiries related to the Project as requested and in accordance with all timelines prescribed by HMQ Entities;
  - (vi) review and develop communications and/or technical materials reasonably requested by HMQ Entities;
  - (vii) provide regular updates to HMQ Entities 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)(ii), to support the implementation of the Project Co Construction Communications Plan, the Project Co Maintenance 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 HMQ Entities' communications meetings and the Communications Working Group;
  - (x) support HMQ Entities' development and execution of business disruption mitigation and business engagement strategies, such as Metrolinx' "Experience Eglinton" program, in order to address business concerns about Construction Activities and to foster positive relationships;

- (xi) work with HMQ Entities 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 HMQ Entities with respect to design opportunities to engage the community in the Project's design process, where feasible and as directed by HMQ Entities;
- (xiii) support HMQ Entities in making communications materials accessible to the public;
- (xiv) work with all Project Co Parties, HMQ Entities, and other Stakeholders of the Project, including the Toronto Transit Commission, City of Toronto, MTO, MEDEI, 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 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
  - (D) making reasonable amends to replace or rehabilitate waste receptacles, plantings and signage should these items become damaged;
- (xvi) during the Maintenance Period, 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 ECLRT system;
  - (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 Maintenance Period, support a positive relationship with HMQ Entities and the Operator in consideration of their responsibility to provide a positive transit experience for the public; and
- (xviii) during the Maintenance Period, share with HMQ Entities and the Operator lessons learned and best practices to support the communications-related activities and requirements of the Operator and HMQ Entities.

- (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 HMQ Entities' review and approval and, as applicable, the approval of Governmental Authorities; and
  - (ii) HMQ Entities retain 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 HMQ Entities.

### 3.1 Project Co Communications Protocol

- (a) Project Co shall, no later than 60 days following Financial Close, submit a communications protocol for review by HMQ Entities 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 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 description of Project Co's dedicated communications team (the “**Project Co Communications Team**”), including the roles, responsibilities and experience of each team member and Project Co Party who will assist in any aspect of the Project Co Communications Protocol. The Project Co Communications Team shall,
    - (A) be comprised of no less than five full-time staff, and Project Co shall provide any additional staff required in order for Project Co to fulfill its communications obligations under the Project Agreement;
    - (B) include a Project Co designated media relations staff member with at least ten years' experience in transit/construction communications; and
    - (C) have relevant experience in media relations, crisis communications, issues management, corporate and community relations.
- Each member of the Project Co Communications Team shall possess a minimum of five to seven years of transit or construction-related communications experience; and
- (iii) A summary of proposed communication tools to be used by Project Co to consult with and report to HMQ Entities in accordance with this Schedule 18, with a view towards ensuring that a system is in place for media and community relations, 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.

- (b) Project Co shall update the Project Co Communications Protocol,
- (i) on an annual basis; or
  - (ii) more frequently as may be requested by HMQ Entities, 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 HMQ Entities for review pursuant to Schedule 10 – Review Procedure.

### 3.2 Project Co Construction Communications Plan

- (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 HMQ Entities 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 HMQ Entities or Project Co as part of this Schedule 18;
  - (iv) 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
  - (v) a dashboard to 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 HMQ Entities’ 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 HMQ Entities, 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 HMQ Entities for review pursuant to Schedule 10 – Review Procedure.

- (c) With respect to the Maintenance Period, Project Co shall, no later than 30 days prior to Substantial Completion and prior to initiating any communications-related activity or disseminating any communications-related materials, revise the Project Co Construction Communications Plan in accordance with the following and submit an updated communications plan (the “**Project Co Maintenance Communications Plan**”) for review by HMQ Entities pursuant to Schedule 10 – Review Procedure. The Project Co Maintenance 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 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;
  - (iii) a dashboard to provide regular monthly updates about Maintenance and Rehabilitation Activities, including statistics, amount of local investments, number of direct jobs and training through registered apprenticeship programs, schedule and other information that will support HMQ Entities’ communications and social media strategies;
  - (iv) 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
  - (v) 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 HMQ Entities or the Operator;
    - (B) how Project Co will coordinate communications activities with HMQ Entities, the Operator and City of Toronto staff during the Maintenance Period generally; and
    - (C) how Project Co will respond to communications-related requests from the Operator and HMQ Entities on topics applicable to the performance of the Maintenance and Rehabilitation Services.
- (d) Project Co shall update the Project Co Maintenance Communications Plan,
- (i) on an annual basis; or
  - (ii) more frequently as may be requested by HMQ Entities, 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 Maintenance Communications Plan to HMQ Entities for review pursuant to Schedule 10 – Review Procedure.

#### 4. COMMUNITY ENGAGEMENT DURING THE CONSTRUCTION PERIOD AND MAINTENANCE PERIOD

##### 4.1 General

- (a) During the Construction Period, public engagement activities shall be conducted by HMQ Entities and Project Co on a range of topics, some of which will be overarching and apply to the length of the Project (e.g. station design; urban design, landscaping and aesthetics), 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.
- (b) During the Maintenance Period, public engagement activities and communications strategies shall be conducted by HMQ Entities and the Toronto Transit Commission with the support of Project Co to support a positive relationship with the community and transit users in respect of their transit experience.

##### 4.2 Community Engagement and Stakeholder Relations Plan

- (a) No later than 90 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 HMQ Entities 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 strategies and tactics 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 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
  - (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 HMQ Entities, 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 HMQ Entities 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 HMQ Entities, plan, organize and execute at least 36 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 HMQ Entities 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 HMQ Entities for approval, including both quick turnaround synopses for HMQ Entities' 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 HMQ Entities, plan, organize and execute one public tradeshow 30-180 days following Financial Close 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 HMQ Entities 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 HMQ Entities, Stakeholder meetings, municipal council meetings and presentations, and such other meeting or events as HMQ Entities deem 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 HMQ Entities, and presenting, if requested by HMQ Entities;
- (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 HMQ Entities;
  - (v) attend at least 100 events and meetings at local schools, community associations, HMQ Entities' events and other Stakeholder events and otherwise as reasonably requested by HMQ Entities 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 HMQ Entities, 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 HMQ Entities, as well as dedicated communications staff in accordance with Section 3.1(a)(ii) to work out of HMQ Entities' community store front offices on Eglinton Avenue at each of the following locations:
    - (A) one in the western end of the Project between the Mt Dennis Station and Eglinton West (Allen) Station, at 1848 Eglinton Avenue West;
    - (B) one in the central part of the Project between Eglinton West (Allen) Station and Bayview Station at 660 Eglinton Avenue East; and
    - (C) one in the eastern end of the Project between Bayview Station and the Kennedy Station;
  - (ix) make staff available to respond to enquiries from the public and Stakeholders about the Works;



- (x) in consultation with HMQ Entities, 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 HMQ Entities, notify affected residents and businesses, including HMQ Entities' 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 HMQ Entities' Project website ([www.thecrosstown.ca](http://www.thecrosstown.ca)) and updated messages on HMQ Entities' 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 HMQ Entities 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 HMQ Entities' lead communications contact on a weekly basis (or immediately if urgent) as per the Complaint Protocol set out Section 5.12; and
- (xiv) develop a tracking and reporting system 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 HMQ Entities at least bi-annually.

## 5. COMMUNICATIONS ACTIVITIES

### 5.1 Communications Activities – General

- (a) Project Co shall support the following communication tactics during the Construction Period as deemed necessary by the HMQ Entities, including,
  - (i) Project 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) photography and video production;

- (xi) the Construction Period Complaints Protocol; and
- (xii) performance review.

## 5.2 Project Website and Social Media

- (a) During the Construction Period and, to the extent applicable, during the Maintenance Period, Project Co shall,
  - (i) support,
    - (A) HMQ Entities' social media strategy for the Project (which includes tools such as Twitter, Facebook, Youtube and Flickr); and
    - (B) HMQ Entities' Project websites ([www.thecrosstown.ca](http://www.thecrosstown.ca) and [www.infrastructureontario.ca](http://www.infrastructureontario.ca)) by providing static (written) and dynamic (multimedia) content,  
by providing, for review and approval by HMQ Entities,
      - (C) a monthly feature web article highlighting, but not limited to, one aspect of the Project including, design, innovations on the Project, feature on local workers, general contractors or local companies, Construction Activities, or Project benefits, with a minimum length of 500 words, as well as two related tweets for the Project's twitter account @CrosstownTO;
      - (D) a weekly article on Project construction with a minimum length of 150 words, along with one related tweet for the Project's twitter account @CrosstownTO;
      - (E) notifications of public consultations, consultation materials and post-consultation summaries; and
      - (F) up-to-date graphics, photos and video clips showcasing the design of each Station and progress of the Construction Activities;
  - (ii) employ social media tools to monitor and analyze public responses to the Project;
  - (iii) provide, for review and approval by HMQ Entities, 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 HMQ Entities becomes aware of any such crisis situation, immediate issue, public query or complaint;
  - (iv) provide draft advance notification for the purposes of website and social media updates for review and approval by HMQ Entities with respect to meetings, events, initiatives, Construction Activities or Maintenance and Rehabilitation Services that will have a direct impact on roads, traffic and/or transit; and
  - (v) develop web content to support government Stakeholder (e.g. MEDEI, MTO, and City of Toronto) web and social media communications needs for review and approval by HMQ Entities.

### 5.3 Crisis Communication

- (a) During the Project Term HMQ Entities shall, no later than 60 days following Financial Close, develop, in consultation with Project Co, a crisis communications plan that outlines the roles and responsibilities of Project Co, HMQ Entities and other partners as required (e.g. TTC, MTO) with respect to crisis communications, and identify and rank a list of potential crisis issues that could develop during the performance of the Works (the “**Crisis Communication Plan**”).
- (b) During the Project Term, Project Co shall,
  - (i) consult with and provide assistance to HMQ Entities in HMQ Entities’ development of the Crisis Communications Plan and any updates to the Crisis Communications Plan; and
  - (ii) during a crisis situation, make available sufficient Project Co communications staff and Project resources in order to work effectively with HMQ Entities and the Operator to proactively manage and perform Project Co’s communications responsibilities as set out in this Schedule 18.

### 5.4 Issues Management

- (a) During the Project Term, Project Co shall consult with and provide reasonable assistance to HMQ Entities and the Operator 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 HMQ Entities within a timeframe as determined by HMQ Entities.

### 5.5 Media Relations

- (a) During the Project Term, Project Co shall,
  - (i) direct all media enquiries and interview requests to HMQ Entities’ lead communications contact, who will determine the organization that is most suitable to respond to the enquiry;
  - (ii) provide draft responses and messaging to HMQ Entities and the Operator, 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 HMQ Entities and the Operator 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 HMQ Entities and the Operator;
- (v) provide communications training to Project Co staff, including refresher training regarding HMQ Entities' and the Operator's communication protocols and policies for handling media, public, and stakeholder interaction; 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 HMQ Entities and the Operator.

## 5.6 Government Relations

- (a) During the Project Term Project Co shall,
  - (i) support HMQ Entities as HMQ Entities liaise with affected Governmental Authorities and boards to provide information about the Project status, upcoming milestones, and issues that may affect the Project;
  - (ii) proactively support HMQ Entities by providing information about construction status, upcoming Works milestones, issues related to Construction Activities or Maintenance and Rehabilitation Services, and reviewing messaging for government relations purposes; and
  - (iii) participate in meetings with HMQ Entities and its partners or Stakeholders as and when requested by HMQ Entities.

## 5.7 Special Events

- (a) HMQ Entities and Project Co shall collaborate to develop, plan, and coordinate various special events during the Project Term.
- (b) During the Project Term, HMQ Entities shall,
  - (i) lead and organize special events, including tours of the Site and milestone celebrations, costs of which will be borne by HMQ Entities (excluding costs related to shutdown of the Project Operations or accommodations at the Site 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 HMQ Entities.
- (c) During the Construction Period, HMQ Entities shall provide support and direction to Project Co on the 36 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 HMQ Entities, plan, organize and execute 36 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 HMQ Entities;
    - (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 to HMQ Entities for review and approval, the content of which may be posted publicly to HMQ Entities' websites;
  - (ii) during the Construction Period and in consultation with HMQ Entities, plan, organize and execute a public tradeshow no later than 30-180 days following Financial Close 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 HMQ Entities;
    - (E) issuing invitations, tracking RSVPs and administering a survey;
    - (F) using best efforts to ensure a minimum attendance of 200 individuals, of which at least 25-30% of attendees consist of Toronto 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 to HMQ Entities, the content of which may be posted publicly to HMQ Entities' websites; and
- (iii) during the Project Term,
- (A) participate in planning and executing special events for the Project as needed and as requested by HMQ Entities;
  - (B) at HMQ Entities' and the Operator's request, facilitate reasonable access to the Site 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; and
  - (D) make Project Co staff available for events, tours of the Site, and provide accommodation and support as may be required by HMQ Entities.

## 5.8 Signage and Livery

### 5.8.1 Construction and Promotional Signage

- (a) During the Construction Period, Project Co shall,
- (i) produce, print, install, remove and store signage, including wayfinding, business and "shop local" signage;
  - (ii) prior to installation, provide to HMQ Entities 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;
  - (iii) ensure appropriate signage is provided in a visible location for affected businesses to ensure continuity of their business operations; and
  - (iv) ensure that Project Co and Project Co Parties comply with the construction and promotional signage requirements set out in the Project Agreement.
- (b) During the Project Term, Project Co shall,
- (i) subject to the same approval as described in Section 5.8.1(a)(ii), install and remove HMQ Entities-supplied signs, and store all HMQ Entities' wayfinding, business and "shop local" signage when it is not in use;
  - (ii) ensure the government Project signs are visibly displayed along the corridor throughout the Project Term;
  - (iii) ensure that all signage is kept in good condition when installed and when not in use;
  - (iv) replace any signage that is damaged by Project Co at Project Co's expense;

- (v) provide stainless steel screws, support posts and other fastening materials to install signage made of various materials, including vinyl mesh, coroplast, crezon and plywood;
- (vi) remove graffiti on temporary signage within 24 hours or, in the event that graffiti cannot be removed by means of normal cleaning methods, notify the HMQ Community Liaison Representative who may choose to supply replacement signage, and assist with the installation of any such replacement signage;
- (vii) upon request from HMQ Entities, Project Co shall design and provide dimensions of hoarding, fencing and barriers to support temporary signage provided by HMQ Entities; and
- (viii) provide personnel to install, remove and relocate signage on an expedited basis if required by HMQ Entities.

### **5.8.2 Maintenance Period Brand Identity and Livery for Project Co**

- (a) During the Maintenance Period, Project Co shall:
  - (i) use a corporate brand and livery that:
    - (A) visually differentiates Project Co from Operator, Metrolinx, Infrastructure Ontario, TTC, GO Transit, UP Express, and other transit companies in Toronto;
    - (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; and
      - (III) branding on items such as vehicles, equipment, plant, and facilities; and
  - (ii) consult with HMQ Entities on Project Co's proposals for its brand identity and livery.
- (b) HMQ Entities may, in their sole discretion, review and approve Project Co's brand identity and livery prior to its use by Project Co.
- (c) HMQ Entities shall not retain design rights over Project Co's brand identity and livery.

### **5.9 Advertising Communications and Marketing**

- (a) During the Construction Period, HMQ Entities 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,
- (i) support and contribute to the planning, development and execution of HMQ Entities' 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, radio and television, online media, multimedia and unaddressed mail in accordance with the following:
    - (A) For each of the 36 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 annually issue four ads for each of the eight Business Improvement Areas along Eglinton Avenue consisting of two ad insertions in local newspapers, (full-colour, half page in size);
    - (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); and
    - (E) Project Co shall secure paid advertising space for a four-week time slot per quarter, which includes,
      - (I) two transit shelters at 25 future Station/Stop locations between Black Creek Drive and Kennedy Road (colour, 4' x 6' in size);
      - (II) seven horizontal billboards between Black Creek Drive and Kennedy Road (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 Black Creek Drive and Kennedy Road at each future Station/Stop location;
  - (F) Project Co is responsible for the cost and coordination of Canada Post distribution of construction notices based on a 500 metre distribution area surrounding the intersections where the applicable Construction Activities are set up; and
  - (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 HMQ Entities;
  - (iv) write content and design quarterly newsletters about the Project, the content of which is to be approved in advance by HMQ Entities; and
  - (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 HMQ Entities.
- (c) For clarity, Project Co shall submit all advertisements, insertions, construction notices, messages, and other associated documentation contemplated in this Section 5.9(b) for HMQ Entities' review and approval prior to distributing, placing, posting, issuing, or producing any such advertisement, insertion, construction notice, message or any other documentation.

#### **5.10 Project Identity and Graphic Design**

- (a) HMQ Entities shall develop the brand identity for the Project and provide templates to Project Co as required during the Construction Period.
- (b) During the Construction Period, Project Co shall,
  - (i) apply HMQ Entities' design templates for information related to the Project and comply with Project identity standards on all information materials; and
  - (ii) provide all content and design layout of communication and community engagement materials, including quarterly newsletters, advertisements, public notices, flyers and publications to HMQ Entities for review and approval at least three weeks prior to distribution.

#### **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) at least three times per week, provide high quality photos, graphics and images of the Project to HMQ Entities for use in publications, presentations and on public websites;

- (ii) provide high quality video clips of the Project to HMQ Entities for use on Project websites each month; and
  - (iii) cause Project Co staff or Project Co Parties to provide consent to HMQ Entities respect to HMQ Entities' disclosure of photo and video content relating to the Project.
- (b) During the Project Term, Project Co shall, from time to time and as reasonably requested by HMQ Entities or the Operator, facilitate access for designated photographers and videographers.

### 5.12 Complaints Protocols

- (a) During the Project Term, HMQ Entities 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 in the Project Co Construction Communications Plan and the Community Engagement and Stakeholder Relations Plan a complaints protocol addressing how Project Co will deal with and respond to enquiries, suggestions and complaints received with respect to the Project during the Construction Period (the “**Construction Period Complaints Protocol**”), 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) be responsible for maintaining a software system that will track all complaints, enquiries and suggestions received and responses received with respect to the Project;
  - (iii) provide monthly complaint reports to HMQ Entities, including an analysis of the main areas of concern to complainants; and
  - (iv) coordinate Project Co's complaint tracking and complaint reports with any internal complaint tracking or complaint reports established by HMQ Entities with respect to the Project as requested by HMQ Entities.
- (c) Project Co acknowledges and agrees that the Construction Period Complaints Protocol may be made publicly available at the request of HMQ Entities.
- (d) Project Co shall,
- (i) during the Maintenance Period,
    - (A) direct public enquiries and complaints to the Operator and HMQ Entities; and
    - (B) maintain a record of all material public enquiries, complaints and communications and provide copies to the lead communications contact for the Operator and HMQ Entities on a weekly basis, or immediately if urgent; and
  - (ii) incorporate into the Project Co Maintenance Communications Plan, a revised complaints protocol for the Maintenance Period addressing how Project Co will record and direct enquiries, suggestions and complaints received with respect to the Project during the

Maintenance Period to the Operator and HMQ Entities (the “**Maintenance Period Complaints Protocol**”), provided that the Maintenance Period Complaints Protocol shall contemplate that all complaints, enquiries and suggestions be dealt with no later than 5 days following receipt.

- (e) Project Co acknowledges and agrees that the Maintenance Period Complaints Protocol may be made publicly available at the request of HMQ Entities.

### **5.13 Performance Review**

- (a) HMQ Entities 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 HMQ Entities 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 HMQ Entities 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, residents, traffic, and/or the public generally, Project Co shall,
  - (i) provide Notice to HMQ Entities 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 HMQ Entities 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, residents, traffic, and/or the public generally, Project Co shall,

- (i) provide Notice to HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities or the public (a “**Construction Activities Incident**”), Project Co shall,
  - (i) immediately notify HMQ Entities 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 HMQ Entities for review;
  - (iii) be prepared to provide a public statement with respect to the Construction Activities Incident at the request of HMQ Entities; and
  - (iv) be prepared to enact a crisis communications plan in consultation with HMQ 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 Maintenance and Rehabilitation Services that are reasonably anticipated to have an impact to transit users, pedestrians, residents, traffic and the public, Project Co shall,

- (i) provide Notice to HMQ Entities of such Maintenance and Rehabilitation Services at least 30 Business Days prior to the commencement of such Maintenance and Rehabilitation Services; and
- (ii) provide a draft public notification at least 15 Business Days prior to the commencement of such Maintenance and Rehabilitation Services to HMQ Entities for review.

For the purposes of this Section 7(f), “Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Activities.

## 7. COMMUNICATIONS WORKING GROUP

### 7.1 Communications Working Group

- (a) HMQ Entities 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 HMQ Entities 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 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 and Maintenance 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.

**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).

**9. PUBLIC DISCLOSURE AND MEDIA RELEASES****9.1 Public Disclosure and Media Releases**

- (a) 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, HMQ Entities' activities or any related matters, without the prior written consent of HMQ Entities.
- (b) 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, HMQ Entities activities or any matter related thereto, without the prior written consent of the other Party.
- (c) Project Co shall comply and shall ensure that all Project Co Parties comply, at all times, with HMQ Entities' media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by HMQ Entities from time to time.

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**SCHEDULE 19**

**[INTENTIONALLY DELETED]**

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## SCHEDULE 20

## PAYMENT MECHANISM

## PART A: DEFINITIONS

## Section 1. Definitions

- 1.1 “**Accessibility Condition**” means a state or condition of the relevant Room or the means of access to it which allows all persons who are entitled to enter, occupy or use the relevant Room to enter and leave the Room safely and conveniently and using normal access routes, or using temporary diversions, as required to perform Maintenance Rehabilitation Services.
- 1.2 “**Aggregate Passenger Facility Availability Ratio**” for Contract Month  $n$  means the total Scheduled Passenger Facility Hours for all Passenger Facilities in Contract Month  $n$  less the total Passenger Facility Availability Failure Hours for all Passenger Facilities in Contract Month  $n$  plus the number of Scheduled Passenger Facility Hours which were “missed” or not achieved during period  $n$  and which were attributed in the relevant Monthly Performance Monitoring report as being due to a Non-Project Co Cause, divided by the total Scheduled Passenger Facility Hours for all Passenger Facilities in Contract Month  $n$ . For clarity, the formula is provided below:

$$APFAR_n = \frac{SPFH_n - PFAF_n + NPCChr_n}{SPFH_n}$$

Where:

- $APFAR_n$  Means the Aggregate Passenger Facility Availability Ratio for the relevant Contract Month  $n$ ;
- $SPFH_n$  Means the sum total of Scheduled Passenger Facility Hours for all Passenger Facilities during Contract Month  $n$ , and includes both Peak Period and Off-Peak Period hours;
- $PFAF_n$  Means the sum total of Passenger Facility Availability Failure Hours for all Passenger Facilities during Contract Month  $n$ , and includes both Peak Period and Off-Peak Period hours; and
- $NPCChr_n$  Means the number of Scheduled Passenger Facility Hours which were “missed” or not achieved during period  $n$  and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause.
- 1.3 “**Aggregate Vehicle Kilometres Availability Ratio**” for any period  $n$  means the total Revenue Service Vehicle Kilometres in period  $n$  plus the number of Scheduled Revenue Service Vehicle Kilometres which were “missed” or not achieved during period  $n$  and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause, divided by the total Scheduled Revenue Service Vehicle Kilometres for period  $n$ . For clarity, the formula is provided below:



$$AVKR_n = \frac{Rkm_n + NPCCKm_n}{Skm_n}$$

Where:

- AVKR<sub>n</sub>* Means the Aggregate Vehicle Kilometres Availability Ratio for the relevant period *n*;
- Rkm<sub>n</sub>* Means the total amount of Revenue Service Vehicle Kilometres for period *n*, and includes both Peak and Off-Peak service;
- NPCCKm<sub>n</sub>* Means the number of Scheduled Revenue Service Vehicle Kilometres which were “missed” or not achieved during period *n* and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause; and
- Skm<sub>n</sub>* Means the total Scheduled Revenue Service Vehicle Kilometres for period *n*, and includes both Peak and Off-Peak service.
- 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 15-1 – Maintenance and Rehabilitation Requirements.
- 1.8 “**Availability Condition**” means any of (i) the Accessibility Condition, (ii) the Safety Condition or (iii) the Use Condition.
- 1.9 “**Availability Failure**” means either a Vehicle Kilometres Availability Failure or a Passenger Facility Availability Failure or a Room Availability Failure.
- 1.10 “**Availability Ratio**” means Aggregate Vehicle Kilometres Availability Ratio or Aggregate Passenger Facility Availability Ratio.
- 1.11 “**Bus Facilities Operator**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.12 “**Bus Facility**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.

- 1.13 “**Bus Facility Access Standard**” means the standard set out in Article 5.4(a) of Attachment 2 to Appendix A to Schedule 15-3 – Maintenance and Rehabilitation Requirements to the Project Agreement related to Bus Facilities.
- 1.14 “**Contract Month**” means a calendar month, except with respect to:
- (a) the first Contract Month of the Maintenance Period, 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 Maintenance Period, which runs from the first day of the calendar month in which the Expiry Date falls until the Expiry Date.
- 1.15 “**Contract Year**” means the period of 12 calendar months that commences on April 1<sup>st</sup> of each calendar year and ends on March 31<sup>st</sup> 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 31<sup>st</sup>; and
  - (b) the final Contract Year shall be such period that commences on April 1<sup>st</sup> 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.
- 1.16 “**CPI-XFET**” means the Consumer Price Index excluding food, energy, and the effect of indirect taxes, as reported by Statistics Canada for Canada.
- 1.17 “**Daily Performance Report**” has the meaning given in Section 2.8 of Article 2 to Schedule 15-3 – Maintenance and Rehabilitation Requirements.
- 1.18 “**Deduction**” means a deduction made from a Monthly Service Payment in accordance with this Schedule 20.
- 1.19 “**Driver**” has the meaning given in Schedule 15 – Output Specifications.
- 1.20 “**Eligible Lifecycle Costs**” is defined in Section 3 of Part F.
- 1.21 “**Emergency**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.22 “**EMSF Dedicated Facility**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.23 “**Escalation Factor**” means the escalation factor calculated in accordance with Section 4.1 of Part B.

- 1.24 “**Event**” means:
- (a) a Vehicle Kilometres Availability Failure;
  - (b) a Passenger Facility Availability Failure;
  - (c) a Room Availability Failure; or
  - (d) an incident or state of affairs which does not meet or comply with the Performance Criteria, which is capable of becoming a Quality Failure or Service Failure.
- 1.25 “**Event of Vandalism**” has the meaning given in Appendix A, Attachment 5 to Schedule 15-3 – Maintenance and Rehabilitation Requirements.
- 1.26 “**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.
- 1.27 “**Group 1 Passenger Facilities**”, “**Group 2 Passenger Facilities**”, and “**Group 3 Passenger Facilities**” are defined in Appendix D.
- 1.28 “**Help Desk**” means the contact point to be established by Project Co pursuant to Section 1.12 of Article 1 to Schedule 15-3 – Maintenance and Rehabilitation Requirements in respect of the help desk service for the notification of Events and other day to day matters arising during the Maintenance Period.
- 1.29 “**Indoor Bicycle Facility**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.30 “**Inflation Base Date**” means April 1, 2015.
- 1.31 “**Insurance Adjustment**” means the adjustment calculated in accordance with Schedule 25 – Insurance and Performance Security Requirements.
- 1.32 “**Insurance Review Date**” has the meaning given in Schedule 25 – Insurance and Performance Security Requirements.
- 1.33 “**Joint Insurance Cost Report**” has the meaning given in Schedule 25 – Insurance and Performance Security Requirements.
- 1.34 “**Kodak Non-Transit Facility**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.35 “**Labour Industrial Aggregate Index**” means the industrial aggregate excluding unclassified businesses index for Canada, CANSIM 281-0063, as reported by Statistics Canada.

- 1.36 “**Lifecycle Escalation Factor**” means the escalation factor calculated in accordance with Section 4.2 of Part B.
- 1.37 “**Lifecycle Payment**” means the relevant amounts for each Contract Month as represented in Table 3 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 Maintenance Period.
- 1.38 “**Major Quality Failure**” means a Quality Failure which has been designated in Schedule 11 – Quality Management, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 20 as a Major Quality Failure.
- 1.39 “**Major Room Availability Failure**” means a Room Availability Failure which has been designated in Appendix E as a Major Room Availability Failure.
- 1.40 “**Major Service Change**” has the meaning given in Schedule 15 – Output Specifications.
- 1.41 “**Major Service Failure**” means a Service Failure which has been designated in Schedule 11 – Quality Management, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 20 as a Major Service Failure.
- 1.42 “**Medium Quality Failure**” means a Quality Failure which has been designated in Schedule 11 – Quality Management, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 20 as a Medium Quality Failure.
- 1.43 “**Medium Room Availability Failure**” means a Room Availability Failure which has been designated in Appendix E as a Medium Room Availability Failure.
- 1.44 “**Medium Service Failure**” means a Service Failure which has been designated in Schedule 11 – Quality Management, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 20 as a Medium Service Failure.
- 1.45 “**Minor Quality Failure**” means a Quality Failure which has been designated in Schedule 11 – Quality Management, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 20 as a Minor Quality Failure.
- 1.46 “**Minor Room Availability Failure**” means a Room Availability Failure which has been designated in Appendix E as a Minor Room Availability Failure.
- 1.47 “**Minor Service Failure**” means a Service Failure which has been designated in Schedule 11 – Quality Management, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 20 as a Minor Service Failure.
- 1.48 “**Monthly Service Payment**” means the sum in Canadian Dollars payable by HMQ Entities to Project Co in accordance with the Project Agreement, as calculated in Section 1.1 of Part B.
- 1.49 “**Non-Project Co Cause**” has the meaning given in Section 2 of this Part A.

- 1.50 “**Operations Service Plan**” has the meaning given in Attachment 1 of Appendix A to Schedule 15-3 – Maintenance and Rehabilitation Requirements.
- 1.51 “**Passenger Facility**” means a Station, Stop, or Bus Facility.
- 1.52 “**Passenger Facility Availability Failure**” occurs where any Station or Stop or Bus Facility does not comply with the Station and Stop Access Standard or Bus Facility Access Standard (as appropriate) otherwise than by reason of any Non-Project Co Cause.
- 1.53 “**Passenger Facility Availability Failure Deduction**” means a Deduction calculated in accordance with Section 2.1 of Part D, regarding any failure of Project Co during a Contract Month to maintain Stations or Stops or Bus Facilities in compliance with the Station and Stop Access Standard or Bus Facility Access Standard, as applicable.
- 1.54 “**Passenger Facility Availability Failure Hours**” means, for any Station or Stop or Bus Facility, 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.<sup>1</sup>
- 1.55 “**Passenger Facility Event**” means an event identified as such in Table 2 in Article 2.6 of Part D.
- 1.56 “**Performance Criteria**” means a description in Schedule 11 – Quality Management, Schedule 15-3 – Maintenance and Rehabilitation Requirements, 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.
- 1.57 “**Permanent Repair**” means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 3 of Part E.
- 1.58 “**Quality Failure**” means any failure by Project Co to provide the Maintenance and Rehabilitation Services in accordance with any Performance Criteria designated as Failure Type “QF” in Schedule 11 – Quality Management, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 20, otherwise than by reason of any Non-Project Co Cause.
- 1.59 “**Quality Failure Deduction**” means a Deduction which may be made in respect of a Quality Failure.
- 1.60 “**Rectification**” means, following the occurrence of an Event and where rectification is applicable in accordance with Schedule 11 – Quality Management, Schedule 15-3 – Maintenance and Rehabilitation Requirements, 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

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<sup>1</sup>Example: Three (3) hours and fifteen (15) minutes of Passenger Facility Availability Failure shall be represented as 3.25 Passenger Facility Availability Failure Hours.

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.

- 1.61 “**Rectification Time**” means the period specified in Schedule 11 – Quality Management, Schedule 15-3 – Maintenance and Rehabilitation Requirements, 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.
- 1.62 “**Remedial Period**” means the period allowed for remedying a Quality Failure in accordance with Section 1.3 of Part E.
- 1.63 “**Response**” means, following the notification of the occurrence of an Event and where response is applicable in accordance with Schedule 11 – Quality Management, Schedule 15-3 – Maintenance and Rehabilitation Requirements, 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) taking any and all necessary actions to establish temporary measures that mitigate the effect of the Event and maintain the normal functioning of the Project Co System Infrastructure to the extent possible;
  - (e) when necessary, giving the HMQ 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 Maintenance and Rehabilitation Services; and
  - (f) formally advising the Help Desk that the Response has been completed.
- 1.64 “**Response Time**” means the time required by Schedule 11 – Quality Management, Schedule 15-3 – Maintenance and Rehabilitation Requirements, 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.

- 1.65 “**Retail Facilities**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.66 “**Revenue Service Vehicle Kilometres**” means the total distance travelled by Revenue Vehicles in Revenue Service during a Contract Month, measured in kilometres and reported by the Monthly Performance Monitoring Report for that Contract Month. For clarity, Revenue Service Vehicle Kilometres exclude ad-hoc activities required by the Operator (for example, additional kilometers for training of Operator staff, including Drivers) but include distances travelled by Revenue Vehicles for the purposes of entering into or exiting from Revenue Service.
- 1.67 “**Revenue Vehicles**” has the meaning given in Schedule 15 – Output Specifications.
- 1.68 “**Room**” means a room or space which is specified as such in Appendix E.
- 1.69 “**Room Availability Failure**” means an Event which causes a Room to be Unavailable, otherwise than by reason of any Non-Project Co Cause.
- 1.70 “**Safety Condition**” means a state or condition of the relevant Room which allows those persons who it can reasonably be expected may from time to time require to enter, leave, occupy and use such Room to do so safely, including compliance with Applicable Law, relevant policies of HMQ Entities and HMQ Entities’ requirements related to fire safety or health or workplace safety.
- 1.71 “**Scheduled Passenger Facility Hours**” means the total number of hours during a Contact Month that a Passenger Facility is required to be open and available for use in accordance with the Station and Stop Access Standard or Bus Facility Access Standard (as applicable), based on the Operations Service Plan then in effect.
- 1.72 “**Scheduled Revenue Service Vehicle Kilometres**” means the total Revenue Service Vehicle Kilometres required in a Contract Month by HMQ Entities through the booking process set out in Article 4.4 of Appendix A to Schedule 15-3 – Maintenance and Rehabilitation Requirements, measured in kilometres and reported by the Monthly Performance Monitoring Report for that Contract Month. For clarity, Scheduled Revenue Service Vehicle Kilometres exclude ad-hoc activities required by the Operator (for example, additional kilometers for training of Operator staff, including Drivers) but include distances travelled by Revenue Vehicles for the purposes of entering into or exiting from Revenue Service.
- 1.73 “**Security Operations Office**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.74 “**Service Failure**” means any failure by Project Co to provide the Maintenance and Rehabilitation Services in accordance with Performance Criteria designated Failure Type “SF” in Schedule 11 – Quality Management, Schedule 15-3 – Maintenance and Rehabilitation Requirements, 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, otherwise 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).
- 1.75 “**Service Failure Deduction**” means a Deduction which may be made in respect of a Service Failure.
- 1.76 “**Service Level**” has the meaning given in Schedule 15-1 – Maintenance and Rehabilitation Requirements.
- 1.77 “**Service Level Decrease**” means a circumstance in any Contract Year where Project Co is required, by virtue of a Major Service Change occurring in that Contract Year or any previous Contract Year, to provide a Service Level less than the Service Level contemplated for that Contract Year by the Operations Service Plan in effect at Financial Close.
- 1.78 “**Service Level Increase**” means a circumstance in any Contract Year where Project Co is required, by virtue of a Major Service Change occurring in that Contract Year or any previous Contract Year, to provide a Service Level in excess of the Service Level contemplated for that Contract Year by the Operations Service Plan in effect at Financial Close.
- 1.79 “**Station**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.80 “**Station and Stop Access Standard**” means the standard set out in Article 5.3 of Attachment 2 to Appendix A to Schedule 15-3 – Maintenance and Rehabilitation Requirements related to Stations and Stops.
- 1.81 “**Stop**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.82 “**System Event**” means an event identified as such in Table 1 in Article 1.7 of Part D.
- 1.83 “**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.
- 1.84 “**Total Vehicle Kilometres**” means the total distance travelled by Revenue Vehicles in Revenue Service and for ad-hoc activities required by the Operator, during a Contract Month, measured in kilometres and reported by the Monthly Performance Monitoring Report for that Contract Month. For clarity, Total Vehicle Kilometres comprises Revenue Service Vehicle Kilometres and ad-hoc activities required by the Operator (for example, additional kilometers for training of Operator staff, including Drivers).
- 1.85 “**Train**” has the meaning given in Schedule 15-1 – Maintenance and Rehabilitation Requirements.



- 1.86 “**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  $\Sigma D$ , GS or PS.
- 1.87 “**Unavailable**” means, in relation to a Room, that such Room (or any part thereof) is in a state or condition which does not comply with any one or more of the Availability Conditions and “Unavailability” shall be construed accordingly.
- 1.88 “**Use Condition**” means a state or condition of the relevant Room which satisfies the Use Parameters for that Room.
- 1.89 “**Use Parameters**” means the range of functional requirements for the proper use and enjoyment of a Room for its particular purpose as set out in the Maintenance and Rehabilitation Requirements.
- 1.90 “**Vehicle Kilometres Availability Failure**” means any failure of the Project Co System Infrastructure contributing to the inability to attain the Scheduled Revenue Service Vehicle Kilometres for a Contract Month, otherwise than by reason of any Non-Project Co Cause.
- 1.91 “**Vehicle Kilometres Availability Failure Deduction**” means a Deduction calculated in accordance with Section 1.1 of Part D, regarding Vehicle Kilometres Availability Failure.
- 1.92 “**Volume Payment**” means the sum in Canadian dollars calculated monthly, in accordance with the provisions set out in Section 3.1 of Part B.
- 1.93 “**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, to the extent that such issue or event causes an Event resulting in a Vehicle Kilometres Availability Failure, Passenger Facilities Availability Failure, Room Availability Failure, Quality Failure, or Service Failure:
- (a) an action or order issued by the Operator, Bus Facilities Operator, or Governmental Authority, including:
- (i) slowing down, re-routing or stopping a Train service from its schedule;
- (ii) closing or partially closing a Station, Stop, or Bus Facility; and
- (iii) any action or orders resulting from an Emergency, including but not limited to Emergencies caused by disease-carrying agents, fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks,

apparatus or pipes, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;

- (b) with regards to Passengers:
  - (i) Passenger requests for emergency stops;
  - (ii) sick or injured Passengers requiring medical attention;
  - (iii) attendance of Operator's security staff or Emergency Services to respond to Passenger actions; or
  - (iv) Passengers holding open the doors of Revenue Vehicles at a platform beyond the scheduled dwell time;
- (c) any blockage of the Guideway, including intersections, caused by:
  - (i) a pedestrian, road vehicle, spillage, 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 subsequently removed by Project Co;
- (d) Events of Vandalism;
- (e) the unlawful or negligent acts or omissions of System Users, Protesters, Trespassers, Governmental Authorities, Additional Contractors, Operator, Bus Facilities Operator, or Auxiliary Facilities Occupants; for the avoidance of doubt, in respect of this Section 2.1(e) these include:
  - (i) by-laws applicable to Systems Users when on Project Co System Infrastructure; and
  - (ii) failure by any person who is subject to the Standard Operating Procedures and/or the LRT Rules to act in accordance with the Standard Operating Procedures and/or the LRT Rules;
- (f) the actions of Additional Contractors or Third Party Contractors, provided that if HMQ Entities have 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,
  - (i) HMQ Entities fail to carry out their responsibilities in Section 9.8(d) of the Project Agreement; or
  - (ii) the Additional Contractor or Third Party Contractor engages in unlawful or negligent acts;

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- (g) conditions exceeding the operating environmental parameters specified in Article 2.3(a) of Part 1 of Schedule 15-2 – Design and Construction Requirements that result in the degradation of the performance of the Project Co System Infrastructure;
  - (h) interruption to the Maintenance and Rehabilitation Services caused by loss of utility service or electrical power outside the nominal range, including lawful imposition of restrictions by a Governmental Authority;
  - (i) Vehicle Kilometres Availability Failures caused by a design or manufacturing fault on a Vehicle to be assessed individually for each Vehicle until the first of the following two events is achieved:
    - (i) the Vehicle having completed 50,000 kilometres after delivery of that Vehicle to EMSF, whether those kilometres are travelled in Revenue Service or for other purposes; and
    - (ii) the latter of:
      - (A) the first twelve (12) Contract Months having passed; and
      - (B) twelve (12) Contract Months having passed since the Vehicle achieved a Revenue Vehicle Final Acceptance Certificate, as defined in Schedule 36 – Vehicles;
  - (j) Vehicle Kilometres Availability Failures caused by HMQ Entities, the Revenue Vehicle Manufacturer, or the Operator in connection with Revenue Vehicle Final Acceptance Testing conducted during Revenue Service;
  - (k) Vehicle Kilometres Availability Failures caused by Operator failing to implement, to the fullest extent reasonable, a catch-up mode of operation in accordance with the schedule regulation protocol of the Standard Operating Procedures;
  - (l) Passenger Facility Availability Failures caused by the fit-out contractor of an Auxiliary Facilities Occupant; and
  - (m) Availability Failures, Quality Failures and Service Failures caused by requirements or changes to the requirements in the Standard Operating Procedures or LRT Rules that are required by Operator but result in Project Co being unable to meet the obligations of Project Co set out in the Project Agreement.
- 2.2 Project Co shall only be entitled to any relief and a Non-Project Co Cause shall only be applicable pursuant to this Section 2 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;

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- (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, including but not limited to Project Co's adherence to its Maintenance and Rehabilitation Plan;
- (b) Project Co has taken, and continued to take, commercially-reasonable steps to mitigate the consequences of the Non-Project Co Cause, and, in respect of Section Part A2.1(i) of this Part A only, including implementation of commercially-reasonable advice from the Revenue Vehicle Manufacturer; 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 HMQ Entities 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 Maintenance and Rehabilitation 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 during the Maintenance Period. The Monthly Service Payment shall be calculated in accordance with the following formula:

$$MSP_n = \left( \frac{ASP_n}{12} \right) + VP + LCP_n - \Sigma D + GS - PS$$

Where:

- MSP<sub>n</sub>* Means the Monthly Service Payment for the Contract Month for which the formula is to be applied.
- ASP<sub>n</sub>* Means the applicable Annual Service Payment for the Service Level in effect for the relevant Contract Year, calculated in accordance with the provisions set out in Section 2.1 of this Part B.
- VP* Means the Volume Payment for the relevant Contract Month, calculated in accordance with the provisions set out in Section 3.1 of this Part B.
- LCP<sub>n</sub>* Means the Lifecycle Payment for the relevant Contract Month, calculated in accordance with the provisions set out in Section 3.2 of this Part B.
- ΣD* Means the sum of Vehicle Kilometres Availability Failure Deductions, Passenger Facility Availability Failure Deductions, Room Availability Failure Deductions, Quality Failure Deductions, and Service Failure Deductions in respect of the relevant Contract Month.
- GS* Means any Gainshare Adjustment arising pursuant to the terms of Schedule 8 – Energy Matters.
- PS* Means any Painshare Adjustment arising pursuant to the terms of Schedule 8 – Energy Matters.

- 1.2 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 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:

$$ASP_n = ASPcap_n + (ASPser_o * ESC_n) + IA$$

Where:

- $ASP_n$  Means the total, escalated Annual Service Payment for the relevant Contract Year.
- $ASPcap_n$  Means the Annual Service Payment – Capital Portion for the Service Level in effect during the relevant Contract Year, as referenced in Column B of Table 1 in Appendix A.
- $ASPser_o$  Means the un-escalated Annual Service Payment – Service Portion for the Service Level in effect during the relevant Contract Year, as referenced in Column C of Table 1 in Appendix A.
- $ESC_n$  Means the Escalation Factor for the relevant Contract Year as calculated in accordance with Section 4.1 of this Part B.
- $IA$  Means the Insurance Adjustment calculated in accordance with Section 2.2 and 2.3 of this Part B.
- 2.2 No later than 60 days prior to each Insurance Review Date, Project Co will require its insurance broker to prepare and submit to HMQ Entities the Joint Insurance Cost Report. HMQ Entities and Project Co, acting reasonably, will agree on the Insurance Adjustment to be applied to the Annual Service Payment for the next Contract Year.
- 2.3 The Insurance Adjustment will constitute an adjustment to the Annual Service Payment on the Payment Commencement Date and on each Insurance Review Date thereafter. The Insurance Adjustment will be applied in accordance with this Part B.

**Section 3. Volume Payment and Lifecycle Payment**

- 3.1 The Volume Payment for any Contract Month  $n$  shall be calculated in accordance with the following formula:

$$VP_n = Tkm_n * PPkm_n * ESC_n$$

Where:

- $VP_n$  Means the Volume Payment for the Service Level in effect during the relevant Contract Month  $n$ ;

$Tkm_n$	Means the Total Vehicle Kilometres for the relevant Contract Month $n$ ;
$PPkm$	Means the Price per Vehicle Kilometre for the Service Level in effect during the relevant Contract Month, as set out in Column D of Table 1 in Appendix A; and
$ESC_n$	Means the Escalation Factor for the relevant Contract Year as calculated in accordance with Section 4.1 of this Part B.

3.2 The Lifecycle Payment applicable for any Contract Month  $n$  shall be calculated in accordance with the following formula:

$$LCP_n = (LCP_{Month\ n} * PESCLC * LCESC_n) + (LCP_{Month\ n} * (1 - PESCLC))$$

Where:

$LCP_n$	Means the total, escalated Lifecycle Payment applicable for the relevant Contract Month $n$ ;
$LCP_{Month\ n}$	Means the Lifecycle Payment for the relevant Contract Month $n$ as set out in Column C of Table 3 in Appendix A;
$PESCLC$	Means [REDACTED] %; and
$LCESC_n$	Means the Lifecycle Escalation Factor for the relevant Contract Year as calculated in accordance with Section 4.2 of this Part B.

#### Section 4. Escalation Factor

4.1 The Escalation Factor shall be calculated in accordance with the following formula:

$$ESC_n = \left[ \left( \frac{CPI_n}{CPI_o} \right) * W_{CPI} \right] + \left[ \left( \frac{Labour_n}{Labour_o} \right) * W_L \right]$$

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] %.

$Labour_o$  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.

4.2 The Lifecycle Escalation Factor shall be calculated in accordance with the following formula:

$$LCESC_n = \frac{(CPI_n * WLC_{CPI}) + (Labour_n * WLC_L)}{(CPI_o * WLC_{CPI}) + (Labour_o * WLC_L)}$$

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.



<i>WLC<sub>L</sub></i>	Means [REDACTED] %.
<i>CPI<sub>o</sub></i>	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.
<i>Labour<sub>o</sub></i>	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.

### Section 5. Changes in Service Level and Partial Years

- 5.1 If the Service Level is changed during a Contract Year resulting in a change in the Annual Service Payment during such Contract Year, the formula in Section 2.1 of this Part B above shall be applied by using one of the two methods below, as agreed by HMQ Entities and Project Co:
- (a) Pro-rating the Annual Service Payment for such Contract Year based on the number of days in the Contract Year each Service Level is in effect; or
  - (b) Re-applying the above formula on the date on which the new Service Level comes into effect, and using the resulting Annual Service Payment as the basis for calculating the Monthly Service Payment from that date forward.
- 5.2 If the Service Level is changed during a Contract Month resulting in a change in the applicable Price per Vehicle Kilometre, then the total Volume Payment for that Contract Month shall be calculated as an aggregate based on:
- (a) With regard to Total Vehicle Kilometres run prior to the change in Service Level, the Price per Vehicle Kilometre in effect prior to the change in Service Level; and
  - (b) With regard to Total Vehicle Kilometres run following the change in Service Level, the Price per Vehicle Kilometre associated with the new Service Level.
- 5.3 With respect to the Contract Months in which:
- (a) the Payment Commencement Date, and
  - (b) the Expiry Date,

occur, unless such date falls on the first or last day of the Contract Month (respectively), a pro rata adjustment to the Monthly Service Payment shall be made to reflect the actual number of days in the relevant Contract Month.

**PART C: DEDUCTIONS FROM MONTHLY SERVICE PAYMENTS - GENERAL****Section 1. Entitlement to Make Deductions**

- 1.1 If at any time during the Maintenance Period a Quality Failure, Service Failure or Availability Failure shall occur, HMQ Entities shall be entitled to make a Deduction from the relevant Monthly Service Payment in respect of that Quality Failure, Service Failure or Availability Failure.
- 1.2 The maximum aggregate of all Deductions that HMQ Entities 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, 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 HMQ 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 A Vehicle Kilometres Availability Failure is not required to be reported to the Help Desk. Vehicle Kilometres 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 VEHICLE AND PASSENGER FACILITY AND ROOM  
UNAVAILABILITY**

**Section 1. Vehicle Kilometres Availability Failure Deductions**

- 1.1 The Vehicle Kilometres Availability Failure Deduction in respect of a Contract Month  $n$ , shall be calculated in accordance with the following formula:

$$VAFD_n = [VAFD_{Peak}] + [VAFD_{Off-Peak}] + \sum SEvD$$

Where:

$VAFD_n$  Means the Vehicle Kilometres Availability Failure Deduction applicable to Contract Month  $n$ .

$VAFD_{Peak}$  Means the Vehicle Kilometres Availability Failure Deduction for Vehicle Kilometres Availability Failure during Peak Period applicable to Contract Month  $n$ , calculated in accordance with Section 1.2 of this Part D.

$VAFD_{Off-Peak}$  Means the Vehicle Kilometres Availability Failure Deduction for Vehicle Kilometres Availability Failure during Off-Peak Period applicable to Contract Month  $n$ , calculated in accordance with Section 1.3 of this Part D.

$\Sigma SEvD$  Means the sum of System Event Deductions applicable to Contract Month  $n$ , calculated in accordance with Section 1.7 of this Part D.

- 1.2 The amount to be deducted in respect of Vehicle Kilometres Availability Failure for Peak Periods during Contract Month  $n$ , shall be calculated in accordance with the following formula:

$$VAFD_{Peak} = DF_{Peak,n} * (UASP_n) *.67$$

Where:

$VAFD_{Peak}$  Means the amount to be deducted in respect of Vehicle Kilometres Availability Failure for Peak Periods applicable to Contract Month  $n$ .

$DF_{Peak,n}$  Means the Deduction Factor for Peak Period service during Contract Month  $n$ , determined in accordance with Section 1.4 of this Part D.

$UASP_n$  Means the Un-Adjusted Service Payment for Contract Month  $n$ .

- 1.3 The amount to be deducted in respect of Vehicle Kilometres Availability Failure for Off-Peak Periods during Contract Month  $n$ , shall be calculated in accordance with the following formula:

$$VAFD_{Off-Peak} = DF_{Off-Peak,n} * (UASP_n) *.33$$

Where:

$VAFD_{Off-Peak}$  Means the amount to be deducted in respect of Vehicle Kilometres Availability Failure for Off-Peak Periods applicable to Contract Month  $n$ .

$DF_{Off-Peak, n}$  Means the Deduction Factor for Off-Peak Period service during Contract Month  $n$ , determined in accordance with Section 1.5 of this Part D.

$UASP_n$  Means the Un-Adjusted Service Payment for Contract Month  $n$ .

- 1.4 The Deduction Factor in respect of Peak Periods during Contract Month  $n$ , shall be determined by calculating the Availability Ratio for Contract Month  $n$ , in accordance with the formula set out below, and applying the corresponding Deduction Factor from Table 1 in Appendix B.

$$AR_{Peak, n} = \frac{(Rkm_{Peak, n} + NPCCKm_{Peak, n})}{Skm_{Peak, n}}$$

Where:

$AR_{Peak, n}$  Means the Availability Ratio for Peak Period service during Contract Month  $n$ .

$Rkm_{Peak, n}$  Means the total amount of Revenue Service Vehicle Kilometres during Peak Periods for Contract Month  $n$ .

$NPCCKm_{Peak, n}$  Means the number of Scheduled Revenue Service Vehicle Kilometres which were “missed” or not achieved at Peak Periods during Contract Month  $n$  and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause.

$Skm_{Peak, n}$  Means the total Scheduled Revenue Service Vehicle Kilometres during Peak Periods for Contract Month  $n$ .

- 1.5 The Deduction Factor in respect of Off-Peak Periods during Contract Month  $n$ , shall be determined by calculating the Availability Ratio for Contract Month  $n$ , in accordance with the formula set out below, and applying the corresponding Deduction Factor from Table 1 in Appendix B.

$$AR_{Off-Peak, n} = \frac{(Rkm_{Off-Peak, n} + NPCCKm_{Off-Peak, n})}{Skm_{Off-Peak, n}}$$

Where:

$AR_{Off-Peak, n}$  Means the Vehicle Availability Ratio for Off-Peak Period service during Contract Month  $n$ .

<i>Rkm<sub>Off-Peak, n</sub></i>	Means the total amount of Revenue Service Vehicle Kilometres during Off-Peak Periods for Contract Month <i>n</i> .
<i>NPCCkm<sub>Off-Peak, n</sub></i>	Means the number of Scheduled Revenue Service Vehicle Kilometres which were “missed” or not achieved at Off-Peak Periods during Contract Month <i>n</i> and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause.
<i>Skm<sub>Off-Peak, n</sub></i>	Means the total Scheduled Revenue Service Vehicle Kilometres during Off-Peak Periods for Contract Month <i>n</i> .

- 1.6 For the purposes of Sections 1.4 and 1.5 of this Part D, when selecting a Deduction Factor from the tables in Appendix B, the Availability Ratio shall be rounded up to the nearest [REDACTED] %.
- 1.7 The following deductions (“**System Event Deductions**”) shall also apply in respect of Vehicle Kilometres Availability Failure. 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
On any single Weekday during a Contract Month, the Aggregate Vehicle Kilometres 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 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.
On any single day during a Contract Month, the Aggregate Vehicle Kilometres Availability Ratio for that day is less than [REDACTED] %	\$[REDACTED] per occurrence.

- 1.8 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 4.1 of Part B.
- 1.9 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  $n$ , shall be calculated in accordance with the following formula:

$$PF\text{AFD}_n = [PF\text{AFD}_{\text{Peak}}] + [PF\text{AFD}_{\text{Off-Peak}}] + \sum PF\text{EvD}$$

Where:

$PF\text{AFD}_n$  Means the Passenger Facility Availability Failure Deduction applicable to Contract Month  $n$ .

$PF\text{AFD}_{\text{Peak}}$  Means the amount deducted in respect of Passenger Facility Availability Failure during Peak Period applicable to Contract Month  $n$ , calculated in accordance with Section 2.2 of this Part D.

$PF\text{AFD}_{\text{Off-Peak}}$  Means the amount deducted in respect of Passenger Facility Availability Failure during Off- Peak Period applicable to Contract Month  $n$ , calculated in accordance with Section 2.3 of this Part D.

$\sum PF\text{EvD}$  Means the sum of Passenger Facility Event Deductions applicable to Contract Month  $n$ , calculated in accordance with Section 2.6 of this Part D.

- 2.2 The amount to be deducted in respect of Passenger Facility Availability Failure during Peak Periods during Contract Month  $n$ , shall be calculated in accordance with the following formula:

$$PF\text{AFD}_{\text{Peak}} = Pa.DF_{\text{Peak},n} * UASP_n * .67$$

Where:

$PF\text{AFD}_{\text{Peak}}$  Means the amount to be deducted in respect of Passenger Facility Availability Failure during Peak Period applicable to Contract Month  $n$ .

$Pa.DF_{\text{Peak},n}$  Means the Passenger Facility Deduction Factor for Peak Period service during Contract Month  $n$ , determined in accordance with Section 2.4 of this Part D.

$UASP_n$  Means the Un-Adjusted Service Payment for Contract Month  $n$ .

- 2.3 The amount to be deducted in respect of Passenger Facility Availability Failure during Off-Peak Periods during Contract Month  $n$ , shall be calculated in accordance with the following formula:

$$PF\text{AFD}_{\text{Off-Peak}} = Pa.DF_{\text{Off-Peak},n} * UASP_n * .33$$

Where:

$PF\text{AFD}_{\text{Off-Peak}}$  Means the amount to be deducted in respect of Passenger Facility Availability Failure during Off-Peak Period applicable to Contract Month  $n$ .

$Pa. DF_{\text{Off-Peak},n}$  Means the Passenger Facility Deduction Factor for Off-Peak Period service during Contract Month  $n$ , determined in accordance with Section 2.5 of this Part D.

$U\text{ASP}_n$  Means the Un-Adjusted Service Payment for Contract Month  $n$ .

- 2.4 The Passenger Facility Deduction Factor in respect of Peak Periods during Contract Month  $n$ , shall be determined by calculating the Aggregate Passenger Facility Availability Ratio for Contract Month  $n$ , in accordance with the formula set out below, and applying the corresponding Passenger Facility Deduction Factor from Table 2 in Appendix B.

$$PF\text{AR}_{P,n} = .50 * \left[ \frac{(PF\text{SH}_{Gp.1 P,n} - PF\text{AF}_{Gp.1 P,n} + NPC\text{Chr}_{Gp.1 P,n})}{PF\text{SH}_{Gp.1 P,n}} \right] + .35 * \left[ \frac{(PF\text{SH}_{Gp.2 P,n} - PF\text{AF}_{Gp.2 P,n} + NPC\text{Chr}_{Gp.2 P,n})}{PF\text{SH}_{Gp.2 P,n}} \right] + .15 * \left[ \frac{(PF\text{SH}_{Gp.3 P,n} - PF\text{AF}_{Gp.3 P,n} + NPC\text{Chr}_{Gp.3 P,n})}{PF\text{SH}_{Gp.3 P,n}} \right]$$

Where:

$PF\text{AR}_{P,n}$  Means the Passenger Facility Availability Ratio for Peak Period service during Contract Month  $n$

$PF\text{SH}_{Gp.1 P,n}$  Means the sum total of Scheduled Passenger Facility Hours for all Group 1 Passenger Facilities during Peak Periods for Contract Month  $n$

$PF\text{AF}_{Gp.1 P,n}$  Means the sum total of Passenger Facility Availability Failure Hours for all Group 1 Passenger Facilities during Peak Periods for Contract Month  $n$

$NPC\text{Chr}_{Gp.1 P,n}$  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  $n$  and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause

$PF\text{SH}_{Gp.2 P,n}$  Means the sum total of Scheduled Passenger Facility Hours for all Group 2 Passenger Facilities during Peak Periods for Contract Month  $n$

$PF\text{AF}_{Gp.2 P,n}$  Means the sum total of Passenger Facility Availability Failure Hours for all Group 2 Passenger Facilities during Peak Periods for Contract Month  $n$

$NPC\text{Chr}_{Gp.2 P,n}$  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  $n$  and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause



$PFSH_{Gp,3P,n}$	Means the sum total of Scheduled Passenger Facility Hours for all Group 3 Passenger Facilities during Peak Periods for Contract Month $n$
$PFAF_{Gp,3P,n}$	Means the sum total of Passenger Facility Availability Failure Hours for all Group 3 Passenger Facilities during Peak Periods for Contract Month $n$
$NPCChr_{Gp,3P,n}$	Means the number of Scheduled Passenger Facility Hours which were “missed” or not achieved for all Group 3 Passenger Facilities at Peak Periods during Contract Month $n$ and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause

- 2.5 The Passenger Facility Availability Factor in respect of Off-Peak Periods during Contract Month  $n$ , shall be determined by calculating the Passenger Facility Availability Ratio for Contract Month  $n$ , in accordance with the formula set out below, and applying the corresponding Passenger Facility Availability Factor from Table 2 in Appendix B.

$$PFAR_{P,n} = .50 * \left[ \frac{(PFSH_{Gp,1OP,n} - PFAF_{Gp,1OP,n} + NPCChr_{Gp,1OP,n})}{PFSH_{Gp,1OP,n}} \right] + .35 * \left[ \frac{(PFSH_{Gp,2OP,n} - PFAF_{Gp,2OP,n} + NPCChr_{Gp,2OP,n})}{PFSH_{Gp,2OP,n}} \right] + .15 * \left[ \frac{(PFSH_{Gp,3OP,n} - PFAF_{Gp,3OP,n} + NPCChr_{Gp,3OP,n})}{PFSH_{Gp,3OP,n}} \right]$$

Where:

$PFAR_{OP,n}$	Means the Passenger Facility Availability Ratio for Off-Peak Period service during Contract Month
$PFSH_{Gp,1OP,n}$	Means the sum total of Scheduled Passenger Facility Hours for all Group 1 Passenger Facilities during Off-Peak Periods for Contract Month $n$
$PFAF_{Gp,1OP,n}$	Means the sum total of Passenger Facility Availability Failure Hours for all Group 1 Passenger Facilities during Off-Peak Periods for Contract Month $n$
$NPCChr_{Gp,1OP,n}$	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 $n$ and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause
$PFSH_{Gp,2OP,n}$	Means the sum total of Scheduled Passenger Facility Hours for all Group 2 Passenger Facilities during Off-Peak Periods for Contract Month $n$
$PFAF_{Gp,2OP,n}$	Means the sum total of Passenger Facility Availability Failure Hours for all Group 2 Passenger Facilities during Off-Peak Periods for Contract Month $n$
$NPCChr_{Gp,2OP,n}$	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 $n$ and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause

## Cause

$PFSH_{Gp,3OP,n}$	Means the sum total of Scheduled Passenger Facility Hours for all Group 3 Passenger Facilities during Off-Peak Periods for Contract Month $n$
$PFAF_{Gp,3OP,n}$	Means the sum total of Passenger Facility Availability Failure Hours for all Group 3 Passenger Facilities during Off-Peak Periods for Contract Month $n$
$NPCChr_{Gp,3OP,n}$	Means the number of Scheduled Passenger Facility Hours which were “missed” or not achieved for all Group 3 Passenger Facilities at Off-Peak Periods during Contract Month $n$ and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause

- 2.6 For the purposes of Sections 2.4 and 2.5 of this Part D, when selecting a Deduction Factor from the tables in Appendix B, the Availability Ratio shall be rounded up to the nearest [REDACTED] %.
- 2.7 The following deductions (“**Passenger Facility Event Deductions**”) shall also apply in respect of Passenger Facility Availability Failures. The maximum aggregate amount of Passenger Facility Event Deductions to be applied in one day shall be \$[REDACTED]. 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**

<b>Passenger Facility Event is triggered where</b>	<b>Passenger Facility Event Deduction Applied</b>
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 Station or Stop.

- 2.8 The Passenger Facility Event Deductions and the maximum daily aggregate amount listed above shall be index-linked using the Escalation Factor as referred to in Section 4.1 of Part B.
- 2.9 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. Room Availability Failure Deductions**

- 3.1 The Room Availability Failure Deduction in respect of a Contract Month  $n$ , shall be calculated in accordance with the following formula:

$$TRAFD_n = \sum RAFD_n$$

Where:

- TRAFD<sub>n</sub>* Means the Total Room Availability Failure Deduction applicable to Contract Month *n*.
- $\Sigma$ *RAFD<sub>n</sub>* Means the sum of amounts deducted in respect of Room Availability Failures applicable to Contract Month *n*, calculated in accordance with Section 3 of this Part D.

- 3.2 Each Room Availability Failure shall be designated as a Minor Room Availability Failure, Medium Room Availability Failure or Major Room Availability Failure as indicated in Appendix E.
- 3.3 The amount to be deducted from the Monthly Service Payment in respect of a Room Availability Failure shall be as follows:
- (a) In the case of a Minor Room Availability Failure, the sum of \$[REDACTED];
  - (b) In the case of a Medium Room Availability Failure, the sum of \$[REDACTED], indexed, using the Escalation Factor as referred to in Section 4.1 of Part B; and
  - (c) In the case of a Major Room Availability Failure, the sum of \$[REDACTED], indexed, using the Escalation Factor as referred to in Section 4.1 of Part B.
- 3.4 A Room Availability Failure shall occur upon the occurrence of the Event in question and a Room Availability Failure Deduction shall apply in accordance with Section 3 of this Part D. To the extent that such a Room Availability Failure is not rectified within a 4 hour period, another Room Availability Failure Deduction may be applied since this will be treated as a Room Availability Failure (and, if appropriate, Room Availability Failure Deductions shall continue to be made) until such time as Project Co shall demonstrate to the reasonable satisfaction of the HMQ Representative, that it has remedied the Room Availability Failure.
- 3.5 For clarity and to avoid double-counting, any Room Availability Failure directly contributing to the determination of a relevant Passenger Facility Availability Failure shall not further constitute a separate Room Availability Failure.

#### **Section 4. Partial Availability**

- 4.1 Where a Room Availability Failure has been deemed to have taken place but HMQ Entities continue to use the relevant room, then Project Co shall be given credit for partial availability and the related deduction for the Room Availability Failure shall be reduced by [REDACTED] %.
- 4.2 In respect of the Vehicle Kilometres Availability Failure:

- (a) Where HMQ Entities exercise their discretion under Article 5.2 of Appendix A to Schedule 15-3 – Maintenance and Rehabilitation Requirements to permit a Vehicle which does not meet the Vehicle Availability Standard to be entered into Revenue Service as part of a Train, the Revenue Service Vehicle Kilometres traveled by that Vehicle while it fails to meet such standard shall be deemed to be reduced by [REDACTED] %.

4.3 In respect of the Passenger Facilities Availability Failure:

- (a) Where a Station does not meet the Station and Stop Access Standard but does meet the requirements of Article 5.5 of Attachment 2 to Appendix A to Schedule 15-3 – Maintenance and Rehabilitation Requirements to the Project Agreement, the Passenger Facility Availability Failure Hours that would otherwise be assessed for the duration of the Station's failure to meet the Station and Stop Access Standard shall be reduced by [REDACTED] %; and
- (b) Where a Bus Facility does not meet the Bus Facility Access Standard but does meet the requirements of Article 5.6 of Attachment 2 to Appendix A to Schedule 15-3 – Maintenance and Rehabilitation Requirements to the Project Agreement, the Passenger Facility Availability Failure Hours that would otherwise be assessed for the duration of the Bus Facility's failure to meet the Bus Facility 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 4.1 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 4.1 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 4.1 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 a 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 HMQ 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 HMQ 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 4.1 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 4.1 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 4.1 of Part B.
- 2.2 Where a Service Failure Performance Criteria has 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 HMQ 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 HMQ 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 HMQ Representative notifies the Project Co Representative that HMQ Entities no longer require Project Co to address such Service Failure.
- 2.5 Where a Service Failure Performance Criteria has 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. Temporary Repairs

- 3.1 If Project Co informs HMQ Entities 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) HMQ Entities may, in their 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**”).
- 3.2 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.
- 3.3 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 3.3(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 3.3(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 3 shall cease and Section 3.4 of this Part E shall apply.

3.4 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 3.4 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 HMQ 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 HMQ Representative, that it has remedied the Quality Failure.
- (b) Following the occurrence of a Service Failure per Section 3.4 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 HMQ 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 HMQ Representative, that it has remedied the Service Failure.

**PART F: REVIEW AND AMENDMENT OF PAYMENT MECHANISM****Section 1. Five Year Review**

- 1.1 The amount of Deductions for Vehicle Kilometres Availability Failures, Passenger Facility Availability Failures, Room Availability Failures, Quality Failures and Service Failures, as well as the overall functioning of the Payment Mechanism shall be reviewed by HMQ Entities 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 HMQ Entities 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 Maintenance and Rehabilitation Services or the likely magnitude of Vehicle Kilometres Availability Failures, Passenger Facility Availability Failures, Room Availability Failures, Quality Failures and Service 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 HMQ Entities 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 HMQ Entities may change the hours within the definition of “Peak Period” within Article 1 (b) of Appendix A to Schedule 15-3 – Maintenance and Rehabilitation Requirements for the purposes of the Payment Mechanism, at its sole discretion at any time during the Maintenance Period 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-five (35) hours, and the two daily peak periods are separated by a minimum of three (3) hours.
- 2.2 HMQ Entities may, in their sole discretion, change the grouping of Passenger Facilities (Group 1, Group 2, and Group 3 definitions), for the purposes of the Payment Mechanism, at any time during the Maintenance Period by providing Project Co with sixty (60) days written Notice, provided that:
- (a) Group 1 shall not include more than 8 Passenger Facilities;



- (b) Group 2 shall not include more than 11 Passenger Facilities; and
  - (c) if the change in the grouping causes a change in the overall risk profile of the relevant Maintenance and Rehabilitation Services, Project Co shall be entitled to a Variation and Schedule 22 – Variation Procedure shall apply.
- 2.3 HMQ Entities may increase the total number of Peak Period hours per week and/or increase the number of Group 1 or Group 2 Passenger Facilities, beyond the limits set out in 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 Maintenance and Rehabilitation Services or the likely magnitude of Vehicle Kilometres Availability Failures, Passenger Facility Availability Failures, Room 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. Lifecycle Payment Adjustment

- 3.1 In the event of a Service Level Increase or Service Level Decrease, Project Co may request adjustments to the schedule of Lifecycle Payments set out in Table 3 of Appendix A, in accordance with the provisions of this Section 3 of this Part F.
- 3.2 Any adjustments to the schedule of Lifecycle Payments under this Section 3 of this Part F shall be limited by the following constraints:
- (a) Adjustments shall be limited to costs in respect of the replacement, refreshment and/or refurbishment during the Maintenance Period of the following components of the Project Co System Infrastructure (“**Eligible Lifecycle Costs**”):
    - (i) Trackwork, as described in Article 22 of Part 4 of Schedule 15-2 – Design and Construction Requirements;
    - (ii) Overhead Catenary System, as described in Article 3 of Part 4 of Schedule 15-2 – Design and Construction Requirements; and
    - (iii) Revenue Vehicles as described in Article 4 of Part 4 of Schedule 15-2 – Design and Construction Requirements;
  - (b) Adjustments shall be limited to the following forms of adjustment:
    - (i) Acceleration of already scheduled Lifecycle Payments in respect of Eligible Lifecycle Costs by virtue of a Service Level Increase, such that Project Co would be entitled to receive a specific Lifecycle Payment or portion thereof in a Contract Month which is earlier than under the then-prevailing schedule of Lifecycle Payments; or

- (ii) Introduction of new Lifecycle Payments in respect of Eligible Lifecycle Costs which, by virtue of a Service Level Increase, will either:
  - (A) require an additional cycle of replacement, refreshment and/or refurbishment during the Maintenance Period which is over and above such cycles already scheduled in the Maintenance and Rehabilitation Plan; or
  - (B) reach the end of their lifecycle and require replacement, refreshment and/or refurbishment during the Maintenance Period where no such replacement, refreshment and/or refurbishment is scheduled in the then-prevailing Maintenance and Rehabilitation Plan; and
- (c) Adjustments must:
  - (i) be attributable by the quantity of service provided by Project Co, measured by vehicle kilometres, and
  - (ii) not be attributable to any Project Co failure to adhere to its Maintenance and Rehabilitation Plan,

each supported by items 3.3(c) and 3.3(d) in the application process described below.

3.3 Project Co shall apply for an adjustment to the schedule of Lifecycle Payments as a Project Co Variation Notice in accordance with the provisions of Schedule 22 – Variation Procedure. In addition to the requirements of Schedule 22 – Variation Procedure, Project Co’s application shall contain the following elements:

- (a) Identify the components of the Project Co System Infrastructure and Eligible Lifecycle Costs which form the basis of the application;
- (b) Identify the originally scheduled dates (if any) for replacement, refreshment and/or refurbishment of the relevant components of the Project Co System Infrastructure in the Maintenance and Rehabilitation Plan, and the proposed amended dates for such lifecycle works;
- (c) Describe the rationale for the proposed amended dates for lifecycle works, with specific reference to the following:
  - (i) The number of vehicle kilometres scheduled by the Operations Service Plan to have been provided at the originally scheduled date of lifecycle works;
  - (ii) The number of vehicle kilometres that will have been provided by Project Co at the proposed amended date of lifecycle works; and

- (iii) Reference to manufacturer specifications or industry standards and the impact of the Service Level Increase in triggering a need for replacement, refreshment and/or refurbishment in accordance with these specifications or standards; and
  - (d) Carry out an Internal Quality Audit (as described in Schedule 10 – Review Procedure) on Project Co’s adherence to its Maintenance and Rehabilitation Plan for the relevant components of the Project Co System Infrastructure.
- 3.4 For greater certainty, where Project Co’s application includes a request for introduction of new Lifecycle Payments in accordance with Section 3.2 of this Part F, then the amount of such new Lifecycle Payments shall be determined in accordance with the terms of Schedule 22 – Variation Procedure.
- 3.5 Project Co’s application shall provide HMQ Entities with at least twelve (12) months of Notice in advance of any proposed amended or additional Lifecycle Payment.
- 3.6 Project Co and HMQ Entities shall work collaboratively to minimize the number of adjustments to the Lifecycle Payment schedule, including:
  - (a) wherever possible, agreeing upon adjustments to the Lifecycle Payment schedule that take account of a number of years of accelerated Service Level where it is apparent that the condition of the Service Level Increase will continue to persist and future Service Levels can reasonably be predicted; and
  - (b) deferring adjustment to the Lifecycle Payment schedule where HMQ Entities, acting reasonably, believe that a condition of the Service Level Increase or Service Level Decrease is temporary and Service Levels will soon revert to or track the Operations Service Plan in effect at Financial Close, and there is no long term lifecycle impact to Project Co.

#### **Section 4. Vehicle Kilometres Availability Failure Deduction Adjustment**

- 4.1 Project Co may request adjustments to the Availability Ratios and Deduction Factors in Table 1 of Appendix B, in accordance with the provisions of this Section 4 of Part F in the event of one of the following instances:
  - (a) Service Level 7 is reached prior to the commencement of Contract Year 17; or
  - (b) The following two events occur when measured for a morning or afternoon weekday Peak Period on average over six Contract Months:
    - (i) Operator does not meet the scheduled dwell times at a specific Station or Stop; and
    - (ii) The relevant vehicle capacity standards in Section 2.6(c) of Part 1 of Schedule 15-2 – Design and Construction Requirements are exceeded by Revenue Vehicles leaving that Station or Stop; or

- (c) The following two events occur when measured for a morning or afternoon weekday Peak Period when averaged over six Contract Months:
- (i) Operator does not meet the scheduled dwell times at a specific Station or Stop; and
  - (ii) The level of demand set out in the Operations Service Plan for the Service Level in use is exceeded.
- 4.2 For the avoidance of doubt, Project Co and HMQ Entities intend that any adjustments to the schedule of Availability Ratios and Deduction Factors in Table 1 of Appendix B shall not alter the overall risk profile or the likely magnitude of Vehicle Kilometre Availability Failure Deductions. Further, adjustments must:
- (a) be directly attributable to one or more of the events listed in Section 4.1, and
  - (b) not be attributable to any Project Co inability to achieve satisfactory Availability Ratios.
- 4.3 Project Co shall apply for an adjustment to the Availability Ratios and Deduction Factors in Table 1 of Appendix B as a Project Co Variation Notice in accordance with the provisions of Schedule 22 – Variation Procedure. In addition to the requirements of Schedule 22 – Variation Procedure, Project Co’s application shall contain the following elements as applicable:
- (a) Identify which Station(s) or Stop(s) are impacted;
  - (b) Describe the rationale for the proposed amended Availability Ratios and Deduction Factors in Table 1 of Appendix B, with specific reference to the following:
    - (i) The number of vehicle kilometres scheduled and to have been provided by the original Operations Service Plan;
    - (ii) The dwell times per impacted Station or Stop scheduled and to have been achieved based on the original Operations Service Plan; and
    - (iii) Reference to industry standards and the impact of the events listed in Section 4.1 in triggering a need for amendments to Availability Ratios and Deduction Factors in Table 1 of Appendix B.
- 4.4 Project Co’s application shall provide HMQ Entities with at least three months of Notice in advance of any proposed amendment.
- 4.5 Project Co and HMQ Entities shall work collaboratively to minimize the number of adjustments to the Availability Ratios and Deduction Factors in Table 1 of Appendix B, including:
- (a) wherever possible, agreeing upon adjustments to the Operations Service Plan or the vehicle capacity standards in Section 2.6(c) of Part 1 to Schedule 15-2 – Design and Construction Requirements; and

- (b) deferring adjustment to the Availability Ratios and Deduction Factors in Table 1 of Appendix B where HMQ Entities, acting reasonably, believe that the event(s) listed in Section 4.1 is temporary and Service Levels will soon revert to or track the Operations Service Plan in effect at Financial Close, and there is no long term Vehicle Kilometres Availability Failure Deduction impact to Project Co.

**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 Maintenance Period, 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 Vehicle Kilometres Availability Failure shall be awarded for each Contract Month based on the relevant Aggregate Vehicle Kilometres 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;
  - (e) Failure Points in respect of Room Availability Failures shall be awarded in respect of each Room Availability Failure, in accordance with Section 5 of Appendix D; and
  - (f) 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 6 of Appendix D.
- 1.3 For the avoidance of doubt when awarding Failure Points, where a further Availability Failure, Quality Failure or Service Failure is deemed to have occurred in accordance with Section 3 of Part D or Section 2 to Section 3 of Part E, the appropriate number of Failure Points shall be awarded in respect of each such Availability Failure, Quality Failure and Service Failure, even though they arise from the same circumstances.

**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 Maintenance and Rehabilitation 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.

<b>Item</b>	<b>Source</b>
Revenue Service Vehicle Kilometres for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
Scheduled Revenue Service Vehicle Kilometres for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
Number of Scheduled Revenue Service Vehicle Kilometres which were “missed” or not traveled by Project Co due to a Non-Project Co Cause, for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
System Events for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
Passenger Facility Availability Failure Hours for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
Scheduled Passenger Facility Hours for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
Number of Scheduled Passenger Facility Hours which were “missed” by Project Co due to a Non-Project Co Cause, for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
Passenger Facility Events for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
Room Availability Failures for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
Quality Failures for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
Service Failures for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</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 HMQ Entities 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 or Quality Failure then, without prejudice to the Deduction to be made in respect of the relevant Availability Failure, Service Failure or Quality 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 HMQ Entities 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 HMQ Entities shall, in addition, be entitled to make Deductions in respect of any Availability Failure, Service Failure or Quality 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 HMQ Entities' investigations or, to the extent that HMQ Entities are 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 HMQ Entities pursuant to Sections 32, 45 and 60 of the Project Agreement.



**APPENDIX A: ANNUAL SERVICE PAYMENT AND MONTHLY SERVICE PAYMENT  
INPUTS**

**Table 1**

COLUMN A		COLUMN B	COLUMN C	COLUMN D
Contract Year	Service Level	Annual Service Payment – Capital Portion	Annual Service Payment – Service Portion (in Inflation Base Date prices)	Price per Vehicle Kilometre (in Inflation Base Date prices)
1	1	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
2	2	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
3	2	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
4	3	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
5	3	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
6	3	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
7	4	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
8	4	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
9	4	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
10	5	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
11	5	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
12	5	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
13	5	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
14	5	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
15	6	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
16	6	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
17	6	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

COLUMN A		COLUMN B	COLUMN C	COLUMN D
Contract Year	Service Level	Annual Service Payment – Capital Portion	Annual Service Payment – Service Portion (in Inflation Base Date prices)	Price per Vehicle Kilometre (in Inflation Base Date prices)
18	6	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
19	6	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
20	7	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
21	7	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
22	7	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
23	7	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
24	7	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
25	8	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
26	8	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
27	8	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
28	8	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
29	8	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
30	9	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
31	9	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

**Table 2 – INTENTIONALLY DELETED****Table 3**

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
1	01-Oct-21	31-Oct-21	[\$REDACTED]
2	01-Nov-21	30-Nov-21	[\$REDACTED]
3	01-Dec-21	31-Dec-21	[\$REDACTED]
4	01-Jan-22	31-Jan-22	[\$REDACTED]
5	01-Feb-22	28-Feb-22	[\$REDACTED]
6	01-Mar-22	31-Mar-22	[\$REDACTED]
7	01-Apr-22	30-Apr-22	[\$REDACTED]
8	01-May-22	31-May-22	[\$REDACTED]
9	01-Jun-22	30-Jun-22	[\$REDACTED]
10	01-Jul-22	31-Jul-22	[\$REDACTED]
11	01-Aug-22	31-Aug-22	[\$REDACTED]
12	01-Sep-22	30-Sep-22	[\$REDACTED]
13	01-Oct-22	31-Oct-22	[\$REDACTED]
14	01-Nov-22	30-Nov-22	[\$REDACTED]
15	01-Dec-22	31-Dec-22	[\$REDACTED]
16	01-Jan-23	31-Jan-23	[\$REDACTED]
17	01-Feb-23	28-Feb-23	[\$REDACTED]

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
18	01-Mar-23	31-Mar-23	[\$[REDACTED]]
19	01-Apr-23	30-Apr-23	[\$[REDACTED]]
20	01-May-23	31-May-23	[\$[REDACTED]]
21	01-Jun-23	30-Jun-23	[\$[REDACTED]]
22	01-Jul-23	31-Jul-23	[\$[REDACTED]]
23	01-Aug-23	31-Aug-23	[\$[REDACTED]]
24	01-Sep-23	30-Sep-23	[\$[REDACTED]]
25	01-Oct-23	31-Oct-23	[\$[REDACTED]]
26	01-Nov-23	30-Nov-23	[\$[REDACTED]]
27	01-Dec-23	31-Dec-23	[\$[REDACTED]]
28	01-Jan-24	31-Jan-24	[\$[REDACTED]]
29	01-Feb-24	29-Feb-24	[\$[REDACTED]]
30	01-Mar-24	31-Mar-24	[\$[REDACTED]]
31	01-Apr-24	30-Apr-24	[\$[REDACTED]]
32	01-May-24	31-May-24	[\$[REDACTED]]
33	01-Jun-24	30-Jun-24	[\$[REDACTED]]
34	01-Jul-24	31-Jul-24	[\$[REDACTED]]
35	01-Aug-24	31-Aug-24	[\$[REDACTED]]
36	01-Sep-24	30-Sep-24	[\$[REDACTED]]

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
37	01-Oct-24	31-Oct-24	[\$REDACTED]
38	01-Nov-24	30-Nov-24	[\$REDACTED]
39	01-Dec-24	31-Dec-24	[\$REDACTED]
40	01-Jan-25	31-Jan-25	[\$REDACTED]
41	01-Feb-25	28-Feb-25	[\$REDACTED]
42	01-Mar-25	31-Mar-25	[\$REDACTED]
43	01-Apr-25	30-Apr-25	[\$REDACTED]
44	01-May-25	31-May-25	[\$REDACTED]
45	01-Jun-25	30-Jun-25	[\$REDACTED]
46	01-Jul-25	31-Jul-25	[\$REDACTED]
47	01-Aug-25	31-Aug-25	[\$REDACTED]
48	01-Sep-25	30-Sep-25	[\$REDACTED]
49	01-Oct-25	31-Oct-25	[\$REDACTED]
50	01-Nov-25	30-Nov-25	[\$REDACTED]
51	01-Dec-25	31-Dec-25	[\$REDACTED]
52	01-Jan-26	31-Jan-26	[\$REDACTED]
53	01-Feb-26	28-Feb-26	[\$REDACTED]
54	01-Mar-26	31-Mar-26	[\$REDACTED]
55	01-Apr-26	30-Apr-26	[\$REDACTED]

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
56	01-May-26	31-May-26	[\$REDACTED]
57	01-Jun-26	30-Jun-26	[\$REDACTED]
58	01-Jul-26	31-Jul-26	[\$REDACTED]
59	01-Aug-26	31-Aug-26	[\$REDACTED]
60	01-Sep-26	30-Sep-26	[\$REDACTED]
61	01-Oct-26	31-Oct-26	[\$REDACTED]
62	01-Nov-26	30-Nov-26	[\$REDACTED]
63	01-Dec-26	31-Dec-26	[\$REDACTED]
64	01-Jan-27	31-Jan-27	[\$REDACTED]
65	01-Feb-27	28-Feb-27	[\$REDACTED]
66	01-Mar-27	31-Mar-27	[\$REDACTED]
67	01-Apr-27	30-Apr-27	[\$REDACTED]
68	01-May-27	31-May-27	[\$REDACTED]
69	01-Jun-27	30-Jun-27	[\$REDACTED]
70	01-Jul-27	31-Jul-27	[\$REDACTED]
71	01-Aug-27	31-Aug-27	[\$REDACTED]
72	01-Sep-27	30-Sep-27	[\$REDACTED]
73	01-Oct-27	31-Oct-27	[\$REDACTED]
74	01-Nov-27	30-Nov-27	[\$REDACTED]

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
75	01-Dec-27	31-Dec-27	[\$[REDACTED]]
76	01-Jan-28	31-Jan-28	[\$[REDACTED]]
77	01-Feb-28	29-Feb-28	[\$[REDACTED]]
78	01-Mar-28	31-Mar-28	[\$[REDACTED]]
79	01-Apr-28	30-Apr-28	[\$[REDACTED]]
80	01-May-28	31-May-28	[\$[REDACTED]]
81	01-Jun-28	30-Jun-28	[\$[REDACTED]]
82	01-Jul-28	31-Jul-28	[\$[REDACTED]]
83	01-Aug-28	31-Aug-28	[\$[REDACTED]]
84	01-Sep-28	30-Sep-28	[\$[REDACTED]]
85	01-Oct-28	31-Oct-28	[\$[REDACTED]]
86	01-Nov-28	30-Nov-28	[\$[REDACTED]]
87	01-Dec-28	31-Dec-28	[\$[REDACTED]]
88	01-Jan-29	31-Jan-29	[\$[REDACTED]]
89	01-Feb-29	28-Feb-29	[\$[REDACTED]]
90	01-Mar-29	31-Mar-29	[\$[REDACTED]]
91	01-Apr-29	30-Apr-29	[\$[REDACTED]]
92	01-May-29	31-May-29	[\$[REDACTED]]
93	01-Jun-29	30-Jun-29	[\$[REDACTED]]

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
94	01-Jul-29	31-Jul-29	[\$[REDACTED]]
95	01-Aug-29	31-Aug-29	[\$[REDACTED]]
96	01-Sep-29	30-Sep-29	[\$[REDACTED]]
97	01-Oct-29	31-Oct-29	[\$[REDACTED]]
98	01-Nov-29	30-Nov-29	[\$[REDACTED]]
99	01-Dec-29	31-Dec-29	[\$[REDACTED]]
100	01-Jan-30	31-Jan-30	[\$[REDACTED]]
101	01-Feb-30	28-Feb-30	[\$[REDACTED]]
102	01-Mar-30	31-Mar-30	[\$[REDACTED]]
103	01-Apr-30	30-Apr-30	[\$[REDACTED]]
104	01-May-30	31-May-30	[\$[REDACTED]]
105	01-Jun-30	30-Jun-30	[\$[REDACTED]]
106	01-Jul-30	31-Jul-30	[\$[REDACTED]]
107	01-Aug-30	31-Aug-30	[\$[REDACTED]]
108	01-Sep-30	30-Sep-30	[\$[REDACTED]]
109	01-Oct-30	31-Oct-30	[\$[REDACTED]]
110	01-Nov-30	30-Nov-30	[\$[REDACTED]]
111	01-Dec-30	31-Dec-30	[\$[REDACTED]]
112	01-Jan-31	31-Jan-31	[\$[REDACTED]]



COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
113	01-Feb-31	28-Feb-31	[\$[REDACTED]]
114	01-Mar-31	31-Mar-31	[\$[REDACTED]]
115	01-Apr-31	30-Apr-31	[\$[REDACTED]]
116	01-May-31	31-May-31	[\$[REDACTED]]
117	01-Jun-31	30-Jun-31	[\$[REDACTED]]
118	01-Jul-31	31-Jul-31	[\$[REDACTED]]
119	01-Aug-31	31-Aug-31	[\$[REDACTED]]
120	01-Sep-31	30-Sep-31	[\$[REDACTED]]
121	01-Oct-31	31-Oct-31	[\$[REDACTED]]
122	01-Nov-31	30-Nov-31	[\$[REDACTED]]
123	01-Dec-31	31-Dec-31	[\$[REDACTED]]
124	01-Jan-32	31-Jan-32	[\$[REDACTED]]
125	01-Feb-32	29-Feb-32	[\$[REDACTED]]
126	01-Mar-32	31-Mar-32	[\$[REDACTED]]
127	01-Apr-32	30-Apr-32	[\$[REDACTED]]
128	01-May-32	31-May-32	[\$[REDACTED]]
129	01-Jun-32	30-Jun-32	[\$[REDACTED]]
130	01-Jul-32	31-Jul-32	[\$[REDACTED]]
131	01-Aug-32	31-Aug-32	[\$[REDACTED]]

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
132	01-Sep-32	30-Sep-32	[\$[REDACTED]]
133	01-Oct-32	31-Oct-32	[\$[REDACTED]]
134	01-Nov-32	30-Nov-32	[\$[REDACTED]]
135	01-Dec-32	31-Dec-32	[\$[REDACTED]]
136	01-Jan-33	31-Jan-33	[\$[REDACTED]]
137	01-Feb-33	28-Feb-33	[\$[REDACTED]]
138	01-Mar-33	31-Mar-33	[\$[REDACTED]]
139	01-Apr-33	30-Apr-33	[\$[REDACTED]]
140	01-May-33	31-May-33	[\$[REDACTED]]
141	01-Jun-33	30-Jun-33	[\$[REDACTED]]
142	01-Jul-33	31-Jul-33	[\$[REDACTED]]
143	01-Aug-33	31-Aug-33	[\$[REDACTED]]
144	01-Sep-33	30-Sep-33	[\$[REDACTED]]
145	01-Oct-33	31-Oct-33	[\$[REDACTED]]
146	01-Nov-33	30-Nov-33	[\$[REDACTED]]
147	01-Dec-33	31-Dec-33	[\$[REDACTED]]
148	01-Jan-34	31-Jan-34	[\$[REDACTED]]
149	01-Feb-34	28-Feb-34	[\$[REDACTED]]
150	01-Mar-34	31-Mar-34	[\$[REDACTED]]

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
151	01-Apr-34	30-Apr-34	\$(REDACTED)
152	01-May-34	31-May-34	\$(REDACTED)
153	01-Jun-34	30-Jun-34	\$(REDACTED)
154	01-Jul-34	31-Jul-34	\$(REDACTED)
155	01-Aug-34	31-Aug-34	\$(REDACTED)
156	01-Sep-34	30-Sep-34	\$(REDACTED)
157	01-Oct-34	31-Oct-34	\$(REDACTED)
158	01-Nov-34	30-Nov-34	\$(REDACTED)
159	01-Dec-34	31-Dec-34	\$(REDACTED)
160	01-Jan-35	31-Jan-35	\$(REDACTED)
161	01-Feb-35	28-Feb-35	\$(REDACTED)
162	01-Mar-35	31-Mar-35	\$(REDACTED)
163	01-Apr-35	30-Apr-35	\$(REDACTED)
164	01-May-35	31-May-35	\$(REDACTED)
165	01-Jun-35	30-Jun-35	\$(REDACTED)
166	01-Jul-35	31-Jul-35	\$(REDACTED)
167	01-Aug-35	31-Aug-35	\$(REDACTED)
168	01-Sep-35	30-Sep-35	\$(REDACTED)
169	01-Oct-35	31-Oct-35	\$(REDACTED)

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
170	01-Nov-35	30-Nov-35	[\$REDACTED]
171	01-Dec-35	31-Dec-35	[\$REDACTED]
172	01-Jan-36	31-Jan-36	[\$REDACTED]
173	01-Feb-36	29-Feb-36	[\$REDACTED]
174	01-Mar-36	31-Mar-36	[\$REDACTED]
175	01-Apr-36	30-Apr-36	[\$REDACTED]
176	01-May-36	31-May-36	[\$REDACTED]
177	01-Jun-36	30-Jun-36	[\$REDACTED]
178	01-Jul-36	31-Jul-36	[\$REDACTED]
179	01-Aug-36	31-Aug-36	[\$REDACTED]
180	01-Sep-36	30-Sep-36	[\$REDACTED]
181	01-Oct-36	31-Oct-36	[\$REDACTED]
182	01-Nov-36	30-Nov-36	[\$REDACTED]
183	01-Dec-36	31-Dec-36	[\$REDACTED]
184	01-Jan-37	31-Jan-37	[\$REDACTED]
185	01-Feb-37	28-Feb-37	[\$REDACTED]
186	01-Mar-37	31-Mar-37	[\$REDACTED]
187	01-Apr-37	30-Apr-37	[\$REDACTED]
188	01-May-37	31-May-37	[\$REDACTED]

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
189	01-Jun-37	30-Jun-37	\$(REDACTED)
190	01-Jul-37	31-Jul-37	\$(REDACTED)
191	01-Aug-37	31-Aug-37	\$(REDACTED)
192	01-Sep-37	30-Sep-37	\$(REDACTED)
193	01-Oct-37	31-Oct-37	\$(REDACTED)
194	01-Nov-37	30-Nov-37	\$(REDACTED)
195	01-Dec-37	31-Dec-37	\$(REDACTED)
196	01-Jan-38	31-Jan-38	\$(REDACTED)
197	01-Feb-38	28-Feb-38	\$(REDACTED)
198	01-Mar-38	31-Mar-38	\$(REDACTED)
199	01-Apr-38	30-Apr-38	\$(REDACTED)
200	01-May-38	31-May-38	\$(REDACTED)
201	01-Jun-38	30-Jun-38	\$(REDACTED)
202	01-Jul-38	31-Jul-38	\$(REDACTED)
203	01-Aug-38	31-Aug-38	\$(REDACTED)
204	01-Sep-38	30-Sep-38	\$(REDACTED)
205	01-Oct-38	31-Oct-38	\$(REDACTED)
206	01-Nov-38	30-Nov-38	\$(REDACTED)
207	01-Dec-38	31-Dec-38	\$(REDACTED)

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
208	01-Jan-39	31-Jan-39	\$(REDACTED)
209	01-Feb-39	28-Feb-39	\$(REDACTED)
210	01-Mar-39	31-Mar-39	\$(REDACTED)
211	01-Apr-39	30-Apr-39	\$(REDACTED)
212	01-May-39	31-May-39	\$(REDACTED)
213	01-Jun-39	30-Jun-39	\$(REDACTED)
214	01-Jul-39	31-Jul-39	\$(REDACTED)
215	01-Aug-39	31-Aug-39	\$(REDACTED)
216	01-Sep-39	30-Sep-39	\$(REDACTED)
217	01-Oct-39	31-Oct-39	\$(REDACTED)
218	01-Nov-39	30-Nov-39	\$(REDACTED)
219	01-Dec-39	31-Dec-39	\$(REDACTED)
220	01-Jan-40	31-Jan-40	\$(REDACTED)
221	01-Feb-40	29-Feb-40	\$(REDACTED)
222	01-Mar-40	31-Mar-40	\$(REDACTED)
223	01-Apr-40	30-Apr-40	\$(REDACTED)
224	01-May-40	31-May-40	\$(REDACTED)
225	01-Jun-40	30-Jun-40	\$(REDACTED)
226	01-Jul-40	31-Jul-40	\$(REDACTED)

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
227	01-Aug-40	31-Aug-40	[\$REDACTED]
228	01-Sep-40	30-Sep-40	[\$REDACTED]
229	01-Oct-40	31-Oct-40	[\$REDACTED]
230	01-Nov-40	30-Nov-40	[\$REDACTED]
231	01-Dec-40	31-Dec-40	[\$REDACTED]
232	01-Jan-41	31-Jan-41	[\$REDACTED]
233	01-Feb-41	28-Feb-41	[\$REDACTED]
234	01-Mar-41	31-Mar-41	[\$REDACTED]
235	01-Apr-41	30-Apr-41	[\$REDACTED]
236	01-May-41	31-May-41	[\$REDACTED]
237	01-Jun-41	30-Jun-41	[\$REDACTED]
238	01-Jul-41	31-Jul-41	[\$REDACTED]
239	01-Aug-41	31-Aug-41	[\$REDACTED]
240	01-Sep-41	30-Sep-41	[\$REDACTED]
241	01-Oct-41	31-Oct-41	[\$REDACTED]
242	01-Nov-41	30-Nov-41	[\$REDACTED]
243	01-Dec-41	31-Dec-41	[\$REDACTED]
244	01-Jan-42	31-Jan-42	[\$REDACTED]
245	01-Feb-42	28-Feb-42	[\$REDACTED]

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
246	01-Mar-42	31-Mar-42	[\$REDACTED]
247	01-Apr-42	30-Apr-42	[\$REDACTED]
248	01-May-42	31-May-42	[\$REDACTED]
249	01-Jun-42	30-Jun-42	[\$REDACTED]
250	01-Jul-42	31-Jul-42	[\$REDACTED]
251	01-Aug-42	31-Aug-42	[\$REDACTED]
252	01-Sep-42	30-Sep-42	[\$REDACTED]
253	01-Oct-42	31-Oct-42	[\$REDACTED]
254	01-Nov-42	30-Nov-42	[\$REDACTED]
255	01-Dec-42	31-Dec-42	[\$REDACTED]
256	01-Jan-43	31-Jan-43	[\$REDACTED]
257	01-Feb-43	28-Feb-43	[\$REDACTED]
258	01-Mar-43	31-Mar-43	[\$REDACTED]
259	01-Apr-43	30-Apr-43	[\$REDACTED]
260	01-May-43	31-May-43	[\$REDACTED]
261	01-Jun-43	30-Jun-43	[\$REDACTED]
262	01-Jul-43	31-Jul-43	[\$REDACTED]
263	01-Aug-43	31-Aug-43	[\$REDACTED]
264	01-Sep-43	30-Sep-43	[\$REDACTED]



COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
265	01-Oct-43	31-Oct-43	\$(REDACTED)
266	01-Nov-43	30-Nov-43	\$(REDACTED)
267	01-Dec-43	31-Dec-43	\$(REDACTED)
268	01-Jan-44	31-Jan-44	\$(REDACTED)
269	01-Feb-44	29-Feb-44	\$(REDACTED)
270	01-Mar-44	31-Mar-44	\$(REDACTED)
271	01-Apr-44	30-Apr-44	\$(REDACTED)
272	01-May-44	31-May-44	\$(REDACTED)
273	01-Jun-44	30-Jun-44	\$(REDACTED)
274	01-Jul-44	31-Jul-44	\$(REDACTED)
275	01-Aug-44	31-Aug-44	\$(REDACTED)
276	01-Sep-44	30-Sep-44	\$(REDACTED)
277	01-Oct-44	31-Oct-44	\$(REDACTED)
278	01-Nov-44	30-Nov-44	\$(REDACTED)
279	01-Dec-44	31-Dec-44	\$(REDACTED)
280	01-Jan-45	31-Jan-45	\$(REDACTED)
281	01-Feb-45	28-Feb-45	\$(REDACTED)
282	01-Mar-45	31-Mar-45	\$(REDACTED)
283	01-Apr-45	30-Apr-45	\$(REDACTED)

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
284	01-May-45	31-May-45	[\$[REDACTED]]
285	01-Jun-45	30-Jun-45	[\$[REDACTED]]
286	01-Jul-45	31-Jul-45	[\$[REDACTED]]
287	01-Aug-45	31-Aug-45	[\$[REDACTED]]
288	01-Sep-45	30-Sep-45	[\$[REDACTED]]
289	01-Oct-45	31-Oct-45	[\$[REDACTED]]
290	01-Nov-45	30-Nov-45	[\$[REDACTED]]
291	01-Dec-45	31-Dec-45	[\$[REDACTED]]
292	01-Jan-46	31-Jan-46	[\$[REDACTED]]
293	01-Feb-46	28-Feb-46	[\$[REDACTED]]
294	01-Mar-46	31-Mar-46	[\$[REDACTED]]
295	01-Apr-46	30-Apr-46	[\$[REDACTED]]
296	01-May-46	31-May-46	[\$[REDACTED]]
297	01-Jun-46	30-Jun-46	[\$[REDACTED]]
298	01-Jul-46	31-Jul-46	[\$[REDACTED]]
299	01-Aug-46	31-Aug-46	[\$[REDACTED]]
300	01-Sep-46	30-Sep-46	[\$[REDACTED]]
301	01-Oct-46	31-Oct-46	[\$[REDACTED]]
302	01-Nov-46	30-Nov-46	[\$[REDACTED]]

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
303	01-Dec-46	31-Dec-46	[\$[REDACTED]]
304	01-Jan-47	31-Jan-47	[\$[REDACTED]]
305	01-Feb-47	28-Feb-47	[\$[REDACTED]]
306	01-Mar-47	31-Mar-47	[\$[REDACTED]]
307	01-Apr-47	30-Apr-47	[\$[REDACTED]]
308	01-May-47	31-May-47	[\$[REDACTED]]
309	01-Jun-47	30-Jun-47	[\$[REDACTED]]
310	01-Jul-47	31-Jul-47	[\$[REDACTED]]
311	01-Aug-47	31-Aug-47	[\$[REDACTED]]
312	01-Sep-47	30-Sep-47	[\$[REDACTED]]
313	01-Oct-47	31-Oct-47	[\$[REDACTED]]
314	01-Nov-47	30-Nov-47	[\$[REDACTED]]
315	01-Dec-47	31-Dec-47	[\$[REDACTED]]
316	01-Jan-48	31-Jan-48	[\$[REDACTED]]
317	01-Feb-48	29-Feb-48	[\$[REDACTED]]
318	01-Mar-48	31-Mar-48	[\$[REDACTED]]
319	01-Apr-48	30-Apr-48	[\$[REDACTED]]
320	01-May-48	31-May-48	[\$[REDACTED]]
321	01-Jun-48	30-Jun-48	[\$[REDACTED]]

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
322	01-Jul-48	31-Jul-48	[\$[REDACTED]]
323	01-Aug-48	31-Aug-48	[\$[REDACTED]]
324	01-Sep-48	30-Sep-48	[\$[REDACTED]]
325	01-Oct-48	31-Oct-48	[\$[REDACTED]]
326	01-Nov-48	30-Nov-48	[\$[REDACTED]]
327	01-Dec-48	31-Dec-48	[\$[REDACTED]]
328	01-Jan-49	31-Jan-49	[\$[REDACTED]]
329	01-Feb-49	28-Feb-49	[\$[REDACTED]]
330	01-Mar-49	31-Mar-49	[\$[REDACTED]]
331	01-Apr-49	30-Apr-49	[\$[REDACTED]]
332	01-May-49	31-May-49	[\$[REDACTED]]
333	01-Jun-49	30-Jun-49	[\$[REDACTED]]
334	01-Jul-49	31-Jul-49	[\$[REDACTED]]
335	01-Aug-49	31-Aug-49	[\$[REDACTED]]
336	01-Sep-49	30-Sep-49	[\$[REDACTED]]
337	01-Oct-49	31-Oct-49	[\$[REDACTED]]
338	01-Nov-49	30-Nov-49	[\$[REDACTED]]
339	01-Dec-49	31-Dec-49	[\$[REDACTED]]
340	01-Jan-50	31-Jan-50	[\$[REDACTED]]

COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
341	01-Feb-50	28-Feb-50	[\$[REDACTED]]
342	01-Mar-50	31-Mar-50	[\$[REDACTED]]
343	01-Apr-50	30-Apr-50	[\$[REDACTED]]
344	01-May-50	31-May-50	[\$[REDACTED]]
345	01-Jun-50	30-Jun-50	[\$[REDACTED]]
346	01-Jul-50	31-Jul-50	[\$[REDACTED]]
347	01-Aug-50	31-Aug-50	[\$[REDACTED]]
348	01-Sep-50	30-Sep-50	[\$[REDACTED]]
349	01-Oct-50	31-Oct-50	[\$[REDACTED]]
350	01-Nov-50	30-Nov-50	[\$[REDACTED]]
351	01-Dec-50	31-Dec-50	[\$[REDACTED]]
352	01-Jan-51	31-Jan-51	[\$[REDACTED]]
353	01-Feb-51	28-Feb-51	[\$[REDACTED]]
354	01-Mar-51	31-Mar-51	[\$[REDACTED]]
355	01-Apr-51	30-Apr-51	[\$[REDACTED]]
356	01-May-51	31-May-51	[\$[REDACTED]]
357	01-Jun-51	30-Jun-51	[\$[REDACTED]]
358	01-Jul-51	31-Jul-51	[\$[REDACTED]]
359	01-Aug-51	31-Aug-51	[\$[REDACTED]]

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COLUMN A	COLUMN B		COLUMN C
Contract Month	Period Start Date	Period End Date	Lifecycle Payment (in Inflation Base Date prices)
360	01-Sep-51	29-Sep-51	\${REDACTED}

## APPENDIX B: DEDUCTION FACTORS

VEHICLE KILOMETRES AVAILABILITY FAILURE DEDUCTION - TABLE 1

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]
97.80%	[REDACTED]
97.70%	[REDACTED]
97.60%	[REDACTED]
97.50%	[REDACTED]
97.40%	[REDACTED]

95.20%	[REDACTED]
95.10%	[REDACTED]
95.00%	[REDACTED]
94.90%	[REDACTED]
94.80%	[REDACTED]
94.70%	[REDACTED]

92.50%	[REDACTED]
92.40%	[REDACTED]
92.30%	[REDACTED]
92.20%	[REDACTED]
92.10%	[REDACTED]
92.00%	[REDACTED]



**VEHICLE KILOMETRES AVAILABILITY FAILURE DEDUCTION - TABLE 1 (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]
89.60%	[REDACTED]
89.50%	[REDACTED]
89.40%	[REDACTED]
89.30%	[REDACTED]

87.00%	[REDACTED]
86.90%	[REDACTED]
86.80%	[REDACTED]
86.70%	[REDACTED]
86.60%	[REDACTED]

84.30%	[REDACTED]
84.20%	[REDACTED]
84.10%	[REDACTED]
84.00%	[REDACTED]
83.90%	[REDACTED]

**VEHICLE KILOMETRES AVAILABILITY FAILURE DEDUCTION - TABLE 1 (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]
81.50%	[REDACTED]
81.40%	[REDACTED]
81.30%	[REDACTED]
81.20%	[REDACTED]

78.90%	[REDACTED]
78.80%	[REDACTED]
78.70%	[REDACTED]
78.60%	[REDACTED]
78.50%	[REDACTED]

76.20%	[REDACTED]
76.10%	[REDACTED]
76.00%	[REDACTED]
75.90%	[REDACTED]
75.80%	[REDACTED]

**VEHICLE KILOMETRES AVAILABILITY FAILURE DEDUCTION - TABLE 1 (CONT'D)**

Availability Ratio	Deduction Factor	Availability Ratio	Deduction Factor
75.70%	[REDACTED]	73.00%	[REDACTED]
75.60%	[REDACTED]	72.90%	[REDACTED]
75.50%	[REDACTED]	72.80%	[REDACTED]
75.40%	[REDACTED]	72.70%	[REDACTED]
75.30%	[REDACTED]	72.60%	[REDACTED]
75.20%	[REDACTED]	72.50%	[REDACTED]
75.10%	[REDACTED]	72.40%	[REDACTED]
75.00%	[REDACTED]	72.30%	[REDACTED]
74.90%	[REDACTED]	72.20%	[REDACTED]
74.80%	[REDACTED]	72.10%	[REDACTED]
74.70%	[REDACTED]	72.00%	[REDACTED]
74.60%	[REDACTED]	71.90%	[REDACTED]
74.50%	[REDACTED]	71.80%	[REDACTED]
74.40%	[REDACTED]	71.70%	[REDACTED]
74.30%	[REDACTED]	71.60%	[REDACTED]
74.20%	[REDACTED]	71.50%	[REDACTED]
74.10%	[REDACTED]	71.40%	[REDACTED]
74.00%	[REDACTED]	71.30%	[REDACTED]
73.90%	[REDACTED]	71.20%	[REDACTED]
73.80%	[REDACTED]	71.10%	[REDACTED]
73.70%	[REDACTED]	71.00%	[REDACTED]
73.60%	[REDACTED]	70.90%	[REDACTED]

73.50%	[REDACTED]
73.40%	[REDACTED]
73.30%	[REDACTED]
73.20%	[REDACTED]
73.10%	[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]
97.70%	[REDACTED]
97.60%	[REDACTED]
97.50%	[REDACTED]
97.40%	[REDACTED]

95.10%	[REDACTED]
95.00%	[REDACTED]
94.90%	[REDACTED]
94.80%	[REDACTED]
94.70%	[REDACTED]

92.40%	[REDACTED]
92.30%	[REDACTED]
92.20%	[REDACTED]
92.10%	[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]
89.50%	[REDACTED]
89.40%	[REDACTED]
89.30%	[REDACTED]

86.90%	[REDACTED]
86.80%	[REDACTED]
86.70%	[REDACTED]
86.60%	[REDACTED]

84.20%	[REDACTED]
84.10%	[REDACTED]
84.00%	[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]
81.40%	[REDACTED]
81.30%	[REDACTED]
81.20%	[REDACTED]

78.80%	[REDACTED]
78.70%	[REDACTED]
78.60%	[REDACTED]
78.50%	[REDACTED]

76.10%	[REDACTED]
76.00%	[REDACTED]
75.90%	[REDACTED]
75.80%	[REDACTED]

**PASSENGER FACILITY AVAILABILITY FAILURE DEDUCTION - TABLE 2 (CONT'D)**

<b>Availability Ratio</b>	<b>Deduction Factor</b>
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]

## APPENDIX C: FAILURE POINTS

**Section 1. Failure Points Applicable to Vehicle Kilometres Availability Failures**

- 1.1 Failure Points shall be awarded in each Contract Month during the first 12 Contract Months of the Maintenance Period based on the Aggregate Vehicle Kilometres Availability Ratio calculated for that Contract Month, in accordance with the table, below.

<b>Aggregate Vehicle Kilometres Availability Ratio for Contract Month <i>n</i></b>	<b>Failure Points Awarded for Contract Month <i>n</i></b>
99.0% to 100%	[REDACTED]
98.0% to 98.9%	[REDACTED]
97.0% - 97.9%	[REDACTED]
96.0% - 96.9%	[REDACTED]
95.0% - 95.9%	[REDACTED]
94.0% - 94.9%	[REDACTED]
93.0% - 93.9%	[REDACTED]
92.0% - 92.9%	[REDACTED]
91.0% - 91.9%	[REDACTED]
90.0% - 90.9%	[REDACTED]
89.0% - 89.9%	[REDACTED]
88.0% - 88.9%	[REDACTED]
87.0% - 87.9%	[REDACTED]
86.0% - 86.9%	[REDACTED]
85.9% or below	[REDACTED]

- 1.2 Failure Points shall be awarded in each Contract Month following the first 12 Contract Months of the Maintenance Period based on the Aggregate Vehicle Kilometres Availability Ratio calculated for that Contract Month, in accordance with the table, below.

<b>Aggregate Vehicle Kilometres Availability Ratio for Contract Month <i>n</i></b>	<b>Failure Points Awarded for Contract Month <i>n</i></b>
99.5% to 100%	[REDACTED]
99.0% to 99.4%	[REDACTED]
98.0% to 98.9%	[REDACTED]
97.0% - 97.9%	[REDACTED]
96.0% - 96.9%	[REDACTED]
95.0% - 95.9%	[REDACTED]
94.0% - 94.9%	[REDACTED]
93.0% - 93.9%	[REDACTED]
92.0% - 92.9%	[REDACTED]
91.0% - 91.9%	[REDACTED]
90.0% - 90.9%	[REDACTED]
89.0% - 89.9%	[REDACTED]
88.0% - 88.9%	[REDACTED]
87.0% - 87.9%	[REDACTED]
86.0% - 86.9%	[REDACTED]
85.9% 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 one day shall be [REDACTED].

System Event	Failure Points Applied
On any single Weekday during a Contract Month, the Aggregate Vehicle Kilometres 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] in respect of afternoon Peak Period service.
On any single day during a Contract Month, the Aggregate Vehicle Kilometres Availability Ratio for that day is less than [REDACTED].	[REDACTED] per occurrence

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. The maximum aggregate amount of Failure Points to be awarded in respect of Passenger Facility Events for any one day shall be [REDACTED].

Passenger Facility Event	Failure Points Applied
On any single day during a Contract Month, any Passenger Facility is not made available (by reason other than due to unavailability of one (1) escalator or one (1) elevator but the Specified Accessibility Requirement is met) by the scheduled opening time per the Station and Stop Access Standard.	[REDACTED] per occurrence for each Station or Stop.
On any single day during a Contract Month, any Passenger Facility is not made available as a result of unavailability of one (1) escalator or one (1) elevator but the Specified Accessibility Requirement is met by the scheduled opening time per the Station and Stop Access Standard.	[REDACTED] per occurrence for each Station or Stop.

**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.

<b>Aggregate Passenger Facility Availability Ratio for Contract Month <i>n</i></b>	<b>Failure Points Awarded for Contract Month <i>n</i></b>
98.5% to 100%	[REDACTED]
98.0% to 98.4%	[REDACTED]
97.0% - 97.9%	[REDACTED]
96.0% - 96.9%	[REDACTED]
95.0% - 95.9%	[REDACTED]
94.0% - 94.9%	[REDACTED]
93.0% - 93.9%	[REDACTED]
92.0% - 92.9%	[REDACTED]
91.0% - 91.9%	[REDACTED]
90.0% - 90.9%	[REDACTED]
89.0% - 89.9%	[REDACTED]
88.0% - 88.9%	[REDACTED]
87.0% - 87.9%	[REDACTED]
86.0% - 86.9%	[REDACTED]
85.0% - 85.9%	[REDACTED]
84.9% or below	[REDACTED]

**Section 5. Failure Points Applicable to Room Availability Failures**

Category	Failure Points	Application
Minor Room Availability Failure	[REDACTED]	Per Room Availability Failure
Medium Room Availability Failure	[REDACTED]	Per Room Availability Failure
Major Room Availability Failure	[REDACTED]	Per Room Availability Failure

**Section 6. 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	Group 3 Passenger Facilities
<ul style="list-style-type: none"> <li>• Mt. Dennis Station</li> <li>• Allen Station</li> <li>• Yonge Station</li> <li>• Kennedy Station</li> <li>• Keele Station Bus Facility</li> <li>• Don Mills Station Bus Facility</li> <li>• Mount Dennis Bus Facility</li> <li>• Caledonia Bus Facility</li> </ul>	<ul style="list-style-type: none"> <li>• Keele Station</li> <li>• Caledonia Station</li> <li>• Dufferin Station</li> <li>• Oakwood Station</li> <li>• Bathurst Station</li> <li>• Chaplin Station</li> <li>• Avenue Station</li> <li>• Mt. Pleasant Station</li> <li>• Bayview Station</li> <li>• Laird Station</li> <li>• Don Mills Station</li> </ul>	<ul style="list-style-type: none"> <li>• Leslie Stop</li> <li>• Ferrand Stop</li> <li>• Wynford Stop</li> <li>• Bermondsey Stop</li> <li>• Victoria Park Stop</li> <li>• Pharmacy Stop</li> <li>• Lebovic Stop</li> <li>• Warden Stop</li> <li>• Birchmount Stop</li> <li>• Ionview Stop</li> </ul>

**APPENDIX E: ROOM FACILITY AVAILABILITY FAILURE DESIGNATIONS AND DEDUCTIONS**

Room Data Sheet	Reference	Type of Facilities	Room Description	Location	Room Failure Category
EG-O-BT-1	Schedule 15-2 Part 5 Appendix C	Bus Facilities	Bus Operator Lunch Room	Mt. Dennis Bus Terminal	Major
EG-O-BT-2	Schedule 15-2 Part 5 Appendix C	Bus Facilities	Mt. Dennis Bus Terminal	Male Bus Operator Washroom	Major
EG-O-BT-3	Schedule 15-2 Part 5 Appendix C	Bus Facilities	Mt. Dennis Bus Terminal	Female Bus Operator Washroom	Major
EG-O-BT-4	Schedule 15-2 Part 5 Appendix C	Bus Facilities	Mt. Dennis Bus Terminal	Route Supervisor's Room	Major
EG-O-BT-5	Schedule 15-2 Part 5 Appendix C	Bus Facilities	Mt. Dennis Bus Terminal	Janitor's Service Room(Bus Operations)	Major
EG-M-NT-001A	Schedule 20 Appendix D	Indoor Bicycle Facilities	Mt. Dennis	Indoor Secure Bicycle Storage	Medium
EG-M-NT-005A	Schedule 20 Appendix D	Retail Facilities	Mt. Dennis - Kodak Building Main Level	Retail Space I - Retail Store (Type C)	Medium
EG-M-NT-005M	Schedule 20 Appendix D	Retail Facilities	Mt. Dennis - Kodak Building Lower Concourse Level	Retail Space II - Retail Store (Type C)	Medium
EG-M-NT-005F	Schedule 20 Appendix D	Retail Facilities	Mt. Dennis - Bus - At-Grade	Retail Space III - Retail Store (Type C)	Medium
EG-M-NT-007	Schedule 20 Appendix D	Kodak Non-Transit Facilities	Mt. Dennis - Kodak Building Second Level	Tenant area I	Medium
EG-M-NT-007	Schedule 20 Appendix D	Kodak Non-Transit Facilities	Mt. Dennis - Kodak Building Third Level	Tenant area II	Medium
EG-M-NT-007	Schedule 20 Appendix D	Kodak Non-Transit Facilities	Mt. Dennis - Kodak Building Fourth Level	Tenant area III	Medium
EG-M-NT-007	Schedule 20 Appendix D	Kodak Non-Transit Facilities	Mt. Dennis - Kodak Building Auditorium	Tenant area IV	Medium
EG-M-NT-005O	Schedule 20 Appendix D	Retail Facilities	Caledonia - Main Entrance	Retail Space I - Retail Store (Type C)	Medium
EG-M-NT-005I	Schedule 20 Appendix D	Retail Facilities	Dufferin - Main Entrance	Retail Space I - Retail Store (Type C)	Medium
EG-M-NT-001A	Schedule 20 Appendix D	Indoor Bicycle Facilities	Allen	Indoor Secure Bicycle Storage	Medium
EG-M-NT-004A	Schedule 20 Appendix D	Retail Facilities	Allen - Upper Concourse	Retail Space I - Kiosk (Type B)	Medium
EG-M-NT-004A	Schedule 20 Appendix D	Retail Facilities	Allen - Upper Concourse	Retail Space II - Kiosk (Type B)	Medium
EG-M-NT-003	Schedule 20 Appendix D	Retail Facilities	Allen - Upper Concourse	Retail Space III - ABM (Type A)	Medium
EG-M-NT-003	Schedule 20 Appendix D	Retail Facilities	Allen - Upper Concourse	Retail Space IV - ABM (Type A)	Medium
EG-M-NT-004B	Schedule 20 Appendix D	Retail Facilities	Allen - Upper Concourse	Retail Space V - Kiosk (Type B)	Medium
EG-M-NT-004B	Schedule 20 Appendix D	Retail Facilities	Allen - Upper Concourse	Retail Space VI - Kiosk (Type B)	Medium
EG-M-NT-005F	Schedule 20 Appendix D	Retail Facilities	Bathurst - Secondary Entrance	Retail Space I - Retail Store (Type C)	Medium
EG-M-NT-004C	Schedule 20 Appendix D	Retail Facilities	Bathurst - Main Entrance	Retail Space II - Kiosk (Type B)	Medium
EG-M-NT-005D	Schedule 20 Appendix D	Retail Facilities	Avenue - Main Entrance	Retail Space I - Retail Store (Type C)	Medium
EG-M-NT-005G	Schedule 20 Appendix D	Retail Facilities	Avenue - Secondary Entrance	Retail Space II - Retail Store (Type C)	Medium
EG-M-NT-005N	Schedule 20 Appendix D	Retail Facilities	Yonge - Upper Concourse	Retail Space I - Retail Store (Type C)	Medium
EG-M-NT-005L	Schedule 20 Appendix D	Retail Facilities	Yonge - Upper Concourse	Retail Space II - Retail Store (Type C)	Medium
EG-M-NT-004D	Schedule 20 Appendix D	Retail Facilities	Yonge - Upper Concourse	Retail Space III - Kiosk (Type B)	Medium
EG-M-NT-005C	Schedule 20 Appendix D	Retail Facilities	Yonge - Upper Concourse	Retail Space IV - Retail Store (Type C)	Medium
EG-M-NT-005H	Schedule 20 Appendix D	Retail Facilities	Yonge - Upper Concourse	Retail Space V - Retail Store (Type C)	Medium

Room Data Sheet	Reference	Type of Facilities	Room Description	Location	Room Failure Category
EG-M-NT-005J	Schedule 20 Appendix D	Retail Facilities	Mt. Pleasant - Main Entrance	Retail Space I - Retail Store (Type C)	Medium
EG-M-NT-005B	Schedule 20 Appendix D	Retail Facilities	Mt. Pleasant - Secondary Entrance	Retail Space II - Retail Store (Type C)	Medium
EG-M-NT-005M	Schedule 20 Appendix D	Retail Facilities	Bayview - Main Entrance	Retail Space I - Retail Store (Type C)	Medium
EG-M-NT-005M	Schedule 20 Appendix D	Retail Facilities	Bayview - Main Entrance	Retail Space I - Retail Store (Type C)	Medium
EG-O-BT-1	Schedule 15-2 Part 5 Appendix C	Bus Facilities	Don Mills Bus Terminal	Bus Operator Lunch Room	Major
EG-O-BT-2	Schedule 15-2 Part 5 Appendix C	Bus Facilities	Don Mills Bus Terminal	Male Bus Operator Washroom	Major
EG-O-BT-3	Schedule 15-2 Part 5 Appendix C	Bus Facilities	Don Mills Bus Terminal	Female Bus Operator Washroom	Major
EG-O-BT-4	Schedule 15-2 Part 5 Appendix C	Bus Facilities	Don Mills Bus Terminal	Route Supervisor's Room	Major
EG-O-BT-5	Schedule 15-2 Part 5 Appendix C	Bus Facilities	Don Mills Bus Terminal	Janitor's Service Room (Bus Operations)	Major
EG-M-NT-001B	Schedule 20 Appendix D	Indoor Bicycle Facilities	Don Mills	Indoor Secure Bicycle Storage	Medium
EG-M-NT-005K	Schedule 20 Appendix D	Retail Facilities	Don Mills - Concourse Level	Retail Space I - Retail Store (Type C)	Medium
EG-M-NT-005E	Schedule 20 Appendix D	Retail Facilities	Don Mills - Concourse Level	Retail Space II - Retail Store (Type C)	Medium
EG-M-NT-001A	Schedule 20 Appendix D	Indoor Bicycle Facilities	Kennedy	Indoor Secure Bicycle Storage	Medium
EG-M-NT-005P	Schedule 20 Appendix D	Retail Facilities	Kennedy	Retail Space I - Retail Store (Type C)	Medium
EG-M-NT-005Q	Schedule 20 Appendix D	Retail Facilities	Kennedy	Retail Space II - Retail Store (Type C)	Medium
EG-O-TP-1	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Transportation Mgr Office	Major
EG-O-TP-002 A	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Transport. Asst Mgr Office	Major
EG-O-TP-002B	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Transport. Asst Mgr Office	Major
EG-O-TP-3	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Operator Sign-up Room	Major
EG-O-TP-4	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Clerical Area	Major
EG-O-TP-5	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Transportation Conference Room	Major
EG-O-TP-6	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Uniform Storage Room	Major
EG-O-TP-7	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Operator Waiting/Assembly	Major
EG-O-TP-8	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Operator Lunch/Rest Area	Major
EG-O-TP-9	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Operators Washroom & Showers - Men	Major
EG-O-TP-10	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Operators Washroom & Showers - Women	Major
EG-O-TP-11	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Route Supervisors Office	Major
EG-O-TP-12	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Route Supervisors Lockers	Major
EG-O-TP-13	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Archive - Storage	Major

Room Data Sheet	Reference	Type of Facilities	Room Description	Location	Room Failure Category
EG-O-TP-14	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Security Field Office	Major
EG-O-TP-15	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Staff Lunchroom	Major
EG-O-TP-16	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Health & Wellness Office	Major
EG-O-TP-17	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Multi-Use Room	Major
EG-O-TP-18	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Mail/copy Area	Major
EG-O-TP-19	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Staff Washroom & Shower - Men	Major
EG-O-TP-20	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Transportation Department	Staff Washroom & Shower - Women	Major
EG-O-TN-1	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Training Department	Large Conference Room	Major
EG-O-TN-002 A	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Training Department	Small Classroom	Major
EG-O-TN-002 B	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Training Department	Small Classroom	Major
EG-O-TN-3	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Training Department	Computer Based Tmg Rm	Major
EG-O-TN-4	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Training Department	Training Storage Room	Major
EG-O-TN-5	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Training Department	Instructors' Prep Rm	Major
EG-O-TN-6	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Training Department	Training Clerk/Reception Area	Major
EG-O-TN-7	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Training Department	Simulator Suite	Major
EG-O-TN-8	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Training Department	Training Supervisor Office	Major
EG-O-TN-9	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Training Department	Chair Storage Room	Major
EG-O-TN-10	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Training Department	Training - Men's Washroom	Major
EG-O-TN-11	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Training Department	Training-Women's Washroom	Major
EG-O-OP-1	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Operator - Operations Department	Hostler Platform Dispatcher Room	Major
EG-HMQ-1	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	HMQ Agencies	Supervisor's Office (HMQ)	Major
EG-HMQ-2	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	HMQ Agencies	Shared Office (HMQ)	Major
EG-HMQ-3	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	HMQ Agencies	Open Office (HMQ)	Major
EG-HMQ-4	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Vehicle Maintainer	Vendor Office	Major
EG-HMQ-5	Schedule 15-2 Part 6 Appendix A	EMSF Dedicated Facilities	Vehicle Maintainer	Vendor Storage	Major
EG-O-ST-1	Schedule 15-2 Part 5 Appendix B	Security Operations Office	Yonge	Security Operations Office	Major
EG-O-ST-2	Schedule 15-2 Part 5 Appendix B	Security Operations Office	Yonge	SOO Equipment Room	Major
EG-O-ST-3	Schedule 15-2 Part 5 Appendix B	Security Operations Office	Yonge	SOO Change & Locker Room (M)	Major
EG-O-ST-4	Schedule 15-2 Part 5 Appendix B	Security Operations Office	Yonge	SOO Change & Locker Room (F)	Major
EG-O-ST-5	Schedule 15-2 Part 5 Appendix B	Security Operations Office	Yonge	SOO Multi-Purpose Room	Major

Room Data Sheet	Reference	Type of Facilities	Room Description	Location	Room Failure Category
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Dennis	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Dennis	Multi-Purpose Room	Major
EG-O-ST-8	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Dennis	Local Control Panel Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Dennis	Male Staff Washroom	Major
EG-O-ST-10	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Dennis	Male Operator Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Dennis	Female Staff Washroom	Major
EG-O-ST-12	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Dennis	Female Operator Washroom	Major
EG-O-ST-13	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Dennis	Operator Waiting/Lunch Rm	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Dennis	Emergency Response Room	Major
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Keele	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Keele	Multi-Purpose Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Keele	Male Staff Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Keele	Female Staff Washroom	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Keele	Emergency Response Room	Major
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Caledonia	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Caledonia	Multi-Purpose Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Caledonia	Male Staff Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Caledonia	Female Staff Washroom	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Caledonia	Emergency Response Room	Major
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Dufferin	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Dufferin	Multi-Purpose Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Dufferin	Male Staff Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Dufferin	Female Staff Washroom	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Dufferin	Emergency Response Room	Major
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Oakwood	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Oakwood	Multi-Purpose Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Oakwood	Male Staff Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Oakwood	Female Staff Washroom	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Oakwood	Emergency Response Room	Major
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Allen	Station Attendant Booth	Major



Room Data Sheet	Reference	Type of Facilities	Room Description	Location	Room Failure Category
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Allen	Multi-Purpose Room	Major
EG-O-ST-8	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Allen	Local Control Panel (LCP) Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Allen	Male Staff Washroom	Major
EG-O-ST-10	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Allen	Male Operator Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Allen	Female Staff Washroom	Major
EG-O-ST-12	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Allen	Female Operator Washroom	Major
EG-O-ST-13	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Allen	Operator Waiting/Lunch Rm	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Allen	Emergency Response Room	Major
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Bathurst	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Bathurst	Multi-Purpose Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Bathurst	Male Staff Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Bathurst	Female Staff Washroom	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Bathurst	Emergency Response Room	Major
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Chaplin	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Chaplin	Multi-Purpose Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Chaplin	Male Staff Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Chaplin	Female Staff Washroom	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Chaplin	Emergency Response Room	Major
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Avenue	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Avenue	Multi-Purpose Room	Major
EG-O-ST-8	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Avenue	Local Control Panel (LCP) Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Avenue	Male Staff Washroom	Major
EG-O-ST-10	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Avenue	Male Operator Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Avenue	Female Staff Washroom	Major
EG-O-ST-12	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Avenue	Female Operator Washroom	Major
EG-O-ST-13	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Avenue	Operator Waiting/Lunch Rm	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Avenue	Emergency Response Room	Major
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Yonge	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Yonge	Multi-Purpose Room	Major
EG-O-ST-8	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Yonge	Local Control Panel (LCP) Room	Major

Room Data Sheet	Reference	Type of Facilities	Room Description	Location	Room Failure Category
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Yonge	Male Staff Washroom	Major
EG-O-ST-10	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Yonge	Male Operator Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Yonge	Female Staff Washroom	Major
EG-O-ST-12	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Yonge	Female Operator Washroom	Major
EG-O-ST-13	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Yonge	Operator Waiting/Lunch Rm	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Yonge	Emergency Response Room	Major
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Pleasant	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Pleasant	Multi-Purpose Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Pleasant	Male Staff Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Pleasant	Female Staff Washroom	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Mt Pleasant	Emergency Response Room	Major
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Bayview	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Bayview	Multi-Purpose Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Bayview	Male Staff Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Bayview	Female Staff Washroom	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Bayview	Emergency Response Room	Major
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Laird	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Laird	Multi-Purpose Room	Major
EG-O-ST-8	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Laird	Local Control Panel (LCP) Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Laird	Male Staff Washroom	Major
EG-O-ST-10	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Laird	Male Operator Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Laird	Female Staff Washroom	Major
EG-O-ST-12	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Laird	Female Operator Washroom	Major
EG-O-ST-13	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Laird	Operator Waiting/Lunch Rm	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Laird	Emergency Response Room	Major
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Don Mills	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Don Mills	Multi-Purpose Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Don Mills	Male Staff Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Don Mills	Female Staff Washroom	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Don Mills	Emergency Response Room	Major

Room Data Sheet	Reference	Type of Facilities	Room Description	Location	Room Failure Category
EG-O-ST-6	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Kennedy	Station Attendant Booth	Major
EG-O-ST-7	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Kennedy	Multi-Purpose Room	Major
EG-O-ST-8	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Kennedy	Local Control Panel (LCP) Room	Major
EG-O-ST-9	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Kennedy	Male Staff Washroom	Major
EG-O-ST-10	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Kennedy	Male Operator Washroom	Major
EG-O-ST-11	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Kennedy	Female Staff Washroom	Major
EG-O-ST-12	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Kennedy	Female Operator Washroom	Major
EG-O-ST-13	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Kennedy	Operator Waiting/Lunch Rm	Major
EG-O-ST-14	Schedule 15-2 Part 5 Appendix B	Facilities at a Station	Kennedy	Emergency Response Room	Major
EG-M-NT-006	Schedule 20 Appendix D	Facilities at a Station	Mt. Dennis	Male Public Washrooms	Major
EG-M-NT-006	Schedule 20 Appendix D	Facilities at a Station	Mt. Dennis	Female Public Washrooms	Major
EG-M-NT-006	Schedule 20 Appendix D	Facilities at a Station	Allen	Male Public Washrooms	Major
EG-M-NT-006	Schedule 20 Appendix D	Facilities at a Station	Allen	Female Public Washrooms	Major
EG-M-NT-006	Schedule 20 Appendix D	Facilities at a Station	Yonge	Male Public Washrooms	Major
EG-M-NT-006	Schedule 20 Appendix D	Facilities at a Station	Yonge	Female Public Washrooms	Major
EG-M-NT-006	Schedule 20 Appendix D	Facilities at a Station	Kennedy	Male Public Washrooms	Major
EG-M-NT-006	Schedule 20 Appendix D	Facilities at a Station	Kennedy	Female Public Washrooms	Major

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## SCHEDULE 21

## CONSTRUCTION PAYMENTS

## (PAYMENTS DURING THE CONSTRUCTION PERIOD)

## 1. INTERPRETATION AND DEFINITIONS

## 1.1 Interpretation

- (a) In this Schedule 21, and for the purposes of all calculations pursuant to this Schedule 21, all amounts cited in respect of capital costs and/or costs in respect of the construction of the Works are amounts prior to any CLA holdback.

## 1.2 Definitions

In this Schedule 21, unless the context otherwise requires:

- (a) **“Actual Eligible Construction Period Payment”** means, for each Payment Period, an amount equal to the (Total Capital Cost Incurred to Date minus the Initial Capital Works) multiplied by [REDACTED].
- (b) **“Attachment A”**, **“Attachment B”**, **“Attachment C”**, **“Attachment D”**, **“Attachment E”** and **“Attachment F”** mean, respectively, Attachment A, Attachment B, Attachment C, Attachment D, Attachment E and Attachment F to this Schedule 21.
- (c) **“Changed Cost for Utilities”** means an amount equal to,
- (i) the total aggregate price actually paid by Project Co for the Eligible Utilities Costs minus any Ineligible Cost Increase; minus,
  - (ii) the Original Eligible Utilities Cost.
- (d) **“Construction Period Deduction”** means a deduction made from a Construction Period Payment or the Substantial Completion Payment in accordance with Section 6.2.
- (e) **“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.
- (f) **“Construction Period Failure Category”** means the failure category described in the fourth column of the tables in Attachment E.
- (g) **“Construction Period Failure Type”** means in the failure type described in the third column of the tables in Attachment E.
- (h) **“Construction Period Month”** means a calendar month during the Construction Period, except with respect to:

- (i) the first Construction Period Month of the Construction Period, which runs from Financial Close until the end of the calendar month in which Financial Close occurs; and
  - (ii) the last Construction Period Month of the Construction Period, which runs from the first day of the calendar month in which the Final Completion Date falls until the Final Completion Date.
- (i) “**Construction Period Payment**” means a payment, which shall be no more frequent than once a month, calculated in accordance with this Schedule 21.
  - (j) “**Construction Period Payment Application**” has the meaning set out in Section 3.3(a).
  - (k) “**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.
  - (l) “**Construction Period Quality Failure**” means any failure by Project Co to provide the services in accordance with any Construction Period Performance Criteria designated as Construction Period Failure Type of “CPQF” in Attachment E.
  - (m) “**Construction Period Quality Failure Deduction**” has the meaning given in Section 6.2(a).
  - (n) “**Contested Non-Conforming Works**” means Works in respect of which HMQ Entities have given Notice to Project Co, pursuant to Article 61 of the Project Agreement (but not a Non-Conformance Report initiated by HMQ Entities pursuant to Schedule 11 – Quality Management), that, in the opinion of HMQ Entities, the Works are not in accordance with the Project Agreement, and Project Co has asserted that, in Project Co’s opinion, the Works are in accordance with the Project Agreement.
  - (o) “**Cost Adjustment – Utilities**” has the meaning given in Section 2.4(b).
  - (p) “**Credit Rules**” means the rules set out in Attachment F.
  - (q) “**Critical Construction Period Quality Failure**” means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Critical” in Attachment E.
  - (r) “**Critical Qualifying NCR**” means a Qualifying NCR raised by HMQ Entities 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.
- (s) “**Critical Qualifying Process NCR**” means a Qualifying Process NCR raised by HMQ Entities or Project Co on a Non-Conformance that requires physical progress on the Works to be stopped for longer than twenty-four (24) hours.
- (t) “**Earned Value**” means the budgeted cost of work performed in respect of each Payment Period, measured using Earned Value Measurement Techniques using the Performance Measurement Baseline. For clarity, this includes Project Co Financing costs, special purpose vehicle costs and other costs incurred to perform the Works.
- (u) “**Earned Value Measurement Techniques**” means the techniques used to measure Earned Value established by Project Co and agreed with the Independent Certifier in accordance with the “Practice Standard for Earned Value Management” (2<sup>nd</sup> Edition, published in 2011 by the Project Management Institute, Inc.).
- (v) “**Eligible Utilities Costs**” means the price charged to Project Co by the Category 1 Utility Companies,
- (i) to inspect or review, as applicable, Utility Work carried out by Project Co; and
  - (ii) for the design and construction of Utility Infrastructure in those circumstances where the Utility Agreement specifies that such design and construction must be carried out by the Category 1 Utility Company itself (by the Category 1 Utility Company’s own forces or by a subcontractor retained by the Category 1 Utility Company).
- (w) “**Embargo Period**” means the dates when Utility Companies do not permit works to be undertaken.
- (x) “**Financing**” means the financing with the Lenders to finance the costs of the Project pursuant to the Lending Agreements.
- (y) “**IC Construction Period Payment Authorization Certificate**” has the meaning set out in Section 3.3(c).
- (z) “**IC Initial Capital Investment Certificate**” has the meaning set out in Section 3.2(b)(iv).

- (aa) **“Ineligible Cost Increase”** means any cost increase attributable to,
- (i) Works that Project Co could have self-performed but elected to have the Category 1 Utility Company perform on Project Co’s behalf;
  - (ii) Works carried out during an Embargo Period;
  - (iii) 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
  - (iv) 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.
- (bb) **“Initial Capital Investment”** means the threshold point at which,
- (i) the Initial Capital Investment Amount has been achieved by Project Co in respect of the Project and has been advanced to Project Co either through sources of equity capital and/or the Financing; and
  - (ii) the Initial Capital Works have been completed by Project Co and have been certified as having been achieved by Project Co by the Independent Certifier in the IC Initial Capital Investment Certificate.
- (cc) **“Initial Capital Investment Amount”** means \$[REDACTED].
- (dd) **“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.
- (ee) **“Initial Capital Investment Date Notice”** has the meaning set out in Section 3.2(a)(i).
- (ff) **“Initial Capital Works”** means the total Earned Value of the Works when the Initial Capital Investment Amount has been reached.
- (gg) **“Lender Advance Confirmations”** has the meaning set out in Section 3.1(a).
- (hh) **“Lender Advances”** has the meaning set out in Section 3.1(a)(i).
- (ii) **“Medium Construction Period Quality Failure”** means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Medium” in Attachment E.
- (jj) **“Medium Qualifying NCR”** means a Qualifying NCR raised by HMQ Entities or Project Co on a Non-Conformance for all or any portion of Project Co Accepted Works that is not a Critical Qualifying NCR.
- (kk) **“Medium Qualifying Process NCR”** means a Qualifying Process NCR raised by HMQ Entities or Project Co on a Non-Conformance that requires changes to a Works Submittal being used by Project Co in its delivery of the Works that is not a Critical Qualifying NCR.

- (ll) “**Minor Construction Period Quality Failure**” means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Minor” in Attachment E.
- (mm) “**Minor Qualifying NCR**” means a Qualifying NCR raised by HMQ Entities 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.
- (nn) “**Minor Qualifying Process NCR**” means a Qualifying Process NCR raised by HMQ Entities 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.
- (oo) “**Mobilization Credit**” has the meaning given in Section 1.3(e) of Attachment F.
- (pp) “**Monthly Non-Conformance Report**” has the meaning given in Schedule 11 – Quality Management.
- (qq) “**NCR**” means a Non-Conformance Report.
- (rr) “**Non-Conformance**” has the meaning given in Schedule 11- Quality Management.
- (ss) “**Non-Conformance Report**” has the meaning given in Schedule 11 – Quality Management.
- (tt) “**Original Eligible Utilities Costs**” means the total aggregate Eligible Utilities Costs included by Project Co in its proposal in response to the Request for Proposals, as set out in the Final Utility Baseline Document.
- (uu) “**Payment Application Requirements**” has the meaning set out in Section 3.3(a).
- (vv) “**Payment Calculation Date**” means the date set out in Column 2 of Table A that is the date to be used as the “Payment Calculation Date” for the applicable Construction Period Payment, subject to Section 2.2(a)(iii).
- (ww) “**Payment Period**” means the payment period(s) identified in Column 1 of Table A.
- (xx) “**Performance Measurement Baseline**” is the Total Capital Cost loaded Works Schedule, at detailed activity level, that has achieved “Reviewed” or “Reviewed as Noted” status in accordance with Section 22 of the Project Agreement, as amended from time to time by the parties in accordance with Section 22 of the Project Agreement.
- (yy) “**Private Capital**” means the Private Capital Invested that is unpaid following the Substantial Completion Payment which shall be no less than the Initial Capital Investment Amount.
- (zz) “**Private Capital Invested**” means the total amount of financing advanced (Senior Debt, Junior Debt and Equity Capital) and utilized in the Project to fund Project costs.



- (aaa) “**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 its Inspection and Test Plan.
- (bbb) “**Project Co Construction Period Payment Documentation**” has the meaning set out in Section 3.1(c).
- (ccc) “**Project Co Officer Construction Period Payment Certificate**” has the meaning set out in Section 3.1(d).
- (ddd) “**Projected Eligible Construction Period Payment (Cumulative)**” means, in respect of each Construction Period Payment, the amount set out in Column 4 of Table A.
- (eee) “**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),  
  
and shall include “Critical Qualifying NCR”, “Medium Qualifying NCR” or “Minor Qualifying NCR”.
- (fff) “**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 a physical element of the Works after inspection and testing by Project Co, if any, pursuant to the Inspection and Test Plan and relevant Inspection and Test Sub-Plan(s), if any, and shall include “Critical Qualifying Process NCR”, “Medium Qualifying Process NCR” or “Minor Qualifying Process NCR”.
- (ggg) “**Remedial Period**” means the period of time described in the fifth column of the tables in Attachment E.
- (hhh) “**Request for Payment**” has the meaning set out in Section 3.3(a)(i).
- (iii) “**Scheduled Initial Capital Investment Date**” means May 31, 2016.
- (jjj) “**Supplementary Payment Calculation Date**” has the meaning set out in Section 2.3(a).
- (kkk) “**Table A**” means the Table A set out in Attachment A.
- (lll) “**Total Capital Cost**” means \$[REDACTED].

- (mmm) “**Total Capital Cost Incurred to Date**” means the cumulative amount of the Total Capital Cost determined as of each Payment Calculation Date as defined by Earned Value.
- (nnn) “**Unpaid Construction Period Payment**” means any portion of the Projected Eligible Construction Period Payment (Cumulative) set out in Table A that is unpaid after the last Construction Period Payment set out in Table A.
- (ooo) “**Witness and Hold Point**” has the meaning given in Schedule 11 – Quality Management.
- (ppp) “**Works Report**” means the Works Report set out in Section 22.5 of the Project Agreement.

## **2. PAYMENTS BY HMQ ENTITIES**

### **2.1 Obligation to Pay**

- (a) HMQ Entities 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) HMQ Entities shall not be obliged to make any Construction Period Payment until Project Co has achieved the Initial Capital Investment, as certified by the Independent Certifier;
  - (ii) Subject to Section 2.2(a)(iii) and Section 2.3, the number of Construction Period Payments to be paid by HMQ Entities 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 first Payment Calculation Date set out in Table A that occurs after the Initial Capital Investment Date,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 Projected Eligible Construction Period Payment (Cumulative) set out in Table A for the applicable Payment Period; or
    - (B) the Actual Eligible Construction Period Payment for the applicable Payment Period,

less the sum of Construction Period Deductions assessed since the previous Payment Period and minus the total value of all Construction Period Payments made by HMQ Entities prior to the date of calculation.

### 2.3 Payment of Unpaid Construction Period Payment Prior to Substantial Completion

- (a) After the expiration of all Payment Calculation Dates 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 Payment, or any portion thereof, in accordance with the following:
- (i) Project Co shall provide at least 30 days’ Notice to HMQ Entities of each Supplementary Payment Calculation Date;
  - (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 2.3;
  - (iii) Each Supplementary Payment Calculation Date shall occur no more than once a month; and
  - (iv) any Unpaid Construction Period Payment, or any portion thereof, not paid pursuant to this Section 2.3 shall be paid in accordance with Section 2.5.

### 2.4 Cost Adjustment – Utilities

- (a) Project Co shall keep detailed records of all amounts invoiced to Project Co by the Category 1 Utility Companies of sufficient detail to enable Project Co to demonstrate that a Changed Cost for Utilities has arisen. Project Co’s failure to keep such records shall be at Project Co’s risk.
- (b) 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 2.5(a)(i)(C). 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; and
  - (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.

## 2.5 Calculation of the Substantial Completion Payment

- (a) Subject to Section 2.3, the payment to be made by HMQ Entities following Substantial Completion shall be calculated in accordance with the following:
  - (i) The payment made following Substantial Completion shall equal,
    - (A) the Substantial Completion Payment; plus
    - (B) any Unpaid Construction Period Payment as of the date of payment of the Substantial Completion Payment; plus
    - (C) any Cost Adjustment – Utilities.
  - (ii) Notwithstanding anything else to the contrary in the Project Agreement, Project Co shall retain Private Capital of no less than [REDACTED]% of the Total Capital Costs subject only to the progressive reduction of the Private Capital during the Maintenance Period in accordance with the Lending Agreements.
  - (iii) For clarity, Project Co acknowledges and agrees that,
    - (A) the Substantial Completion Payment is intended to act as a “take-out” payment, such that the amount of the payment shall be sized to reduce the amount of Private Capital Invested to no less than [REDACTED]% of Total Capital Costs;
    - (B) Project Co has structured its Construction Period Payments and the Substantial Completion Payment to ensure that a minimum of [REDACTED]% of Total Capital Costs remain financed by Private Capital Invested following receipt of the Substantial Completion Payment; and
    - (C) HMQ Entities have the authority to pay up to [REDACTED]% of Total Capital Costs through payment of the Construction Period Payments plus the Substantial Completion Payment.

## 3. CONSTRUCTION PERIOD PAYMENTS

### 3.1 Information to be Provided by Project Co – Lender Advance Confirmations and Project Co Construction Period Payment Documentation

- (a) In order to enable HMQ Entities and the Independent Certifier to verify Earned Value and to verify the Construction Period Payments, Project Co shall deliver to the HMQ Representative and the Independent Certifier,
  - (i) copies of all draw requests, reports, information, and documentation supporting, or required to be submitted to the Lenders, the Lenders’ technical advisor and/or the Collateral Trustee, as the case may, in respect of Project Co’s applications for advances,

draws, releases of funds or payments by the Lenders under the Lending Agreements (“**Lender Advances**”); and

- (ii) all payment or advance confirmations issued by or on behalf of the Lenders including, for clarity, issued by the Lenders’ technical advisor,  
  
(items in Section 3.1(a)(i) and Section 3.1(a)(ii) collectively referred to as “**Lender Advance Confirmations**”). Acceptable forms of confirmation would include such proof as wire transfer statements and/or bank statements and any other evidence as agreed between HMQ Entities and Project Co.
- (b) Project Co shall acquire, from the Lenders or the Collateral Trustee, as part of the Financing and in a form and content acceptable to the HMQ Representative, the right for Project Co to receive, and to deliver to HMQ Entities and the Independent Certifier, copies of all Lender Advance Confirmations. Project Co shall deliver to the HMQ Representative and the Independent Certifier, copies of all Lender Advance Confirmations within two Business Days following receipt of each Lender Advance by Project Co.
- (c) In order to enable HMQ Entities and the Independent Certifier to verify progress of the Works and Earned Value and to verify the Construction Period Payments, Project Co shall submit, to the Independent Certifier,
  - (i) all information required by Schedule 33 – Works Reports Requirements; and
  - (ii) any other information reasonably required by the Independent Certifier to allow the Independent Certifier to assess the Earned Value and to assess the Total Capital Cost Incurred to Date,  
  
(collectively, the “**Project Co Construction Period Payment Documentation**”).
- (d) Prior to the issuance of the Initial Capital Investment Date Notice, and thereafter in conjunction with all Construction Period Payment Applications, Project Co shall complete and deliver to the HMQ Representative and the Independent Certifier a Project Co officer certificate in substantially the form set out in Attachment C confirming the information set out therein (“**Project Co Officer Construction Period Payment Certificate**”).

### 3.2 Achieving the Initial Capital Investment

- (a) Once Project Co believes that it has achieved the Initial Capital Investment, it shall deliver to the HMQ Representative and the Independent Certifier,
  - (i) a notice (the “**Initial Capital Investment Date Notice**”) indicating that all requirements necessary to 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 the HMQ Entities, all Lender Advance Confirmations as of the date of the Initial Capital Investment Date Notice;

- (iii) except to the extent already delivered to HMQ Entities, all Project Co Construction Period Payment Documentation as of the date of the Initial Capital Investment Date Notice; and
  - (iv) a Project Co officer certificate, in the form attached as Appendix G to this Schedule 21, certifying that the Initial Capital Investment has been achieved.
- (b) The Independent Certifier shall, within ten Business Days after receipt of the Initial Capital Investment Date Notice, and associated materials, review and fully assess,
- (i) the Project Co Construction Period Payment Documentation and the Lender Advance 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 3.2(a)(iv),
- and shall provide to HMQ Entities 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**”); 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.
- (c) If the Independent Certifier has issued a report in accordance with Section 3.2(b)(v), Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the HMQ 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 and, thereafter, Project Co may give a further Initial Capital Investment Date Notice and the requirements of Sections 3.2(a) and 3.2(b) shall be repeated until the Independent Certifier issues the IC Initial Capital Investment Certificate.
- (d) For clarity, HMQ Entities acknowledge that,
- (i) Project Co may share the IC Initial Capital Investment Certificate with the Collateral Trustee or Lenders’ technical advisor; and
  - (ii) subject to Section 3.2(e), 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 3.2, but Project Co’s early completion of the Initial Capital Investments shall not change the first Payment Calculation Date which shall remain the same, notwithstanding Project Co’s early achievement of the Initial Capital Investment.
- (e) If Project Co,
- (i) achieves the Initial Capital Investment; and

- (ii) the Independent Certifier has issued the IC Initial Capital Investment Certificate, prior to the Scheduled Initial Capital Investment Date, Project Co may apply to HMQ Entities to revise the first Payment Calculation Date to an earlier date. HMQ Entities may grant or refuse to grant a revision to the first Payment Calculation Date in their sole discretion.

### 3.3 Submission and Review of Project Co Construction Period Payment Applications

- (a) No later than five days after 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 HMQ Representative and the Independent Certifier. Each Construction Period Payment Application shall consist of,
  - (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**”);
  - (ii) except to the extent already delivered to HMQ Entities, the Lender Advance Confirmations;
  - (iii) except to the extent already delivered to HMQ Entities, the Project Co Construction Period Payment Documentation; and
  - (iv) a Project Co Officer Construction Period Payment Certificate certifying Earned Value and the amount of Total Capital Cost Incurred to Date, as of the applicable Payment Calculation Date.(the “**Payment Application Requirements**”).
- (b) Project Co shall cooperate with the HMQ Representative and the Independent Certifier to permit the Independent Certifier’s review and assessment of the Project Co Construction Period Payment Documentation, the Lender Advance Confirmations and all other documentation submitted with the Construction Period Payment Application. Such cooperation shall include responding to inquiries by the Independent Certifier so that the Independent Certifier can verify any and all matters related to the Project Co Construction Period Payment Documentation and the Lender Advance Confirmations, and the statements contained therein, to the satisfaction of the Independent Certifier.
- (c) Within ten Business Days after the receipt by the Independent Certifier of a duly completed Construction Period Payment Application, the Independent Certifier shall review the Total Capital Cost Incurred to Date claimed in the Construction Period Payment Application and shall perform such inquiries, investigations and inspections as are necessary for the Independent Certifier to be able to verify Earned Value and Total Capital Cost Incurred To Date and shall provide a certificate to the HMQ Representative setting out,
  - (i) a certification to HMQ Entities of the Actual Eligible Construction Period Payment as representing Earned Value in accordance with the Works Report; and

- (ii) a calculation of the Construction Period Payment pursuant to Section 2.2,  
(an “**IC Construction Period Payment Authorization Certificate**”).
- (d) The HMQ Entities shall, subject to and in accordance with Section 34.1(a) of the Project Agreement and no later than five Business Days after the date of the IC Construction Period Payment Authorization Certificate, pay the applicable Construction Period Payment to Project Co.
- (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 HMQ Entities 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 CLA including complying with all holdback and trust obligations from its own resources, if necessary, and as required under the CLA.

#### 4. SUBSTANTIAL COMPLETION PAYMENT

##### 4.1 Substantial Completion Payment

- (a) Once Project Co believes that it has satisfied all requirements for Substantial Completion, it shall deliver the Substantial Completion Notice contemplated in Section 25.3(b) of the Project Agreement.
- (b) HMQ Entities shall, subject to Section 2.5(a)(ii), pay to Project Co, the Substantial Completion Payment plus, for clarity, applicable HST, less any Lane Closure Adjustment or Door Closure Adjustment on the Substantial Completion Payment Commencement Date.

##### 4.2 Payment of Remaining Unpaid Construction Period Payments

- (a) Subject to Section 2.3, once Project Co believes that it has satisfied all requirements for Substantial Completion, it shall deliver an application for payment of any remaining Unpaid Construction Period Payments, to the HMQ Representative and the Independent Certifier substantially in the form attached as Attachment D (the “**Unpaid Construction Period Payment Application**”) which shall provide all documentation in respect of the Unpaid Construction Period Payments. Once all of the conditions for payment of the Substantial Completion Payment have been satisfied by Project Co, HMQ Entities shall pay or cause to be paid to Project Co, subject to Section 2.5(a)(ii), all Unpaid Construction Period Payments, in accordance with the provisions of the Project Agreement.

#### 5. GENERAL

- (a) Project Co shall provide direction to HMQ Entities 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 HMQ Entities of Construction Period Payments, the Substantial Completion Payment and the Unpaid Construction Period Payments in accordance with this Schedule 21 constitutes payment by HMQ Entities to Project Co in satisfaction of HMQ Entities' 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 HMQ Entities with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.
- (c) Project Co shall provide to HMQ Entities, from time to time and no later than 5 Business Days after a request from HMQ Entities, such information and documentation as HMQ Entities require, including certification in writing by a Project Co officer addressed to HMQ Entities and the Independent Certifier, to demonstrate that the proceeds of the Construction Period Payments and the Substantial Completion Payment are being used to pay duly authorized costs of the Works, special purpose vehicle costs and, Financing costs, and other costs incurred to complete the Works to verify that all amounts due and payable in respect of the costs of the Works, special purpose vehicle costs, Financing costs and other costs incurred to complete the Works for the applicable period in excess of the applicable Construction Period Payment are being satisfied and to satisfy all holdback and trust obligations owed to the Construction Contractor and other Subcontractors from time to time under the CLA.
- (d) Notwithstanding anything to the contrary in this Schedule 21 or the Project Agreement (including achieving the Initial Capital Investment),
- (i) the quantum of Construction Period Payments may be adjusted from time to time by application of Section 34.12 and other provisions of the Project Agreement that permit deductions from the Construction Period Payments;
  - (ii) HMQ Entities are 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; and
  - (iii) HMQ Entities are not obligated to make payment to Project Co if, in connection with the Works, HMQ Entities are or become aware,
    - (A) that a claim for lien under the CLA has been registered against the Lands; or
    - (B) that a notice of lien or claim for lien under the CLA has been made against or in respect of the Lands or the holdbacks required to be maintained under the CLA; or
    - (C) that there has been a failure by Project Co or any Project Co Party to comply with the requirements of the CLA, including a failure to satisfy the statutory holdbacks under the CLA in respect of the Works,(in each case to the extent that any such liens, claims or failures have been caused by an act or omission of Project Co or any Project Co Party), and provided that no payment from HMQ Entities shall be withheld or delayed on the grounds of any liens registered or

claimed, where such liens have been duly released, discharged or vacated in accordance with the requirements of the CLA.

- (e) 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 HMQ Entities of the Works in accordance with the Project Agreement.
- (f) If HMQ Entities or Project Co, acting in good faith, dispute a determination of the Independent Certifier made pursuant to this Schedule 21, HMQ Entities 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.
- (g) For clarity, Sections 34.1, 34.7, 34.10, 34.11, 34.12, 34.13 and 34.14 of the Project Agreement apply to Construction Period Payments and the Substantial Completion Payment.

## 6. CONSTRUCTION ENFORCEMENT DEDUCTIONS

### 6.1 Construction Period Deductions

- (a) If, at any time prior to Substantial Completion, Project Co commits a Construction Period Quality Failure, HMQ Entities may, in their sole discretion, make a Construction Period Deduction from the Construction Period Payment immediately following the applicable Construction Period Quality Failure.
- (b) For clarity, all Construction Period Deductions assessed after the final Construction Period Payment shall be applied as a Construction Period Deduction against the Substantial Completion Payment.

### 6.2 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 HMQ Entities:
  - (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 HMQ Entities:
  - (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 HMQ Entities, to apply a Construction Period Quality Failure Deduction against the next Construction Period, 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 HMQ 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, HMQ Entities, may, in their sole discretion, apply a further Construction Period Deduction, calculated in accordance with this Section 6.2, and a further Remedial Period (or Remedial

Periods) of the same duration shall be deemed to have commenced. HMQ Entities may, in their 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 HMQ 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(g) and 44.2(e) of the Project Agreement.

### **6.3 Tolerances for Minor Construction Period Quality Failures for Non-Conformance Reports Initiated by HMQ Entities**

- (a) HMQ Entities shall assess Construction Period Quality Failures on a Construction Period Month by Construction Period Month basis. Except as provided in Section 6.3(c), HMQ Entities shall not apply a Construction Period Deduction due to a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by HMQ Entities in respect of any Construction Period Month in which the total number of Minor Construction Period Quality Failures for Non-Conformance Reports initiated by HMQ Entities for that Construction Period Month is less than or equal to ten (the “**Minor Construction Period Quality Failure Tolerance**”).
- (b) If the Minor Construction Period Quality Failure Tolerance is exceeded, HMQ Entities may, in their sole discretion, apply a Construction Period Deduction for each Minor Construction Period Quality Failure for a Non-Conformance Report initiated by HMQ Entities in excess of the Minor Construction Period Quality Failure Tolerance during the applicable Construction Period Month.
- (c) If, in any Construction Period Month, a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by HMQ Entities 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 HMQ Entities (within the same Construction Period Month or in a different Construction Period 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.

### **6.4 Administration of Construction Period Quality Failures and Construction Period Deductions**

- (a) Subject to Sections 6.4(b) to 6.4(e) inclusive, HMQ Entities 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 6.4(b), Project Co and HMQ Entities 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 6.4(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 6.4(b), either Party may refer the matter to the Dispute Resolution

Procedure. Subject to Section 6.4(d) and Section 6.4(e), the Parties are prohibited from giving Notice of an error or omission pursuant to this Section 6.4(b) after the expiration of 60 days after the date of the applicable Monthly Non-Conformance Report.

- (c) Subject to Section 6.4(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 HMQ Entities or Project Co pursuant to the Project Agreement reveals new errors, omissions or failures of the type referred to in Section 6.4(b) or Section 6.4(c), such errors, omissions or failures shall be dealt with in accordance with Section 6.4(b) or Section 6.4(c), as applicable, and, for clarity, HMQ Entities may, in their sole discretion, apply Construction Period Deductions in respect of any Construction Period Quality Failures discovered pursuant to this Section 6.4(d) in the manner set out in Section 6.2. Any such Construction Period Deductions shall be made from the Construction Period Payment immediately following the resolution of the error, omission or failure or from the Substantial Completion Payment, as applicable. For clarity, the 60 day deadline set out in Section 6.4(b) shall not apply to errors, omissions or failures revealed pursuant to this Section 6.4(d).
- (e) For the purposes of Sections 6.4(b), 6.4(c) and 6.4(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 6.4(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 6.4(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.

#### **6.5 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.

#### **6.6 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 HMQ Entities 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 6.6(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 6.6(a)(i) had not been issued.

## ATTACHMENT A

Table A: Payment Calculation Dates and Project Construction Period Payments

Payment Period (Column 1)	Payment Calculation Date (Column 2)	Projected Eligible Construction Period Payment (Column 3)	Projected Eligible Construction Period Payment (Cumulative) (Column 4)
1	19-Feb-15	[\$[REDACTED]]	[\$[REDACTED]]
2	31-Jul-15	[\$[REDACTED]]	[\$[REDACTED]]
3	31-Aug-15	[\$[REDACTED]]	[\$[REDACTED]]
4	30-Sep-15	[\$[REDACTED]]	[\$[REDACTED]]
5	31-Oct-15	[\$[REDACTED]]	[\$[REDACTED]]
6	30-Nov-15	[\$[REDACTED]]	[\$[REDACTED]]
7	31-Dec-15	[\$[REDACTED]]	[\$[REDACTED]]
8	31-Jan-16	[\$[REDACTED]]	[\$[REDACTED]]
9	29-Feb-16	[\$[REDACTED]]	[\$[REDACTED]]
10	31-Mar-16	[\$[REDACTED]]	[\$[REDACTED]]
11	30-Apr-16	[\$[REDACTED]]	[\$[REDACTED]]
12	31-May-16	[\$[REDACTED]]	[\$[REDACTED]]
13	30-Jun-16	[\$[REDACTED]]	[\$[REDACTED]]
14	31-Jul-16	[\$[REDACTED]]	[\$[REDACTED]]
15	31-Aug-16	[\$[REDACTED]]	[\$[REDACTED]]
16	30-Sep-16	[\$[REDACTED]]	[\$[REDACTED]]
17	31-Oct-16	[\$[REDACTED]]	[\$[REDACTED]]
18	30-Nov-16	[\$[REDACTED]]	[\$[REDACTED]]
19	31-Dec-16	[\$[REDACTED]]	[\$[REDACTED]]
20	31-Jan-17	[\$[REDACTED]]	[\$[REDACTED]]

21	28-Feb-17	[\$[REDACTED]]	[\$[REDACTED]]
22	31-Mar-17	[\$[REDACTED]]	[\$[REDACTED]]
23	30-Apr-17	[\$[REDACTED]]	[\$[REDACTED]]
24	31-May-17	[\$[REDACTED]]	[\$[REDACTED]]
25	30-Jun-17	[\$[REDACTED]]	[\$[REDACTED]]
26	31-Jul-17	[\$[REDACTED]]	[\$[REDACTED]]
27	31-Aug-17	[\$[REDACTED]]	[\$[REDACTED]]
28	30-Sep-17	[\$[REDACTED]]	[\$[REDACTED]]
29	31-Oct-17	[\$[REDACTED]]	[\$[REDACTED]]
30	30-Nov-17	[\$[REDACTED]]	[\$[REDACTED]]
31	31-Dec-17	[\$[REDACTED]]	[\$[REDACTED]]
32	31-Jan-18	[\$[REDACTED]]	[\$[REDACTED]]
33	28-Feb-18	[\$[REDACTED]]	[\$[REDACTED]]
34	31-Mar-18	[\$[REDACTED]]	[\$[REDACTED]]
35	30-Apr-18	[\$[REDACTED]]	[\$[REDACTED]]
36	31-May-18	[\$[REDACTED]]	[\$[REDACTED]]
37	30-Jun-18	[\$[REDACTED]]	[\$[REDACTED]]
38	31-Jul-18	[\$[REDACTED]]	[\$[REDACTED]]
39	31-Aug-18	[\$[REDACTED]]	[\$[REDACTED]]
40	30-Sep-18	[\$[REDACTED]]	[\$[REDACTED]]
41	31-Oct-18	[\$[REDACTED]]	[\$[REDACTED]]
42	30-Nov-18	[\$[REDACTED]]	[\$[REDACTED]]
43	31-Dec-18	[\$[REDACTED]]	[\$[REDACTED]]
44	31-Jan-19	[\$[REDACTED]]	[\$[REDACTED]]



45	28-Feb-19	[\$[REDACTED]]	[\$[REDACTED]]
46	31-Mar-19	[\$[REDACTED]]	[\$[REDACTED]]
47	30-Apr-19	[\$[REDACTED]]	[\$[REDACTED]]
48	31-May-19	[\$[REDACTED]]	[\$[REDACTED]]
49	30-Jun-19	[\$[REDACTED]]	[\$[REDACTED]]
50	31-Jul-19	[\$[REDACTED]]	[\$[REDACTED]]
51	31-Aug-19	[\$[REDACTED]]	[\$[REDACTED]]
52	30-Sep-19	[\$[REDACTED]]	[\$[REDACTED]]
53	31-Oct-19	[\$[REDACTED]]	[\$[REDACTED]]
54	30-Nov-19	[\$[REDACTED]]	[\$[REDACTED]]
55	31-Dec-19	[\$[REDACTED]]	[\$[REDACTED]]
56	31-Jan-20	[\$[REDACTED]]	[\$[REDACTED]]
57	29-Feb-20	[\$[REDACTED]]	[\$[REDACTED]]
58	31-Mar-20	[\$[REDACTED]]	[\$[REDACTED]]
59	30-Apr-20	[\$[REDACTED]]	[\$[REDACTED]]
60	31-May-20	[\$[REDACTED]]	[\$[REDACTED]]
61	30-Jun-20	[\$[REDACTED]]	[\$[REDACTED]]
62	31-Jul-20	[\$[REDACTED]]	[\$[REDACTED]]
63	31-Aug-20	[\$[REDACTED]]	[\$[REDACTED]]
64	30-Sep-20	[\$[REDACTED]]	[\$[REDACTED]]
65	31-Oct-20	[\$[REDACTED]]	[\$[REDACTED]]
66	30-Nov-20	[\$[REDACTED]]	[\$[REDACTED]]
67	31-Dec-20	[\$[REDACTED]]	[\$[REDACTED]]
68	31-Jan-21	[\$[REDACTED]]	[\$[REDACTED]]

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69	28-Feb-21	[\$[REDACTED]]	[\$[REDACTED]]
70	31-Mar-21	[\$[REDACTED]]	[\$[REDACTED]]
71	30-Apr-21	[\$[REDACTED]]	[\$[REDACTED]]
72	31-May-21	[\$[REDACTED]]	[\$[REDACTED]]
73	30-Jun-21	[\$[REDACTED]]	[\$[REDACTED]]
74	31-Jul-21	[\$[REDACTED]]	[\$[REDACTED]]
75	31-Aug-21	[\$[REDACTED]]	[\$[REDACTED]]
76	30-Sep-21	[\$[REDACTED]]	[\$[REDACTED]]

## ATTACHMENT B

## Form of Request for Payment

TO: <b>HMQ Entities</b> AND TO: <b>[Independent Certifier]</b>	BY: <b>[Project Co Name]</b> (“Project Co”)
Construction Period Payment No:	Project: <b>Eglinton Crosstown LRT</b> (“Project”)
Date: <b>[Date]</b>	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. This payment is for a portion of the Total Capital Costs pursuant to the terms of the Project Agreement and Schedule 21 – Construction 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 Construction Period Payment Certificate in respect of this Payment Period No. \_\_\_ **[Note: Use the form of certificate set out in Attachment C of this Schedule 21.]**
3. The amount set out in paragraph 1 above corresponds to the amount certified by the Independent Certifier in accordance with Section 3.3(c) of Schedule 21 – Construction Payments.
4. Project Co hereby certifies that the Earned Value and the Total Capital Cost Incurred To Date for the applicable Payment Period qualifies Project Co for the Construction Period Payment being requested herein.
5. Attached hereto as Appendix 1 are the Lender Advance Confirmations for the period covered by this Request for Payment.
6. Attached hereto as Appendix 2 is a current Workplace Safety and Insurance Board Clearance Certificate for Construction Contractor evidencing full compliance by **[Project Co/Construction Contractor]** with the requirements of the *Workplace Safety and Insurance Act, 1997* (Ontario).
7. Attached hereto as Appendix 3 is a Statutory Declaration by Project Co on CCDC Form 9A (2001) evidencing compliance by Project Co with the holdback requirements of the CLA.
8. Attached hereto as Appendix 4 is a sub-search of the title to the Lands against which a claim for lien under the CLA could be registered advising that no notice of lien or claims for lien under the CLA in respect of the Works have been registered.

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 [●].

**[Project Co]**

per: \_\_\_\_\_

Appendix 1

Summary of any Lender Advance Confirmations for the Period

Appendix 2

Current Workplace Safety and Insurance Board Clearance Certificate

Appendix 3

Statutory Declaration by Project Co on CCDC Form 9A (2001)

Appendix 4

Sub-search of the Title to the Lands Confirming No Claims for Lien under the CLA

## ATTACHMENT C

## Form of Project Co Officer Construction Period Payment Certificate

TO: <b>HMQ Entities</b> AND TO: <b>[Independent Certifier]</b>	BY: <b>[Project Co Name]</b> (“Project Co”)
Progress Certificate/Construction Period Payment No: _____	Project: <b>Eglinton Crosstown LRT</b> (“Project”)
Date: <b>[Date]</b>	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 be relied upon by HMQ Entities 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. Terms defined in the Project Agreement have the same meanings when used in this certificate.
2. Project Co has performed, satisfied and is in compliance with all of its material obligations under the Project Agreement and the other Project Documents.
3. Project Co is in compliance with all of its material obligations under the Construction Contract, including those in respect of payments owed to the Construction Contractor on or before the date of the Request for Payment to which this Certificate is attached.
4. Project Co has available to it sufficient funds to achieve Substantial Completion in accordance with the Project Agreement.
5. All funds received and disbursed by Project Co in connection with the Project prior to the date of this Certificate have been solely in respect of the payment of Total Capital Cost properly due and payable.
6. The requested Construction Period Payment amount to which this Certificate is attached does not exceed the Projected Eligible Construction Period Payment (Cumulative) set out in Table A applicable to the period to which this Certificate applies.
7. Project Co has complied with all requirements of Applicable Law in connection with the Project, including without limitation, all requirements under the *Workplace Safety and Insurance Act, 1997* (Ontario) and the CLA. No claims for lien or notices of lien under the

CLA 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 CLA, if applicable. Any notice of lien or claim for lien identified in paragraph 10 of the Request for Payment to which this Certificate is attached has been released, discharged or vacated in accordance with the requirements of the CLA.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Appendix 1 to Attachment C**

Copies of any Lender Advance Confirmations (before Initial Capital Investment Date)



## ATTACHMENT D

## Form of Substantial Completion Payment Application

TO: <b>HMQ Entities</b>	BY: <b>[Project Co Name]</b> (“Project Co”)
AND TO: <b>[Independent Certifier]</b>	
<b>Substantial Completion Payment Application</b>	<b>Project: Eglinton Crosstown LRT</b> (“Project”)
Date: <b>[Date]</b>	<b>Project Agreement dated _____</b> (“Project Agreement”)

1. Project Co hereby makes application for the Substantial Completion Payment and Unpaid Construction Period Payments in the amount of **[insert amount in words]** Dollars (**[\$[insert amount in numbers]**) pursuant to the terms of Section 25.3 of the Project Agreement and Schedule 21 – Construction Payments. Capitalized terms used and not defined herein shall have the same meaning given to them in the Project Agreement.
2. Project Co has certified to HMQ Entities that all requirements for Substantial Completion and all conditions for issuance of the Substantial Completion Certificate have been satisfied, and has performed all requirements and provided all assurances and documents set out in the definition of “Substantial Completion” in the Project Agreement.
3. Project Co is in compliance with all of its material obligations under the Construction Contract, including those in respect of payments owed to the Construction Contractor on or before the date of this Substantial Completion Payment Application.
4. Project Co has complied with all requirements of Applicable Law in connection with the Project, including without limitation, all requirements under the *Workplace Safety and Insurance Act, 1997* (Ontario) and the CLA. No claims for lien or notices of lien under the CLA 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 CLA.
5. Attached hereto as Appendix 1 is a current Workplace Safety and Insurance Board Clearance Certificate for Project Co evidencing full compliance by **[Project Co/Construction Contractor]** with the requirements of the *Workplace Safety and Insurance Act, 1997* (Ontario), as amended.
6. 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 CLA.
7. Attached hereto as Appendix 3 is a sub-search of the title to the Lands against which a claim for lien under the CLA could be registered, if applicable. Any notice of lien or claim for lien identified in such Appendix 4 has been released, discharged or vacated in accordance with the requirements of the CLA.

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 [●].

**[Project Co]**

per: \_\_\_\_\_

Appendix 1 to Attachment D  
Workplace Safety and Insurance Board Clearance Certificate

Appendix 2 to Attachment D  
Statutory Declaration by Project Co on CCDC Form 9A (2001)

Appendix 3 to Attachment D  
Sub-search of the Title to the Lands

## ATTACHMENT E

## CONSTRUCTION PERIOD PERFORMANCE CRITERIA

## Non-Conformances Discovered in 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 Payments	Physical elements of the Works 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 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 HMQ Entities in its sole discretion) and the first Remedial Period.
CPPC-02: Schedule 21 – Construction Payments	Physical elements of the Works 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 twenty (20) Business Days (or such longer period as may be approved by HMQ Entities in its sole discretion) and the first Remedial Period.
CPPC-03: Schedule 21 – Construction Payments	Physical elements of the Works 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 twenty (20) Business Days (or such longer period as may be approved by HMQ Entities in its sole discretion) and the first Remedial Period.

**Non-Conformances Discovered in Process Elements of the Works**

<b>Reference</b>	<b>Requirement to be met</b>	<b>Construction Period Failure Type</b>	<b>Construction Period Failure Category</b>	<b>Remedial Period</b>
CPPC-04: Schedule 21 – Construction Payments	Works that are not physical elements of the Works 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 HMQ Entities in its sole discretion) and the first Remedial Period.
CPPC-05: Schedule 21 – Construction Payments	Works that are not physical elements of the Works 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 twenty (20) Business Days (or such longer period as may be approved by HMQ Entities in its sole discretion) and the first Remedial Period.
CPPC-06: Schedule 21 – Construction Payments	Works that are not physical elements of the Works 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 twenty (20) Business Days (or such longer period as may be approved by HMQ Entities in its sole discretion) and the first Remedial Period.

**Other Requirements**

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-07: PA 22.2(a)	Project Co shall prepare and submit, within 45 days after Financial Close, a detailed 6-Month Works Schedule.	CPQF	Critical	Five Business Days
CPPC-08: PA 22.2(a)	Project Co shall prepare and submit, within 120 days after Financial Close, a detailed draft of the Works Schedule.	CPQF	Critical	Five Business Days
CPPC-09: Schedule 10 – Review Procedure Part A Clause 2	6-Month Works Schedule shall not receive a 'REJECTED' comment from HMQ Entities more than once.	CPQF	Critical	n/a
CPPC-10: Schedule 10 – Review Procedure Part A Clause 2	The first and every subsequent monthly submittal of the Works Schedule shall not receive a 'REJECTED' comment from HMQ Entities more than once.	CPQF	Critical	n/a
CPPC-11: Schedule 10 – Review Procedure Part A Clause 2	The following Submittals shall not receive a "REJECTED" comment from HMQ Entities more than two times in a row for the same reason:  (a) Submittals marked with a cross ("+") in the first column of Table 1 of Appendix A to Schedule 10 – Review Procedure; and  (b) the Geotechnical Instrumentation Monitoring Plan.	CPQF	Medium	Five Business Days

**ATTACHMENT F****CREDIT RULES****1. CREDIT RULES FOR THE EVALUATION OF EARNED VALUE****1.1 Purpose of Credit Rules**

- (a) The Credit Rules set out requirements agreed between HMQ Entities and Project Co for use and interpretation of the Earned Value Measurement Techniques, pursuant to this Schedule 21.

**1.2 Change of Credit Rules**

- (a) In the event that Project Co or HMQ Entities propose a change to the Credit Rules, the Independent Certifier may agree to such proposed change to the Credit Rule, provided that:
- (i) any proposed change the Credit Rules will result in revised Credit Rules that:
    - (A) continue to meet the Earned Value Measurement Techniques; and
    - (B) follow the principles, guidance, and intent of the Credit Rules set out in this Attachment F, wherever possible;
  - (ii) any proposed change to the Credit Rules is subject to consultation with HMQ Entities and Project Co at least three months prior to the first Construction Period that uses those revised Credit Rules;
  - (iii) the Independent Certifier considers any responses made by HMQ Entities and Project Co to a proposed change to the Credit Rules and the Independent Certifier provides a report justifying its decision regarding acceptance or rejection of any proposal to change the Credit Rules; and
  - (iv) prior to the start of the first Construction Period that is to use the revised Credit Rules for the evaluation of Earned Value:
    - (A) the proposed changes to the Credit Rules are agreed to by the Independent Certifier; and
    - (B) both HMQ Entities and Project Co receive the revised Credit Rules from the Independent Certifier.

**1.3 Selection of Measurement Methods**

- (a) In principle, when selecting the appropriate measurement methods from the Earned Value Measurement Techniques, the following principles shall be applied:
- (i) for tangible work or tasks taking three Construction Periods or more to perform, the measurement methods shall be considered in the following decreasing order of preference:
    - (A) firstly, physical measurement;

- (B) secondly, weighted milestone; and
- (C) thirdly, percent complete;
- (ii) for tangible work or tasks taking one or two Construction Periods to perform, the measurement methods shall be considered in the following decreasing order of preference:
  - (A) fixed formula using the 0/100 method or 0/50/100 method; and
- (iii) for intangible work or tasks, the measurement methods shall be considered in the following decreasing order of preference:
  - (A) firstly, apportioned effort; and
  - (B) secondly, only where apportioned effort is not possible, level of effort.
- (b) Table 1 sets out the measurement methods that shall be used from the Earned Value Measurement Techniques for specific cost categories, unless there are technical reasons preventing these measurement methods from being used. The specific cost categories in Table 1 are set out in ‘Program Controls Coding Guidelines’, Metrolinx Rapid Transit Implementation Program, RTI-AP-GDE-001, Revision 0, 06/06/2014, and supplemented by ‘Standard Cost Codes for Capital Projects – Definitions’, US Federal Transportation Administration, rev16 June 2014.

<b>Table 1: Earned Value measurement methods for specific cost categories</b>		
<b>Standard Cost Code</b>	<b>Description</b>	<b>Measurement Method from the Earned Value Measurement Techniques</b>
<b>10</b>	<b>Guideway</b>	
10.01	Guideway: at-grade exclusive right-of-way (including trackwork)	Physical measurement
10.04	Guideway: aerial structure (including trackwork)	Physical measurement
10.06	Guideway: underground cut & cover (including trackwork)	Physical measurement
10.07	Guideway: underground tunnel (including trackwork)	Physical measurement
<b>20</b>	<b>Stations, Stops, Terminals, Intermodals</b>	
20.01	At-grade station; stop; shelter; mall; terminal; platform	Physical measurement
20.03	Underground station; stop; shelter; mall; terminal; platform	Physical measurement
<b>30</b>	<b>Support Facilities: Yards, Shops and Admin Buildings</b>	
30.03	Heavy maintenance facility	Physical measurement
<b>40</b>	<b>Sitework and Special Conditions</b>	
40.01	Demolition; clearing; earthwork	Physical measurement
40.02	Site utilities; utility relocation	Physical measurement
40.03	Hazardous material; contaminated soil mitigation; ground water treatments	Physical measurement or weighted milestone
40.05	Site structures including retaining walls; sound walls and other structures	Physical measurement
40.06	Pedestrian and bike access and accommodation; landscaping	Physical measurement or weighted milestone
40.07	Automobile; bus; van access ways including	Physical measurement or weighted milestone



<b>Table 1: Earned Value measurement methods for specific cost categories</b>		
<b>Standard Cost Code</b>	<b>Description</b>	<b>Measurement Method from the Earned Value Measurement Techniques</b>
	roads; parking lots	
40.08	Temporary facilities	Physical measurement or weighted milestone
<b>50</b>	<b>Systems</b>	
50.01	Train control and signals	Physical measurement or weighted milestone
50.02	Traffic signals and crossing protection	Physical measurement or weighted milestone
50.03	Traction power supply and substations	Physical measurement or weighted milestone
50.04	Traction power distribution and catenary	Physical measurement or weighted milestone
50.05	Communications	Physical measurement or weighted milestone
50.06	Fare collection system and equipment	Physical measurement or weighted milestone
50.07	Central control	Physical measurement or weighted milestone
<b>80</b>	<b>Professional Services and Agency Costs</b>	
80.01	Preliminary design	Weighted milestone
80.02	Final design	Weighted milestone
80.03	Project management for design and construction	Apportioned effort
80.04	Construction administration and management	Apportioned effort
80.05	Professional liability and other insurance costs	Weighted milestone
80.06	Legal; permits; review fees by other agencies, cities, etc;	Weighted milestone
80.07	Surveys, testing (quality related), investigation, inspection	Weighted milestone or apportioned effort
80.08	Start up; testing and commissioning	Weighted milestone or apportioned effort
<b>Public Realm Infrastructure</b>		
	Mandatory Public Realm Infrastructure	Physical measurement or weighted milestone
	Discretionary Public Realm Infrastructure	Physical measurement or weighted milestone
<b>Relevant Additional City Infrastructure</b>		
	Relevant Additional City Infrastructure	Physical measurement or weighted milestone
	48 strands of Dedicated Fibre Optic Cable	Physical measurement
<b>80.09</b>	<b>Other Transaction Costs during Bid and Construction Period</b>	
80.09.1	SPV costs	[REDACTED]% credit for amounts as set forth in the Financial Model; [REDACTED]% credit for amounts due within the next 30 days as set forth in the Financial Model
80.09.2	Accounting, tax, audit	
80.09.3	Rating agency fees	
80.09.4	Design and bid fee cost	
80.09.5	Independent Certifier costs	
80.09.6	Pre-construction costs (e.g. bid pursuit costs, financial advisor, legal advisor, insurance advisor)	
80.09.7	Other ancillary fees	
<b>100.01</b>	<b>Financing Costs during Construction Period</b>	
100.01.1	Interest paid	[REDACTED]% credit for amounts as set forth in the Financial Model; [REDACTED]% credit for amounts due within the next 30 days as set forth in the Financial Model
100.01.2	Interest received	
100.01.3	Net interest	
100.01.4	Financing fees	
100.01.5	Reserve prefunding	

- (c) The measurement methods associated with procurement of materials shall be in accordance with the following principles:
- (i) except as set out in Section 1.3(c)(ii), the costs of materials used in construction shall be included in the cost of each construction task and shall be evaluated for the purposes of Earned Value as part of each construction task using physical measurement; and
  - (ii) the costs of rail and large long-lead equipment manufactured off-site before installation, such as transformers and packaged air conditioning units, shall be evaluated for the purposes of Earned Value using the fixed formula measurement method, based on the payment terms of the supply contract, except that [REDACTED]% of any payments made by Project Co to the supplier will not be credited for the purposes of Earned Value until the rail or large equipment manufactured off-site is delivered to the Lands or a bonded warehouse.
- (d) The measurement methods associated with procurement of plant, such as cranes and road vehicles, shall be in accordance with the following principles:
- (i) the costs of plant, such as cranes and road vehicles, shall be evaluated for the purposes of Earned Value using the fixed formula measurement method, based on the payment terms of the supply contract, except that [REDACTED]% of any payments made by Project Co to the supplier will not be credited for the purposes of Earned Value until the plant is delivered to the Lands or a bonded warehouse.
- (e) In order to make the measurement of Earned Value more efficient during mobilization, Project Co may choose to identify a tranche of its mobilization cost up to [REDACTED] percent of Total Capital Cost that shall be automatically credited for the purposes of measuring Earned Value at the end of the first Construction Period Month (the “**Mobilization Credit**”), where:
- (i) the sum of the costs identified to the Mobilization Credit and the costs identified to the cost codes from Table 1 shall remain equal to the Total Capital Cost;
  - (ii) the Mobilization Credit shall not include costs associated with the following cost codes from Table 1:
    - (A) 80.09 Other Transaction Costs during Bid and Construction Period; and
    - (B) 100.01 Financing Costs during Construction Period;
  - (iii) the scope of activity associated with the Mobilization Credit shall be documented by Project Co to the satisfaction of the Independent Certifier before the end of the first Construction Period Month in order to avoid double counting with the Earned Value for activities that are not included within the Mobilization Credit; and
  - (iv) the Earned Value for the activities included within the Mobilization Credit shall be credited as Earned Value without using a measurement method from the Earned Value Management Techniques.

ATTACHMENT G

Form of Project Co Officer Initial Capital Investment Certificate

TO: <b>HMQ Entities</b> AND TO: <b>[Independent Certifier]</b>	BY: <b>[Project Co Name]</b> (“Project Co”)
<b>Project: Eglinton Crosstown LRT</b>	(“Project”)
Date: <b>[Date]</b>	<b>Project Agreement dated _____</b> (“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 be relied upon by HMQ Entities 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. Terms defined in the Project Agreement have the same meanings when used in this certificate.
2. Project Co has performed, satisfied and is in compliance with all of its material obligations under the Project Agreement and the other Project Documents.
3. Project Co is in compliance with all of its material obligations under the Construction Contract, including those in respect of payments owed to the Construction Contractor on or before the date of this Certificate.
4. The Initial Capital Investment has been achieved in accordance with the terms and conditions set out in the Project Agreement.
5. Project Co has complied with all requirements of Applicable Law in connection with the Project, including without limitation, all requirements under the *Workplace Safety and Insurance Act, 1997* (Ontario) and the CLA. No claims for lien or notices of lien under the CLA 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 CLA, if applicable. Any notice of lien or claim for lien identified in paragraph 10 of the Request for Payment to which this Certificate is attached has been released, discharged or vacated in accordance with the requirements of the CLA.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## SCHEDULE 22

## VARIATION PROCEDURE

## 1. VARIATIONS

## 1.1 Definitions

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

## 1.2 General

- (a) HMQ Entities have 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 HMQ Entities 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 HMQ Entities are obligated to proceed with a Variation.
- (b) HMQ Entities 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) 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.

### 1.3 Variation Enquiry

- (a) If HMQ Entities propose or are 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 HMQ Entities intend 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.

### 1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to HMQ Entities’ 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 or Approvals required by Project Co to perform the Project Operations, and any such Permit, Licence or Approval is not, using commercially reasonable efforts, capable of amendment or renewal; or
  - (C) require any new Permits, Licences or Approvals for Project Co to perform the Project Operations, any of which will not, using commercially reasonable efforts by Project Co or HMQ Entities, as applicable, be obtainable;
- (iii) the proposed Variation would have a material and adverse effect on performance of the Project Operations (except those Project Operations which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
  - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
  - (v) HMQ Entities do 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;
  - (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 Maintenance and Rehabilitation 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 HMQ Entities a written Notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

## 1.6 Estimate Requirements

- (a) Unless HMQ Entities in a Variation Enquiry require only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to HMQ Entities' reasonable satisfaction:

- 
- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
  - (ii) any impact on the Construction Period Payments, Earned Value 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 and completion of the Works (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 HMQ Entities to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
  - (vi) any impact on the Direct Costs of Project Co and each Subcontractor, 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 HMQ Entities); 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, 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 HMQ Entities, 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 HMQ Entities' 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 (if appropriate or required by Sections 1.6(c) and 1.6(e)), to minimize any increase in costs and to maximize any reduction in costs;
  - (ii) except as otherwise set out herein, all costs of Project Co and each Subcontractor are limited to Direct Costs;
  - (iii) Project Co, the Construction Contractor and the Maintenance and Rehabilitation Contractor shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co, the Construction Contractor or the Maintenance and Rehabilitation Contractor is calculated on any other margin of Project Co, the Construction Contractor or the Maintenance and Rehabilitation Contractor), and no other margins or mark-ups;
  - (iv) the margins for overheads and profit as set out in Appendix B hereto 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 the Construction Contractor or the Maintenance and Rehabilitation Contractor;
  - (v) all costs of providing Project Operations, including Capital Expenditures, reflect:
    - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;

- (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
  - (C) any and all changes in risk allocation;
  - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and
  - (vii) Project Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Project Operations, the expected usage of utilities, and the Direct Costs to be incurred.
- (c) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to HMQ Entities, including using commercially reasonable efforts to mitigate such costs.
  - (d) As soon as practicable, and in any event not more than 15 Business Days after HMQ Entities receive an Estimate, Project Co and HMQ Entities shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
  - (e) If HMQ Entities would be required by Applicable Law or any policy applicable to HMQ Entities to competitively tender any contract in relation to the proposed Variation, HMQ Entities may require Project Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
  - (f) HMQ Entities 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 HMQ Entities 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 HMQ Entities' Right to Perform**

- (a) In respect of the Project Co System Infrastructure and the New Third Party Infrastructure, after Substantial Completion, HMQ Entities shall have the right to perform the subject matter of a proposed Variation (“**HMQ Work**”) itself, or through others contracting directly with HMQ Entities, without compensation to Project Co, except as specifically stated herein.
- (b) HMQ Entities 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 HMQ Entities, or any third party, of HMQ 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, HMQ Entities shall either:
- (i) subject to Section 1.2(b) and Section 1.8(e), withdraw the Variation Enquiry by written Notice to Project Co; or
  - (ii) issue a written confirmation (the “**Variation Confirmation**”) of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.9.
- (b) If HMQ Entities do not issue a Variation Confirmation within such 15 Business Days, then, subject to Section 1.2(b) and Section 1.8(e), the Variation Enquiry shall be deemed to have been withdrawn.
- (c) 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(c)(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(c)(i).
- (d) 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 HMQ Entities in their sole discretion; or
  - (ii) HMQ Entities in their sole discretion waive such requirement.

- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
- (i) the determination of whether or not to proceed with a Variation shall at all times be at HMQ Entities' 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) HMQ Entities may at any time withdraw a Variation Enquiry and, subject to Section 1.8(f), HMQ Entities shall not be obligated to Project Co in respect of a Variation until such time as HMQ Entities in their sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by HMQ Entities or HMQ Entities have waived such requirement,

provided that HMQ Entities may not withdraw a Variation Enquiry in circumstances where HMQ Entities are 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.

- (f) 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, HMQ Entities shall reimburse Project Co for all Direct Costs 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 HMQ Entities request 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, the Lenders and HMQ Entities, provided that, prior to the Substantial Completion Date, Project Co shall not be required to seek financing from any source other than the 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 HMQ Entities within 60 days of the date that HMQ Entities issue 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 HMQ Entities, in their sole discretion, waive the requirement for financing or unless HMQ Entities are 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 HMQ Entities with details of such financing, and HMQ Entities shall, in their sole discretion, determine whether Project Co should proceed with such financing. If HMQ Entities determine 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 HMQ Entities, in their sole discretion, waive the requirement for financing or unless HMQ Entities are obligated to proceed with the Variation pursuant to the terms of the Project Agreement.

- (d) HMQ Entities 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 HMQ Entities in their sole discretion waive the requirement for financing or unless HMQ Entities are obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (e) If HMQ Entities waive 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 HMQ Entities 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 HMQ Entities, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
  - (i) the Monthly Service Payments shall be adjusted as set out in the Variation Confirmation; and
  - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
    - (A) HMQ Entities shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by HMQ Entities 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 HMQ Entities; 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 HMQ Entities 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 HMQ Entities (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 HMQ Entities in time to make payments to that third party in accordance with its contract with Project Co.

- (b) HMQ Entities shall make payment to Project Co within 20 Business Days of receipt by HMQ Entities of invoices presented to HMQ Entities 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 HMQ Entities in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Lien 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, HMQ Entities shall provide to Project Co copies of any consent or approval issued by HMQ Entities in connection with a proposed Variation.

#### **1.11 Reduction in Project Operations**

- (a) If a Variation involves any reduction in Project Operations which results in savings in Direct Costs to 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 Direct Costs, and Project Co shall compensate HMQ Entities by way of a reduction in the Monthly Service Payments.

#### **1.12 Variation Directive**

- (a) If an Estimate is not promptly agreed upon by HMQ Entities and Project Co or if there is a Dispute in relation thereto or if HMQ Entities, in their sole discretion, require a Variation to be implemented prior to issuing a Variation Confirmation, then HMQ Entities may issue a Variation Directive and, following receipt of the Variation Directive:
  - (i) Project Co shall promptly proceed with the Variation;
  - (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
  - (iii) pending final determination of the valuation and time extensions, if any, required in connection with such Variation, the Independent Certifier (if such Variation is in respect of matters prior to Final Completion) or the HMQ 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,

provided that, HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities, 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 HMQ Entities, in their sole discretion, elect to consider the Variation proposed by Project Co, HMQ Entities may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.

## **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 HMQ Entities.
- (b) If Small Works are requested by HMQ Entities, Project Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide HMQ Entities with a price for carrying out the Small Works.
- (c) If Project Co’s price is accepted by HMQ Entities, in their sole discretion, Project Co shall carry out the Small Works for such price.

- (d) HMQ Entities may at any time, in their sole discretion, including if HMQ Entities do 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.
- (e) Project Co's price shall include only its Direct Costs, as calculated in accordance with Appendix A, together with applicable margins as set out in Appendix B.

### **3.2 Project Co to Minimize Inconvenience**

- (a) Project Co shall notify HMQ Entities of the estimated duration of any Small Works so that HMQ Entities and Project Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to HMQ Entities. Project Co shall use commercially reasonable efforts to minimize the duration of any Small Works.



## APPENDIX A

## CALCULATION OF DIRECT COSTS

## 1. DIRECT COSTS

- 1.1 Subject to Section 1.2 of this Appendix A, the term “Direct Cost” means the cumulative 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;
  - (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;
  - (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 to Project Co 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) travel and subsistence expenses of Project Co’s or each Subcontractor’s officers or employees referred to in Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A;
  - (vi) 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;
  - (vii) 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;
  - (viii) deposits lost;

- (ix) the amount of all Subcontracts with Subcontractors;
- (x) the amount paid for any design services;
- (xi) the cost of third party quality assurance required by HMQ Entities, such as independent inspection and testing services;
- (xii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiii) subject to Section 1.1(iv) of this Appendix A, Taxes (and without limiting the obligation of HMQ Entities 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;
- (xiv) 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;
- (xv) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co 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;
- (xvi) the cost of financing, including additional financing costs related to any delay caused by the implementation of the Variation;
- (xvii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to HMQ Entities;
- (xviii) the cost of any additional insurance or performance security required or approved by HMQ Entities;

- (xix) the cost of obtaining all Project Co Permits, Licences and Approvals; and
- (xx) reasonable fees and disbursements of Project Co's legal advisors.

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 amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour 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 City; and
- (v) the Direct Cost shall not include any cost incurred due to the failure on the part of Project Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Project Operations.

**APPENDIX B**  
**APPLICABLE MARGINS**

Party	Total Overhead and Profit Margin (as % of Direct Cost)		
	For projects under \$[REDACTED]	For projects between \$[REDACTED] and \$[REDACTED]	For projects over \$[REDACTED]
Project Co (Own Work)	[REDACTED] %	[REDACTED] %	[REDACTED] %
Construction Contractor (Own Work)	[REDACTED] %	[REDACTED] %	[REDACTED] %
Construction Contractor (Subcontracted Work)	[REDACTED] %	[REDACTED] %	[REDACTED] %
Maintenance and Rehabilitation Contractor (Own Work)	[REDACTED] %	[REDACTED] %	[REDACTED] %
Maintenance and Rehabilitation Contractor (Subcontracted Work)	[REDACTED] %	[REDACTED] %	[REDACTED] %

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## SCHEDULE 23

## COMPENSATION ON TERMINATION

## 1. DEFINITIONS

## 1.1 Definitions

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 HMQ Entities 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 HMQ Entities to Project Co prior to the Compensation Date;
    - (B) the Tender Costs; and
    - (C) amounts that HMQ Entities are 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) HMQ Entities have 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 HMQ Entities 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 HMQ Entities to Project Co prior to the Compensation Date;
    - (B) the Tender Costs; and
    - (C) amounts that HMQ Entities are 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) HMQ Entities have received such amounts in accordance with the Project Agreement.
- (c) “**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 HMQ Entities pay 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.

- (d) “**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.
- (e) “**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.
- (f) “**Estimated Fair Value**” means the amount determined in accordance with Section 3.4.
- (g) “**HMQ Default Termination Sum**” has the meaning given in Section 2.1(b).
- (h) “**Invoice Date**” means the date that is the later of:
- (i) the date on which HMQ Entities receive an invoice from Project Co for the relevant termination sum; and
  - (ii) the date on which HMQ Entities receive the supporting evidence required pursuant to Section 8.1(a).
- (i) “**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.

- (j) “**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.
- (k) “**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 the Finance Documents as defined in the Common Terms and Intercreditor Agreement and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the rescheduling of their indebtedness in respect of the financing of the Project Operations or the refinancing of the Project Operations.
- (l) “**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 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.
- (m) “**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 HMQ Entities incurring Rectification Costs or otherwise.
- (n) “**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.
- (o) “**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.
- (p) “**New Project Co**” means the person who has entered or who will enter into the New Agreement with HMQ Entities.
- (q) “**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 the Bank of Nova Scotia 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.
- (r) “**Non-Default Termination Sum**” has the meaning given in Section 4.1(b).
- (s) “**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 HMQ Entities in that Payment Period.
- (t) “**Prohibited Acts Termination Sum**” has the meaning given to it in Section 5.1(b).
- (u) “**Qualification Criteria**” means the criteria that HMQ Entities require 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 Maintenance and Rehabilitation Services or similar services;
  - (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 HMQ Entities, acting reasonably.

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- (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 HMQ Entities in a particular Payment Period or part of a Payment Period in ensuring that the Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Contractor under the terms of the Maintenance and Rehabilitation 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 HMQ Entities 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 HMQ Entities request 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 HMQ DEFAULT OR CONVENIENCE

### 2.1 Compensation

- (a) If Project Co terminates the Project Agreement pursuant to Section 46 of the Project Agreement or HMQ Entities terminate the Project Agreement pursuant to Section 47.3 of the Project Agreement, HMQ Entities shall pay to Project Co the HMQ Default Termination Sum.
- (b) The **“HMQ 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 HMQ Entities 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) any reasonable costs properly incurred by Project Co to wind up its operations; and
  - (vi) 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:

- (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 HMQ Entities are required to procure insurances and to make proceeds available to Project Co under the Project Agreement and they have 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 HMQ Entities and, at no additional cost to Project Co, give HMQ Entities reasonable assistance in prosecuting such claims;
- (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 HMQ Entities 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 HMQ Entities are entitled to set off pursuant to Section 34.12(a)(i) of the Project Agreement,

provided that the HMQ 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)(viii) are not realized and applied pursuant thereto, Project Co shall, on payment of the HMQ Default Termination Sum, assign such assets and rights to HMQ Entities.
- (d) HMQ Entities shall pay the HMQ Default Termination Sum in accordance with Section 8.

### **3. COMPENSATION FOR PROJECT CO DEFAULT**

#### **3.1 Compensation**

- (a) Save and except where Sections 5 or 6 apply, if HMQ Entities terminate the Project Agreement pursuant to Section 45 of the Project Agreement, HMQ Entities 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) HMQ Entities 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) HMQ Entities notify Project Co on or before the date falling 30 days after the Termination Date; and
  - (ii) there is a Liquid Market,

but, otherwise, HMQ Entities 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 Maintenance and Rehabilitation Services and HMQ Entities 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.
- (b) HMQ Entities 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) HMQ Entities 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.

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- (d) Project Co authorizes the release of any information by HMQ Entities 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 Maintenance and Rehabilitation Services, and, for all or any part of a Payment Period falling within the period from the Termination Date to the Compensation Date, HMQ Entities 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 HMQ Entities’ compliance with the Tender Process. The Tender Process Monitor shall enter into a confidentiality agreement with HMQ Entities in a form acceptable to HMQ Entities 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 HMQ Entities as to compliance with the Tender Process. HMQ Entities 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 HMQ Entities have 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, HMQ Entities 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, HMQ Entities shall, irrespective of such Dispute, be entitled to enter into a New Agreement.
- (j) HMQ Entities shall pay the Adjusted Highest Qualifying Tender Price in accordance with Section 8.
- (k) HMQ Entities may elect, by Notice to Project Co at any time prior to HMQ Entities ascertaining the Adjusted Highest Qualifying Tender Price, to follow the no retendering procedure set out in Section 3.4. In addition, HMQ Entities 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 HMQ Entities 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 HMQ Entities are in agreement with such Notice, the provisions of Section 3.4 shall apply. If HMQ Entities 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 HMQ Entities 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 HMQ Entities elect 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 HMQ Entities 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 Maintenance and Rehabilitation Services reasonably forecast to be incurred by HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 Maintenance and Rehabilitation 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) HMQ Entities shall pay the Adjusted Estimated Fair Value in accordance with Section 8.

#### **4. CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION BY HMQ ENTITIES FOR RELIEF EVENT**

##### **4.1 Consequences**

- (a) If HMQ Entities terminate the Project Agreement pursuant to Section 47.1 of the Project Agreement or if either of the Parties terminate the Project Agreement pursuant to Section 47.2 of the Project Agreement, HMQ Entities 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 HMQ Entities 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); and
  - (v) 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:

- (vi) 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 HMQ Entities are 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 HMQ Entities and, at no additional cost to Project Co, give HMQ Entities reasonable assistance in prosecuting such claims; and
- (vii) 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 HMQ Entities 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
- (viii) amounts which HMQ Entities are 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)(vii) are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to HMQ Entities.
- (d) HMQ Entities shall pay the Non-Default Termination Sum in accordance with Section 8.

## 5. CONSEQUENCES OF TERMINATION FOR PROHIBITED ACTS

### 5.1 Consequences

- (a) If HMQ Entities terminate the Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 60 of the Project Agreement, HMQ Entities shall pay to Project Co the Prohibited Acts Termination Sum.
- (b) The "**Prohibited Acts 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 HMQ Entities to Project Co in accordance with Sections 43.2(b) and 44.2(b) of the Project Agreement; and
  - (iii) the following amounts calculated in respect of the Construction Contractor, if the Construction Contractor is not responsible for a Prohibited Act, and the Maintenance and Rehabilitation Contractor, if the Maintenance and Rehabilitation Contractor is not responsible for a Prohibited Act, and 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 Maintenance and Rehabilitation Contractor'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 Maintenance and Rehabilitation Contractor, as applicable);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

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- (iv) 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 HMQ Entities are 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 HMQ Entities and, at no additional cost to Project Co, give HMQ Entities reasonable assistance in prosecuting such claims;
- (v) 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 HMQ Entities 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
- (vi) amounts which HMQ Entities are entitled to set off pursuant to Section 34.12(a)(i) of the Project Agreement, provided that HMQ Entities shall only set off amounts which are due to HMQ Entities by Project Co pursuant to the terms of the Project Agreement if and to the extent the Prohibited Acts Termination Sum exceeds the Senior Debt Amount.
- (c) To the extent that such assets and rights referred to in Section 5.1(b)(v) are not realized and applied pursuant thereto, Project Co shall, on payment of the Prohibited Acts Termination Sum, assign such assets and rights to HMQ Entities.
- (d) HMQ Entities shall pay the Prohibited Acts Termination Sum in accordance with Section 8.

**6. CONSEQUENCES OF TERMINATION FOR BREACH OF REFINANCING****6.1 Consequences**

- (a) If HMQ Entities terminate 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 Lender assigns, transfers or otherwise disposes of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents in breach of the Lenders' Direct Agreement, HMQ Entities shall pay to Project Co a termination sum equivalent to, and calculated in accordance with Sections 5.1(b)(i), (ii), (iii), (iv) and (v), less amounts which HMQ Entities are entitled to set off pursuant to Section 34.12(a)(i) of the Project Agreement.
- (b) HMQ Entities shall pay such termination sum in accordance with Section 8.

**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, HMQ Entities shall pay to Project Co a termination sum equivalent to the greater of (i) an amount calculated and payable in accordance with, the Prohibited Acts Termination Sum; and (ii) the Adjusted Estimated Fair Value calculated in accordance with this Schedule 23.
- (b) HMQ Entities 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, 5, 6 or 7, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to HMQ Entities an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to HMQ Entities, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) HMQ Entities 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, 5, 6 or 7, if the applicable termination sum is negative, HMQ Entities shall have no obligation to make any payment to Project Co and Project Co shall also thereafter indemnify HMQ Entities 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, HMQ Entities 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 HMQ Entities enter 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 HMQ Entities shall pay the undisputed amount on the date referred to in Section 8.2(a)(i),

and HMQ Entities 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 HMQ Entities enter 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, HMQ Entities shall have no obligation to make any payment to Project Co and Project Co shall, on the date of the New Agreement, pay HMQ Entities the amount by which such termination sum is negative, failing which Project Co shall also thereafter indemnify HMQ Entities 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 HMQ Entities follow the no retendering procedure set out in Section 3.4, HMQ Entities 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, HMQ Entities shall have no obligation to make any payment to Project Co and Project Co shall, on the Compensation Date, pay HMQ Entities the amount by which the Adjusted Estimated Fair Value is negative, failing which Project Co shall also thereafter indemnify HMQ Entities 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) HMQ Entities shall be entitled to rely on a certificate of the Collateral Trustee 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 Collateral Trustee 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 HMQ Entities' obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

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**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 HMQ Entities' 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 HMQ Entities 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 Maintenance and Rehabilitation Specifications, 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 Service Level 9 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 Appendix C of the Maintenance and Rehabilitation Specifications,  
  
(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 Maintenance and Rehabilitation 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 (subject to the exception specified in Section 2.2) 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 (subject to the exception specified in Section 2.2) 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 HMQ Entities 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 3.3 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, HMQ Entities 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, HMQ Entities 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 HMQ Entities 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. HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities are 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 HMQ Entities, provide a bond or letter of credit (the “**Expiry Transition Security**”) in favour of HMQ Entities in an amount equal to the amounts which HMQ Entities are permitted to deduct pursuant to Sections 4.2 and 4.5, in a form and from a surety or bank, as applicable, acceptable to HMQ Entities.

**5. Project Co Not Relieved of Obligations**

## 5.1 Notwithstanding:

- (a) any agreement of HMQ Entities to any Expiry Transition Works, Expiry Transition Works Costs or Expiry Transition Security;
- (b) any participation of HMQ Entities 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, HMQ Entities may withdraw from the Escrow Account or call upon the Expiry Transition Security an amount equivalent to such Expiry Transition Works Costs, and HMQ Entities 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, HMQ Entities shall, within 20 Business Days of receipt by HMQ Entities 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 HMQ Entities dispute 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.

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**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**  
**MAINTENANCE PERIOD 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 Maintenance and Rehabilitation Services during the Maintenance Period 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 Project Co Parties, respectively, 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  
BENCHMARKING OF INSURANCE COSTS**

- 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 (i) 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 the Insurance Review Period, but excluding Taxes and all broker's fees and commissions.
  - (b) “**Base Relevant Insurance Cost**” means \$[REDACTED] at the Relevant Insurance Inception Date and, thereafter, means the aggregate of the annual insurance premiums which were projected (as set out in the Financial Model) to be incurred by Project Co to maintain (or cause to be maintained) the Relevant Insurance during the Insurance Review Period, which amounts exclude Taxes and all broker's fees and commissions.
  - (c) “**Insurance Cost Differential**” means an amount, based on the Joint Insurance Cost Report, equal to  $(ARIC - BRIC) \pm PIC$  where:
    - ARIC is the Actual Relevant Insurance Cost;
    - BRIC is the Base Relevant Insurance Cost; and
    - PIC is any Project Insurance Change.

For the purpose of determining the Insurance Cost Differential, in the event that there is a net increase in the ARIC relative to the BRIC, the Project Insurance Change shall have a negative value and, in the event that there is a net decrease in the ARIC relative to the BRIC, the Project Insurance Change shall have a positive value.

- (d) “**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.
- (e) “**Insurance Review Period**” means a one year period from the Relevant Insurance Inception Date and each subsequent one year period commencing on 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.
- (f) “**Project Insurance Change**” means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:
  - (i) other than in respect of claims or re-ratings arising out of acts or omissions of HMQ Entities, an HMQ Party, an Operator or a System User, the claims history or re-rating of Project Co or any Project Co Party;
  - (ii) the effect of any change in deductible unless:
    - (1) such change is attributable to circumstances generally prevailing in the worldwide insurance market;
    - (2) the deductible, further to such change, is either greater than or equal to the maximum deductibles set out in this Schedule 25; and
    - (3) in respect of the Relevant Insurance, such change is not attributable to claims made as the result of acts or omissions of Project Co or any Project Co Party; and
  - (iii) any other issue or factor other than circumstances generally prevailing in the worldwide insurance market.
- (g) “**Relevant Insurance**” means all policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with Article 2.
- (h) “**Relevant Insurance Inception Date**” means the date on which the Relevant Insurance is first providing active insurance cover to Project Co and Metrolinx being a date no earlier than the Substantial Completion Date.

7.2 No later than 60 days prior to each Insurance Review Date, 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 “**Joint Insurance Cost Report**”), which contains the following information at the Relevant Insurance Inception Date, and thereafter for the relevant Insurance Review Period:

- (a) a full breakdown of the Actual Relevant Insurance Cost;
  - (b) the Base Relevant Insurance Cost;
  - (c) an assessment and quantification of each Project Insurance Change, together with the reasons therefor;
  - (d) the opinion of Project Co's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor;
  - (e) the calculation of the Insurance Cost Differential; and
  - (f) evidence satisfactory to Metrolinx, acting reasonably, of any changes to circumstances generally prevailing in the worldwide insurance market that are claimed to account for the Insurance Cost Differential.
- 7.3 The Monthly Service Payment will be subject to an adjustment in the amount of the Insurance Cost Differential (the "**Insurance Adjustment**") in accordance with Schedule 20 – Payment Mechanism.

#### 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 provided that, in respect of a Revenue Vehicle or an Eglinton Crosstown Tunnel, this Section 9.1 shall not apply, and the provisions of Sections 9.2, 20.1, 20.2 and 20.3 shall apply.
- 9.2 In respect of insurance proceeds received by Metrolinx under the provisions of Sections 20.2 and 20.3, Metrolinx shall make such insurance proceeds available to Project Co, to be solely applied by Project Co in the reinstatement, restoration or replacement of the Eglinton Crosstown Tunnels and Revenue Vehicles, as applicable, necessary for the carrying out of the Project Operations.

#### **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, HMQ Entities, HMQ Parties, City, TTC, Revenue Vehicle Manufacturer 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 HMQ Entities, HMQ Parties, Revenue Vehicle Manufacturer, City, TTC, Railway Company, the Lenders, the Collateral Trustee 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 HMQ Entities, HMQ Parties, City, TTC and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than design consultants) and agents;
  - (d) with respect to the “All Risk” Course of Construction Property, including Boiler and Machinery and “All Risk” Property, contain a waiver of subrogation as against the Revenue Vehicle Manufacturer, and its shareholders, officers, directors, officers, employees, servants, consultants (other than design consultants and agents);
  - (e) 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
  - (f) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to HMQ Entities and HMQ Parties without any right of contribution of any insurance carried by HMQ Entities and HMQ 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 Maintenance and Rehabilitation 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 HMQ Entities, HMQ Parties, City, TTC, Railway Company, the Lenders and the Collateral Trustee. 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 HMQ Entities, HMQ Parties, City, TTC, Railway Company, the Lenders and the Collateral Trustee.
- 15.3 With respect to Maintenance Period 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 HMQ Entities, HMQ Parties, City, TTC, 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 Prior to the transfer of ownership in respect of a Revenue Vehicle from the Revenue Vehicle Manufacturer to Metrolinx, all losses under the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion shall be payable solely to the Revenue Vehicle Manufacturer and the provisions of Section 2.5 of Schedule 35 – Revenue Vehicles shall apply, and such losses shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.
- 20.2 After the transfer of ownership in respect of a Revenue Vehicle from the Revenue Vehicle Manufacturer to Metrolinx, losses under (i) the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion; (ii) the Property Insurance carried by Project Co after Substantial Completion; and (iii) the Boiler and Machinery Insurance carried by Project Co after Substantial Completion, which, in each case, relate to a total loss of such Revenue Vehicle for purposes of such insurance policies, and otherwise relate to related equipment, shall be paid solely to Metrolinx and such losses shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.
- 20.3 After the Acceptance Date of each Tunnel Section Acceptance, all losses under (i) the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion; (ii) the Property Insurance carried by Project Co after Substantial Completion; and (iii) the Boiler and Machinery Insurance carried by Project Co after Substantial Completion, which, in each case relate to the responsibilities of HMQ Entities under Section 13 of Schedule 38 – Tunnels 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 – Eglinton Crosstown LRT 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><b>“All Risks” Course of Construction Property, including Boiler and Machinery</b></p>	<p>Limit of liability of \$[REDACTED], including Property of Every description including Revenue Vehicles and Eglinton Crosstown Tunnels supplied by Metrolinx for incorporation into the Project.</p> <p>For clarity, Project Co’s obligation to insure Revenue Vehicles commences once the Revenue Vehicle arrives at EMSF</p> <p>For clarity, Project Co’s obligation to insure Eglinton Crosstown Tunnels commences at the Tunnel Section Acceptance Date</p> <p>Delay in Start-up \$[REDACTED], covering a 24 month indemnity period, including Contingent Delayed Start-Up related to losses at 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>Tunnel and subsurface structures – maximum percentage payable – [REDACTED] %</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>Replacement Cost Valuation</li> </ul>	<p>[REDACTED] % of loss value / \$[REDACTED] minimum Earthquake</p> <p>\$[REDACTED] Contractors’ Equipment (Road Headers or similar equipment used in Tunnelling – Subject to insurer review and approval)</p> <p>\$[REDACTED] Flood and water damage</p> <p>\$[REDACTED] Underground losses</p> <p>\$[REDACTED] Testing and commissioning</p> <p>\$[REDACTED] All other losses</p> <p>120 day waiting period applicable to time element coverages, underground losses</p> <p>48 hour waiting period, off premises services</p> <p>60 day waiting period applicable to all other time element coverages</p>	<p>“All Risks” Course of Construction Property Insurance covering the insurable replacement cost of Project Co System Infrastructure, New Third Party Infrastructure, Revenue Vehicles and Eglinton Crosstown Tunnels 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 HMQ Entities, HMQ Parties or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	(Property)		
	<ul style="list-style-type: none"> <li>• Most Recent Technology Replacement Cost Valuation (Equipment or Machinery, except Contractors' Equipment)</li> <li>• Contractors' Equipment Valuation Clause and Endorsement</li> <li>• Flood (to policy limit with annual aggregate)</li> <li>• Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with an annual aggregate)</li> <li>• Electronic Data Processing equipment and media, including data restoration and re-creation costs</li> <li>• Transit</li> <li>• Unnamed locations</li> <li>• By-laws including Demolition, Increased Cost of Repairs and Replacement (subject to a \$[REDACTED] sub-limit only with respect to existing or renovated buildings)</li> <li>• Debris Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Off Premises Services Interruption (minimum \$[REDACTED] sub-limit)</li> <li>• Professional Fees (minimum \$[REDACTED] sub-limit)</li> <li>• Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)</li> <li>• Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>• Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>• Green Building and LEED Upgrades (subject to a \$[REDACTED] sub-limit)</li> <li>• Defence Costs (subject to a \$[REDACTED] sub-limit)</li> <li>• Contamination Clean-up or Removal (minimum \$[REDACTED] sub-</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>• limit)</li> <li>• Ammonia Contamination (minimum \$[REDACTED] sub-limit)</li> <li>• LEED Rectification, Commissioning and Testing Expenses (subject to a \$[REDACTED] sub-limit)</li> <li>• Civil Authority Access Interruption (8 weeks)</li> <li>• Prevention of Ingress/Egress (8 weeks)</li> <li>• Permission for Partial Use or Occupancy prior to Substantial Completion</li> <li>• Cost of Carrying Project Financing (24 Months), included in Delayed Start-Up coverage</li> <li>• Margin of Profit Extension for Contractors</li> <li>• Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident)</li> <li>• Testing and Commissioning (120 Days)</li> </ul>		
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum LEG 2 standard</li> <li>• War risk</li> <li>• Terrorism</li> <li>• Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>• Contractors' Equipment (unless values declared and risk accepted by insurers – Contractors' Equipment Endorsement noted)</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>• Munich Re Endorsement 101</li> <li>• Munich Re Endorsement 121</li> <li>• TBMs left by Tunnel Contractor for removal by Project Co</li> <li>• Sanctions Clause</li> <li>• Latent defect or inherent vice with respect to Eglinton Crosstown Tunnels and Revenue Vehicles respectively</li> <li>• All items appearing on the Built to Design Deficiency Lists of the Eglinton Crosstown Tunnels and Revenue Vehicles respectively</li> </ul>		
<i>Comments</i>			<ul style="list-style-type: none"> <li>• Named Insured includes Project Co, HMQ Entities, HMQ Parties, Lenders, Lender’s Agent, the Construction Contractor, Revenue Vehicle Manufacturer, all subcontractors, sub-subcontractors, consultants and sub-consultants, as their respective interests may appear</li> <li>• No provision permitted allowing a coinsurance penalty</li> <li>• Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Additional key extensions of coverage: <ul style="list-style-type: none"> <li>• Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the construction of the Project</li> <li>• Losses payable in accordance with the Insurance Trust Agreement and Section 20.1 and 20.2 of Schedule 25 – Insurance and Performance Security Requirements</li> <li>• Upon Substantial Completion, cover will cease and be replaced by All Risk Property and Boiler &amp; Machinery Insurance – Maintenance Period</li> <li>• Waiver of Subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, HMQ Entities, HMQ Parties, City, TTC, Revenue Vehicle Manufacturer, the Construction Contractor, all subcontractors, professional consultants (other than for their professional liability), Lenders, Collateral Trustee, as well as officers, directors and employees, servants, and agents of the foregoing</li> <li>• Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded</li> <li>• Liberalization Clause</li> <li>• Errors and Omissions</li> <li>• Breach of Conditions</li> <li>• Interims Payments Clause</li> </ul> </li> </ul>
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements		

## Construction Period Insurance – Eglinton Crosstown LRT 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"> <li>• \$(REDACTED) Non-Owned Automobile Liability</li> <li>• \$(REDACTED) Sudden and Accidental Pollution and Hostile Fire Pollution Liability</li> <li>• \$(REDACTED) “All Risks” Tenants’ Legal Liability</li> <li>• \$(REDACTED) Prairie or Forest Fire Fighting Expenses</li> <li>• \$(REDACTED) Employee Benefits Administrative Errors and Omissions</li> <li>• \$(REDACTED) Contractors Rework</li> <li>• \$(REDACTED) Legal Liability for Damages To Non-Owned Automobiles (SEF 94)</li> <li>• \$(REDACTED) Medical Payments</li> </ul> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Owner’s and Contractor’s Protective</li> <li>• Blanket Contractual (written and oral)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> </ul>	<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, New Third Party Infrastructure, Revenue Vehicles and Eglinton Crosstown Tunnels 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 24 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 HMQ Entities, HMQ Parties or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>• 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</li> <li>• Elevator and Hoist Collision Liability</li> <li>• Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co</li> <li>• Non-Owned Automobile Liability</li> <li>• Tenants’ Legal Liability (All Risks) – subject to sub-limit</li> <li>• Medical Expenses – subject to sub-limit</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Sudden and Accidental Pollution and Hostile Fire Pollution Liability – subject to sub-limit</li> <li>• Employee Benefits Administrative Errors and Omissions – subject to sub-limit</li> <li>• Contractors’ Rework Coverage – subject to sub-limit</li> <li>• Permission for Unlicensed Vehicles (partial road use)</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Accident Benefits</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
US			
			<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except during the Broad Form Products and Completed Operations extension period</li> <li>• Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the Project Site</li> <li>• Physical damage to the Project, except during Broad Form Products and Completed Operations extension period</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects and other professional consultants</li> <li>• Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>• Sanctions Clause</li> </ul>

Type	Amount	Maximum Deductibles	Principal Cover
<i>Comments</i>		<ul style="list-style-type: none"> <li>Named Insured includes Project Co and its affiliates, HMQ Entities, HMQ Parties, City, TTC, the Lenders, Collateral Trustee, 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</li> <li>Railway Company as Additional Insureds</li> <li>Directors, officers, shareholders, employees of the insured parties involved in the Works are covered as Additional Insureds</li> <li>Insurance is primary without right of contribution of any other insurance carried by any Named Insured</li> <li>Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors &amp; Omissions Liability; no policy general aggregate will be permitted</li> <li>Professional service activities integral to the Project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers</li> <li>Waiver of subrogation of insurers’ rights of recovery against all Named and/or Additional Insureds, including Project Co, HMQ Entities, HMQ Parties, City, TTC, the Construction Contractor, all subcontractors, sub-subcontractors, professional consultants, engineers and architects (other than for their professional liability), Lenders, Collateral Trustee, as well as officers, directors, employees, servants and agents of the foregoing</li> </ul>	
<i>Underwriters</i>		Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements	



## Construction Period Insurance – Eglinton Crosstown LRT 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
<b>Project Specific Professional Liability</b>	<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"> <li>• Primary Insurance extension</li> <li>• Automatic addition of firms</li> <li>• Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured</li> <li>• Any individuals or personal corporations retained by the Named Insured under a personal services contract</li> <li>• 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</li> <li>• Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims</li> <li>• Duty to defend, even if the allegations are groundless, false or fraudulent</li> <li>• Worldwide territory, subject to suits brought in Canada</li> <li>• Mitigation of loss</li> <li>• Project Co endorsement</li> </ul>	<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, New Third Party Infrastructure excluding Revenue Vehicles and Eglinton Crosstown Tunnels 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 36 months.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by HMQ Entities, HMQ Parties or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Express warranties or guarantees</li> <li>• Estimates on profit, return</li> <li>• Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents</li> <li>• Design or manufacture of any good or products sold or supplied by the Named Insured</li> <li>• Terrorism</li> <li>• Nuclear Liability</li> <li>• Judgments and awards deemed uninsurable by law</li> <li>• Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement</li> <li>• Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees</li> <li>• Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies</li> <li>• Coverage associated with Revenue Vehicles and Eglinton Crosstown Tunnels</li> <li>• Sanctions Clause</li> </ul>		
<i>Comments</i>			<ul style="list-style-type: none"> <li>• Named Insured: Construction Contractor (as appropriate), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project</li> <li>• Professional services covered: All architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services and procurement services, including their replacements and/or sub-consultants of any tier</li> <li>• Retroactive Date: Full retroactive coverage from date of first design activity</li> <li>• Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts or a material breach of any condition of the policy</li> </ul>
<i>Underwriters</i>			Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements

## Construction Period Insurance – Eglinton Crosstown LRT 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
<b>Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability – Claims Made)</b>	\$[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"> <li>• Hazardous Substances occurring at or emanating from the System, the Public Infrastructure or the Lands during the Policy Period</li> <li>• Microbial Matter (including Fungus/Mould)</li> <li>• Underground / above ground storage tanks</li> <li>• First Party Restoration and Clean-up Costs</li> <li>• Disposal Site System, including Transportation (reporting required)</li> <li>• Duty to Defend</li> <li>• Canada and US Territory</li> <li>• Contractual Liability</li> <li>• Emergency Response Costs</li> </ul> Permitted Exclusions: <ul style="list-style-type: none"> <li>• Terrorism</li> <li>• War</li> <li>• Intentional Non-compliance</li> <li>• Prior Knowledge</li> <li>• WSIB</li> <li>• Employers’ Liability</li> <li>• Professional Liability</li> <li>• Nuclear Liability</li> <li>• Property Damage to Motor Vehicles during Transportation</li> </ul>	\$[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 36 months after the Substantial Completion Date.  This coverage shall be primary with respect to Project Co System Infrastructure, New Third Party Infrastructure, Revenue Vehicles and Eglinton Crosstown Tunnels without right of contribution of any insurance carried by HMQ Entities, HMQ Parties or the Lenders.

Type	Amount	Maximum Deductibles	Principal Cover
<i>Comments</i>		<ul style="list-style-type: none"> <li>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</li> <li>HMQ Entities, HMQ Parties, City, TTC, Railway Company, Lenders and Collateral Trustee will be identified as Additional Insureds</li> <li>The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds</li> </ul>	
<i>Underwriters</i>		Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements	

## Construction Period Insurance – Eglinton Crosstown LRT 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
<b>Automobile Liability</b>	<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>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to HMQ Entities, HMQ Parties, City, TTC, Railway Company or the Lenders</p>
<p><b>Commercial General Liability and Non-Owned Automobile Liability</b></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 Protective</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 Design and Construction Works and the Public Infrastructure 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>Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to HMQ Entities, HMQ Parties, City, TTC, Railway Company or the Lenders</p>

Type	Amount	Maximum Deductibles	Principal Cover
<p>extensions</p>	<p>Sub-limits (Project Co and Project Co’s Construction Contractor):</p> <ul style="list-style-type: none"> <li>• Full policy limits with respect to Non-Owned Automobile Liability</li> <li>• \$[REDACTED] Prairie or Forest Fire Fighting Expenses</li> </ul> <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 Design and Construction Works and the Public Infrastructure Works):</p> <ul style="list-style-type: none"> <li>• Owner’s and Contractor’s Protective</li> <li>• Blanket Contractual (written)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting / demolition / excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunnelling/grading and similar operations associated with the Design and Construction Works and/or Public Infrastructure Works, as applicable</li> <li>• Elevator and Hoist Collision Liability</li> <li>• Non-Owned Automobile Liability</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Permission for Unlicensed Vehicles’ (partial road use)</li> <li>• Unlicensed Equipment</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul>		
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li> <li>• Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the Lands</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects and other professional consultants</li> <li>• Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use</li> </ul>		
<i>Comments</i>	<ul style="list-style-type: none"> <li>• HMQ Entities, HMQ Parties, City, TTC, Railway Company, the Lenders and Collateral Trustee will be identified as Additional Insureds</li> </ul>		
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements		

## Construction Period Insurance – Eglinton Crosstown LRT 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
<b>Aircraft and Watercraft Liability</b>  (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	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to HMQ Entities, HMQ Parties, City, TTC or the Lenders
<i>Comments</i>	<ul style="list-style-type: none"> <li>• HMQ Entities, HMQ Parties, City, TTC, Railway Company, the Lenders and Collateral Trustee will be identified as Additional Insureds</li> </ul>		
<b>“All Risks” Ocean Marine Cargo</b>  (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 HMQ Entities, HMQ Parties or the Lenders.
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured includes Project Co, HMQ Entities, HMQ Parties, Lenders, Lender’s Agent, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants as their respective interests may appear</li> </ul>		
<b>“All Risks” Contractors’ Equipment</b>  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 Construction Property, including		All Risks coverage on all owned, rented, leased or borrowed contractors’ equipment, used at the Lands.



Type	Amount	Maximum Deductibles	Principal Cover
	Boiler and Machinery policy		
<i>Comments</i>	<ul style="list-style-type: none"> <li>Waiver of Subrogation rights against Project Co, HMQ Entities, HMQ Parties, City, the Construction Contractor, all subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Collateral Trustee, as well as officers, directors, shareholders and employees of the foregoing</li> </ul>		
<b>Employee Dishonesty (Crime)</b>	[\$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 HMQ Entities, HMQ 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		
<b>WSIB</b>	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>

**Maintenance Period Insurance –Eglinton Crosstown LRT 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
<p><b>“All Risk” Property</b></p>	<p>Limit of Liability of \$[REDACTED] 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 Maintenance and Rehabilitation Services and all Revenue Vehicles and Eglinton Crosstown Tunnels and equipment</p> <p>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</p> <p>Extra and Expediting Expenses (minimum \$[REDACTED] sub-limit)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Replacement Cost Valuation (Property)</li> <li>• Most Recent Technology Replacement Cost Valuation (Equipment or Machinery)</li> <li>• Flood (to policy limit with annual aggregate)</li> <li>• Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate)</li> <li>• Electronic Data Processing</li> </ul>	<p>[REDACTED] % of loss value / \$[REDACTED] minimum Earthquake</p> <p>\$[REDACTED] Flood</p> <p>\$[REDACTED] All other losses</p> <p>120 day waiting period applicable to time element coverages, underground losses</p> <p>60 days waiting period applicable to time element coverages</p> <p>48 hour waiting period, off premises services</p>	<p>“All Risks” Property Insurance covering the insurable replacement cost of Project Co System Infrastructure, New Third Party Infrastructure, Revenue Vehicles and Eglinton Crosstown Tunnels 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 HMQ Entities, HMQ Parties or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	equipment and media, including data restoration and re-creation costs <ul style="list-style-type: none"> <li>• Debris Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Transit (minimum \$[REDACTED] sub-limit)</li> <li>• Unnamed locations (minimum \$[REDACTED] sub-limit)</li> <li>• Professional Fees (minimum \$[REDACTED] sub-limit)</li> <li>• Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)</li> <li>• Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>• Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>• Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Civil Authority Access Interruption (minimum 8 weeks)</li> <li>• Prevention of Ingress/Egress (minimum 8 weeks)</li> <li>• Automatic Coverage for Newly Acquired Locations (90 day reporting period acceptable)</li> <li>• By-Laws including demolition and increased replacement / repair costs</li> <li>• Off Premises Services Interruption</li> <li>• Margin of profit extension for contractors</li> <li>• Joint Loss Agreement (if separate “All Risk” Property and Boiler and Machinery policies are arranged)</li> </ul>		
	Permitted Exclusions: <ul style="list-style-type: none"> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Faulty workmanship, materials construction, design or latent defects but resultant damage to be insured</li> <li>• War risk</li> <li>• Terrorism</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>Sanctions Clause</li> </ul>		
<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured will include HMQ Entities, HMQ Parties and the Lenders – Lenders will be covered as Loss Payee and Mortgagee</li> <li>All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement</li> <li>No provision allowing a coinsurance penalty</li> <li>Waiver of Subrogation against all Named Insureds, including but not limited to Project Co, HMQ Entities, HMQ Parties and the Lenders, Collateral Trustee as well as officers, employees, servants and agents of the foregoing</li> </ul>		
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements		

## Maintenance Period Insurance –Eglinton Crosstown LRT 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
<b>Boiler &amp; Machinery</b>	Limit of \$[REDACTED] each Accident to an Insured Object  The same dollar limit for Business Interruption Insurance as provided by the “All Risk” Property included, subject to a 24 month period of indemnity  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"> <li>• Ammonia Contamination</li> <li>• Automatic Coverage</li> <li>• Bylaws</li> <li>• Errors and Omissions</li> <li>• Expediting Expenses</li> <li>• Extra Expense</li> <li>• Hazardous Substances</li> <li>• Professional Fees</li> <li>• Water Damage</li> </ul>	\$[REDACTED] per claim, Direct Damage  Business Interruption – Maximum 30 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 HMQ Entities, HMQ Parties or the Lenders.
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured will include Project Co, Project Co, HMQ Entities, HMQ Parties and the Lenders – Lenders will be covered as Loss Payee and Mortgagee</li> <li>• All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement</li> </ul> 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		

## Maintenance Period Insurance –Eglinton Crosstown LRT 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
<b>Commercial General Liability and Non-Owned Automobile Liability</b>	<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"> <li>• \$(REDACTED) Non-Owned Automobile Liability, unless coverage provided under automobile liability insurance</li> <li>• \$(REDACTED) Sudden and Accidental Pollution and Hostile Fire Pollution</li> <li>• \$(REDACTED) “All Risks” Tenants’ Legal Liability, if any exposure exists</li> <li>• \$(REDACTED) Prairie or Forest Fire Fighting Expense</li> <li>• \$(REDACTED) Employee Benefits Administrative Errors and Omission Liability</li> <li>• \$(REDACTED) Legal Liability for Damages To Non-owned Automobiles (SEF 94) , unless coverage provided under automobile liability insurance</li> <li>• \$(REDACTED) Medical Payments</li> </ul> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Owner’s and Contractor’s Protective</li> <li>• Blanket Contractual (written and oral)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Employee Benefits Administrative</li> </ul>	<p>\$(REDACTED) per occurrence</p>	<p>Commercial General Liability insurance covering all Maintenance and Rehabilitation 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 HMQ Entities, HMQ Parties or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
			<ul style="list-style-type: none"> <li>Errors and Omissions</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting / demolition / excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunnelling / grading and similar operations, as applicable</li> <li>• Elevator and Hoist Collision Liability</li> <li>• Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co</li> <li>• Non-owned Automobile Tenants’ Legal Liability (All Risks) – subject to sub-limit</li> <li>• Medical Expenses – subject to sub limit</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Sudden and Accidental Pollution and Hostile Fire Pollution – subject to sub-limit</li> <li>• Permission for unlicensed vehicles’ partial road use</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Voluntary Compensation</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul>

Type	Amount	Maximum Deductibles	Principal Cover
	Permitted Exclusions: <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li> <li>• Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the Maintenance and Rehabilitation Services and the Operations Services Work site</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects and other professional consultants</li> <li>• Asbestos</li> <li>• Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>• Sanctions Clause</li> </ul>		
<i>Comments</i>			<ul style="list-style-type: none"> <li>• Named Insured includes Project Co and its affiliates, HMQ Entities, HMQ Parties, City, the Lenders, Project Co Parties involved in the Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Services and the control and use of the Lands</li> <li>• Railway Company, TTC as Additional Insureds</li> <li>• Directors, officers, shareholders, employees of the insured parties involved in the Maintenance and/or the Operations Services are covered as Additional Insureds</li> <li>• Insurance primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors &amp; Omissions Liability; no policy general aggregate will be permitted</li> <li>• Professional service activities integral to the Maintenance and Rehabilitation Services and the Operations 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</li> <li>• Waiver of subrogation of insurers’ rights of recovery against all Named and/or Additional Insureds, including Project Co, HMQ Entities, HMQ Parties, City, the Construction Contractor, all subcontractors, sub-subcontractors, professional consultants, engineers and architects (other than for their professional liability), Lenders, Collateral Trustee, as well as officers, directors, employees, servants and agents of the foregoing</li> </ul>
<i>Underwriters</i>			Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements



## Maintenance Period Insurance –Eglinton Crosstown LRT 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
<b>Environmental Impairment (Pollution) Liability</b>	<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"> <li>Hazardous Substances occurring at or emanating from the Maintenance and Rehabilitation Services and the Operations Services or site or the Lands during the Policy Period</li> <li>Microbial Matter (including Fungus/Mould)</li> <li>Biological Agents</li> <li>Underground / above ground storage tanks</li> <li>First Party Restoration and Clean-up</li> <li>Duty to Defend</li> <li>Contractual Liability</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>Terrorism</li> <li>Intentional Non-Compliance</li> <li>WSIB</li> <li>War</li> <li>Employers Liability</li> <li>Nuclear Liability</li> <li>Professional Liability</li> <li>Sanctions Clause</li> </ul>	<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 Maintenance and Rehabilitation 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 HMQ Entities, HMQ Parties or the Lenders.                 </p>
<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured will include Project Co, its Affiliates, Project Co Parties and all other parties engaged in the Works, including the Maintenance and Rehabilitation Contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants</li> <li>HMQ Entities, HMQ Parties, City, Railway Company, Lenders and Collateral Trustee will be identified as Additional Insureds</li> <li>The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
<i>Underwriters</i>			Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements

## Maintenance Period Insurance –Eglinton Crosstown LRT 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
<b>Automobile Liability</b>	<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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 HMQ Entities, HMQ Parties, City, TTC, Railway Company or the Lenders.</p>
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements	
<b>Comprehensive Crime</b>	\$(REDACTED) per extension	<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 HMQ Entities, HMQ Parties or the Lenders.</p>
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of Schedule 25 – Insurance and Performance Security Requirements	

## Maintenance Period Insurance – Eglinton Crosstown LRT 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 Maintenance and Rehabilitation Services are being performed.</p> <p>Prior to commencement of the Maintenance and Rehabilitation 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 Maintenance and Rehabilitation 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 Maintenance and Rehabilitation Services or confirmation of that person’s exemption from WSIB coverage.</p>

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## 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 Maintenance and Rehabilitation Contractor's normal business practices;
  - (f) in accordance with Canadian GAAP;
  - (g) in chronological order;
  - (h) in electronic format in accordance with HMQ Entities' 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 HMQ Entities' 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 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 HMQ Entities, and shall conform to the Output Specifications, Good Industry Practice and the CAD Standards. All drawings are to be submitted via HMQ Entities' electronic control management system, with one hard copy provided to HMQ

- Entities. 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. HMQ Entities shall provide Project Co access to HMQ Entities' electronic control management system.
- 1.5 Records shall be stored in electronic format within HMQ Entities' electronic control management system where Project Co shall have access thereto and will continue to have access thereto, such that HMQ Entities 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 HMQ Entities 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, HMQ Entities may elect to require Project Co to deliver such records to HMQ Entities, in which case Project Co shall, at the expense of HMQ Entities, deliver such records (with the exception of Sensitive Information) to HMQ Entities in the manner and to the location as HMQ Entities shall specify; or
  - (b) if HMQ Entities fail 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 HMQ Entities in the manner and to the location that HMQ Entities shall reasonably specify. HMQ Entities 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 HMQ 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 HMQ Entities; 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 HMQ Entities a report, as reasonably requested by HMQ Entities in connection with HMQ Entities' 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 HMQ Entities or that may be owing by HMQ Entities 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 HMQ Entities no later than 45 days after the end 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 management financial statements prepared in accordance with Approved Accounting Principles (as defined in the Common Terms and Intercreditor Agreement) in respect of that period, and no later than 120 days after the end of each fiscal year, a copy of Project Co's annual audited financial statements, in respect of that period, prepared in accordance with Applicable Law, and Approved Accounting Principles (as defined in the Common Terms and Intercreditor Agreement), 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 HMQ Entities as Confidential Information of Project Co.

## 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 HMQ 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;

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- (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 HMQ Entities 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 formal notices, reports or submissions made to or received from HMQ Entities in connection with the provision of the Maintenance and Rehabilitation Services, the monitoring of performance, the availability of the Project Co System Infrastructure, and payment adjustments;
  - (k) all certificates, licences, registrations or warranties related to the performance of the Maintenance and Rehabilitation Services;
  - (l) the invoices for Monthly Service Payments;
  - (m) all documents submitted in accordance with Schedule 22 – Variation Procedure;
  - (n) any documents related to decisions resulting from the Dispute Resolution Procedure;
  - (o) any documents related to a Project Co Change in Ownership or Change in Control;
  - (p) any documents relating to any Refinancing;
  - (q) 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;
    - (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;
  - (r) the financial accounts of Project Co referred to in Section 1.11 above;
  - (s) such documents as HMQ Entities may reasonably require relating to Business Opportunities in which HMQ Entities have a right or interest;
  - (t) 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;
  - (u) any documents relating to insurance and insurance claims;
  - (v) all Jointly Developed Materials; and
  - (w) 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.

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## 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 HMQ 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 HMQ Representative, if given by HMQ Entities, 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 HMQ 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 HMQ 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 within such period as may be specified in the Project Agreement, or if no period is specified, within 10 Business Days after submission to the Independent Certifier.

4.3 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 4.2.

- 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 HMQ Entities, 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, HMQ Entities, 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 HMQ Entities 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, HMQ Entities may, at their 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 HMQ Entities undertake 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 HMQ Entities' right to contest the determination made by the Adjudicator in a subsequent proceeding. HMQ Entities 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 HMQ Entities, 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 HMQ Entities 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 HMQ Entities, 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 HMQ Entities 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 HMQ Entities, 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 HMQ Entities' 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 HMQ Entities, Project Co shall indemnify HMQ Entities 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 HMQ Entities until the date of payment; or
  - (b) for amounts payable by HMQ Entities to Project Co, HMQ Entities 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 HMQ Entities or, as applicable, any underpayment or non-payment by HMQ Entities from the date of any overpayment to HMQ Entities 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 HMQ Entities and the HMQ Representative.
- 13.5 HMQ Entities shall ensure that any and all documents and other information in the possession or control of any HMQ Party that are available to HMQ Entities 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 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

agree to resolve a Dispute relating to the decision of an Expert by adjudication, arbitration or litigation, notwithstanding the provisions of Section 5.

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**SCHEDULE 28**  
**REFINANCING****1. DEFINITIONS**

1.1 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) “**Equity Provider**” means each of [REDACTED].
- (c) “**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 HMQ Entities 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 HMQ Entities as part of any Variation under the Project Agreement; or
  - (ix) any Permitted Borrowing.
- (d) “**Mandatory Refinancing**” means an Exempt Refinancing described in Section 1.1(c)(i).
- (e) “**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.
- (f) “**Planned Mini-Perm Refinancing Date**” Not Applicable.
- (g) “**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) HMQ Entities’ reputation or integrity, or (ii) the nature of the public transit system in the City of Toronto so as to affect public confidence in the public transit system in the City of Toronto or the Project.

- (h) **“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.
- (i) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (j) **“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.
- (k) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to HMQ Entities, 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.
- (l) “**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.
- (m) “**Refinancing Notice**” has the meaning given in Section 2.9.
- (n) “**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 HMQ Entities, 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 HMQ Entities, 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 HMQ Entities 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 HMQ Entities may withhold their consent to any Qualifying Refinancing, in their 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 HMQ Entities, whether actual or contingent, present or future, known or unknown.

2.3 HMQ Entities 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 HMQ Entities 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. HMQ Entities 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 HMQ Entities, provide any information in relation to a proposed Refinancing as HMQ Entities may reasonably require. Project Co shall keep HMQ Entities informed as to any changes to the material terms of the Refinancing. Both HMQ Entities and Project Co shall at all times act in good faith with respect to any Refinancing.

2.5 Subject to Section 2.6, HMQ Entities 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 HMQ Entities' share of the Refinancing Gain.

- 2.6 HMQ Entities and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of HMQ Entities' share of the Refinancing Gain (taking into account how HMQ Entities have elected to receive their 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 HMQ Entities' share, the Dispute shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure. Both HMQ Entities 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 HMQ Entities for all such reasonable out-of-pocket costs incurred by HMQ Entities. Project Co and HMQ Entities 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 HMQ Entities may at any time request that Project Co provide to HMQ Entities 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, HMQ Entities must request Project Co to provide the Refinancing Information before it can issue a Refinancing Notice pursuant to Section 2.9. If HMQ Entities 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 HMQ Entities may provide Project Co with a Refinancing Notice pursuant to Section 2.9.
- 2.9 If HMQ Entities consider the funding terms generally available in the market to be more favourable than those reflected in the Lending Agreements, HMQ Entities 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 HMQ Entities believe such funding terms to be available. Project Co and HMQ Entities 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. HMQ Entities 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 HMQ Entities serve 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 HMQ Entities (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 HMQ Entities 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 HMQ Entities for such belief and evidence to the reasonable satisfaction of HMQ Entities 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), HMQ Entities 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 HMQ Entities reasonably consider that the requirements of Sections 2.11(c)(i) or (ii) have not been satisfied, HMQ Entities 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, HMQ Entities shall not instruct Project Co to implement the proposed Refinancing unless both HMQ Entities 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 HMQ Entities instruct 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) HMQ Entities instruct 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, HMQ Entities 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 HMQ Entities 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 HMQ Entities 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) HMQ Entities have, by prior written agreement, approved the use of such internal management resource.

- 2.15 HMQ Entities 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.

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## SCHEDULE 29

## STANDBY LETTER OF CREDIT

[Note: The Standby Letter of Credit must be issued by a bank acceptable to IO, acting reasonably, and must be callable at the bank's counters in Toronto, Ontario.]

Letter of Credit: #[●]

Date: [●]

Ontario Infrastructure and Lands Corporation  
777 Bay Street, 9th Floor  
Toronto, Ontario  
M5G 2C8

Attn: [●]

Dear Sir/Madam:

**RE: Eglinton Crosstown LRT Project**

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At the request of our client, [●] (“**Project Co**”), we, [insert name and address of issuing bank], hereby issue in your favour an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of [REDACTED] (\$[REDACTED]).

The amount available under this Letter of Credit is payable to Ontario Infrastructure and Lands Corporation (“**IO**”), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of IO certifying that IO is entitled to draw on this Letter of Credit pursuant to Section 2.3(c) of a project agreement dated [●] (as amended from time to time, the “**Project Agreement**”), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on [insert the date that is 180 days after the Financial Close Target Date] (the “**Expiry Date**”), and IO may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on the Expiry Date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the Expiry Date, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[●].

It is understood that [insert name of issuing bank] is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “UCP”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit.

Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

**[Name of Issuing Bank]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

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## SCHEDULE 30

## INSURANCE TRUST AGREEMENT

**THIS AGREEMENT** is made as of the 21<sup>st</sup> day of July, 2015

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**, as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated 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 in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48

(collectively, “**HMQ Entities**”)

**AND: [REDACTED]**

(the “**Collateral Trustee**”)

**AND: [REDACTED]**

(“**Project Co**”)

**AND: [REDACTED]**

(the “**Account Trustee**”)

**WHEREAS:**

- A. HMQ Entities and Project Co have entered into the Project Agreement.
- B. HMQ Entities, the Collateral Trustee and Project Co have entered into the Lenders’ Direct Agreement.
- C. HMQ Entities, the Collateral Trustee 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 and Metrolinx intend to enter into this Insurance Trust Agreement as agents of Her Majesty the Queen in right of Ontario, in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of HMQ Entities 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**” means [REDACTED].
- (b) “**Bank**” means [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) “**Collateral Trustee**” means [REDACTED].
- (g) “**Crown**” has the meaning given in the Project Agreement.
- (h) “**Default Notice**” means a written notice given by the Collateral Trustee to the Account Trustee that an event of default under the Lending Agreements has occurred and is continuing.
- (i) “**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 Collateral Trustee that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (j) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (k) “**HMQ Event of Default**” 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 Account No. [REDACTED] at [REDACTED].
- (o) “**Insurance Trust Agreement**” means this insurance trust agreement.
- (p) “**IO**” has the meaning given in the Project Agreement.
- (q) “**Lenders**” has the meaning given in the Project Agreement.
- (r) “**Lenders’ Direct Agreement**” means the lenders’ direct agreement made on or about the date hereof between HMQ Entities, Project Co and the Collateral Trustee.
- (s) “**Lending Agreements**” has the meaning given in the Project Agreement.

- (t) “**New Third Party Infrastructure**” has the meaning given in the Project Agreement.
- (u) “**Order**” has the meaning given in Section 6(k).
- (v) “**Party**” means any of HMQ Entities, Project Co, the Collateral Trustee or the Account Trustee, and “**Parties**” means all of HMQ Entities, Project Co, the Collateral Trustee and the Account Trustee.
- (w) “**Project**” has the meaning given in the Project Agreement.
- (x) “**Project Agreement**” means the project agreement made on or about July 21, 2015 between HMQ Entities and Project Co.
- (y) “**Project Co**” means [REDACTED].
- (z) “**Project Co System Infrastructure**” has the meaning given in the Project Agreement.
- (aa) “**Project Operations**” has the meaning given in the Project Agreement.
- (bb) “**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 Collateral Trustee 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 HMQ Entities.

- (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 Collateral Trustee, HMQ Entities, 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 HMQ Entities 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 HMQ Entities are entitled to indemnification under the Insurance Policies in respect of any loss incurred by HMQ Entities, such related insurance proceeds are to be paid directly to HMQ Entities 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 HMQ Entities 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 Collateral Trustee or HMQ Entities (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 Collateral Trustee 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 Collateral Trustee 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 HMQ Entities 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 Collateral Trustee, or, following receipt by the Account Trustee of a Change of Authorization Notice, to HMQ Entities, 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 Collateral Trustee, or, following receipt by the Account Trustee of a Change of Authorization Notice, HMQ Entities, 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 Collateral Trustee 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 Collateral Trustee may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to HMQ Entities 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 HMQ Entities 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 Collateral Trustee, HMQ Entities 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 Collateral Trustee, HMQ Entities 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 Collateral Trustee, 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 Collateral Trustee 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.

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- (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 Collateral Trustee, the Lenders or HMQ Entities 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 Collateral Trustee, HMQ Entities 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 Collateral Trustee or, where the Account Trustee has received a Change of Authorization Notice, HMQ Entities, 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 Collateral Trustee or, if the Account Trustee has received a Change of Authorization Notice, HMQ Entities, 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 Collateral Trustee, or where the Account Trustee has received a Change of Authorization Notice, HMQ Entities, 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 Collateral Trustee 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 Collateral Trustee. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by HMQ Entities 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 HMQ Entities.
- (o) Each of the Collateral Trustee and HMQ Entities 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 Collateral Trustee or HMQ Entities, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Collateral Trustee or HMQ Entities which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Collateral Trustee or HMQ Entities, 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 Collateral Trustee or HMQ Entities, as applicable, pursuant to Section 6(o).

## 7. COLLATERAL TRUSTEE AND HMQ ENTITIES' 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 HMQ Entities (a "**Change of Authorization Event**"), the Collateral Trustee 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 Collateral Trustee shall cease to be entitled, and HMQ Entities 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 Collateral Trustee and HMQ Entities shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that HMQ Entities 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 an HMQ Event of Default has occurred. Where an HMQ Event of Default has occurred, upon receipt by the Collateral Trustee and Lenders of all amounts owing by HMQ Entities to the Collateral Trustee 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 Collateral Trustee 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 HMQ Entities 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, HMQ Entities, 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 Collateral Trustee, the Lenders and HMQ Entities.

## 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 Collateral Trustee, HMQ Entities 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 HMQ Entities: Metrolinx  
5160 Yonge Street, Suite 300  
Toronto, Ontario M2N 6L9

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

With a copy to:

Infrastructure Ontario  
777 Bay Street, 6th Floor  
Toronto, Ontario M5G 2C8

Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

If to Project Co:

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
Email: [REDACTED]

With a copy to:

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]  
E-mail: [REDACTED]

If to the Account Trustee:

[REDACTED]  
Attn.: [REDACTED]  
Fax No.: [REDACTED]

If to the Collateral Trustee:                   **[REDACTED]**  
Attn.:   **[REDACTED]**  
Fax No.:                                       **[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. HMQ 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 HMQ Entities under this Insurance Trust Agreement and Project Co, the Collateral Trustee 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 Collateral Trustee 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 Collateral Trustee 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 Collateral Trustee 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 and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of HMQ Entities 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.

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

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

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

**METROLINX**

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation.

[REDACTED], acting in its capacity as Collateral Trustee under the Common Terms and Intercreditor Agreement

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

**CROSSLINX TRANSIT SOLUTIONS GENERAL  
PARTNERSHIP, [REDACTED]**

**[REDACTED]**

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

Name: **[REDACTED]**  
Title: **[REDACTED]**

I have authority to bind the corporation.

**[REDACTED]**

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

Name: **[REDACTED]**  
Title: **[REDACTED]**

I have authority to bind the corporation.

**[REDACTED]**

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

Name: **[REDACTED]**  
Title: **[REDACTED]**

I have authority to bind the corporation.

**[REDACTED]**

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

Name: **[REDACTED]**  
Title: **[REDACTED]**

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

Name: **[REDACTED]**  
Title: **[REDACTED]**

I/We have authority to bind the corporation.

**[REDACTED]**, acting in its capacity as Account  
Trustee

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

Name: **[REDACTED]**

Title: **[REDACTED]**

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

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

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**SCHEDULE 31**

**PROJECT CO INFORMATION**

**[REDACTED]**

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**SCHEDULE 32**

**[REDACTED]**

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**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) updated 6-Month Works Schedule and Works Schedule with all past and forecasted Works activities logically linked without any open ended activities (except for the start and final completion milestone activities), including appropriate critical path(s) including:
    - (i) earned value metrics (tabular and graphical) by project, location, major design and construction categories including:
      - (A) 'S' curve showing planned value vs. earned value;
      - (B) schedule performance index trend over time; and
      - (C) cost performance index trend over time,  
using the "Practice Standards for Earned Value Management" (Project Management Institute, Inc.);
    - (ii) a softcopy of the updated critical path method Works Schedule in native format (XER);
    - (iii) detailed activity level bar chart report, comparing the current Works Schedule to the previous version of the Works Schedule that obtained "REVIEWED" status; and
    - (iv) updated Submittals schedule identifying the required Submittals that are anticipated to be submitted to HMQ Entities in the following three months;
  - (c) updated 6-month Works Schedule and Works Schedule narrative;
  - (d) detailed status of the Works, including:
    - (i) a narrative detailing the progress of:
      - (A) Project Co System Infrastructure, including:
        - (1) Stations;
        - (2) Stops;
        - (3) Associated Facilities;



- (4) Civil and Guideway;
- (5) Systems;
- (6) Tunnels;
- (7) Revenue Vehicles; and
- (8) EMSF;
- (B) OCC; and
- (C) all New Third Party Infrastructure, including:
  - (1) schedule of Works;
  - (2) progress of design and review;
  - (3) identification of dependencies within overall work, and critical path items; and
  - (4) contemplated innovations, where applicable; and
- (ii) a narrative detailing progress and issues for:
  - (A) communications and public engagement;
  - (B) coordination with the Tunnel Contractor;
  - (C) coordination with the Revenue Vehicle Manufacturer;
  - (D) traffic and transit management (including upcoming road closures);
  - (E) progress for Utility Work;
  - (F) demolitions and removals;
  - (G) safety, security, and emergency management;
  - (H) Operator training;
  - (I) property access and business management plan updates;
  - (J) status update of all Permits, Licences, and Approvals; and
  - (K) environmental monitoring and compliance status;

- (e) status of all Commissioning, including:
  - (i) test-track for the Revenue Vehicles;
  - (ii) Revenue Vehicles;
  - (iii) Tunnels; and
  - (iv) New Third Party Infrastructure and status with all New Third Party Infrastructure owners;
- (f) plans for Works scheduled in the forthcoming reporting period;
- (g) goals for next reporting period (such as progress on activities, resolution of issues);
- (h) progress photos;
- (i) outstanding contractual decisions;
- (j) sustainability compliance status, including:
  - (i) LEED Certified Rating progress reports for the Eglinton Maintenance and Storage Facility;
  - (ii) Toronto Green Standard progress reports for the Project Co System Infrastructure; and
  - (iii) other sustainability measures implemented or to be implemented;
- (k) quality assurance and quality control, including:
  - (i) status of Design Quality Management Plan, Construction Quality Management Plan, Maintenance and Rehabilitation Quality Management Plan, Environmental Quality Management Plan, and Traffic Quality Management Plan;
  - (ii) status of design certificates and construction certificates;
  - (iii) update of quality control and quality assurance activities and personnel responsible;
  - (iv) monthly Quality Management System reports, Quality Audit reports and summary information from the Non-Conformance Tracking System (all as described in Schedule 11 - Quality Management); and
  - (v) status of Internal Quality Audits and External Quality Audits;
- (l) organization / staffing changes, deletions, and additions for Project Co and all Project Co Parties;

- 
- (m) status of all Submittals pursuant to the requirements of the Project Agreement;
  - (n) health and safety, including:
    - (i) threat and vulnerability log;
    - (ii) lost time injuries; and
    - (iii) accidents with no lost time;
  - (o) Subcontract status, including:
    - (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);
  - (p) financial status, including:
    - (i) all requirements of Schedule 21 - Construction Payments;
    - (ii) progress and Variations status;
    - (iii) insurance summary;
    - (iv) Construction Contractor default status; and
    - (v) an expenditure projection, including a brief narrative summary of assumptions, cash expenditure curves, other appropriate tabular reports, graphics and supporting cash flow and cash expenditure data; and
  - (q) risk management, including:
    - (i) updated risk register;
    - (ii) risk response plans requiring action from HMQ Entities
    - (iii) claims;
    - (iv) liens;

- (v) environmental issues;
- (vi) labour;
- (vii) market conditions;
- (viii) outstanding disputes;
- (ix) safety and security;
- (x) operational risks;
- (xi) Stakeholder risks; and
- (xii) other risks.

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**SCHEDULE 34**  
**HMQ ENTITIES PERMITS, LICENCES AND APPROVALS (PLAA) TABLE**

- (a) The Permits, Licences and Approvals may include, but are not limited to, those included in the tables below.
- (b) The following Responsibility Tables are for the purpose of the performance of the Works.
- (c) If, for any Permit, Licence or Approval, there is a legislative requirement for the applicant to be the HMQ Entities, then Project Co shall act as the HMQ Entities agent and will be responsible for all aspects of the application preparation and submittal process. If required, HMQ Entities will sign off on the application.
- (d) All other Permits, Licences, and Approvals not listed herein or otherwise noted, are the responsibility of Project Co.

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: HMQ Entities or Project Co
Hydro One Transmission Line Modification Agreement to enable Hydro One to modify/relocate its transmission line in the vicinity of Jonesville Crescent in order to accommodate the ECLRT (overhead catenary systems and tracks)	Hydro One		HMQ Entities to enter into Transmission Line Modification Agreements with Hydro One. Project Co, at its expense, to provide work, documents and information required for HMQ Entities to obtain and Project Co to fulfill all of HMQ Entities' obligations thereunder.
Hydro One agreement to allow for the use of the hydro corridor for the new alignment into Kennedy Station	Hydro One		HMQ Entities to enter into Agreements with Hydro One. Project Co, at its expense, to provide work, documents and information required for HMQ Entities to obtain and Project Co to fulfill all of HMQ Entities' obligations thereunder.
Hydro One agreement to allow for the use of the hydro corridor for a surface commuter parking lot north of Eglinton Avenue.	Hydro One		HMQ Entities to enter into Agreements with Hydro One. Project Co, at its expense, to provide work, documents and information required for HMQ Entities to obtain and Project Co to fulfill all of HMQ Entities' obligations thereunder.

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: HMQ Entities or Project Co
Railway Agreements at: <ul style="list-style-type: none"> <li>• Mactier Subdivision</li> <li>• Belleville Subdivision</li> </ul>	CP Rail		<ol style="list-style-type: none"> <li>(1) HMQ Entities shall, at their sole cost and expense, enter into any crossing agreements, temporary siding agreements or similar license agreements with CP Rail (the “<b>CP Licence Agreements</b>”) that are necessary in order to provide Project Co with access to such lands owned by CP Rail as are necessary for the performance of the Works, and such construction, maintenance and other agreements ancillary thereto (the “<b>Additional CP Agreements</b>”) required by CP in respect of performance of the Works, provided that Project Co shall, subject to Section (2) immediately below, be responsible for, at Project Co’s sole cost and expense,                         <ol style="list-style-type: none"> <li>(a) providing all work, documents and information required for HMQ Entities to obtain the Licence Agreements and the Additional CP Agreements; and</li> <li>(b) complying with all obligations of HMQ Entities thereunder.</li> </ol> </li> <li>(2) HMQ Entities (and not Project Co) shall be responsible for paying the licence fee(s) to CP Rail required under the Eglinton Crosstown LRT (Mount Dennis) CP Licence Agreements.</li> <li>(3) If CP Rail is prepared to enter into any Additional CP Agreement directly with Project Co and does not require HMQ Entities to be a party to such Additional CP Agreement, then HMQ Entities shall have no obligation to enter into such Additional CP Agreement.</li> </ol>

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: HMQ Entities or Project Co
Pipeline Crossing Agreements, as required	Various	HMQ Entities will secure agreements with Sarnia Products, Sun-Canadian Pipelines and Trans-Northern Pipelines for pipeline crossings in the West Don River valley.	HMQ Entities to enter into Pipeline Crossing Agreements with authorities. Project Co, at its expense, to provide work, documents and information required for HMQ Entities to obtain and Project Co to fulfill all of HMQ Entities’ obligations thereunder.
Offer to Connect (OTC)	Toronto Hydro		HMQ Entities and GO Transit will execute the Offers To Connect (OTC) with Toronto Hydro Electrical System Limited (THESL); however, Project Co to complete all work required to secure and fulfill OTC agreements including Project Requirements in Article 7 of Part 1 to Schedule 15-2 – Design and Construction Requirements - Electrical Utilities Interface Requirements.
HMQ Entities shall make applications to the Ontario Ministry of Labour (“MOL”) to designate the Site as a project for the purposes of the <i>Occupational Health and Safety Act</i> (Ontario).	MOL		Although HMQ Entities will make the initial application to the MOL to designate the Site as a project, Project Co shall make the Notice of Project application to the MOL and shall demonstrate that Project Co’s planned Construction Activities will be separated in either space or time from the Tunnel Contractor’s activities.

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**SCHEDULE 35  
LANDS**

**PART A – DEFINITIONS AND INTERPRETATION**

- (a) For the purposes of the Project Agreement,
  - (i) “**City Lands**” means the lands owned by the City upon which the New City Infrastructure is or will be located;
  - (ii) “**City Road Allowance**” means the municipal street and right of way, commonly known as Eglinton Avenue and any municipal streets or rights of way intersecting Eglinton Avenue, approximately from Weston Road to Kennedy Road;
  - (iii) “**Construction Period Lands**” means Lands designated as “Construction Period” in the column marked “Construction Period or Project Term” in the table in Part B of this Schedule 35;
  - (iv) “**Lands**” means the Metrolinx Lands and the City Road Allowance;
  - (v) “**Maintenance Period Lands**” means Lands designated as “Project Term” in the column marked “Construction Period or Project Term” in the table in Part B of this Schedule 35;
  - (vi) “**Metrolinx Easement Lands**” means lands located within the City Road Allowance representing the required location for the Project Co System Infrastructure as set out in Schedule 15 – Output Specifications;
  - (vii) “**Metrolinx Lands**” means the lands owned or to be acquired by Metrolinx or lands in respect of which Metrolinx has acquired certain rights, all as set out in the table in Part B of this Schedule 35 and HMQ Entities’ rights of access to the TTC Interchange Stations as set out in Part C of this Schedule 35 and, for clarity, includes the Metrolinx Easement Lands; and
  - (viii) “**TTC Lands**” means the lands owned by the TTC or the City upon which Existing TTC Infrastructure is, or New TTC Infrastructure will, be located.
  
- (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) Pursuant to this Schedule 35 – Lands, 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 currently contemplated in the “Restrictions and Requirements” column of Part B (for example, see Row 29 in Part B entitled, “Temporary Easement Agreement for 1860 Keele Street.pdf (Dated Oct.21, 2013)) (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)(ii) 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.
- (iii) Maintenance 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 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.
- (iv) Subject to Project Co’s obligations with respect to Permits, Licenses and Approvals and the terms and conditions of the Project Agreement, Project Co’s access to and use of the Metrolinx Lands for the purposes of the Project Operations is subject to the restrictions, qualifications and requirements contained in the applicable grant including as set out in the column marked “Restrictions and Requirements” set out in the table in Part B of this Schedule 35.
- (v) 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.
- (vi) With respect to access to the TTC OCC and BOCC,
- (A) during the Construction Period, HMQ Entities will assist Project Co in obtaining access to the TTC OCC and BOCC from TTC necessary for Project Co undertake the Project Operations in respect of the TTC OCC and BOCC; and

- (B) during the Maintenance Period, HMQ Entities will provide access to the TTC OCC and BOCC to Project Co to permit Project Co to deliver the Maintenance and Rehabilitation Services at the TTC OCC and BOCC specified in Schedule 15 – Output Specifications.
  
- (vii) Access to TTC Lands and Lands located within the TTC Zone of Influence, are subject to Project Co’s obligations with respect to the TTC Zone of Influence.

**PART B – METROLINX LANDS**

[REDACTED]

**PART C – TTC INTERCHANGE STATIONS**

HMQ Entities will obtain and provide to Project Co, subject to Project Co's obligations with respect to the terms and conditions of the Project Agreement including the TTC Zone of Influence, non-exclusive access to the Existing TTC Infrastructure set out in the table in this Part C for the purposes of Project Co undertaking the Works.

For clarity, Project Co's use of and access to the Existing TTC Infrastructure will be subject to TTC approval.

<b>TTC Station</b>	<b>Municipal Address (Description)</b>	<b>Applicable Part C PIN</b>
Eglinton West Station (Allen)	1300 Eglinton Avenue West, Toronto, Ontario (Subway Structures, Bus Terminal and Plaza)	10446-0494
Eglinton Station (Yonge)	33 Orchard View Boulevard (Subway Structure Below RioCan Food Court) See Agreement: NW 33 Orchard View (RioCan) Tunnel Easement.pdf (dated May 26, 1971)	21171-0363, Parts 3, 4, 5, 6, 7, 8, 9, 10 (Plan 64R-14268)
	2190 Yonge Street, Toronto, Ontario (Subway Station Concourse Level and Platform/ Track Level)	21172-0309
	Portal and Subway Right-of-Way – south of Berwick Avenue	21172-0256
	Pedestrian Tunnels at Yonge Street & Eglinton Avenue intersection	21136-0414 (north); 21136-0409 (east); 21134-0045 (south)
Kennedy Station	2457 Eglinton Avenue East, Toronto, Ontario (Subway Structures, Traction Power Substation and Bus Terminal)	06437-0252

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## SCHEDULE 36

## VEHICLES

## 1. DEFINITIONS

In this Schedule 36 – Vehicles, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 36 – Vehicles) shall have meanings given to them in the Project Agreement and the following items shall have the following meanings:

- 1.1 “**Approved Request for Contract Amendment**” means an amendment to the Vehicle Contract Specification that has been approved by Metrolinx and is identified as an “RFCA” in a revision or comment shown in Appendix D to Part 4 of Schedule 15-2 to the Project Agreement, as amended from time to time.
- 1.2 “**Approved Request for Waiver**” means a request for a waiver of a provision of the Vehicle Contract Specification that has been approved by Metrolinx and is identified as an “RFW” in a comment shown in Appendix D to Part 4 of Schedule 15-2 to the Project Agreement, as amended from time to time.
- 1.3 “**Built to Specification**” means designed and manufactured in accordance with the Technical Specifications (Built to Specification).
- 1.4 “**Built to Specification Deficiency List**” has the meaning given in Section 8.1(b).
- 1.5 “**Built to Specification Failures**” has the meaning given in Section 8.2(a).
- 1.6 “**Burn-in Track**” means a section of the ECLRT track connected to the EMSF via rail that,
- (a) meets all requirements to permit the Revenue Vehicle testing identified in Schedule 15 – Output Specifications and, in particular, Appendix D to Part 4 of Schedule 15-2 to the Project Agreement, TS D.6.4 and, for clarity, includes all associated Systems, facilities, and infrastructure, of any kind whatsoever, required to carry out such testing;
  - (b) is at least 1.8 km in length; and
  - (c) is configured to simulate Revenue Service as set out in Appendix D to Part 4 of Schedule 15-2 to the Project Agreement D, TS D.6.4.

Project Co acknowledges and agrees that because at least 600 km shall be run as part of the burn-in testing on each Revenue Vehicle, a Burn-in Track that exceeds the requirement set out in Section 1.6(b) will be more efficient for the purposes of testing.

- 1.7 “**Contingency Service Change**” means a modification to the Operations Service Plan which results in a requirement for Project Co to accommodate a specified Contingency Service Level.
- 1.8 “**Contingency Service Change Date**” has the meaning given in Section 19.2.

- 1.9 “**Contingency Service Level**” means the Revenue Vehicle operational parameters set out by HMQ Entities in Appendix E of this Schedule 36 and labeled as “Contingency Service Level A” and “Contingency Service Level B”.
- 1.10 “**EMSF Readiness for Delivery**” means a state of readiness of the EMSF that will permit Project Co to accept delivery of the Revenue Vehicles, by both rail and 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 Schedule 36 and Schedule 15 – Output Specifications and Project Co’s state of readiness shall include,
- (a) the provision, and ongoing maintenance, of all Systems, resources, functionality, supplies, equipment, procedures and operating protocols in respect of the delivery and receipt of the Revenue Vehicles including,
    - (i) all infrastructure required to receive the Revenue Vehicles, including the provision of a detailed Notice to HMQ Entities confirming that the infrastructure is ready to accommodate delivery and movement of the Revenue Vehicles;
    - (ii) all infrastructure required to carry out Pre-FAC Maintenance in accordance with Good Industry Standards and to ensure that such Pre-FAC Maintenance does not void any warranty provided by the Revenue Vehicle Manufacturer nor make it more difficult for a Revenue Vehicle to achieve a Final Acceptance Certificate, including powered storage for up to 30 Revenue Vehicles including,
      - (A) ability to park the Revenue Vehicles with pantographs raised with energized overhead catenary power, where the vehicles could be parked in layover mode so that car interiors can be maintained within pre-set temperature ranges;
      - (B) provision for safe access to the roofs of the stored Revenue Vehicles, such as by moving the Revenue Vehicles into the EMSF or other temporary building that has suitable roof access provisions;
      - (C) access to pits or equipment to lift the Revenue Vehicles (including suitable foundations) for access to the underside of the Revenue Vehicles;
      - (D) access to 200 amp service with 120 volt and 240 volt outlets;
      - (E) pest control;
      - (F) sufficient additional lengths of track to periodically move the Revenue Vehicles (as individual cars, or up to three car trains) under their own power up to 500 metres, such that the Revenue Vehicles could be moved under their own power a total of one to two kilometres per week;

- (G) sufficient track space to shuttle the Revenue Vehicles into and out of EMSF for periodic pre-FAC maintenance, including as may be required by the Revenue Vehicle Manufacturer, removal of snow from the roofs of the Revenue Vehicles;
  - (H) sufficient track space to shuttle the Revenue Vehicles into and out of storage on a first in, first out basis;
  - (I) provision for post-storage cleaning of the Revenue Vehicles; and
  - (J) access to Special Tools and test equipment that HMQ Entities have provided to Project Co for the Revenue Vehicles;
- (iii) the ability to carry out a safe and controlled movement of Revenue Vehicles that do not have power;
  - (iv) radio communications systems and associated wayside infrastructure required during the delivery and vehicle movement process;
  - (v) procedures and protocols for the safe movement and storage of the Revenue Vehicles that have been approved by HMQ Entities;
  - (vi) security provisions and protocols to secure and protect the Revenue Vehicles; and
  - (vii) fire protection, lighting building power and associated safety appurtenances;
- (b) the provision of an unloading area and secure storage area(s) for the Revenue Vehicle Manufacturer's equipment, spare parts and tools;
  - (c) the provision of a spur track and a Revenue Vehicle unloading ramp;
  - (d) sufficient storage capacity, including track capacity, for Revenue Vehicles as they are delivered;
  - (e) the completion of Project Co's training program (designed and delivered by Project Co) to ensure that a sufficient number of trained Project Co Drivers and other Project Co personnel are available, as required, to move the Revenue Vehicles within the EMSF;
  - (f) readiness for delivery and installation of the Training Cab Simulator;
  - (g) 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;



- (h) 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;
  - (i) access to the EMSF provided to the Revenue Vehicle Manufacturer, including the completion of facilities dedicated to the Revenue Vehicle Manufacturer as set out in Schedule 15-2 Part 6 Section 1.7 of the Project Agreement; and
  - (j) sufficient track, infrastructure, and facilities to permit Project Co to carry out all receipt, inspection and storage of Revenue Vehicles.
- 1.11 “**EMSF Test Track**” means a section of track and associated Systems, infrastructure and facilities within the EMSF sufficient to permit limited functional testing as specified in Schedule 15 – Output Specifications.
- 1.12 “**Fleet-Wide Warranty**” means the warranty that applies to the fleet of Revenue Vehicles purchased by Metrolinx in accordance with GC Section 30 of the Vehicle Contract.
- 1.13 “**Fleet-Wide Warranty Review Committee**” means a committee organized and chaired by HMQ Entities and with membership that includes Project Co, and, in HMQ’s sole discretion, other entities that have received light rail vehicles provided pursuant to the Vehicle Contract, for the purpose of,
- (a) consolidating the warranty information for all light rail vehicles, including the Revenue Vehicles, procured by HMQ Entities under the Vehicle Contract; and
  - (b) supporting Metrolinx's administration and enforcement of the warranty provisions in the Vehicle Contract .
- 1.14 “**Initial Spare Parts**” has the meaning given in Section 12.2.
- 1.15 “**On Board Equipment**” means Project Co supplied equipment that is required to be installed on each Revenue Vehicle in order to ensure compliance with and achievement of the requirements of Schedule 15 – Output Specifications.
- 1.16 “**Operational Requirements and Specifications**” has the meaning given in Schedule 15-1 – Terms and Reference Documents.
- 1.17 “**Operations Service Plan**” has the meaning given in Schedule 15-1 – Terms and Reference Documents.
- 1.18 “**Original Delivery Schedule**” has the meaning given in Section 6.1(a)(i).
- 1.19 “**Pilot Testing**” means Revenue Vehicle pilot testing to be carried out by the Revenue Vehicle Manufacturer before commencement of delivery of the Revenue Vehicles to Project Co.

- 1.20 “**Pre-FAC Maintenance**” means maintenance required to be carried out on a Revenue Vehicle, after delivery of the Revenue Vehicle to the EMSF but prior to that Revenue Vehicle achieving a Final Acceptance Certificate.
- 1.21 “**Pre-Substantial Completion Maintenance**” has the meaning given in Section 6.2(a)(iv).
- 1.22 “**Project Co Proposed Adjustments**” has the meaning given in Section 8.3(a).
- 1.23 “**Readiness for Testing and Commissioning**” means a state of readiness of the EMSF, EMSF Test Track and Burn-in Track that will permit Metrolinx, with the support of Project Co, 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 Schedule 36 and Schedule 15 – Output Specifications and shall include,
- (a) 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 including,
- (i) all infrastructure required to test and commission the Revenue Vehicles and to accommodate safe movement of the Revenue Vehicles including,
- (A) traction power system;
- (B) overhead catenary system;
- (C) signalling and train control interlocking system;
- (D) voice and data radio communication systems;
- (E) emergency trip system;
- (F) SCADA;
- (G) track;
- (H) tunnel and station emergency ventilation systems;
- (I) fire protection;
- (J) lighting and emergency lighting sufficient to carry out all testing and commissioning; and track drainage; and
- (K) any other infrastructure reasonably required to demonstrate that the infrastructure is ready to accommodate safe movement of the Revenue Vehicles;

- (ii) procedures and protocols to ensure safe movement and storage of the Revenue Vehicles anywhere within the EMSF, EMSF Test Track, Burn-in Track and any associated or connecting tracks;
  - (iii) security provisions and protocols to secure and protect the Revenue Vehicle movements on EMSF, EMSF Test Track, Burn-in Track and any associated or connecting tracks;
  - (iv) track and pit space;
  - (v) shop power for shop functions and shop power to power the Revenue Vehicle auxiliary electric system;
  - (vi) roof mezzanine access to Revenue Vehicles;
  - (vii) tools and equipment, including wheel truing capability, lifts, overhead craned to remove and install equipment and components on the Revenue Vehicle;
  - (viii) EMSF Test Track to complete all testing and commissioning requirements;
  - (ix) Burn-in Track to complete all testing and commissioning requirements; and
  - (x) sufficient track, infrastructure and facilities to carry out all Pre-FAC Maintenance and Pre-Substantial Completion Maintenance; and
- (b) Project Co's delivery and completion of a training program to allow for a sufficient number of trained Project Co Drivers and other Project Co personnel, as required, to support the testing and commissioning of the Revenue Vehicles.
- 1.24 “**Revenue Vehicle Availability Standard**” has the meaning given in Schedule 15-1 – Terms and Reference Documents.
- 1.25 “**Revenue Vehicle Design and Manufacturing Data**” has the meaning given in Section 16.
- 1.26 “**Revenue Vehicle Final Acceptance Certificate**” means the final acceptance certificate issued by Metrolinx pursuant to the Vehicle Contract.
- 1.27 “**Revenue Vehicle Final Acceptance Testing**” means Revenue Vehicle acceptance testing after delivery of the Revenue Vehicles to Project Co, which testing is led by Metrolinx and supported by Project Co and the Revenue Vehicle Manufacturer and is conducted in accordance with Appendix D to Part 4 of Schedule 15-2 to the Project Agreement. For clarity, Revenue Vehicle Final Acceptance Testing includes all acceptance tests set out in Section D 6.1, 6.3 and 6.4 of Appendix D to Part 4 of Schedule 15-2 to the Project Agreement.
- 1.28 “**Revenue Vehicle Inspections**” has the meaning given in Section 5.1.

- 1.29 “**Revenue Vehicle Maintenance and Rehabilitation Services**” means the Maintenance and Rehabilitation Services set out in Schedule 15-3 – Maintenance and Rehabilitation Requirements to be carried out by Project Co in respect of the Revenue Vehicles.
- 1.30 “**Revenue Vehicle Manufacturer**” means Bombardier Transportation Canada Inc.
- 1.31 “**Revenue Vehicle NDA**” means the confidentiality agreement, attached as Appendix G to this Schedule 36, which Project Co shall execute and deliver to the HMQ Entities and the Revenue Vehicle Manufacturer prior to Commercial Close.
- 1.32 “**Revenue Vehicle Preliminary Acceptance Testing**” means Revenue Vehicle preliminary acceptance testing to be carried out by the Revenue Vehicle Manufacturer before commencement of delivery of the Revenue Vehicles to Project Co. For clarity, Revenue Vehicle Preliminary Acceptance Testing includes all pre-delivery testing set out in Section D5 of Appendix D to Part 4 of Schedule 15-2 to the Project Agreement.
- 1.33 “**Revenue Vehicle Technical Specifications**” means the sub-set of Vehicle Contract Specifications applicable to the Project Agreement as set out in Section 4.1 (h) of Part 4 of Schedule 15-2 to the Project Agreement and any provisions in the Vehicle Contract related to the interpretation of that sub-set of Vehicle Contract Specifications, all as of the Technical Submission Deadline.
- 1.34 “**Revenue Vehicle Warranties**” means the manufacturer and supplier warranties or guarantees provided by Revenue Vehicle Manufacturer to Metrolinx in the Vehicle Contract.
- 1.35 “**Revenue Vehicle Warranties Performance Report**” has the meaning given to it in Section 13.2(a)(iv).
- 1.36 “**Special Tools**” has the meaning given to it in Section 12.3.
- 1.37 “**Specification and Performance Adjustment Process**” has the meaning given to it in Section 8.2(a).
- 1.38 “**Systems to Revenue Vehicle Interface Control Document**” has the meaning given to it in Schedule 10 – Review Procedure.
- 1.39 “**Technical Specifications (Built to Specification)**” means the sub-set of Vehicle Contract Specifications applicable to this Schedule 36, as set out in Appendix D to this Vehicles Schedule, and any provisions in the Vehicle Contract related to the interpretation of that sub-set of Vehicle Contract Specifications, including, for clarity, Approved Requests for Contract Amendment and Approved Requests for Waiver, all as of the Technical Submission Deadline.
- 1.40 “**Technical Submission Deadline**” means January 29, 2015.
- 1.41 “**Training Cab Simulator**” means a simulator for the purposes of training Drivers in the operation of Revenue Vehicles, to be provided by HMQ Entities pursuant to the requirements of Section 4.1(m) of Schedule 15-2, Part 4.

1.42 “**Vehicle Contract**” means contract C14PD10795 entered into between Metrolinx and Bombardier Transportation Canada Inc. dated June 13, 2010, as amended prior to the Technical Submission Deadline.

1.43 “**Vehicle Contract Specifications**” means the technical specifications set out in the Vehicle Contract and as defined in GC Section 1.45 of the Vehicle Contract.

## 2. GENERAL OBLIGATIONS

### 2.1 HMQ Entities General Obligations

- (a) HMQ Entities shall provide Revenue Vehicles for the Project in accordance with the following:
- (i) Provided that Project Co has achieved EMSF Readiness for Delivery and Readiness for Testing and Commissioning, HMQ Entities shall provide to Project Co,
    - (A) at least [REDACTED] Revenue Vehicles that have received Revenue Vehicle Final Acceptance Certificates at least [REDACTED] prior to the Scheduled Substantial Completion Date; and
    - (B) subject to Section 2.1(a)(ii), at least [REDACTED] Revenue Vehicles (taking into account any Revenue Vehicles delivered pursuant to Section 2.1(a)(i)(A)) that have received Revenue Vehicle Final Acceptance Certificates at least [REDACTED] prior to the Scheduled Substantial Completion Date and, subject to Section 2.1(a)(ii), are each capable of achieving Commissioning and meeting the Revenue Vehicle Availability Standard on the Scheduled Substantial Completion Date;
  - (ii) If HMQ Entities fail to comply with any one of the requirements set out in Section 2.1(a)(i)(A) or Section 2.1(a)(i)(B) such failure, in each case, 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, in the case of Section 2.1(a)(i)(B), a Revenue Vehicle’s failure to meet the Revenue Vehicle Availability Standard on the Scheduled Substantial Completion Date, does not arise from any act or omission of Project Co or any failure of Project Co to comply with its obligations pursuant to this Project Agreement;
  - (iii) Subject to Section 8.1(c)(i), HMQ Entities shall cause the Revenue Vehicles to be Built to Specification; and
  - (iv) HMQ Entities, acting reasonably and in consultation with Project Co, shall determine the schedule for carrying out Revenue Vehicle Final Acceptance Testing.

- (b) HMQ Entities shall provide the Revenue Vehicle Design and Manufacturing Data to Project Co and shall update the Revenue Vehicle Design and Manufacturing Data on an ongoing basis, subject to the following:
- (i) Project Co's right to receive Revenue Vehicle Design and Manufacturing Data shall be subject to Project Co's obligation to deliver the executed Revenue Vehicle NDA to HMQ Entities;
  - (ii) HMQ Entities' shall not be obliged to provide and update Revenue Vehicle Design and Manufacturing Data that,
    - (A) pursuant to the Vehicle Contract, Metrolinx does not have a right to receive or disseminate; or
    - (B) the Revenue Vehicle Manufacturer has refused to provide to Metrolinx, notwithstanding Metrolinx's commercially reasonable efforts, excluding litigation or arbitration, to obtain pursuant to the Vehicle Contract; and
  - (iii) HMQ Entities shall provide to Project Co,
    - (A) the first draft of the operations and maintenance manuals for the Revenue Vehicles, as soon as practical, and, in any event, no later than January 30, 2016; and
    - (B) the final draft of the operations and maintenance manuals, as soon as practical, and, in any event, no later than the delivery to Project Co of the first Revenue Vehicle.
- (c) Subject to Section 2.1(b), HMQ Entities shall provide Revenue Vehicle Design and Manufacturing Data and the associated updates by providing Project Co access to a data room for this purpose.
- (d) With respect to the Fleet-Wide Warranty, HMQ Entities shall cause all parties to whom Metrolinx has provided light rail vehicles that were provided pursuant to the Vehicle Contract to provide warranty related data and information in respect of the Fleet Wide Warranty.
- (e) HMQ Entities shall provide **[REDACTED]** Revenue Vehicles that have achieved Final Acceptance Certificates to Project Co no later than **[REDACTED]**. If HMQ Entities fails to meet their obligations pursuant to this Section 2.1(e), Project Co shall be entitled to a Variation, subject to and in accordance with Schedule 22 – Variation Procedure.

## 2.2 Project Co General Obligations

- (a) Project Co shall,
  - (i) ensure that the Project Co System Infrastructure integrates with the Revenue Vehicles in accordance with Schedule 15 – Output Specifications;
  - (ii) achieve readiness to receive delivery of Revenue Vehicles, from the Revenue Vehicle Manufacturer, receive delivery and inspect each Revenue Vehicle on arrival, carry out all Pre-Substantial Completion Maintenance (including, for clarity, all Pre-FAC Maintenance in accordance with Good Industry Standards and to ensure that such Pre-FAC Maintenance does not void any warranty provided by the Revenue Vehicle Manufacturer nor make it more difficult for a Revenue Vehicle to achieve a Final Acceptance Certificate), achieve readiness for testing and commissioning, support Metrolinx in all testing and commissioning activities, and maintain and rehabilitate the Revenue Vehicles, all in accordance with the Project Agreement;
  - (iii) provide EMSF access to the Revenue Vehicle Manufacturer, and subcontractors of the Revenue Vehicle Manufacturer, and Metrolinx, on an expedited basis, for the purpose of correcting any minor deficiencies in the Revenue Vehicles and to rectify any damage or defects sustained by the Revenue Vehicles during shipment, and to perform modifications, testing set-up, and testing of the Revenue Vehicles;
  - (iv) provide facilities for use by the Revenue Vehicle Manufacturer, and subcontractors of the Revenue Vehicle Manufacturer, when accessing the EMSF;
  - (v) subject to Section 8.1(c)(i), accept the Revenue Vehicles on an “as is” basis with the applicable Revenue Vehicle Warranties; and
  - (vi) on request by HMQ Entities, provide detailed comments on the various drafts of the operations and maintenance manuals for the Revenue Vehicles, at no additional cost or expense to HMQ Entities.

## 3. PROVISION OF ON BOARD EQUIPMENT BY PROJECT CO BEFORE DELIVERY OF THE REVENUE VEHICLES

### 3.1 On Board Equipment – Systems to Revenue Vehicle Interface Control Document

- (a) Project Co shall develop and finalize, in accordance with Schedule 10 – Review Procedure, a Systems to Revenue Vehicle Interface Control Document no later than June 30, 2016. HMQ Entities shall cause the Revenue Vehicle Manufacturer to support the development of the Systems to Revenue Vehicle Interface Control Document.

- (b) Project Co shall coordinate all interface requirements with the Revenue Vehicle Manufacturer in accordance with Schedule 15 – Output Specifications.
- (c) Project Co acknowledges and agrees that once the Systems to Revenue Vehicle Interface Control Document has been finalized pursuant to Schedule 10 – Review Procedure, HMQ Entities shall, based on the final Systems to Revenue Vehicle Interface Control Document, cause the Revenue Vehicle Manufacturer to,
  - (i) support Project Co in the finalization of On Board Equipment integration; and
  - (ii) carry out the receipt and installation of the On Board Equipment,by issuing a change order to the Revenue Vehicle Manufacturer (pursuant to the Vehicle Contract), at HMQ Entities' expense.

### 3.2 On Board Equipment Installation

- (a) Project Co shall,
  - (i) develop all On Board Equipment in accordance with Schedule 15 – Output Specifications;
  - (ii) provide all On Board Equipment to the Revenue Vehicle Manufacturer at least 60 Business Days prior to the anticipated commencement of final assembly of each Revenue Vehicle or as otherwise agreed with HMQ Entities;
  - (iii) participate in On Board Equipment scoping, design reviews, first article inspections and provide its disposition to various technical and commercial submittals and issues that may arise during the course of the Revenue Vehicle Manufacturer's work regarding the On Board Equipment;
  - (iv) ensure that the On Board Equipment is ready for installation, including all applicable hardware, cables, mounting brackets, software and installation manuals and procedures;
  - (v) ensure that all pre-installation testing and certification has been performed on the On Board Equipment, including environmental compliance testing and certification, in accordance with Schedule 14 – Commissioning;
  - (vi) coordinate with and support the Revenue Vehicle Manufacturer in the Revenue Vehicle Manufacturer's installation of the On Board Equipment; and
  - (vii) support post-installation check out testing and reporting of the On Board Equipment, as directed by HMQ Entities.



**4. READINESS FOR DELIVERY AND FINAL ACCEPTANCE TESTING (EMSF, TEST TRACK AND BURN-IN TRACK)**

- 4.1 Project Co shall provide the EMSF, EMSF Test Track and Burn-in Track in accordance with Schedule 15 – Output Specifications and shall,
- (a) achieve EMSF Readiness for Delivery no later than 30 days prior to the date of delivery of the first Revenue Vehicles, in accordance with the Original Delivery Schedule;
  - (b) achieve Readiness for Testing and Commissioning no later than 540 days prior to the Scheduled Substantial Completion Date;
  - (c) maintain EMSF Readiness for Delivery until all Revenue Vehicles have been delivered to the EMSF;
  - (d) maintain Readiness for Testing and Commissioning until all Revenue Vehicles have achieved Revenue Vehicle Final Acceptance Certificates; and
  - (e) achieve Substantial Completion of the EMSF, EMSF Test Track and Burn-in Track by the Scheduled Substantial Completion Date.
- 4.2 For clarity, in the event that HMQ Entities amend the Original Delivery Schedule to deliver the Revenue Vehicles later than anticipated by the Original Delivery Schedule, Project Co shall not be eligible for a Delay Event or a Compensation Event, arising from Project Co having achieved EMSF Readiness for Delivery or having achieved Readiness for Testing and Commissioning based on the Original Delivery Schedule.
- 4.3 If Project Co, acting reasonably, determines that it is likely to fail to meet its obligation to achieve EMSF Readiness for Delivery or Readiness for Testing and Commissioning in accordance with this Schedule 36, including, for clarity, in accordance with the required timelines in this Schedule 36, Project Co shall make alternate arrangements, at Project Co's cost and expense, to achieve the equivalent of EMSF Readiness for Delivery and Readiness for Testing and Commissioning, as applicable, using alternate facilities. For clarity, Project Co's obligations pursuant to this Section 4.3 shall also apply in the circumstance where Project Co neglects to make an advance determination that it is "likely to fail" to meet its obligation to achieve EMSF Readiness for Delivery or Readiness for Testing and Commissioning but does, in fact, fail to achieve EMSF Readiness for Delivery or Readiness for Testing and Commissioning in accordance with this Schedule 36.
- 4.4 Project Co shall continue to provide all services set out in this Schedule 36 in respect of,
- (a) the receipt of delivery of Revenue Vehicles; and
  - (b) Revenue Vehicle Final Acceptance Testing,

until all Revenue Vehicles have received Revenue Vehicle Final Acceptance Certificates, even if delivery of a portion of the Revenue Vehicles or Revenue Vehicle Final Acceptance Testing for a portion of the Revenue Vehicles occurs after Substantial Completion.

- 4.5 HMQ Entities shall provide Project Co with at least 14 days' Notice of each delivery of Revenue Vehicles that occurs after Substantial Completion.

## 5. PRE-DELIVERY INSPECTIONS OF THE REVENUE VEHICLES

- 5.1 Project Co shall participate, as an observer, in inspections of the Revenue Vehicles being carried out by Metrolinx prior to delivery of the Revenue Vehicles to the EMSF ("**Revenue Vehicle Inspections**"). Such participation in Revenue Vehicle Inspections shall include,
- (a) if Pilot Testing occurs after Financial Close, attendance at Pilot Testing;
  - (b) participation in inspections during the installation and testing of On Board Equipment;
  - (c) attendance at and monitoring of Revenue Vehicle Preliminary Acceptance Testing; and
  - (d) participation in regular inspections carried out by Metrolinx if Project Co's participation is requested by either HMQ Entities or Project Co.
- 5.2 Project Co may request participation in any inspection being conducted by Metrolinx, request the establishment of regular, periodic participation in inspections by making such a request to the HMQ Representative no later than seven days prior to the anticipated inspection date. HMQ Entities shall make commercially reasonable efforts to grant such requests.
- 5.3 While participating in the Revenue Vehicle Inspections, Project Co shall not interfere with either the inspections being conducted by Metrolinx or the activities being carried out by the Revenue Vehicle Manufacturer. Project Co shall record and report all findings of Project Co, to HMQ Entities, arising from Project Co's participation in the Revenue Vehicle Inspections.
- 5.4 If, during the course of its participation in the Revenue Vehicle Inspections, or at any other time, Project Co makes any observation that causes Project Co to form the opinion that any Revenue Vehicle is not being Built to Specification, Project Co shall immediately give Notice to HMQ Entities of such observation and opinion. If Project Co fails to give Notice to HMQ Entities pursuant to this Section 5.4, such failure shall be at Project Co's risk and Project Co shall be precluded from receiving the benefit of the Specification and Performance Adjustment Process in respect of any corresponding Built to Specification Failure.
- 5.5 HMQ Entities shall facilitate and schedule all Revenue Vehicle Inspections on behalf of Project Co and shall have an HMQ Entities representative accompany Project Co on its Revenue Vehicle Inspections.
- 5.6 Project Co shall participate in the preparation and resolution of the Metrolinx Revenue Vehicle deficiency list for each Revenue Vehicle.

**6. REVENUE VEHICLES DELIVERY, INITIAL STORAGE AND REVENUE VEHICLE MANUFACTURER MODIFICATIONS**

## 6.1 HMQ Entities' Obligations Regarding Delivery

- (a) HMQ Entities,
- (i) shall, subject to Section 6.1(a)(iii), cause the Revenue Vehicles to be delivered to Project Co on a regular basis generally in accordance with the quantities and the delivery schedule set out in Appendix A to this Schedule 36 as of the Technical Submission Deadline (the “**Original Delivery Schedule**”);
  - (ii) shall cause the Revenue Vehicle Manufacturer to deliver no more than 6 Revenue Vehicles in any single month;
  - (iii) may, subject to Section 2.1(a)(i), amend the Original Delivery Schedule provided that HMQ Entities make commercially reasonable efforts to,
    - (A) require the Revenue Vehicle Manufacturer to deliver the Revenue Vehicles in accordance with the Original Delivery Schedule; and
    - (B) require the Revenue Vehicle Manufacturer, notwithstanding an amendment to the Original Delivery Schedule, to deliver the Revenue Vehicles on a regular basis and in a similar flow of quantities to that set out in the Original Delivery Schedule; and
  - (iv) shall cause the Revenue Vehicles to be delivered to the EMSF Site or, if Section 4.3 is applicable, at the alternate location.

## 6.2 Project Co Obligations

- (a) Project Co shall,
- (i) accept delivery of the Revenue Vehicles in accordance with the quantities and schedule for delivery of the Revenue Vehicles set out in Appendix A to this Schedule 36, as amended from time to time in accordance with Section 6.1(a)(iii);
  - (ii) carry out all administrative and ancillary duties related to accepting delivery of the Revenue Vehicles on behalf of Metrolinx;
  - (iii) for each Revenue Vehicle delivery, inspect each Revenue Vehicle on arrival and, no later than two days after delivery of the applicable Revenue Vehicle, provide a detailed report to Metrolinx setting out any damage or defects sustained by the Revenue Vehicles during shipment taking into account the pre-shipment condition provided in the shipper's documentation; and

- (iv) carry out all pre-Substantial Completion maintenance and activities including,
  - (A) storing the Revenue Vehicles at the EMSF in accordance with Schedule 15 – Output Specifications;
  - (B) moving the Revenue Vehicles to the work shop facilities for post-delivery set-up, testing readiness and static testing and carrying out all Revenue Vehicle re-railing readiness and re-railing work, as required;
  - (C) as required, placing the Revenue Vehicles on lifts or over pits for the purpose of under-car maintenance;
  - (D) as required, providing roof-top access to the Revenue Vehicles and appropriate interlocks with the overhead power in the work shop;
  - (E) installing and removing test equipment, excluding test equipment to be installed on or removed from a Revenue Vehicle itself;
  - (F) establishing and implementing shop and wayside operating procedures;
  - (G) carrying out all maintenance normally carried out by a prudent owner to keep the Revenue Vehicles in a condition such that the Revenue Vehicles are ready for Revenue Service at Substantial Completion and at all times thereafter;
  - (H) provide support to the Revenue Vehicle Manufacturer in the installation, inspection and testing of modifications made by the Revenue Vehicle Manufacturer after delivery;
  - (I) establishing and implementing reasonable shop safety interlocks;
  - (J) subject to Section 12, providing the spare parts required to carry out all required maintenance prior to Substantial Completion;
  - (K) establishing and implement all record-keeping systems required by the Project Agreement in respect of the Revenue Vehicles;
  - (L) carrying out spare parts configuration management;
  - (M) receiving, storing and carrying out all testing and configuration of special tools, including the management of the related testing software;
  - (N) carrying out all Revenue Vehicle hostling in to and out of the shop;
  - (O) coupling and uncoupling Revenue Vehicles and carrying out associated checks to ensure that the Revenue Vehicles are road worthy;

- (P) coordinating with emergency responders to coordinate responses to Revenue Vehicle issues that may arise;
  - (Q) ensuring the EMSF Test Track and Burn-in Track is ready for testing;
  - (R) providing security for the Revenue Vehicles, providing rescue vehicles to bring in or move a failed Revenue Vehicle and providing emergency towing operations;
  - (S) after delivery of the Revenue Vehicles to the EMSF, carrying out all recordkeeping in respect of the Revenue Vehicles as required by the Project Agreement, including managing Revenue Vehicles records provided by the Revenue Vehicle Manufacturer;
  - (T) providing ongoing Revenue Vehicle operations and maintenance training including first responder firefighting training and evacuation procedures; and
  - (U) maintaining all Systems required to support maintenance and testing activities,
- (collectively, “**Pre-Substantial Completion Maintenance**”).

## 7. REVENUE VEHICLE FINAL ACCEPTANCE TESTING

### 7.1 HMQ Entities’ Obligations in Revenue Vehicle Final Acceptance Testing

- (a) HMQ Entities shall,
  - (i) direct all testing, in conjunction with Revenue Vehicle Manufacturer and at the EMSF, EMSF Test Track and Burn-in Track, required for each Revenue Vehicle to achieve the requirements for a Revenue Vehicle Final Acceptance Certificate in accordance with the Vehicle Contract; and
  - (ii) permit Project Co to monitor all aspects of the Revenue Vehicle Final Acceptance Testing and provide Project Co with all testing information and documentation.
- (b) For clarity,
  - (i) Project Co acknowledges and agrees that its obligation with respect to Final Acceptance Testing is to provide HMQ Entities with the operating and supervisory personnel necessary to implement the Final Acceptance Testing regime, excluding the work and services that are the responsibility of the Revenue Vehicle Manufacturer (pursuant to the Vehicle Contract) or are the responsibility of HMQ Entities (pursuant to the Vehicle Contract and this Project Agreement); and

- (ii) HMQ Entities acknowledge and agree that their obligations with respect to Revenue Vehicle Final Acceptance Testing are to,
  - (A) manage all aspects of the actual Revenue Vehicle Final Acceptance Testing process in accordance with testing protocols; and
  - (B) exercise all judgement required to determine whether or not a Revenue Vehicle has achieved Final Acceptance.

## 7.2 Project Co Obligations in Revenue Vehicle Final Acceptance Testing

- (a) Project Co shall achieve Readiness for Testing and Commissioning in accordance with Section 4.1(b) and shall provide the operating staff and supervisory personnel necessary to support HMQ Entities in carrying out Revenue Vehicle Final Acceptance Testing including,
  - (i) supporting all post-delivery set-up, testing readiness, and static and dynamic testing of the Revenue Vehicles;
  - (ii) carrying out all day to day functions (and providing the personnel required) to support the Revenue Vehicle Final Acceptance Testing process, including,
    - (A) identification of Revenue Vehicles (from among those delivered to the EMSF) to be tested on the applicable testing day after consultation with Metrolinx and the Revenue Vehicle Manufacturer;
    - (B) retrieval of the appropriate Revenue Vehicles and assembly of the Revenue Vehicles into the test Train and the completion of all necessary Revenue Vehicle make-up into the test Revenue Vehicle;
    - (C) if required, clearance of all snow and ice from the track and switches being used for the Revenue Vehicle Final Acceptance Testing process and establish the appropriate routing, ahead of testing, for the Train to be moved to the location where any pre-test preparation is to be performed;
    - (D) inspection of the Revenue Vehicles to be tested to ensure that the Revenue Vehicle is in appropriate condition to commence testing including conducting a pre-departure check and review of component elements of the Revenue Vehicles (including, for example, operational wipers, operational doors, cleanliness, functional communications equipment and similar operational features);
    - (E) as required, washing the exterior of the Revenue Vehicle before testing to ensure the Revenue Vehicle is presentable to the public during testing;

- (F) as required, movement of the Revenue Vehicle into the EMSF shop to permit the installation of test equipment, test equipment connections and check-out;
  - (G) preparing and providing pre-test safety briefings and file all required Project Co site-specific plans for testing;
  - (H) coordinating all clearing of all track and sites for the day's Revenue Vehicle Final Acceptance Testing process;
  - (I) alignment of all switches for the Revenue Vehicle Final Acceptance Testing process;
  - (J) providing the Train operator and, as appropriate, supervisor and other test witnessing personnel on board the Train;
  - (K) moving the Train to the departure area for the Revenue Vehicle Final Acceptance Testing process;
  - (L) carrying out all required pre-departure signaling tests to be sure all signalling is functioning properly;
  - (M) making all arrangements to protect the route on which the Revenue Vehicle Final Acceptance Testing process will proceed;
  - (N) ensuring the safe Train movement over the route of the Revenue Vehicle Final Acceptance Testing including all arrangements for grade crossing protection, Station closure, and notices to construction personnel;
  - (O) operate the Train in accordance with the test plan and under the general direction of Metrolinx and the Revenue Vehicle Manufacturer while ensuring that the Train is being operated safely and in accordance with all applicable operating rules and procedures and the Applicable Law; and
  - (P) receiving and reviewing test results as they are provided to HMQ Entities and Project Co; and
- (iii) cooperating, and causing all Project Co Parties to cooperate, with the Revenue Vehicle Manufacturer, and providing access to the EMSF and the ECLRT System for the Revenue Vehicle Manufacturer for the purpose of Revenue Vehicle Revenue Vehicle Final Acceptance Testing.

**8. BUILT TO SPECIFICATION DETERMINATION AND REVENUE VEHICLE SPECIFICATION AND PERFORMANCE ADJUSTMENT PROCESS**

## 8.1 Built to Specification Failure Determination

- (a) Project Co acknowledges and agrees that,
- (i) the “**Technical Specifications (Built to Specification)**” are a specific sub-set of the Revenue Vehicle Technical Specifications and the provisions of this Section 8 apply to the failure of a Revenue Vehicle to be compliant with one or more of the Technical Specifications (Built to Specification) only;
  - (ii) for clarity, this Section 8 does not apply to a failure of a Revenue Vehicle to comply with the Revenue Vehicle Technical Specifications, except to the extent that such Revenue Vehicle Technical Specification is listed in Appendix D to this Schedule 36 as a Technical Specification (Built to Specification);
  - (iii) operations during, and maintenance prior to, testing shall be in accordance with the operations and maintenance manuals provided by the Revenue Vehicle Manufacturer; and
  - (iv) when determining whether a Revenue Vehicle has failed to comply with one or more Technical Specification (Built to Specification), the Parties and the Independent Certifier shall have regard to the approach to testing and the types of data listed in Appendix D to this Schedule 36.
- (b) No later than three Business Days after Revenue Vehicle Final Acceptance Testing is complete for a Revenue Vehicle, Project Co shall submit a list of all deficiencies in the applicable Revenue Vehicle that, in Project Co’s opinion, result in the Revenue Vehicle being non-compliant with one or more Technical Specification (Built to Specification) (the “**Built to Specification Deficiency List**”).
- (c) HMQ Entities shall review and consider the Built to Specification Deficiency List for each Revenue Vehicle, if any, and, in respect of each deficiency listed on the Built to Specification Deficiency List, may,
- (i) accept the deficiency or deficiencies, subject to the Specification and Performance Adjustment Process set out in Sections 8.2, 8.3, and 8.4;
  - (ii) arrange for the correction of the deficiency or deficiencies by the Revenue Vehicle Manufacturer or an Additional Contractor;
  - (iii) require Project Co to correct the deficiency or deficiencies by issuing a Variation Directive in accordance with Schedule 22 – Variation Procedure; or
  - (iv) Dispute the deficiency or deficiencies.



- (d) In the event that HMQ Entities elect to Dispute any deficiency or deficiencies set out in the Built to Specification Deficiency List for a Revenue Vehicle, HMQ Entities shall refer such Dispute to the Independent Certifier no later than 5 Business Days after receipt of a Built to Specification Deficiency List for a Revenue Vehicle.
- (e) In the event that a Dispute related to a deficiency on the Built to Specification Deficiency List has been referred to the Independent Certifier pursuant to Section 8.1(d) for final determination, the Parties shall cause the Independent Certifier, no later than 30 days after the Dispute is referred to the Independent Certifier, to determine either,
  - (i) that deficiency or deficiencies in the applicable Revenue Vehicle constitute a failure of the Revenue Vehicle to be Built to Specification; or
  - (ii) that the applicable Revenue Vehicle has been Built to Specification.
- (f) In the event that the Independent Certifier determines, in accordance with Section 8.1(e)(i), that a Revenue Vehicle has not been Built to Specification HMQ Entities may,
  - (i) accept the deficiency or deficiencies, subject to the Specification and Performance Adjustment Process set out in Sections 8.2, 8.3, and 8.4;
  - (ii) arrange for the correction of the deficiency or deficiencies by the Revenue Vehicle Manufacturer or an Additional Contractor; or
  - (iii) require Project Co to correct the deficiency or deficiencies by issuing a Variation Directive in accordance with Schedule 22 – Variation Procedure.

## 8.2 Specification and Performance Adjustment Process – General

- (a) If a Revenue Service Vehicle,
  - (i) is not compliant with one or more Technical Specifications (Built to Specification) (each failure to comply a, “**Built to Specification Failure**”) as determined pursuant to Section 8.1; and
  - (ii) HMQ Entities have elected not to correct the Built to Specification Failure,

HMQ Entities shall carry out the Revenue Vehicle specification and performance adjustment process (the “**Specification and Performance Adjustment Process**”) in accordance with this Section 8.2 and Sections 8.3, and 8.4.
- (b) The purpose of the Specification and Performance Adjustment Process is to,
  - (i) identify and record the Built to Specifications Failure(s) of each Revenue Vehicle that is being accepted by HMQ Entities, on a Revenue Vehicle by Revenue Vehicle basis and for HMQ Entities to formally accept the Built to Specifications Failures; and

- (ii) adjust the Operational Requirements and Specifications in accordance with Section 8.4 to reflect the actual performance capabilities when operated and maintained in accordance with the operations and maintenance manuals provided by the Revenue Vehicle Manufacturer of the fleet of Revenue Vehicles that have received Revenue Vehicle Final Acceptance Certificates.

### 8.3 Acceptance of Built to Specification Failures for Individual Revenue Vehicles

- (a) Project Co shall provide to HMQ Entities, no later than 5 Business Days after a Revenue Vehicle is determined to have Built to Specifications Failures pursuant to Section 8.1, a Revenue Vehicle profile identifying the particular Revenue Vehicle and detailing each Built to Specification Failure of that Revenue Vehicle (each, a **“Draft Revenue Vehicle Failure Report”**).
- (b) HMQ Entities shall review each Draft Revenue Vehicle Failure Report and, no later than 5 Business Days after receipt of each Draft Revenue Vehicle Failure Report shall confirm to Project Co that it accepts the Revenue Vehicle Failure Report (each a **“Final Revenue Vehicle Failure Report”**).
- (c) In respect of each Revenue Vehicle that is the subject of a Final Revenue Vehicle Report, such Revenue Vehicle, shall not be required to comply with those requirements of the Output Specifications that the Revenue Vehicle is incapable of complying with provided that, such failure to comply is directly related to one or more of the Revenue Vehicle’s Built to Specification Failures.
- (d) For clarity, Section 8.3(c) shall not apply to a Revenue Vehicle that does not comply with the Output Specifications because the Revenue Vehicle does not meet a Revenue Vehicle Technical Specification that is not a Technical Specification (Built to Specification).

### 8.4 Adjustments to the Operational Requirements and Specifications

- (a) If HMQ Entities have declined to correct defects and deficiencies in a Revenue Vehicle determined to have one or more Built to Specifications Failure(s) in accordance with Section 8.1, HMQ Entities shall carry out an adjustment of the Operational Requirements and Specifications, at the intervals set out in Section 8.4(f).
- (b) No later than 30 days after each of the accumulation of Revenue Vehicles set out in Section 8.4(f), Project Co shall provide to HMQ Entities, a list of its proposed revisions to the Operational Requirements and Specifications taking into account the performance capability of the Revenue Vehicles that have achieved Revenue Vehicle Final Acceptance Certificates (at the applicable time) measured in accordance with the approach to testing and the types of data listed in Appendix D to this Schedule 36 (the **“Project Co Proposed Adjustments”**).
- (c) No later than 30 days after HMQ Entities’ receipt of the Project Co Proposed Adjustments, HMQ Entities shall provide a detailed response to each of the Project Co

Proposed Adjustments and, if applicable, HMQ Entities proposed Performance Adjustments (“**HMQ Entities Proposed Adjustments**”).

- (d) In the event that Project Co and HMQ Entities cannot agree on the final adjustments to the Operational Requirements and Specifications for any interval set out in Section 8.4(f), the Dispute shall be referred to the Independent Certifier for resolution no later than 30 days after the Dispute is submitted and the Operational Requirements and Specifications shall be adjusted accordingly.
- (e) The performance adjustments to the Operational Requirements and Specifications, as adjusted by agreement by the Parties or by a determination by the Independent Certifier shall be referred to as the “Final Requirements and Specifications Adjustments”.
- (f) The Parties shall complete the actions set out in Sections 8.4(a), 8.4(b), 8.4(c), 8.4(d), and 8.4(e) at the following intervals:
  - (i) Project Co has received an accumulation of 42 Revenue Vehicles that have achieved Financial Acceptance Certificates and have completed the process set out in Section 8.1;
  - (ii) Project Co has received an accumulation of 58 Revenue Vehicles that have achieved Financial Acceptance Certificates and have completed the process set out in Section 8.1; and
  - (iii) Project Co has received an accumulation of 76 Revenue Vehicles that have achieved Financial Acceptance Certificates and have completed the process set out in Section 8.1.
- (g) For clarity, the process set out in this Section 8.4 shall proceed as set out irrespective of the timing of the delivery of the Revenue Vehicles, the timing of Revenue Vehicle Final Acceptance, and before and after Substantial Completion.

#### 8.5 Revenue Service and Disputes

- (a) Provided that Project Co has achieved Substantial Completion, if Project Co or HMQ Entities Dispute a matter pursuant to this Section 8 and the Dispute is unresolved, HMQ Entities may, in its sole discretion, require Project Co to commence Revenue Service, notwithstanding such Dispute.

### 9. REVENUE VEHICLE, SUBSTANTIAL COMPLETION AND SERVICE LEVELS

9.1 HMQ Entities may, in their sole discretion, waive the obligation of Project Co to have 42 Revenue Vehicles available for Revenue Service as of the Substantial Completion Date in accordance with the following:

- (a) HMQ Entities shall not waive the Project Co obligation unless HMQ Entities have fulfilled their obligation pursuant to Section 2.1(a)(i)(A);

- (b) Project Co shall be obliged to achieve only the Contingency Service Level appropriate to the number of Revenue Vehicles that have received Revenue Service Final Acceptance Certificates by the date which is 180 days prior to Scheduled Substantial Completion, subject to HMQ Entities requiring Project Co to implement that Contingency Service Level, as set out in Section 19;
- (c) if HMQ Entities waive the obligation of Project Co to have 42 Revenue Vehicles available for Revenue Service as of the Substantial Completion Date, Project Co shall not be eligible for the Delay Event or Compensation Event set out in Section 2.1(a)(ii) in respect of HMQ Entities' failure to comply with Section 2.1(a)(i)(B);
- (d) HMQ Entities shall communicate any waiver pursuant to this Section 9.1 to the Independent Certifier and, for clarity, such waiver shall be binding on the Independent Certifier; and
- (e) an HMQ Entities' waiver pursuant to this Section 9.1 shall not reduce the Substantial Completion Payment.

## **10. REVENUE VEHICLE SYSTEM INTEGRATION**

- 10.1 Project Co shall carry out all integration activities in accordance with Schedule 15 – Output Specifications.
- 10.2 If an integration activity requires the use of one or more Revenue Vehicles, Project Co shall not commence such integration activity until after the issuance of the Revenue Vehicle Final Acceptance Certificate for the applicable Revenue Vehicle.

## **11. REVENUE VEHICLE MAINTENANCE AND REHABILITATION**

- 11.1 Project Co shall commence the Revenue Vehicle Maintenance and Rehabilitation Services in accordance with Schedule 15 – Output Specifications as of Substantial Completion.
- 11.2 HMQ Entities, through the Revenue Vehicle Manufacturer, shall provide Project Co operations, maintenance and engineering training associated with the Revenue Vehicles as described in Section 28 of Appendix D of Part 4 of Schedule 15-2. The training delivery strategy for Project Co staff provided by HMQ Entities shall be in accordance with Sections 28.5 and 28.6 of Appendix D of Part 4 of Schedule 15-2. Computer-based training shall be a part of the training delivery strategy and such computer-based training shall be provided by the Revenue Vehicle Manufacturer. Project Co shall provide the computer hardware and software applications to accommodate the training developed by the Revenue Vehicle Manufacturer.

## **12. SPARE PARTS AND SPECIAL TOOLS**

- 12.1 Project Co shall obtain, store and manage all spare parts and tools in respect of the Revenue Vehicles in accordance with the following:
  - (a) Project Co shall carry out all configuration control;

- (b) Project Co shall be responsible for all inventory controls and the management of all spare parts and special tools warranties; and
  - (c) Project Co shall provide for the proper storage of all spare parts and tools.
- 12.2 HMQ Entities shall provide Project Co with the initial spare parts listed in Appendix B which represents an initial supply of spare parts (maintenance spares and capital spares) as recommended by the Revenue Vehicle Manufacturer (the “**Initial Spare Parts**”). The Initial Spare Parts will be delivered to the EMSF concurrent with the delivery of the approximately the first Revenue Vehicle, and may be delivered over the course of several weeks in several deliveries. The Initial Spare Parts are provided to Project Co for its use in maintaining the Revenue Vehicles. Project Co shall be responsible for the supply of all spare parts needed for the on-going maintenance and operation of the Revenue Vehicles.
- 12.3 HMQ Entities shall provide Project Co with the test equipment, seized axle/wheel dolly, and special tools and fixtures as listed in Appendix C (collectively, “**Special Tools**”). The Special Tools will be delivered to the EMSF concurrent with the delivery of approximately the first Revenue Vehicle, and may be delivered over the course of several weeks in several deliveries. The Special Tools are provided to Project Co for its use in maintaining and operating the Revenue Vehicles. Project Co shall be responsible for any other special tools that may be needed for the on-going maintenance and operation of the Revenue Vehicles, including the replacement of the Special Tools as required.

### 13. REVENUE VEHICLE WARRANTIES AND WARRANTY WORK

#### 13.1 Revenue Vehicle Warranties

- (a) Project Co acknowledges and agrees that the Revenue Vehicles will have only those Revenue Vehicle Warranties explicitly set out in GC Section 29, GC Section 30 and GC Section 68 of the Vehicle Contract and that such Revenue Vehicle Warranties shall commence on the date the Revenue Vehicle is delivered to the EMSF.
- (b) Project Co shall,
  - (i) identify and manage all Revenue Vehicle Warranties and all associated requirements; and
  - (ii) collect, manage and store all data and information required in respect of the Revenue Vehicle Warranties.

#### 13.2 Warranty Work by the Revenue Vehicle Manufacturer – General

- (a) Project Co shall identify and manage all Revenue Vehicle Warranties and all related claims and work, on behalf of the HMQ Entities, after delivery of the Revenue Vehicles to Project Co, including,

- (i) acting as a single point of contract for the Revenue Vehicle Manufacturer in connection with all Revenue Vehicle Warranties;
- (ii) administration, coordination, management and enforcement of all Revenue Vehicle Warranties;
- (iii) monitoring and inspecting the Revenue Vehicles on an ongoing basis and immediately (and in any event no later than two Business Days after the occurrence) reporting to HMQ Entities all Revenue Vehicle claims available and/or being pursued;
- (iv) submitting monthly reports to HMQ Entities showing the performance Revenue Vehicles against the Revenue Vehicle Warranties, claims, historic trends, forecasts, and commentary (the “**Revenue Vehicle Warranties Performance Report**”), in accordance with the procedural requirements set out in Schedule 10 – Review Procedure;
- (v) arranging reasonable access to the applicable Revenue Vehicle taking into account the access obligations set out in the Vehicle Contract; and
- (vi) arranging for the Revenue Vehicle Manufacturer to use utilities available on the site of the Revenue Vehicle Warranty work including power and water and toilet facilities.

### 13.3 Fleet-Wide Warranties

- (a) Project Co acknowledges and agrees that latent defect claims by Project Co, of any kind whatsoever, with respect to the Revenue Vehicles shall be limited to claims that can be satisfied by the warranty set out in GC Section 30 and GC Section 68 of the Vehicle Contract. For clarity, any latent defect not covered by the warranty set out in GC Section 30 or GC Section 68 shall be at Project Co’s risk and shall be Project Co’s responsibility to rectify.
- (b) Project Co acknowledges and agrees that, in respect of the Fleet-Wide Warranty, Project Co shall,
  - (i) collect, manage and store all information and data (in respect of the Revenue Vehicles) that is required to be collected, managed and stored for the purpose of the Fleet-Wide Warranty;
  - (ii) to the extent HMQ Entities have met their obligation pursuant to Section 2.1(d), collect and store all data and information in respect of the Fleet-Wide Warranty related to the entire fleet of vehicles to which the Fleet-Wide Warranty applies and maintain and update the fleet-wide data base required to assert a claim under the Fleet-Wide Warranty;

- (iii) submit all data and information required in respect of the Fleet-Wide Warranty to HMQ Entities, Metrolinx, the Fleet-Wide Warranty Review Committee and to any other party to whom Metrolinx has provided vehicles to which the Fleet-Wide Warranty applies; and
- (iv) participate in the Fleet-Wide Warranty Review Committee.

#### 14. RISK OF LOSS

- 14.1 Project Co shall assume all responsibility for the risk of loss or damage or destruction to a Revenue Vehicle once that Revenue Vehicle has been unloaded on to the EMSF site or, if Section 4.3 is applicable, once that Revenue Vehicle has been unloaded at the alternate location.

#### 15. INTELLECTUAL PROPERTY

- 15.1 Project Co acknowledges and agrees that it shall carry out the Revenue Vehicle Maintenance and Rehabilitation Services with access to only the Intellectual Property that Metrolinx is able to obtain, and provide to Project Co, using commercially reasonable efforts, but excluding litigation or arbitration, pursuant to the Vehicle Contract.

#### 16. REVENUE VEHICLE DESIGN AND MANUFACTURING DATA

- 16.1 The following Revenue Vehicle design and manufacturing data shall be considered to be the “Revenue Vehicle Design and Manufacturing Data”:
- (a) Revenue Vehicle Technical Specifications;
  - (b) contract drawings;
  - (c) contract change orders (drawings and specifications excluding pricing information);
  - (d) as-built and other record drawings;
  - (e) shop drawings and technical submittals issued for manufacturing;
  - (f) permits, licences and approvals in respect of the Revenue Vehicles;
  - (g) copies of Metrolinx inspection and test reports on the Revenue Vehicles;
  - (h) vehicle history book for each Revenue Vehicle; and
  - (i) operation and maintenance manuals (when available from the Revenue Vehicle Manufacturer).

**17. USE OF REVENUE VEHICLES BY PROJECT CO FOR TESTING OF THE PROJECT CO SYSTEM INFRASTRUCTURE**

17.1 HMQ Entities acknowledge and agree that Project Co may be required to use the first six Revenue Vehicles that are delivered to the EMSF to carry out its own requirements for testing and commissioning the Project Co System Infrastructure. If Project Co uses one or more of the first six Revenue Vehicles to carry out testing and commissioning of the Project Co System Infrastructure, the following shall apply:

- (a) such Revenue Service Vehicles shall be required to progress through Final Acceptance Testing, excluding burn-in testing and excluding the Final Acceptance Certificate, prior to use in testing and commissioning the Project Co System Infrastructure; and
- (b) such Revenue Service Vehicles shall be required to achieve Final Acceptance Certificates, notwithstanding Project Co's use of the Revenue Vehicles for testing and commissioning of the Project Co System Infrastructure.

**18. PERFORMANCE MEASURES**

18.1 Application of Performance Criteria

- (a) The Performance Criteria set out in Section 18.2 of this Schedule 36 have been established in accordance with Schedule 20 – Payment Mechanism.
- (b) Project Co shall achieve the Performance Criteria set out in Section 18.2 of this Schedule 36 during the Maintenance Period. For clarity, the Quality Failures and associated Deductions set out in Section 18.2 of this Schedule 36 shall be applicable after the Substantial Completion Date.

18.2 Performance Criteria

Legend for Table 18.2.1			
Failure Type	Failure Category	Response, Rectification, Remediation	Recording Frequency
“SF” means Service Failure.	“Major” means Major Failure Category.	“Resp. Time” means Response Time.	“PR” means per request.
“QF” means Quality Failure.	“Medium” means Medium Failure Category.	“Rect. Time” means Rectification Time.	“PE” means per Event.
	“Minor” means a Minor Failure Category.	“Remed. Period” means Remedial Period.	“D” means daily.
		“I” means Immediately.	“W” means weekly.
		“N/A” means not applicable.	“M” means monthly.
		“NOD” means the next operational day before the next start of Revenue Service.	“Q” means quarterly.
			“B” means bi-annually.
			“A” means annually.
			“R” means randomly.

Table 18.2.1 Performance Criteria in accordance with Schedule 20 (Payment Mechanism)						
Reference	Requirement to be met	Failure Type	Failure Category	Resp. Time	Rect. Time or Remed. Period	Recording Frequency



Table 18.2.1 Performance Criteria in accordance with Schedule 20 (Payment Mechanism)						
Reference	Requirement to be met	Failure Type	Failure Category	Resp. Time	Rect. Time or Remed. Period	Recording Frequency
<i>Scope: Revenue Vehicles</i>						
KPM-B-01	Project Co shall meet the following requirements until all 76 Revenue Vehicles have been issued with a Revenue Vehicle Final Acceptance Certificate by Metrolinx:  (a) EMSF Readiness for Delivery in accordance with Schedule 36 – Vehicles; and  (b) Readiness for Testing and Commissioning in accordance with Schedule 36 – Vehicles.	QF	Major	N/A	1 day	For each Revenue Vehicle

## 19. SERVICE LEVELS AND CONTINGENCY SERVICE LEVELS

- 19.1 HMQ Entities shall not require Project Co to achieve Service Levels that are incapable of being achieved with the number of Revenue Vehicles that have been delivered to Project Co and have achieved Revenue Vehicle Final Acceptance Certificates, as set out in Table 2.1 in Appendix A – Attachment 1.
- 19.2 Subject to Section 19.1, HMQ Entities may, in their sole discretion, modify the Operations Service Plan in Schedule 15-3 for part or all of the first 24 months of the Maintenance Period to require a Contingency Service Change by providing written notice to Project Co of:
- (a) the Contingency Service Level that is to be implemented on the day after Substantial Completion Date, providing HMQ Entities gives Project Co at least nine months of notice before the Scheduled Substantial Completion Date; or
  - (b) the date on which ‘Contingency Service Level B’ is to be implemented, providing Substantial Completion has passed and HMQ Entities gives Project Co at least nine months of notice,
- (the “**Contingency Service Change Date**”).
- 19.3 As of a Contingency Service Change Date:
- (a) the scope of Project Co’s Maintenance and Rehabilitation Services obligations, including the Peak Minimum Required Fleet which Operator is entitled to schedule, shall be based on the new Contingency Service Level; and
  - (b) the Annual Service Payment and Volume Payment shall be based on the new Contingency Service Level in accordance with this Section 19.

## 19.4 Contingency Service Levels – General Rules

- (a) If HMQ Entities have waived the obligation of Project Co to have 42 Revenue Vehicles available for Revenue Service as of the Substantial Completion Date, pursuant to Section 9.1, and have required Project Co to implement a Contingency Service Level, the following shall apply:
  - (i) No later than 180 days after HMQ Entities have provided 42 Revenue Vehicles (taking into account any Revenue Vehicles delivered pursuant to Section 2.1(a)(i)(A)) that have received Revenue Vehicle Final Acceptance Certificates, Project Co shall be capable of achieving Readiness for Revenue Service at Service Level 1 as Service Level 1 is defined in Schedule 15-1 – Technical Terms and Reference Documents and pursuant to Schedule 15-3 – Maintenance and Rehabilitation Services; and
  - (ii) No later than 90 days after Project Co has achieved Readiness for Revenue Service at Service Level 1 pursuant to Section 19.4(a)(i), HMQ Entities shall be obliged to implement Revenue Service at Service Level 1.
- (b) HMQ Entities shall not be entitled to revert to a Contingency Service Level if Project Co has successfully achieved the requirements of a Service Level, as defined in Schedule 15-1 – Technical Terms and Reference Documents and pursuant to Schedule 15-3 – Maintenance and Rehabilitation Services.
- (c) For clarity, HMQ Entities shall not be entitled to revert to ‘Contingency Service Level A’ if Project Co has successfully achieved Contingency Service Level B.

## 19.5 If HMQ Entities impose, in their sole discretion, a Contingency Service Change, then the process for calculating and making Monthly Service Payments shall follow the requirements of Schedule 20 – Payment Mechanism and this Project Agreement, except:

- (a) Schedule 20 – Payment Mechanism shall be read with the following changes and applied accordingly:
  - (i) ‘Service Level’ shall be read as ‘Contingency Service Level’; and
- (b) the formulae in Part B of Schedule 20 – Payment Mechanism shall be read with the following changes and used accordingly:
  - (i) ‘Column B of Table 1 in Appendix A to this Schedule 20’ shall be read as ‘Column B of Table 1 in Appendix F of Schedule 36 to the Project Agreement’;
  - (ii) ‘Column D of Table 1 in Appendix A to this Schedule 20’ shall be read as ‘Column D of Table 1 in Appendix F of Schedule 36 to the Project Agreement’; and

(iii) ‘Column C of Table 3 in Appendix A to this Schedule 20’ shall be read as ‘Column C of Table 2 in Appendix F of Schedule 36 to the Project Agreement’.

(c) In the event that HMQ Entities requires a Contingency Service Change, HMQ Entities may, in their sole discretion, make commercially reasonable changes to Schedule 20 – Payment Mechanism to ensure its proper operation.

19.6 For clarity, Project Co shall not be entitled to breakage costs or a Variation associated with HMQ Entities selecting a Contingency Service Level as set out in this Schedule 36.

19.7 If HMQ Entities,

(a) extends a Contingency Service Level beyond the first 24 months after the Substantial Completion Date; or

(b) fails to comply with Section 19.4(a)(ii),

Project Co shall be entitled to a Variation, subject to and in accordance with Schedule 22 – Variation Procedure.

**APPENDIX A**

[REDACTED]

**APPENDIX B**

[REDACTED]

**APPENDIX C**

[REDACTED]

**APPENDIX D**

**Built to Specification – Technical Specifications**

[REDACTED]

**APPENDIX E**

**Contingency Service Levels**

[REDACTED]



**APPENDIX F**  
**ANNUAL SERVICE PAYMENT AND MONTHLY SERVICE PAYMENT INPUTS FOR**  
**CONTINGENCY SERVICE LEVELS**

[REDACTED]

**APPENDIX G**  
**REVENUE VEHICLE NDA**

**[REDACTED]**

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## SCHEDULE 37

## INTELLECTUAL PROPERTY

## 1. INTERPRETATION

1.1 **Definitions:** In this Schedule 37, the following terms have the following meanings:

- (a) **“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.
- (b) **“Copyleft Materials”** means any software or content subject to a Copyleft Licence.
- (c) **“Deliverable”** means any item required to be supplied or delivered by Project Co to HMQ Entities within the Project Scope, including Equipment, Project Software, Project Data and all other deliverable requirements specified in Schedule 10 – Review Procedures.
- (d) **“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 ECLRT System (excluding the Revenue Vehicles) 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 HMQ Entities or a subsequent Licensee of any Deliverable, the ECLRT 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 HMQ Entities 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.
- (e) **“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 ECLRT System; and
- (iii) created or designed based on functional, design and performance specifications provided by HMQ Entities, or HMQ Entities Personnel, or HMQ 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.

- (f) “**Embedded Software**” means the Project Co Embedded Software, Subcontractor Embedded Software and Third Party Embedded Software.
- (g) “**Equipment**” means all electrical and mechanical equipment, machinery, computer hardware and systems comprising or used in the ECLRT System other than as is comprised or contained within the Revenue Vehicles.
- (h) “**Equivalent Activity**” means any activity, undertaking or operation relating to the ECLRT System done by HMQ Entities, any permitted assignee of HMQ Entities pursuant to Section 59.2 of the Project Agreement and/or any other Person acting on behalf of or under the authority of HMQ Entities, which activity, undertaking or operation if done by Project Co would be within the Project Scope, including the Project Operations.
- (i) “**Escrow Agent**” means a recognized provider of escrow services selected by Project Co and Approved by HMQ Entities and having a location within the Province of Ontario with whom the Escrow Materials will be deposited in accordance with Section 3.11.
- (j) “**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 HMQ Entities are designated as a beneficiary party.
- (k) “**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.
- (l) “**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.

- (m) **“Expanded Purposes”** means (i) the Permitted Purposes; and (b) for any other purpose of Metrolinx.
- (n) **“HMQ Entities Intellectual Property”** means:
- (i) Intellectual Property that is Owned, created, developed or acquired by HMQ Entities or any HMQ Entities 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 HMQ Entities 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 HMQ Entities and Project Co to be Owned by HMQ Entities; 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, HMQ Entities or any Subcontractor alone, jointly with each other or with any other person;
- and which is used by HMQ Entities, 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.
- (o) **“HMQ Entities Personnel”** means persons acting on behalf of HMQ Entities or employed, engaged or retained by HMQ Entities in connection with the performance of HMQ Entities’ obligations in connection with the Project, including HMQ Entities’ consultants, contractors and subcontractors and the employees, officers, directors, volunteers and agents of HMQ Entities and its direct and indirect consultants, contractors and subcontractors, excluding Project Co and any Subcontractor and their respective Personnel.
- (p) **“HMQ Entities Supplied Third Party Intellectual Property”** means Intellectual Property, excluding the Intellectual Property of the Revenue Vehicle Manufacturer, Owned by a person other than HMQ Entities, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by HMQ Entities to Project Co under the Project Agreement for the purpose of performing the Project Operations and the Project, including any Background Information.
- (q) **“HMQ Entities Trade-Marks”** means the Trade-Marks Owned by HMQ Entities.

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- (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, HMQ Entities 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 HMQ Entities 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 ECLRT, 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 ECLRT.
- (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 HMQ Entities’ obligations and the exercise of HMQ Entities’ rights under the Project Agreement and any other agreements relating to the Project;
  - (ii) during the Project Term, HMQ Entities’ 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 ECLRT System;

- (iii) after the Project Term, any Equivalent Activity;
- (iv) both during and after the Project Term, the use, integration and interoperation of the ECLRT System with:
  - (A) any existing or other transit projects undertaken by or on behalf of HMQ Entities or interfacing with HMQ Entities 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 ECLRT System and any Integrated System Extension;

but, for clarity, not any system that is not the ECLRT System or an Integrated System Extension;

- (v) both during and after the Project Term, the integration and interoperation of the ECLRT System with any existing or other transit projects undertaken by or on behalf of HMQ Entities or interfacing with HMQ Entities projects; or
  - (vi) both during and after the Project Term, and so long as the Licensee is HMQ Entities 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 ECLRT System and any Integrated System Extension and the Lands by HMQ Entities 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 HMQ Entities, HMQ Entities 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:

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- (i) Intellectual Property that is Owned, created, developed or acquired by Project Co or any Project Co Personnel:
    - (A) prior to the Project Term;
    - (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 HMQ Entities Intellectual Property, HMQ Entities Supplied Third Party Intellectual Property, Subcontractor Intellectual Property, Intellectual Property of the Revenue Vehicle 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 HMQ Entities and Project Co to be Owned by HMQ Entities;
  - (vii) any Developed Intellectual Property that is specified in a Variation or by separate agreement of HMQ Entities 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, HMQ Entities, HMQ 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 Maintenance and Rehabilitation Services;
  - (iii) all Operational and Maintenance Data; and



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- (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 ECLRT 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 ECLRT 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 Maintenance and Rehabilitation 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:
- (i) 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 HMQ Entities, acting reasonably, in both cases on a storage medium suitable for long term archival storage;
  - (ii) a complete copy, in English or such other language as is acceptable to HMQ Entities, 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
- (iii) 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;
    - (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 HMQ Entities Intellectual Property, HMQ Entities Supplied Third Party Intellectual Property, Project Co Intellectual Property, Intellectual Property of the Revenue Vehicle Manufacturer 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, HMQ Entities, HMQ 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 ECLRT 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 ECLRT 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 HMQ Entities, 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 HMQ Entities, 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 HMQ Entities, 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 HMQ Entities providing for the license by HMQ Entities of HMQ Entities 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, 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, HMQ Entities 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 HMQ Entities Intellectual Property:** The HMQ Entities shall be and remain the sole and exclusive Owner of HMQ Entities Intellectual Property. For certainty, nothing in this Schedule 37 shall transfer to HMQ Entities any Ownership of, or grant to HMQ Entities 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 HMQ Entities Intellectual Property, except for the Licence granted under Section 3.2.

For greater clarity and without limiting HMQ Entities' Ownership rights, Project Co acknowledges and agrees that HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 Intellectual Property of the Revenue Vehicle Manufacturer:** As between HMQ Entities and Project Co, but subject to any agreement to the contrary between HMQ Entities and the Revenue Vehicle Manufacturer, the Revenue Vehicle Manufacturer shall be and remain the sole and exclusive Owner of the Intellectual Property of the Revenue Vehicle Manufacturer. 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, the Intellectual Property of the Revenue Vehicle Manufacturer 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 HMQ Entities Intellectual Property or any Subcontractor Intellectual Property.

**2.5 HMQ Entities Supplied Third Party Intellectual Property:** As between HMQ Entities and Project Co, but subject to any agreement to the contrary between HMQ Entities and the Owner of any HMQ Entities Supplied Third Party Intellectual Property, the Owner of any HMQ Entities Supplied Third Party Intellectual Property shall be and remain the sole and exclusive Owner of any HMQ Entities 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, HMQ Entities 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 HMQ Entities Intellectual Property or any Subcontractor Intellectual Property, except for the Licence granted under Section 3.1.

## 2.6 Assignments

- (a) If, notwithstanding Section 2.1, 2.2, 2.3, 2.4 or 2.5 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, 2.4 or 2.5 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 2.6(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 2.6(a) or 2.6(b) with respect to: (i) HMQ Entities 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 HMQ Entities remains at all times the sole and exclusive Owner of all such property; and (ii) the Intellectual Property of the Revenue Vehicle Manufacturer and HMQ Entities 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 Revenue Vehicle Manufacturer or the Licensor, as applicable, remains at all times the sole and exclusive Owner of all such property.

**2.7 Personnel:** The HMQ Entities 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, 2.4 or 2.5 and Section 51.4 of the Project Agreement and the assignment by that party pursuant to Section 2.6 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 2.7(a) in favour of the assignee and its successors, assigns and licensees.

**3. LICENCES****3.1 Licence by HMQ Entities to Project Co**

- (a) Subject to Subsection 3.1(d), HMQ Entities hereby grant to Project Co:
- (i) a royalty free, fully paid-up, limited Licence to Use and Modify HMQ Entities 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; and
  - (ii) a limited Licence to Use HMQ Entities 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 HMQ Entities, which consent may be given or refused by HMQ Entities in its absolute and unfettered discretion.
- (d) The Licence of any HMQ Entities Supplied Third Party Intellectual Property pursuant to Subsection 3.1(a) shall be subject to the terms and conditions of the license agreement between HMQ Entities and the licensor of HMQ Entities Supplied Third Party Intellectual Property. The HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities, Project Co will, and will require any Subcontractor to, execute and deliver to HMQ Entities and the third party licensor an agreement that includes reasonable terms for the protection of the confidentiality of HMQ Entities Supplied Third Party Intellectual Property and an acknowledgement of the third party licensor's ownership thereof, unless Project Co disputes such ownership.
- (e) Project Co's rights to the Intellectual Property of the Revenue Vehicle Manufacturer shall be as set out in Section 13 of Schedule 36 – Vehicles and shall be subject to the terms and conditions of the Vehicle Contract. HMQ Entities shall provide to Project Co a copy of the Vehicle Contract (which may be redacted as to financial and other terms not relevant to use of the Intellectual Property of the Revenue Vehicle Manufacturer), or where prohibited from doing so by obligations of confidentiality to the Revenue Vehicle Manufacturer in the Vehicle Contract, a

summary of the obligations, limitations and restrictions applicable to use of the Intellectual Property of the Revenue Vehicle Manufacturer by Project Co and Subcontractors and any additional restrictions communicated by HMQ Entities to Project Co. Project Co shall comply, and shall require all Subcontractors to comply, with the terms and conditions of the Vehicle Contract to the extent applicable to Project Co and any Subcontractor in the performance of their respective obligations under the Project Agreement and any Subcontract and such additional restrictions communicated by HMQ Entities to Project Co. If requested by HMQ Entities, Project Co shall, and shall require any Subcontractor to, execute and deliver to HMQ Entities and the Revenue Vehicle Manufacturer an agreement that includes reasonable terms for the protection of the confidentiality of the Intellectual Property of the Revenue Vehicle Manufacturer and an acknowledgement of the Revenue Vehicle Manufacturer's ownership thereof.

- (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 HMQ Entities Supplied Third Party Intellectual Property or HMQ Entities' licence or sublicense rights thereunder.
- (g) The Licences granted to Project Co under Section 3 do not include licences to any HMQ Entities Trade-Marks. The use of any HMQ Entities Trade-Marks shall be governed by the terms of the Trade-Mark Licence Agreement.

### **3.2 Licence by Project Co to HMQ Entities**

- (a) Project Co hereby grants to HMQ Entities 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 Licenses 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 HMQ Entities a Licence to Use and Modify any System Architecture and Look and Feel that is not owned by HMQ Entities 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 HMQ Entities 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 ECLRT 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 HMQ Entities 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 HMQ Entities shall constitute a repudiation of the Licence granted under this Section 3.2 by HMQ Entities.
- (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 (including the Revenue Vehicle Manufacturer and the Operator) 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 HMQ Entities' 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 HMQ Entities have 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 HMQ Entities and their 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 HMQ Entities 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**

- (a) Project Co will not, and will not permit any Project Co Personnel, Subcontractor or Subcontractor Personnel to, incorporate, embed or otherwise include in the ECLRT System or any Deliverable any Third Party Intellectual Property unless:
  - (i) 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:
    - (A) 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 HMQ Entities; or

(B) has been approved by HMQ Entities in writing, which approval may be given or refused by HMQ Entities in its absolute and unfettered discretion,

and such license agreement, if not entered into with HMQ Entities directly, has been assigned or is freely assignable to HMQ Entities; and

(ii) 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 HMQ Entities 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)(i).

(b) If Project Co, Project Co Personnel, Subcontractor or Subcontractor Personnel incorporates, embeds or includes any Third Party Intellectual Property in the ECLRT System or any Deliverable other than in compliance with this Section 3.4, then in addition to any other rights and remedies HMQ Entities 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 ECLRT 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 HMQ Entities or any Licensee that would have the effect of diminishing the rights granted to HMQ Entities or any Licensee hereunder. Without limiting the generality of the foregoing, Project Co will not sue, and will cause its Subcontractors not to sue, HMQ Entities or any Licensee on the basis that any Equivalent Activity or the Ownership or Use of the ECLRT 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 HMQ Entities 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 HMQ Entities, 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 HMQ Entities 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 HMQ Entities and HMQ Parties on terms and conditions that do not result in any impairment of HMQ Entities' 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 HMQ Entities, 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 HMQ Entities 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 HMQ Entities 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, HMQ Entities Intellectual Property, HMQ Entities Supplied Third Party Intellectual Property, or the Intellectual Property of the Revenue Vehicle Manufacturer without the prior written consent of HMQ Entities.
- 3.11 Escrow Agreements**
- (a) If requested by HMQ Entities (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 HMQ Entities 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 HMQ Entities as part of the Project Operations, Software Maintenance and Support (if purchased by or on behalf of HMQ Entities) or any other services performed by the Escrow Provider for HMQ Entities, 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 HMQ Entities including all Modification thereto made for the benefit of HMQ Entities.
- (c) The HMQ Entities 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 HMQ Entities to which the Escrow Materials relate. In addition, HMQ Entities may purchase such additional verification services as may be offered by the Escrow Agent and the Escrow Provider will cooperate with HMQ Entities and the Escrow Agent in the performance of those verification services.

- (d) The HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities if any of the events listed in Section 3.11(d) occur; (ii) does not contain any provision placing any obligation on HMQ Entities, 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities 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 HMQ Entities;and in either case remain in effect for so long as such licence remains in effect.
- (h) Except where HMQ Entities (i) terminate the Escrow Agreement, (ii) have a renewal right and fail to renew the Escrow Agreement, or (iii) fail 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 HMQ Entities 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 HMQ Entities. The Escrow Provider shall have no responsibility or liability arising from any failure of HMQ Entities to pay fees when due in order to maintain the Escrow Materials with the Escrow Agent.
- (j) If HMQ Entities receive the Escrow Materials, then as between HMQ Entities and Project Co and notwithstanding any other provision of the Project Agreement, HMQ Entities will own all Modifications to the Escrow Materials made by or for HMQ Entities and all Intellectual Property in such Modifications.

**3.12 Modifications:** Notwithstanding the granting of any licence pursuant to this Schedule 37, where HMQ Entities have 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

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## TRADE-MARK LICENSE AGREEMENT

**THIS TRADE-MARK LICENSE AGREEMENT**, effective as of [DATE] (the “**Agreement**”), is between [HMQ Entities] (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.

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

Per:

\_\_\_\_\_  
Name:

Title:

Per:

\_\_\_\_\_  
Name:

Title:

I/We have authority to bind the corporation.

**METROLINX**

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.]**

22786282.2

## SCHEDULE 38

## TUNNELS

## 1. DEFINITIONS

- 1.1 “**Acceptance Date**” has the meaning given in Section 8.2(a).
- 1.2 “**Built to Design**” means built in conformance with the Tunnel Technical Specifications (including, for clarity, any amendments made to the technical specifications and any change orders or change directives finalized pursuant to the applicable Tunnel Contract, as of the Technical Submission Deadline) as applicable to each Tunnel Section subject to the following non-conformances with the Tunnel Technical Specifications in each case to the extent that HMQ Entities have, in their sole discretion, permitted such non-conformances:
- (a) leakage in the Tunnel Section that is less than 1000 litres per day over any linear metre of tunnel, and can be mitigated by Project Co to comply with the requirements of Article 3.4(b)(iii) and (iv) of Part 3 to Schedule 15-2 – Design and Construction Requirements by reasonable control methods such as grouting;
  - (b) alignment deviations,
    - (i) that can be mitigated by Project Co by adjusting the final track alignment, without reducing the Revenue Vehicle design speeds (established pursuant to Schedule 15-2 – Design and Construction Requirements), while meeting the requirements specified in Schedule 15-2 – Design and Construction Requirements, provided that alignment must meet construction tolerances specified in the Tunnel Contracts at Stations, crossovers and pocket tracks; and
    - (ii) indicated by the preliminary as-built survey in respect of Tunnel Section 1 that do not conform with the Tunnel Technical Specifications as set out in documents entitled “2014 Survey Status Report No. 3 (Period Ending September 30, 2014)”, and “Preliminary Tunnel As-Built Data dated November 21, 2014”, subject to the preliminary nature of such survey data and such data being subject to traverse closure after the completion of Tunnel Section 1;
  - (c) jet grouted soil improvement areas where five per cent or less of the cumulative mass does not comply with the Tunnel Technical Specifications;
  - (d) SOE non-conformances in Tunnel Sections 1 and 2, as identified in NCR-032 Oakwood headwall, NCR-038 Caledonia headwall, NCR-039 LS2 secant pile wall, NCR-048 LS2 secant pile wall, NCR-063 Dufferin headwall, and NCR-064 ES1 secant pile wall; and
  - (e) tunnel lining non-conformance in Tunnel Section 1 as identified in NCR-072 Gasket Compression at Ring 1815 Drive 2.
- 1.3 “**Built to Design Deficiency List**” has the meaning given in Section 8.2(b).

- 1.4 “**Metrolinx Parcel**” means that portion of the future Caledonia station site located outside the City Road Allowance known municipally as 2322-2400 Eglinton Avenue West, PIN 10491-0490 and show as Parts 1,2,3,4,7,9, and 10 on Reference Plan 66R-26585 as described in Schedule 35 – Lands.
- 1.5 “**MOL**” means Her Majesty The Queen in right of Ontario as represented by the Minister of Labour, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.6 “**Project Co Work Area**” means that portion of the Site on which Project Co is carrying out active excavation or other ground disturbance.
- 1.7 “**SOE**” means support of excavation.
- 1.8 “**Station Parcel**” means a portion of the City Road Allowance designated for a future station site (including, for clarity, any crossover track and pocket track) as follows:
- (a) with respect to the Eglinton Crosstown West Tunnels:
    - (i) surface areas of the City Road Allowance comprising the future station sites between chainages 106+618 and 106+754 (Keele), 107+407 and 107+547 (Caledonia), 108+744 and 108+865 (Dufferin) and 109+309 and 109+438 (Oakwood) (“**Station Parcel 1**”);
    - (ii) surface areas of the City Road Allowance comprising the future station sites between chainages 110+778 and 110+912 (Bathurst), 111+533 and 111+667 (Chaplin) and 112+257 and 112+675 (Avenue) (“**Station Parcel 2**”); and
  - (b) with respect to the Eglinton Crosstown East Tunnels:
    - (i) surface areas of the City Road Allowance comprising the future station sites between chainages 113+770 and 113+910 (Mt. Pleasant), 114+880 and 115+010 (Bayview) and 115+780 and 116+290 (Laird) (“**Station Parcel 3**”).
- 1.9 “**TBM**” means tunnel boring machine.
- 1.10 “**Technical Submission Deadline**” means January 29, 2015.
- 1.11 “**Tunnel Contractor**” means each of the counterparties under contract to Metrolinx to carry out a Tunnel Contract.
- 1.12 “**Tunnel Contracts**” means,
- (a) contract ECLC1–15 entered into between Metrolinx and Crosstown Transit Constructors, a joint venture of Obayashi Canada Ltd., Kenny Construction Company, Kenaiden Ltd., and Technicore Underground Inc. dated December 6, 2012 and as amended from time to time; and

- (b) contract ECLC1 – 17 entered into between Metrolinx and Aecon Constructors, a division of Aecon Construction Group Inc., and Dragados Canada, Inc. dated October 26, 2013 and as amended from time to time.
- 1.13 “**Tunnel Design**” means the Tunnel Technical Specifications, contract drawings, change orders (in respect of design) and change directives (in respect of design) for Tunnel Contract ECLC1-15 (west), Tunnel Contract ECLC1-17 (east), West Launch Area Contract ECLC1-1 (LS1) and Tunnel Lining Segments Contract ECLM6-2.
- 1.14 “**Tunnel Design and Construction Data**” means the data for the Eglinton Crosstown Tunnels listed in Section 12, as updated from time to time.
- 1.15 “**Tunnel Headwall**” means the secant pile walls or jet grouted soil improvement areas constructed by the Tunnel Contractors.
- 1.16 “**Tunnel Section**” means each of the following discrete segments of the Eglinton Crosstown Tunnels, including, for clarity, the associated Tunnel Headwalls:
- (a) with respect to the Eglinton Crosstown West Tunnels:
- (i) the tunnel section between LS1 and ES1, including tunnel drives 1 and 2, ES1, CP1, CP2, CP3, CP4, CP5, EEB1, LS1 and the Eglinton West station area west of chainage 110+020 (“**Tunnel Section 1**”); and
- (ii) the remaining Eglinton West station area between chainage 110+020 and LS2 and the tunnel section between LS2 and chainage 113+045 including tunnel drives 3 and 4, LS2, CP6, CP7, CP8 (“**Tunnel Section 2**”); and
- (b) with respect to the Eglinton Crosstown East Tunnels:
- (i) the tunnel section between 113+770 and 113+910 (Mount Pleasant Station); between 114+880 and 115+010 (Bayview Station); between 115+780 and 116+290 (Laird Station) (“**Tunnel Section 3**”); and
- (ii) the tunnel section between LS3 and ES3 including ES3, CP10, CP11, CP12, EEB2, EEB3 and LS3 (“**Tunnel Section 4**”),
- and the following acronyms apply
- (iii) CP means cross-passage;
- (iv) EEB means emergency exit building;
- (v) ES means extraction shaft; and
- (vi) LS means launch shaft.
- 1.17 “**Tunnel Section Acceptance**” has the meaning given in Section 8.2(a).



- 1.18 “**Tunnel Section Acceptance Deadline**” has the meaning given in Section 8.2.
- 1.19 “**Tunnel Section Completion Period**” has the meaning given in Section 10.1.
- 1.20 “**Tunnel Section Final Completion**” means, in HMQ Entities’ sole discretion, the point at which each Tunnel Section has achieved final completion in accordance with the terms and conditions of the applicable Tunnel Contract, notwithstanding that “Substantial Performance” and “Contract Completion” (as those terms are defined in the applicable Tunnel Contract) pursuant to the applicable Tunnel Contract has not been achieved for the Tunnel Contract work as a whole.
- 1.21 “**Tunnel Section Security and Maintenance**” has the meaning given in Section 6.7.
- 1.22 “**Tunnel Section Security and Maintenance Handover**” means the handover of a Tunnel Section to Project Co for the purposes of Tunnel Section Security and Maintenance.
- 1.23 “**Tunnel Section Security and Maintenance Handover Date**” has the meaning given in Section 6.2.
- 1.24 “**Tunnel Technical Specifications**” means, for each Tunnel Contract, the technical specifications applicable to that Tunnel Contract, including any amendments made to the technical specifications and any change orders or change directives finalized pursuant to the applicable Tunnel Contract as of the Technical Submission Deadline and, for clarity, interpreted in accordance with the provisions of the applicable Tunnel Contract.

## 2. GENERAL REQUIREMENTS

- 2.1 HMQ Entities shall provide the Eglinton Crosstown Tunnels to Project Co,
- (a) on Tunnel Section by Tunnel Section basis in accordance this Schedule 38; and
  - (b) subject to Section 8.3(c) and Section 8.3(d), with each Tunnel Section Built to Design.
- 2.2 HMQ Entities shall ensure that the Tunnel Contractors have vacated each Station Parcel and shall handover the Metrolinx Parcel no later than the applicable date set out in Section 11.1 and Section 11.2. Project Co shall accept each Station Parcel and the Metrolinx Parcel on an “as is where is” basis in accordance with the terms and conditions of the Project Agreement. In the event that HMQ Entities fail to,
- (a) cause the Tunnel Contractors to vacate a Station Parcel; or
  - (b) handover the Metrolinx Parcel,
- on or prior to the applicable date set out in Section 11.1 and Section 11.2, respectively, such failure 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.
- 2.3 HMQ Entities shall provide the Tunnel Design and Construction Data to Project Co and shall update the Tunnel Design and Construction Data on an ongoing basis. HMQ Entities shall

provide Tunnel Design and Construction Data and the associated updates by providing Project Co access to an online data room for this purpose.

- 2.4 Project Co shall accept responsibility for the Eglinton Crosstown Tunnels on a Tunnel Section by Tunnel Section basis in accordance with the process and schedule for acceptance set out in this Schedule 38. Project Co's acceptance of responsibility for each Tunnel Section shall proceed in two steps as follows:
- (a) Project Co shall accept responsibility for Tunnel Section Security and Maintenance in accordance with Section 6; and
  - (b) Project Co shall achieve Tunnel Section Acceptance in accordance with Section 8.
- 2.5 On the achievement of each Tunnel Section Acceptance, the applicable Tunnel Section shall be deemed to be Project Co System Infrastructure in accordance with the Project Agreement and for all purposes under the Project Agreement. For clarity, Tunnel Section Security and Maintenance Handover does not constitute Tunnel Section Acceptance by Project Co.

### 3. TUNNEL CONDITION REQUIREMENTS FOR TUNNEL SECTION ACCEPTANCE

- 3.1 Subject to Section 7, HMQ Entities shall provide each Tunnel Section to Project Co on a Built to Design basis. For clarity, subject to Section 7, once Project Co has accepted all Tunnel Sections, Project Co shall be deemed to have accepted the Eglinton Crosstown Tunnels, as a whole, as Built to Design.

### 4. PROJECT CO PRE-ACCEPTANCE REVIEW OF TUNNEL DESIGN AND CONSTRUCTION DATA AND INSPECTION OF THE EGLINTON CROSSTOWN TUNNELS

- 4.1 Project Co shall review all Tunnel Design and Construction Data, on an ongoing basis, from the Technical Submission Deadline until all Tunnel Section Acceptances have been successfully completed and Project Co shall,
- (a) report all findings of its review of the Tunnel Design and Construction Data, on an ongoing basis, to HMQ Entities; and
  - (b) provide immediate Notice to HMQ Entities in the event that, in Project Co's opinion and based on Project Co's review of the Tunnel Design and Construction Data, any Tunnel Section, or any part thereof, is not being Built to Design by the applicable Tunnel Contractor and Project Co is not prepared to accept such deviation.
- 4.2 Project Co shall carry out regular and detailed visual inspections of the Eglinton Crosstown Tunnels from Commercial Close until all Tunnel Section Acceptances have been successfully completed (the "**Tunnel Inspections**"). Project Co shall keep written records of its Tunnel Inspections and shall conduct all Tunnel Inspections (and retain all Tunnel Inspections written records) in accordance with Good Industry Standards. Project Co shall immediately raise any issue that arises from Project Co's Tunnel Inspections that, in Project Co's opinion, indicates that

a Tunnel Section is not being Built to Design. While carrying out the Tunnel Inspections, Project Co shall not interfere with the Tunnel Contractors. Project Co shall,

- (a) report all findings of all of its Tunnel Inspections to HMQ Entities and, upon request by HMQ Entities, provide all Project Co Tunnel Inspections records; and
- (b) provide immediate Notice to HMQ Entities in the event that, in Project Co's opinion and based on the Tunnel Inspections, any Tunnel Section, or any part thereof, is not being Built to Design by the applicable Tunnel Contractor.

4.3 HMQ Entities shall facilitate and schedule all Tunnel Inspections on behalf of Project Co and, as required, shall have an HMQ Entities' representative accompany Project Co on its Tunnel Inspections. HMQ Entities may, in their sole discretion, require Project Co to carry out Tunnel Inspections outside of Tunnel Contractor's regular working hours.

4.4 Project Co shall participate in all HMQ Entities' final inspections of each Tunnel Section and in the preparation and resolution of the contract deficiency list for each Tunnel Section.

## 5. **HMQ ENTITIES RIGHT TO DETERMINE TUNNEL SECTION FINAL COMPLETION**

5.1 HMQ Entities may, in their sole discretion, establish the contract deficiency list for the Tunnel Contractor in respect of each Tunnel Section. HMQ Entities may, in their sole discretion, determine whether each Tunnel Section Final Completion has been achieved by the applicable Tunnel Contractor.

## 6. **TUNNEL SECTION SECURITY AND MAINTENANCE**

6.1 HMQ Entities shall handover responsibility for Tunnel Section Security and Maintenance to Project Co ("**Tunnel Section Security and Maintenance Handover**") at 12:01 a.m. on the Tunnel Section Security and Maintenance Handover Date established by HMQ Entities pursuant to Section 6.2.

6.2 HMQ Entities shall, in their sole discretion, establish the Tunnel Section Security and Maintenance Handover date for each Tunnel Section at any time,

- (a) after the applicable Tunnel Section Final Completion has, in HMQ Entities' sole discretion, been achieved and on or after the first day of the Tunnel Section Completion Period; and
- (b) before or on the last day of the Tunnel Section Completion Period for the applicable Tunnel Section set out in Section 10.1,

(each a "**Tunnel Section Security and Maintenance Handover Date**").

6.3 If the HMQ Entities fail to establish a Tunnel Section Security and Maintenance Handover Date on or before the last day of the applicable Tunnel Section Completion Period or fail to carry out Tunnel Section Security and Maintenance Handover on the Tunnel Section Security and Maintenance Handover Date, such failure 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.
- 6.4 HMQ Entities shall give Project Co 30 days prior written Notice of each Tunnel Section Security and Maintenance Handover Date.
- 6.5 For clarity, Project Co shall accept and retain responsibility for Tunnel Section Security and Maintenance in accordance with this Section 6 notwithstanding any Dispute between Project Co and HMQ Entities with respect to whether a Tunnel Section has been Built to Design.
- 6.6 Project Co shall carry out Tunnel Section Security and Maintenance,
- (a) commencing on the Tunnel Section Security and Maintenance Handover Date; and
  - (b) ending on Substantial Completion.
- 6.7 For the purposes of this Schedule 38, “**Tunnel Section Security and Maintenance**” means all security and maintenance for the applicable Tunnel Section including,
- (a) coordinating any warranty work to be carried out by the Tunnel Contractors after the Tunnel Section Security and Maintenance Handover Date and prior to Substantial Completion;
  - (b) securing the applicable Tunnel Section in accordance with Good Industry Practice;
  - (c) maintaining all mechanical and electrical support facilities associated with the Tunnel Section, including monitoring instrumentation, electricity supply and distribution systems, pump, water, pipelines, hoses, lights, ventilation tubes, ventilation fans, substations, electricity distribution equipment, sanitary facilities, tunnel survey brackets, fire protection equipment, and all structure elements such as tunnel liners, headwalls, shafts, emergency exit building and cross passages;
  - (d) security and maintenance associated with weather protection of the applicable Tunnel Sections; and
  - (e) drainage and dewatering.
- 7. HMQ ENTITIES’ RIGHT TO ACCEPT A TUNNEL SECTION THAT IS NOT BUILT TO DESIGN**
- 7.1 HMQ Entities may, in their sole discretion, require Project Co to accept one or more Tunnel Sections, in accordance with Section 8, in circumstances where such Tunnel Section or Tunnel Sections are not Built to Design. HMQ Entities’ right to require such Tunnel Section Acceptance is subject to Project Co’s right to a Variation, subject to and in accordance with Schedule 22 - Variation Procedure.
- 7.2 If, pursuant to Section 7.1, HMQ Entities exercise their right to require Project Co to accept a Tunnel Section that has not been Built to Design, Project Co shall be deemed to have achieved

Tunnel Acceptance upon the issuance of a Variation Confirmation by HMQ Entities in respect of the applicable exercise of HMQ Entities' rights pursuant to Section 7.1.

- 7.3 For clarity, Section 7.1 and Project Co's right to a Variation does not apply to,
- (a) the non-conformances included in the definition of Built to Design in Section 1.2;
  - (b) non-conformances that Project Co ought to have identified pursuant to Section 4 or non-conformances that Project Co has otherwise accepted; or
  - (c) non-conformances with the Tunnel Contract that do not impact whether a Tunnel Section is Built to Design.

## 8. TUNNEL SECTION ACCEPTANCE PROCESS

- 8.1 Project Co shall complete its final inspection of each Tunnel Section no later than 15 days after the Tunnel Section Security and Maintenance Handover Date to assess whether, in Project Co's opinion, the Tunnel Section has achieved Built to Design status.
- 8.2 No later than 30 days after the Tunnel Section Security and Maintenance Handover Date (the "**Tunnel Section Acceptance Deadline**"), Project Co shall either,
- (a) confirm its acceptance of the applicable Tunnel Section as Built to Design ("**Tunnel Section Acceptance**") and the date of each Tunnel Section Acceptance shall be an "**Acceptance Date**"; or
  - (b) submit a list of all deficiencies in the applicable Tunnel Section that, in Project Co's opinion, prevent the Tunnel Section from achieving Built to Design status (the "**Built to Design Deficiency List**").
- 8.3 HMQ Entities shall review and consider the Built to Design Deficiency List, if any, and in respect of each deficiency listed may,
- (a) arrange for the correction of the deficiency or deficiencies by the applicable Tunnel Contractor or an Additional Contractor;
  - (b) Dispute the deficiency or deficiencies;
  - (c) require Project Co to correct the deficiency or deficiencies by issuing a Variation Directive in accordance with Schedule 22 – Variation Procedure; or
  - (d) treat the deficiency or deficiencies as a request for a Variation in accordance with Schedule 22 – Variation Procedure.
- 8.4 In the event that HMQ Entities elect to Dispute any deficiency or deficiencies set out in the Built to Design Deficiency List for a Tunnel Section, HMQ Entities shall refer such Dispute to the Independent Certifier no later than 5 Business Days after receipt of a Built to Design Deficiency List for a Tunnel Section.

- 8.5 In the event that a Dispute related to a deficiency or deficiencies on the Built to Design Deficiency List has been referred to the Independent Certifier pursuant to Section 8.4 for final determination, the Parties shall cause the Independent Certifier, no later than 30 days after the Dispute is referred to the Independent Certifier, to determine either,
- (a) that deficiency or deficiencies identified on the Built to Design Deficiency List constitute a failure of the applicable Tunnel Section to be Built to Design; or
  - (b) that the applicable Tunnel Section has been Built to Design and deem Project Co to have achieved Tunnel Section Acceptance.
- 8.6 In the event that the Independent Certifier determines, in accordance with Section 8.5(a), that a Tunnel Section has not been Built to Design HMQ Entities may,
- (a) arrange for the correction of the deficiency or deficiencies by the applicable Tunnel Contractor or an Additional Contractor;
  - (b) require Project Co to correct the deficiency or deficiencies by issuing a Variation Directive in accordance with Schedule 22 – Variation Procedure; or
  - (c) treat the deficiency or deficiencies as a request for a Variation in accordance with Schedule 22 – Variation Procedure.
- 8.7 If, pursuant to Section 8.6(b) or Section 8.6(c), HMQ Entities require Project Co to correct the deficiency or deficiencies in the applicable Tunnel Section, Project Co shall be deemed to have achieved Tunnel Acceptance upon the issuance of a Variation Confirmation to correct the deficiency or deficiencies in the applicable Tunnel Section. If, pursuant to Section 8.6(a), HMQ Entities arrange for the correction of the deficiency or deficiencies by the applicable Tunnel Contractor or an Additional Contractor, Project Co shall have 15 days after HMQ Entities have determined that such deficiency or deficiencies have been corrected to,
- (a) confirm its Tunnel Section Acceptance and the date of such Tunnel Section Acceptance shall be the applicable Acceptance Date; or
  - (b) submit a Built to Design Deficiency List.
- If Project Co submits a Built to Design Deficiency List, the process set out in of Sections 8.3, 8.4, 8.5, and 8.6 shall be repeated.
- 8.8 Project Co shall not carry out work on any Tunnel Section without the prior written consent of HMQ Entities until either,
- (a) Project Co has confirmed Tunnel Section Acceptance in accordance with Section 8.2(a);
  - (b) the Independent Certifier has deemed Project Co to have achieved Tunnel Section Acceptance in accordance with Section 8.5(b); or
  - (c) HMQ Entities have issued a Variation pursuant to Section 8.6.

**9. WARRANTY WORK BY TUNNEL CO**

- 9.1 Project Co shall, in consultation with HMQ Entities and in accordance with the provisions of the applicable Tunnel Contract, identify and manage all Tunnel Contract warranty work on behalf of HMQ Entities and shall provide tunnel access to Tunnel Contractor for the purpose of carrying out warranty work after Tunnel Section Acceptance, including,
- (a) arranging access into the applicable Tunnel Section during normal working hours;
  - (b) arranging for Tunnel Contractor to use utilities available on the site including power and water and toilet facilities; and
  - (c) accommodating reasonable parking for Tunnel Contractor labor and material deliveries.
- 9.2 Project Co may, acting reasonably, schedule all Tunnel Contract warranty work, pursuant to Section 9.1, at times that are convenient to the Project Operations provided that,
- (a) Project Co shall ensure that its scheduling of warranty work pursuant to this Section 9.2 does not, in any way, worsen the defect or damage requiring the warranty work by the Tunnel Contractor; and
  - (b) Project Co shall ensure that its scheduling of warranty work pursuant to this Section 9.2 does not in any way void, or risk voiding, the applicable Tunnel Contractor warranty.

**10. TUNNEL SECTION COMPLETION PERIODS**

- 10.1 HMQ Entities shall achieve Tunnel Section Final Completion for each Tunnel Section within the period for completion set out for each Tunnel Section (each a “**Tunnel Section Completion Period**”) as follows:
- (a) with respect to the Eglinton Crosstown West Tunnels:
    - (i) Tunnel Section 1 shall achieve Tunnel Section Final Completion no earlier than [REDACTED] and no later than [REDACTED].
    - (ii) Tunnel Section 2 shall achieve Tunnel Section Final Completion no earlier than [REDACTED] and no later than [REDACTED].
  - (b) with respect to the Eglinton Crosstown East Tunnels:
    - (i) Tunnel Section 3 shall achieve Tunnel Section Final Completion no earlier than [REDACTED] and no later than [REDACTED].
    - (ii) Tunnel Section 4 shall achieve Tunnel Section Final Completion no earlier than [REDACTED] and no later than [REDACTED].

**11. VACATING OF STATION PARCELS, HANDOVER OF METROLINX PARCEL, AND RESTRICTIONS ON PROJECT CO WORKS**

- 11.1 HMQ Entities shall ensure that the Tunnel Contractor has vacated the Station Parcels in accordance with the following:
- (a) Station Parcel 1 no later than [REDACTED];
  - (b) Station Parcel 2 no later than [REDACTED]; and
  - (c) Station Parcel 3 no later than [REDACTED].
- 11.2 HMQ Entities shall hand over the Metrolinx Parcel no later than the date for handover of the Metrolinx Parcel set out in Schedule 35 – Lands.
- 11.3 Project Co’s Works above or adjacent to the Eglinton Crosstown Tunnels, including Works by Project Co outside the City Road Allowance (as described in Schedule 35 – Lands), at the Eglinton Yonge Station and at the Allen Station, Station Parcel 1, Station Parcel 2, Station Parcel 3 and the Metrolinx Parcel shall be subject to the following restrictions, until Tunnel Section Acceptance of the Tunnel Section below the applicable Project Co Work Area has been achieved:
- (a) Project Co shall not interfere with or delay the work of the Tunnel Contractor and Project Co shall not do anything whatsoever that causes the Tunnel Contractor to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario). Project Co shall immediately cease and desist any activity that results or has a likelihood in resulting in such interference with or delay of the work of the Tunnel Contractor.
  - (b) Project Co shall register the Project with the MOL by way of a Notice of Project, pursuant to the Applicable Law, with the purpose of designating Project Co as the “constructor” for all Works on the Site.
  - (c) Notwithstanding Sections 11.3(a) and 11.3(b), if Project Co’s activity or presence on the Site causes Metrolinx to be named “constructor” by MOL, Project Co will immediately take any necessary remedial action, including vacating the Site, to absolve Metrolinx from the “constructor” role.
  - (d) If Project Co is unable to secure or maintain MOL “constructor” designation for its work, or if Project Co is denied access to the Site pursuant to Section 11.3(c), Project Co will not be eligible for a Delay Event or a Compensation Event.
  - (e) Project Co’s building demolition, utility Works and traffic rearrangements are permitted but Project Co’s performance of other Works is subject to Section 11.3(g).
  - (f) Project Co may proceed with the installation of piles or other SOE provided that,
    - (i) piles, slurry walls, jet grouted columns or other SOE shall not be installed within the minimum clearance dimension, from the tunnel extrados, set out in the following table prior to the adjacent Tunnel Section Acceptance:



	<b>Minimum* Clearance for Drilled Piles</b>	<b>Minimum* Clearance for Slurry Walls</b>
Before TBM Passes	250 mm	250 mm
As TBM Passes	Not Permitted	Not Permitted
After TBM Passes	1000 mm	4200 mm
*Minimum Clearance is based on the theoretical tunnel alignment provided in the Tunnel Design.		

- (ii) Project Co demonstrates to the satisfaction of HMQ Entities, acting reasonably, that the SOE installation and excavation will not,
- (A) impair the safety or stability; or
  - (B) distort the lining,
- of the Eglinton Crosstown Tunnels;
- (iii) Project Co incorporates quality control measures to ensure the safety and stability of the Eglinton Crosstown Tunnels that include,
- (A) use of guidewalls for surface alignment control;
  - (B) confirmation of rig verticality to achieve a 0.5 per cent vertical installation accuracy;
  - (C) use of a heavy wall casing with drilled piles to increase stiffness of drill strings to improve verticality control;
  - (D) for slurry wall installation, use of hydraulic clam shells on a Kelly bar or hydromills with installed inclinometers to achieve a 0.3 per cent vertical installation accuracy;
  - (E) consultation with Metrolinx to determine the as-constructed location of the Eglinton Crosstown Tunnels;
  - (F) implementation of downhole surveys of the drilled piles holes or slurry wall panels prior to concrete filling; and
  - (G) development of a contingency plan to address any situation where a minimum clearance dimension of 250 mm, when SOE is installed before passage of the TBM, or 1000 mm if SOE is installed after passage of the TBM, between the SOE and Eglinton Crosstown Tunnels is not maintained; and

- (iv) Project Co shall demonstrate, to the satisfaction of HMQ Entities, that safety and stability in the Eglinton Crosstown Tunnels will be maintained in the circumstances set out in Sections 11.3.
  - (g) Project Co may excavate above the Eglinton Crosstown Tunnels subject to the following restrictions:
    - (i) Excavations shall maintain at least 7.0 meters vertical clearance to the planned extrados of the Eglinton Crosstown Tunnels prior to passage of the TBM and at least 7.0 meters vertical clearance to the extrados of the Eglinton Crosstown Tunnels after passage of the TBM;
    - (ii) Project Co demonstrates, to the satisfaction of HMQ Entities, acting reasonably, that the SOE installation and excavation will not,
      - (A) impair the safety or stability; or
      - (B) distort the lining,of the Eglinton Crosstown Tunnels; and
    - (iii) For clarity, Project Co is obliged to obtain all required permissions under the Applicable Law for any such excavation. Notwithstanding this permission, if MOL retracts the designation of Project Co as the “constructor” during the Construction Period, such retraction shall be at Project Co’s risk.
- 11.4 Project Co shall suspend its Work involving SOE installation, excavation or any other disturbance of the ground when any part of the TBM, measured from the cutter head or tail seals, as applicable, is within 200 meters measured horizontally from the active excavation area closest to the TBM in the Project Co Work Area. In circumstances where a TBM has completed mining and is awaiting extraction, Project Co shall allow 14 days after completion of mining by the TBM before commencing any work within 200 meters of the TBM measured from the cutter head or tail seals, as applicable.
- 11.5 The Eglinton Crosstown Tunnels, including the twin bore tunnels, launch shafts and extraction shafts, constructed by Tunnel Contractors shall be considered to be Existing Adjacent Structures as defined in Article 7 of Part 2 to Schedule 15-2 – Design and Construction Requirements – Protection of Existing Adjacent Structures.

## 12. TUNNEL DESIGN AND CONSTRUCTION DATA

- (a) HMQ Entities shall provide the following Tunnel Design and Construction Data to Project Co and shall update such information from time to time:
  - (i) contract drawings and technical specifications;
  - (ii) contract changes (drawings and specifications excluding pricing information);
  - (iii) as-built and other record drawings;

- (iv) shop drawings and technical submittals issued for construction;
- (v) construction data including:
  - (A) concrete tests, grout tests, headwall cores and other material tests;
  - (B) Tunnel alignment survey data;
  - (C) Non Conformance Reports (“NCRs”);
  - (D) geotechnical monitoring and instrumentation data;
  - (E) Tunnel Contractor’s water discharge reports;
  - (F) control survey (survey monuments) data; and
  - (G) Tunnel Contractor’s daily TBM mining reports;
- (vi) permits, licences and approvals obtained for the Tunnel Contracts;
- (vii) building condition surveys;
- (viii) Construction Impact Assessment Reports;
- (ix) geotechnical data reports for additional boreholes;
- (x) geotechnical baseline reports in respect of the Tunnel Contract;
- (xi) Tunnel Contractors’ design submissions and work plans;
- (xii) inspection reports; and
- (xiii) other technical reports.

**13. PROJECT CO NOT LIABLE FOR TUNNEL DESIGN OR UNDISCOVERABLE FAILURE TO ACHIEVE BUILT TO DESIGN**

- 13.1 Pursuant to the requirements of Schedule 15 – Output Specifications, Project Co shall be responsible for the integration of the Project Co System Infrastructure into the design of the Eglinton Crosstown Tunnels, including being responsible for any actions of Project Co that damage the physical integrity of the Eglinton Crosstown Tunnels, or any part thereof.
- 13.2 Subject to Section 13.1, Project Co shall not be liable for the design of the Eglinton Crosstown Tunnels as reflected in the Tunnel Design. In the event that,
- (a) Project Co is delayed during the Construction Period by an event or event arising from an error or omission in the design of the Eglinton Crosstown Tunnels as reflected in Tunnel Design such delay 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; or

- (b) an error or omission in the design of the Eglinton Crosstown Tunnels as reflected in the Tunnel Design materially adversely interferes with Project Co's ability to perform the Maintenance and Rehabilitation Services, such error or omission shall, subject to and in accordance with Schedule 22- Variation Procedure, result in a Variation.

For clarity, error or omission in the design of the Eglinton Crosstown Tunnels as reflected in the Tunnel Design shall not include errors or omissions in Tunnel Design to the extent that such errors or omissions result in the non-conformances included in the definition of Built to Design at Section 1.2.

13.3 If, after a Tunnel Section Acceptance by Project Co pursuant to Section 8.2(a), Project Co discovers that a Tunnel Section was not actually Built to Design, the failure by HMQ Entities to provide a Tunnel Section that was Built to Design shall,

- (a) in respect of the Construction Period, 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
- (b) after Substantial Completion, be treated as an Excusing Cause, subject to and in accordance with Section 42 of the Project Agreement,

provided that the Tunnel Section's failure to achieve Built to Design status,

- (c) was not within the actual knowledge of Project Co or the Project Co Parties prior to Tunnel Section Acceptance;
- (d) was not properly inferable, readily apparent or readily discoverable by Project Co from the Tunnel Design or Construction Data; or
- (e) was not properly inferable, readily apparent or readily discoverable by Project Co from,
  - (i) Project Co's Tunnel Inspections pursuant to Sections 4.1, 4.2, and 4.3, provided that Project Co has carried out such Tunnel Inspections in accordance with Good Industry Practice; or
  - (ii) Project Co's participation in HMQ Entities' final inspections of each Tunnel Section pursuant to Section 4.4.

## 14. DISPUTES

14.1 Subject to Disputes referred to the Independent Certifier for final determination in accordance with Section 8, Disputes arising pursuant to this Schedule 38 may be referred by either Party for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

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**SCHEDULE 39  
SYSTEM EXTENSION****ARTICLE 1  
DEFINITIONS****1.1 Definitions**

- (a) In this Schedule 39, unless the context otherwise requires:
- (i) “**Extension Contractor**” means a person or persons engaged by HMQ Entities to perform any part of a System Extension, which person may or may not be Project Co.
  - (ii) “**Extension Maintenance Services**” means the maintenance and other work to be performed and services to be provided in respect of a System Extension as set out in HMQ Entities Extension Requirements.
  - (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 HMQ Entities Extension Requirements in accordance with Applicable Law.
  - (v) “**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 Maintenance Services.
  - (vi) “**Extension Work Minor Deficiencies**” means any defects, deficiencies and items of outstanding work which would not materially impair HMQ Entities’ use and enjoyment of the System Extension.
  - (vii) “**HMQ Entities Extension Requirements**” means the proposal delivered by HMQ Entities pursuant to Section 2.2(c).
  - (viii) “**Integrated System Extension**” means the development, testing, commissioning and certification (including safety recertification in order to satisfy the Safety and Security 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) “**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.
- (x) “**Notice of Extension**” means the notice delivered by HMQ Entities pursuant to Section 2.2(a).
- (xi) “**Project Co Extension Proposal**” means the proposal delivered by Project Co pursuant to Section 2.2(d).
- (xii) “**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).
- (xiii) “**System**” means, for the purposes of this Schedule 39 only, the Metrolinx light rail system.
- (xiv) “**System Extension**” means either an Integrated System Extension or a Non-Integrated System Extension.

## ARTICLE 2 SYSTEM EXTENSION

### 2.1 System Extension

- (a) HMQ Entities and Project Co acknowledge that HMQ Entities may, in their sole discretion, elect to pursue one or more System Extensions during the Project Term.
- (b) HMQ Entities 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 HMQ Entities elect to engage an Extension Contractor(s), HMQ Entities 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 HMQ Entities’ sole discretion, and HMQ Entities may use any form of competitive procurement or other method of retaining an Extension Contractor(s) that HMQ Entities in their sole discretion decides. If HMQ Entities elect 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 HMQ Entities’ decisions pursuant to this Section 2.1 are subject to approval by the HMQ Entities’ boards of directors and, in some circumstances, the Province, and shall be subject to Applicable Law.
- (c) HMQ Entities may, in their 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 and the provisions of Schedule 22 – Variation Procedure shall apply in respect of such System Extension.

- (d) HMQ Entities may, in their sole discretion, elect to procure or negotiate, as the case may be, the performance of Extension Work, and/or Extension Maintenance Services in respect of a System Extension through consolidated or separate procurements or negotiations.
- (e) For clarity, HMQ Entities may pursue a System Extension at any time or times pursuant to any of the alternatives set out in this Section 2.1, in their sole discretion. In the event HMQ Entities have elected to pursue a System Extension in accordance with this Section 2.1, HMQ Entities may, at any time prior to entering into a binding agreement in respect of the System Extension, in their 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 HMQ Entities and Project Co of Extension Work and/or Extension Maintenance Services**

- (a) If HMQ Entities notify Project Co that they wish to negotiate with Project Co to perform any or all of the Extension Work and/or Extension Maintenance Services, HMQ Entities 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 Maintenance Services, as applicable;
  - (ii) preliminary “term sheet level” output specifications for the Extension Work and/or the Extension Maintenance 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 HMQ Entities requirements of any maintenance and storage facilities, and
  - (iii) a preliminary schedule and required timelines for completion of the Extension Work and/or the Extension Maintenance Services, as applicable.

For clarity, HMQ Entities may, in their sole discretion, issue an Extension Notice in respect of any one of or all of Extension Work, and/or Extension Maintenance Services.

- (b) No later than 30 days after the date of receipt of the Notice of Extension, Project Co shall deliver to HMQ Entities its Extension Notice Response advising HMQ Entities whether or not Project Co desires to proceed to the next stage of negotiation with HMQ Entities 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 HMQ Entities a preliminary cost estimate and schedule for the Extension Work and/or the Extension Maintenance Services, as applicable.
- (c) If HMQ Entities elect, in their sole discretion, to continue to consider Project Co for the Extension Work and/or the Extension Maintenance Services, as applicable, HMQ

Entities shall, no later than 120 days after the date of receipt of Project Co's Extension Notice Response, deliver its HMQ Entities Extension Requirements. HMQ Entities Extension Requirements (which shall be non-binding on HMQ Entities) shall include:

- (i) a draft heads of terms agreement for the Extension Work and/or the Extension Maintenance 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 Maintenance 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 HMQ Entities Extension Requirements, Project Co shall deliver to HMQ Entities 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 Maintenance Services, as applicable;
  - (ii) a detailed description of any impact the Extension Work and/or the Extension Maintenance 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 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 Maintenance 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 Maintenance 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 HMQ Entities 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 Maintenance 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 Maintenance 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 Maintenance 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 HMQ Entities' 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 Maintenance 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 Maintenance Services , as applicable;
  - (vi) Project Co has mitigated or will mitigate the impact of the Extension Work and/or the Extension Maintenance Services , as applicable, including on the Works Schedule, 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 Maintenance 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 HMQ Entities, 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, HMQ Entities 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 Maintenance Services, as applicable, as well as any necessary amendments to the Project Agreement and any relevant project documents, based on the contents of HMQ Entities 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.

### **2.3 System Extension during Option Term**

- (a) If HMQ Entities elects to proceed with a System Extension, the provisions of Schedule 36 –Vehicles may, in HMQ's sole discretion, apply with respect to any additional Vehicles that are required as a result of the System Extension.

## **ARTICLE 3 PROJECT CO COOPERATION**

### **3.1 Project Co Cooperation with HMQ Entities and Interface with an Extension Contractor**

- (a) In the event HMQ Entities 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 HMQ Entities as HMQ Entities may request, acting reasonably. Such assistance shall include:
  - (i) providing to HMQ Entities such information which HMQ Entities may reasonably require concerning the System and the public infrastructure or the operations, maintenance and rehabilitation of the System and the public infrastructure necessary for the purposes of HMQ Entities 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, the Extension Maintenance Services, as applicable, and the evaluation of designs proposed by prospective Extension Contractors to ensure compatibility with the EMSF, electrical and mechanical equipment, Vehicles already supplied, and other items as specified by HMQ Entities;
- (iii) permitting HMQ Entities access to relevant information respecting the System, electrical and mechanical equipment and Vehicles already supplied, and other items as specified by HMQ Entities;
- (iv) advising HMQ Entities on potential modifications to the Extension Work, the Extension Maintenance Services, as applicable, that could result in cost savings or other benefits to HMQ Entities (If Project Co identifies any cost savings to the Maintenance and Rehabilitation Services or the Extension Maintenance Services, such savings shall be shared equally by HMQ Entities and Project Co by way of an adjustment to the Monthly Service Payments);
- (v) the development of an interface protocol between HMQ Entities, 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 HMQ Entities 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 HMQ Entities to those parts of the System and public 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.

HMQ Entities and Project Co's obligations under this Section 3.1(a) shall be subject to and in accordance with Schedule 37 – Intellectual Property.

- (b) HMQ Entities 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 HMQ Entities provides notice to Project Co that HMQ Entities have reached a binding agreement with an Extension Contractor, HMQ Entities 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 Maintenance Services, as applicable. HMQ Entities shall also include, in its agreement with any Extension Contractor, an obligation

on the Extension Contractor to negotiate with HMQ Entities and Project Co in 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 HMQ Entities, Project Co and each Extension Contractor pursuant to Section 3.1(c) shall include provisions related to:
- (i) the rights and obligations of HMQ Entities, Project Co and the Extension Contractor in respect of the physical linking, testing and commissioning, safety and system certification of the System, public 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; and
  - (iv) provision for the sharing of the EMSF if HMQ Entities 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, HMQ Entities, 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 infrastructure and the Non-Integrated System Extension.
- (f) This Article 3 is without prejudice to HMQ Entities’ ability to instruct a Variation in accordance with Schedule 22 – Variation Procedure.

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**SCHEDULE 40****DOOR ACCESS MATTERS****1. DEFINITIONS**

In this Schedule 40, the following definitions shall have the following meanings:

- 1.1 **“Aggregate Actual Door Closures”** or **“AADC”** means the total actual number of Door Closures for each Station.
- 1.2 **“Aggregate Actual Door Closures Cost”** or **“AADCC”** means the actual cost attributable to the AADC for each Station Area.
- 1.3 **“Aggregate Target Door Closures”** or **“ATDC”** means the total target Door Closures, which,
- (a) are set forth in the Door 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.
- 1.4 **“Aggregate Target Door Closures Cost”** or **“ATDCC”** means the total cost attributable to the ATDC, set forth in the Door Closure Target Letter.
- 1.5 **“Door Access Matters Review Meeting”** has the meaning given in Section 3.6.
- 1.6 **“Door Closure”** means:
- (a) the closure of pedestrian access for more than four consecutive hours in any day to a building door, as a result of the Works, including,
    - (i) all circumstances in which the Works are taking place within 1.5 metres of the building door;
    - (ii) utility shutdowns; or
    - (iii) all circumstances in which pedestrian ingress and egress cannot be provided to the building;
  - (b) the closure of access to a driveway for more than four consecutive hours in any day as a result of the Works blocking the driveway, thereby reducing the driveway width to less than 3.75 metres; or
  - (c) the closure of a sidewalk for more than four consecutive hours in any day as a result of the Works that eliminate a continuous sidewalk and where the sidewalk is not already closed as a result of a building or driveway closure as set out in Section 1.6(a) and 1.6(b),

all as identified on Appendix A. For clarity,

- (d) if a single lane of a driveway can remain open for vehicular access, this does not constitute a closure of access to a driveway for the purposes of Section 1.6(b), but it is incumbent on Project Co to ensure access by providing flag persons or other mitigating measures;
- (e) any circumstance in which the width of a sidewalk has been reduced to less than 1.5m shall be deemed to be a closure of a sidewalk for the purposes of Section 1.6(c); and
- (f) closure of a pedestrian access, driveway or sidewalk that is solely as a result of a Category 1 Utility Company carrying out the design and construction of Utility Infrastructure in contravention of the applicable Final Utility Baseline Document and in those circumstances in which the applicable Final Utility Baseline Document specifies that such design and construction must be carried out by the Category 1 Utility Company itself (by the Category 1 Utility Company's own forces or by a subcontractor retained by the Category 1 Utility Company), shall be deemed not to constitute a Door Closure or contribute to any Door Closure for the purpose of this Schedule 40.
- 1.7 **“Door Closure Adjustment”** or **“DCA”** means the finally determined amount calculated pursuant to Section 5.5, which amount may be claimed by HMQ Entities from Project Co and deducted from the Substantial Completion Payment.
- 1.8 **“Door Closure Analysis Report”** has the meaning given to it in Section 2.1.
- 1.9 **“Door Closure Management Plan”** or **“DCMP”** means the plan that Project Co will prepare and submit to HMQ Entities pursuant to Schedule 10 – Review Procedure prior to implementation of any planned Door Closures pursuant to Section 3.4. The Door Closure Management Plan shall describe how Project Co will minimize Door Closures, implement the necessary Door Closures and evaluate its performance in relation to the Door Closure Target Letter. The DCMP shall also describe the verification process through which HMQ Entities can audit Project Co's Door Closure performance.
- 1.10 **“Door Closure Target Letter”** means the letter set out in Appendix C.
- 1.11 **“Station Area”** means a block of properties as identified in Appendix A.
- 1.12 **“Unit Cost”** for each Door Closure, means the price for each Door Closure as set out in Appendix A. The unit costs are per day.
- 2. CONTENT AND FORMAT OF THE DOOR CLOSURE ANALYSIS REPORT**
- 2.1 Project Co shall deliver to HMQ Entities a report summarizing the AADC for the applicable period (the **“Door Closure Analysis Report”**) no later than five Business Days following the end of each month.
- 2.2 Project Co shall include copies of all documentation required to fully support the Door Closure Analysis Report.
- 2.3 The Door Closure Analysis Report shall, at a minimum, include the following information:

- (a) a summary of actual Door Closures by Station Area as defined in Appendix A for the previous month, including a breakdown of Door Closures by times, dates and duration;
  - (b) projected Door Closures until Substantial Completion, on a monthly basis and by Station and any changes forecast for the upcoming month, along with trends and potential risks associated with these Door Closures;
  - (c) accurate and precise data in support of the items set out in Sections 2.3(a) and 2.3(b);
  - (d) calculation of the AADCC and the variance between AADCC with respect to ATDCC from the commencement of the Construction Period up to and including the previous month by Station;
  - (e) if at any time the variance between the AADCC and ATDCC is greater than 10% of the ATDCC, then Project Co shall also submit a detailed remediation plan no later than ten Business Days following the end of the month to explain how it will reduce the AADCC for the subsequent month, such that the variance will not exceed the ATDCC by more than 10% for the subsequent month;
  - (f) establishment of a basis for continued monitoring of Door Closures and adjustments to the AADC;
  - (g) outline of any outstanding issues from any previous Door Closure Analysis Reports and mitigating strategies to address those issues; and
  - (h) summary tables from all previous Door Closure Analysis Reports.
- 2.4 Following the acceptance of the Door Closure Analysis Report by the HMQ Representative, the data set out in the Door Closure Analysis Report will be used by HMQ Entities to determine the Door Closure Adjustment.

### **3. PROCEDURES FOR DETERMINING DOOR CLOSURE ADJUSTMENTS**

- 3.1 HMQ Entities will assess Project Co for the cost of Door Closures based on the total Door Closures that occur per day on a per Station basis. The cost of Door Closures for each Station shall be included in the calculation of the Door Closure Adjustment as provided in Section 5.5.
- 3.2 The AADCC shall be used to calculate the Door Closure Adjustment. The ATDCC shall form the benchmark for calculating the Door Closure Adjustment with respect to the AADCC. The Door Closure Target Letter shall not be amended, altered or adjusted except by the process described in Section 4.
- 3.3 The measurement and verification of Door Closures will be reviewed and confirmed by the HMQ Representative.
- 3.4 No later than three months prior to the first Door Closure, Project Co shall deliver to HMQ Entities, for review, a Door Closure Management Plan. The DCMP 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 Door Closures;
  - (b) clearly identified objectives and targets;
  - (c) identification of the communication methods, protocols and timing by which notification to property owners of Door Closures will be made;
  - (d) an anticipated schedule of Door Closures organized by Station Area;
  - (e) the methods by which Project Co will measure Door Closure duration;
  - (f) the methods by which Project Co will compare planned and actual performance in meeting Door Closure targets; and
  - (g) the method by which Door Closure records will be recorded, preserved and made available to HMQ Entities for the purposes of verification.
- 3.5 Project Co shall not initiate or proceed with initiation or implementation of Door Closures prior to submission and review of the DCMP by HMQ Entities in accordance with Schedule 10 – Review Procedure.
- 3.6 As soon as practicable, and in any event, no later than 5 Business Days following the submission of the Door Closure Analysis Report (or as agreed to between the Parties), Project Co and HMQ Entities shall convene a review meeting (the “**Door Access Matters Review Meeting**”) to be attended by the Project Co Representative and HMQ Representative. At the Door Access Matters Review Meeting, Project Co shall present the Door Closure Analysis Report to HMQ Entities, and HMQ Entities and Project Co shall discuss the AADC for the preceding period.
- 3.7 Project Co shall assist the HMQ Representative and afford the HMQ Representative such information and access to the Door Closure records, and by other means as may reasonably be required for the HMQ Representative to confirm the Door Closure Analysis Report provided by Project Co to determine the AADC and resulting AADCC and interim Door Closure Adjustment for the preceding period.
- 3.8 HMQ Entities will notify Project Co within 5 Business Days following the Door Access Matters Review Meeting of,
- (a) HMQ Entities’ acceptance of the Door Closure Analysis Report; or
  - (b) HMQ Entities’ disagreement with the Door Closure Analysis Report, and HMQ Entities shall provide details of such disagreement with all or any aspect of the Door Closure Analysis Report. The Parties shall then seek to agree to any matter(s) in dispute. Where a matter cannot be resolved within 15 Business Days of HMQ Entities’ notification of disagreement with the Door Closure Analysis Report (or such other period as may be otherwise specified by the HMQ Representative, acting reasonably), such matter shall be dealt with in accordance with Schedule 27 - Dispute Resolution Procedure.



- 3.9 Once the matter(s) in dispute have been resolved in accordance with Section 3.8(b), Project Co shall amend the Door Closure Analysis Report, if necessary, including, for clarity any calculations set out the Door Closure Analysis Report.
- 3.10 For the purpose of this Schedule 40, Door Closures will be measured on a per day basis. Project Co shall ensure that at no time shall any door or driveway be closed for more than 15 consecutive days or a combined total of 30 days during the Construction Period. Any two Door Closures with less than 10 days between closures shall be deemed to be consecutive for the purposes of this Section 3.10.

#### 4. PROCESS FOR AMENDING THE AGGREGATE TARGET DOOR CLOSURE

- 4.1 In all cases, adjustments to ATDC must be consistent with the principles outlined in the DCMF.
- 4.2 Project Co and HMQ Entities shall, each acting reasonably, agree to make any adjustments to the ATDC or the AADC, but only in the event of changes implemented due to an amendment of the Project Agreement or a Variation that would cause Door Closure changes.
- 4.3 The Party requesting an amendment to the ATDC in accordance with Section 4.2 shall initiate a Variation. Where required, an amended DCMF shall also be prepared and include a detailed analysis of the impacts to area businesses and residents, including an analysis of revised Door Closure requirements. The amended DCMF shall include a recommendation regarding amendments to the ATDC. Both HMQ Entities and Project Co shall agree to the amended ATDC 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 DOOR CLOSURE ADJUSTMENT

- 5.1 For the purpose of preparing the Door Closure Target Letter, the Aggregate Target Door Closure Cost shall be calculated for each Station Area as follows:

- (a) Target Door Closures

$$\sum_{i=1}^r [(P_i * D_{Ti}) + (P_t - P_i) * D_{Ti} * [\text{REDACTED}]\%]$$

*Where i is the door in question; r is the number of doors affected by the construction; P<sub>i</sub> is the Unit Cost for door i; D<sub>Ti</sub> is the target number of days that door i will be closed; P<sub>t</sub> is the Unit Cost for the total doors in the Station Area that do not have continuous sidewalk access.*

Plus

- (b) Target Driveway Closures

$$\sum_{j=1}^s [W_j * D_{Tj}]$$

Where  $j$  is the driveway in question;  $s$  is the number of driveways affected by the construction;  $W_j$  is the Unit Cost of driveway  $j$ ;  $D_{Tj}$  is the target number of days that driveway  $j$  is closed.

Plus

- (c) Target Sidewalk Closures

$$[B * (D_T - \sum_{i=1}^r D_{Ti})]$$

Where  $B$  is the cost of the sidewalk closure in the Station Area;  $i$ ,  $r$ , and  $D_{Ti}$  are previously defined;  $D_T$  is the total target number of days that one or more doors within the Station Area do not have continuous sidewalk access during the construction of the Station Area.

5.2 For the purpose of preparing the Door Closure Analysis Report, the Aggregate Actual Door Closure Cost shall be calculated for each Station Area as follows:

- (a) Actual Door Closures Cost

$$\sum_{i=1}^r [(P_i * D_{Ai}) + (P_t - P_i) * D_{Ai} * [\text{REDACTED}]\%]$$

Where  $i$  is the door in question;  $r$  is the number of doors affected by the construction;  $P_i$  is the Unit Cost for door  $i$ ;  $D_{Ai}$  is the actual number of days that door  $i$  was closed;  $P_t$  is the Unit Cost for the total doors in the Station Area that do not have continuous sidewalk access.

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;  $W_j$  is the Unit Cost of driveway  $j$ ;  $D_{Aj}$  is the actual number of days that driveway  $j$  is closed.

Plus

- (c) Actual Sidewalk Closures Cost

$$[B * (D_A - \sum_{i=1}^r D_{Ai})]$$

Where  $B$  is the cost of the sidewalk closure in the Station Area;  $i$ ,  $r$ , and  $D_{Ai}$  are previously defined;  $D_A$  is the total actual number of days that one or more doors within the Station Area do not have continuous sidewalk access during the construction of the Station Area.

- 5.3 For the purpose of calculating the Door Closure Adjustment, Project Co shall complete a preliminary evaluation no later than 180 days prior to Substantial Completion (or at a later date as mutually agreed to between the Parties), comparing the final AADCC to the ATDCC for each Station. Only if the AADCC is more than [REDACTED]% greater than the ATDCC for any Station will the variance for that Station be included in the Door Closure Adjustment.
- 5.4 After the acceptance of the last Door Closure Analysis Report described in Section 2 by HMQ Entities and no later than 30 Business Days before the Scheduled Substantial Completion Date, the Door Closure Adjustment shall be calculated by comparing the final AADCC that has been accepted by HMQ Entities in accordance with this Schedule 40 and included in the final Door Closure Analysis Report, to the ATDCC for each Station. If the final AADCC is more than [REDACTED]% greater than the ATDCC for any Station, then the variance over [REDACTED]% for that Station constitutes the Door Closure Adjustment (DCA) as follows:
- $$DCA = (A - [REDACTED]B)$$
- Where A is the AADCC for each Station and B is the ATDCC for each Station.
- 5.5 HMQ Entities shall deduct the amount of the Door Closure Adjustment from the Substantial Completion Payment to be made in accordance with the Project Agreement.
- 5.6 For clarity, the Door 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.
- 5.7 For the purposes of calculating the Door Closure Adjustment in accordance with this Schedule 40, the Parties shall have regard to Sections 40.2(g) and 44.2(e) of the Project Agreement.

**Appendix A:**

**Unit Costs for Door Closures**

Door, driveway and sidewalk closures have been anticipated at a number of Stations as identified by the list of properties below. Stations where no closures have been anticipated include Mount Dennis, Caledonia, Eglinton West, Don Mills and Kennedy. For any additional closures not listed in this Schedule 40, Project Co shall submit a request to HMQ Entities before closing the door. HMQ Entities may, in its sole discretion, permit the Door Closure and, if permitted, provide the unit cost.

<b>Keele Station</b>			
<b>Station Area 1: Municipal Drive to Trethewey Drive, north side</b>			
<b>Address</b>	<b>Unit Cost/Door Closure</b>	<b>Unit Cost/Driveway Closure</b>	<b>Sidewalk Closure</b>
None	None	None	
Sidewalk Closure			\$[REDACTED]

<b>Keele Station</b>			
<b>Station Area 2: Trethewey Drive to Keele Street, north side</b>			
<b>Address</b>	<b>Unit Cost/Door Closure</b>	<b>Unit Cost/Driveway Closure</b>	<b>Sidewalk Closure</b>
2654 Eglinton Avenue West	\$[REDACTED]	No driveway	
2642 Eglinton Avenue West	\$[REDACTED]	No driveway	
2640 Eglinton Avenue West	\$[REDACTED]	No driveway	
2638 Eglinton Avenue West	\$[REDACTED]	No driveway	
2636 Eglinton Avenue West	\$[REDACTED]	No driveway	
Sidewalk Closure			\$[REDACTED]

<b>Keele Station</b>			
<b>Station Area 3: Yarrow Road to Keele Street, south side</b>			
<b>Address</b>	<b>Unit Cost/Door Closure</b>	<b>Unit Cost/Driveway Closure</b>	<b>Sidewalk Closure</b>
2639A Eglinton Avenue West	\$[REDACTED]	No driveway	
2639 Eglinton Avenue West	\$[REDACTED]	No driveway	
2637A Eglinton Avenue West	\$[REDACTED]	No driveway	
2637 Eglinton Avenue West	\$[REDACTED]	No driveway	
2635A Eglinton Avenue West	\$[REDACTED]	No driveway	
2635 Eglinton Avenue West	\$[REDACTED]	No driveway	
2633A Eglinton Avenue West	\$[REDACTED]	No driveway	
2633 Eglinton Avenue West	\$[REDACTED]	No driveway	

2631A Eglinton Avenue West	[\$REDACTED]	No driveway	
2631 Eglinton Avenue West	[\$REDACTED]	No driveway	
2623 Eglinton Avenue West	[\$REDACTED]	[\$REDACTED]	
Sidewalk Closure			[\$REDACTED]

**Keele Station**

**Station Area 4: Keele Street to Scott Road, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
2611A Eglinton Avenue West	[\$REDACTED]	No driveway	
2611 Eglinton Avenue West	[\$REDACTED]	No driveway	
2609 Eglinton Avenue West	[\$REDACTED]	No driveway	
2605 Eglinton Avenue West	[\$REDACTED]	No driveway	
2603A Eglinton Avenue West	[\$REDACTED]	No driveway	
2603 Eglinton Avenue West	[\$REDACTED]	No driveway	
2601 Eglinton Avenue West	[\$REDACTED]	No driveway	
2599 Eglinton Avenue West	[\$REDACTED]	No driveway	
2597A Eglinton Avenue West	[\$REDACTED]	No driveway	
2597 Eglinton Avenue West	[\$REDACTED]	No driveway	
2595A Eglinton Avenue West	[\$REDACTED]	No driveway	
2595 Eglinton Avenue West	[\$REDACTED]	No driveway	
2593A Eglinton Avenue West	[\$REDACTED]	No driveway	
2593 Eglinton Avenue West	[\$REDACTED]	No driveway	
2591A Eglinton Avenue West	[\$REDACTED]	No driveway	
2591 Eglinton Avenue West	[\$REDACTED]	No driveway	
2589A Eglinton Avenue West	[\$REDACTED]	No driveway	
2589 Eglinton Avenue West	[\$REDACTED]	No driveway	
2587 Eglinton Avenue West	[\$REDACTED]	No driveway	
2585 Eglinton Avenue West	[\$REDACTED]	No driveway	

2581A Eglinton Avenue West	[\$REDACTED]	No driveway
2581 Eglinton Avenue West	[\$REDACTED]	No driveway
2579A Eglinton Avenue West	[\$REDACTED]	No driveway
2579 Eglinton Avenue West	[\$REDACTED]	No driveway
2577A Eglinton Avenue West	[\$REDACTED]	No driveway
2577 Eglinton Avenue West	[\$REDACTED]	No driveway
2575A Eglinton Avenue West	[\$REDACTED]	No driveway
2575 Eglinton Avenue West	[\$REDACTED]	No driveway
2573A Eglinton Avenue West	[\$REDACTED]	No driveway
2573 Eglinton Avenue West	[\$REDACTED]	No driveway
2571 Eglinton Avenue West	[\$REDACTED]	No driveway
2569 Eglinton Avenue West	[\$REDACTED]	No driveway
2567A Eglinton Avenue West	[\$REDACTED]	No driveway
2567 Eglinton Avenue West	[\$REDACTED]	No driveway
2565 Eglinton Avenue West	[\$REDACTED]	No driveway
2563A Eglinton Avenue West	[\$REDACTED]	No driveway
2563 Eglinton Avenue West	[\$REDACTED]	No driveway
2561 Eglinton Avenue West	[\$REDACTED]	No driveway
2559A Eglinton Avenue West	[\$REDACTED]	No driveway
2559 Eglinton Avenue West	[\$REDACTED]	No driveway
2557A Eglinton Avenue West	[\$REDACTED]	No driveway
2557 Eglinton Avenue West	[\$REDACTED]	No driveway
2555 Eglinton Avenue West	[\$REDACTED]	No driveway
Sidewalk Closure		[\$REDACTED]

<b>Dufferin Station</b>	<b>Station Area 1: Shortt Street to Dufferin Street, north side</b>
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Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
1862 Eglinton Avenue West	[\$REDACTED]	No driveway	
1860 Eglinton Avenue West	[\$REDACTED]	No driveway	
1858 Eglinton Avenue West	[\$REDACTED]	No driveway	
1854 Eglinton Avenue West	[\$REDACTED]	No driveway	
1850 Eglinton Avenue West	[\$REDACTED]	No driveway	
1848A Eglinton Avenue West	[\$REDACTED]	No driveway	
1848 Eglinton Avenue West	[\$REDACTED]	No driveway	
1840 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			

**Dufferin Station**

**Station Area 2: Dufferin Street to Locksley Avenue, north side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
1828 Eglinton Avenue West	[\$REDACTED]	No driveway	
1820 Eglinton Avenue West	[\$REDACTED]	No driveway	
1818 Eglinton Avenue West, Unit 2	[\$REDACTED]	No driveway	
1818 Eglinton Avenue West	[\$REDACTED]	No driveway	
1812 Eglinton Avenue West	[\$REDACTED]	[\$REDACTED]	
1808A Eglinton Avenue West	[\$REDACTED]	No driveway	
1808 Eglinton Avenue West	[\$REDACTED]	No driveway	
1806 Eglinton Avenue West	[\$REDACTED]	No driveway	
1804 Eglinton Avenue West	[\$REDACTED]	No driveway	
1802 Eglinton Avenue West	[\$REDACTED]	No driveway	
1800 Eglinton Avenue West	[\$REDACTED]	No driveway	
1798 Eglinton Avenue West	[\$REDACTED]	No driveway	
1796 Eglinton Avenue West	[\$REDACTED]	No driveway	
1794 Eglinton Avenue West	[\$REDACTED]	No driveway	
1792 Eglinton Avenue West	[\$REDACTED]	No driveway	

1790 Eglinton Avenue West	\$(REDACTED)	No driveway
1788 Eglinton Avenue West	\$(REDACTED)	No driveway
1786A Eglinton Avenue West	\$(REDACTED)	No driveway
1786 Eglinton Avenue West	\$(REDACTED)	No driveway
<del>1784A Eglinton Avenue West</del>		
1784 Eglinton Avenue West	\$(REDACTED)	No driveway
1780A Eglinton Avenue West	\$(REDACTED)	No driveway
1780 Eglinton Avenue West	\$(REDACTED)	No driveway
1778A Eglinton Avenue West	\$(REDACTED)	No driveway
1778 Eglinton Avenue West	\$(REDACTED)	No driveway
1776 Eglinton Avenue West	\$(REDACTED)	No driveway
1776 A Eglinton Avenue West	\$(REDACTED)	No driveway
1774B Eglinton Avenue West	\$(REDACTED)	No driveway
1774A Eglinton Avenue West	\$(REDACTED)	No driveway
1774 Eglinton Avenue West	\$(REDACTED)	No driveway
1772 Eglinton Avenue West	\$(REDACTED)	No driveway
1770-1768 Eglinton Avenue West	\$(REDACTED)	No driveway
1766 Eglinton Avenue West	\$(REDACTED)	\$(REDACTED)
1764A Eglinton Avenue West	\$(REDACTED)	No driveway
1764 Eglinton Avenue West	\$(REDACTED)	No driveway
1762 Eglinton Avenue West	\$(REDACTED)	No driveway
1760A Eglinton Avenue West	\$(REDACTED)	No driveway
1760 Eglinton Avenue West	\$(REDACTED)	No driveway
1758A Eglinton Avenue West	\$(REDACTED)	No driveway
1758 Eglinton Avenue West	\$(REDACTED)	No driveway
1756A Eglinton Avenue West	\$(REDACTED)	No driveway



1756 Eglinton Avenue West	[\$REDACTED]	No driveway	
1754A Eglinton Avenue West	[\$REDACTED]	No driveway	
1754 Eglinton Avenue West	[\$REDACTED]	No driveway	
1752A Eglinton Avenue West	[\$REDACTED]	No driveway	
1752 Eglinton Avenue West	[\$REDACTED]	No driveway	
1750A Eglinton Avenue West	[\$REDACTED]	No driveway	
1750 Eglinton Avenue West	[\$REDACTED]	No driveway	
1748A Eglinton Avenue West	[\$REDACTED]	No driveway	
1748 Eglinton Avenue West	[\$REDACTED]	No driveway	
1746A Eglinton Avenue West	[\$REDACTED]	No driveway	
1746 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			[\$REDACTED]

**Dufferin Station**

**Station Area 3: Dynevor Road to Dufferin Street, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
1863 Eglinton Avenue West	[\$REDACTED]	No driveway	
1861 Eglinton Avenue West	[\$REDACTED]	No driveway	
1859A Eglinton Avenue West	[\$REDACTED]	No driveway	
1859 Eglinton Avenue West	[\$REDACTED]	No driveway	
1855 Eglinton Avenue West	[\$REDACTED]	No driveway	
1853 Eglinton Avenue West	[\$REDACTED]	No driveway	
1851 Eglinton Avenue West	[\$REDACTED]	No driveway	
1839A Eglinton Avenue West	[\$REDACTED]	No driveway	
1839 Eglinton Avenue West	[\$REDACTED]	No driveway	
1837 Eglinton Avenue West	[\$REDACTED]	No driveway	
1835 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			[\$REDACTED]

**Dufferin Station**

**Station Area 4: Dufferin Street to Northcliffe Boulevard, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
1807A Eglinton Avenue West	[\$REDACTED]	No driveway	
1807 Eglinton Avenue West	[\$REDACTED]	No driveway	
1801 Eglinton Avenue West (west)	[\$REDACTED]	No driveway	
1801 Eglinton Avenue West (east)	[\$REDACTED]	No driveway	
1801 Eglinton Avenue West (centre)	[\$REDACTED]	No driveway	
1775 Eglinton Avenue West	[\$REDACTED]	No closure permitted	
1775 Eglinton Avenue West (commercial)	[\$REDACTED]	No driveway	
1773 Eglinton Avenue West	[\$REDACTED]	No driveway	
1769 Eglinton Avenue West	[\$REDACTED]	No driveway	
1765 Eglinton Avenue West	[\$REDACTED]	No driveway	
1763 Eglinton Avenue West	[\$REDACTED]	No driveway	
1761 Eglinton Avenue West	[\$REDACTED]	No driveway	
1757A Eglinton Avenue West	[\$REDACTED]	No driveway	
1757 Eglinton Avenue West	[\$REDACTED]	No driveway	
1755 Eglinton Avenue West	[\$REDACTED]	No driveway	
1753 Eglinton Avenue West	[\$REDACTED]	No driveway	
1751 Eglinton Avenue West	[\$REDACTED]	No driveway	
1749 Eglinton Avenue West	[\$REDACTED]	No driveway	
1747 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			

**Oakwood Station**

**Station Area 1: Times Road to Oakwood Avenue, north side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
1634 Eglinton Avenue West	[\$REDACTED]	No driveway	

1622 Eglinton Avenue West	[\$REDACTED]	No driveway	
1612A Eglinton Avenue West	[\$REDACTED]	No driveway	
1612 Eglinton Avenue West	[\$REDACTED]	No driveway	
1610A Eglinton Avenue West	[\$REDACTED]	No driveway	
1610 Eglinton Avenue West	[\$REDACTED]	No driveway	
1608A Eglinton Avenue West	[\$REDACTED]	No driveway	
1608 Eglinton Avenue West	[\$REDACTED]	No driveway	
1606 Eglinton Avenue West	[\$REDACTED]	No driveway	
1604 Eglinton Avenue West	[\$REDACTED]	No driveway	
1602 Eglinton Avenue West (west)	[\$REDACTED]	No driveway	
1602 Eglinton Avenue West (east)	[\$REDACTED]	No driveway	
1600B Eglinton Avenue West	[\$REDACTED]	No driveway	
1600 Eglinton Avenue West	[\$REDACTED]	No driveway	
1598 Eglinton Avenue West	[\$REDACTED]	No driveway	
1596 Eglinton Avenue West	[\$REDACTED]	No driveway	
1594A Eglinton Avenue West	[\$REDACTED]	No driveway	
1594 Eglinton Avenue West	[\$REDACTED]	No driveway	
1592A Eglinton Avenue West	[\$REDACTED]	No driveway	
1592 Eglinton Avenue West	[\$REDACTED]	No driveway	
1590A Eglinton Avenue West	[\$REDACTED]	No driveway	
1590 Eglinton Avenue West	[\$REDACTED]	No driveway	
1588 Eglinton Avenue West	[\$REDACTED]	No driveway	
1586 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			[\$REDACTED]

**Oakwood Station**

**Station Area 2: Oakwood Avenue to Marlee Avenue, north side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
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1576 Eglinton Avenue West	\$(REDACTED)	No driveway
1574 Eglinton Avenue West	\$(REDACTED)	No driveway
1572A Eglinton Avenue West	\$(REDACTED)	No driveway
1572 Eglinton Avenue West	\$(REDACTED)	No driveway
1570A Eglinton Avenue West	\$(REDACTED)	No driveway
1570 Eglinton Avenue West	\$(REDACTED)	No driveway
1568A Eglinton Avenue West	\$(REDACTED)	No driveway
1568 Eglinton Avenue West	\$(REDACTED)	No driveway
1564A Eglinton Avenue West	\$(REDACTED)	No driveway
1564 Eglinton Avenue West	\$(REDACTED)	No driveway
1562 Eglinton Avenue West	\$(REDACTED)	No driveway
1560A Eglinton Avenue West	\$(REDACTED)	No driveway
1560 Eglinton Avenue West	\$(REDACTED)	No driveway
1558A Eglinton Avenue West	\$(REDACTED)	No driveway
1558 Eglinton Avenue West	\$(REDACTED)	No driveway
1556A Eglinton Avenue West	\$(REDACTED)	No driveway
1556 Eglinton Avenue West	\$(REDACTED)	No driveway
1554A Eglinton Avenue West	\$(REDACTED)	No driveway
1554 Eglinton Avenue West	\$(REDACTED)	No driveway
1552A Eglinton Avenue West	\$(REDACTED)	No driveway
1552 Eglinton Avenue West	\$(REDACTED)	No driveway
1550A Eglinton Avenue West	\$(REDACTED)	No driveway
1550 Eglinton Avenue West	\$(REDACTED)	No driveway
1548A Eglinton Avenue West	\$(REDACTED)	No driveway
1548 Eglinton Avenue West	\$(REDACTED)	No driveway
1546A Eglinton Avenue West	\$(REDACTED)	No driveway

1546 Eglinton Avenue West (west)	\$(REDACTED)	No driveway
1546 Eglinton Avenue West (east)	\$(REDACTED)	No driveway
1542 Eglinton Avenue West	\$(REDACTED)	No driveway
1540 Eglinton Avenue West	\$(REDACTED)	No driveway
1538 Eglinton Avenue West	\$(REDACTED)	No driveway
1536 Eglinton Avenue West	\$(REDACTED)	No driveway
1534 Eglinton Avenue West	\$(REDACTED)	No driveway
1532 Eglinton Avenue West	\$(REDACTED)	No driveway
1530B Eglinton Avenue West	\$(REDACTED)	No driveway
1530 Eglinton Avenue West	\$(REDACTED)	No driveway
1528 Eglinton Avenue West	\$(REDACTED)	No driveway
1526 Eglinton Avenue West	\$(REDACTED)	No driveway
1524 Eglinton Avenue West	\$(REDACTED)	No driveway
1522 Eglinton Avenue West	\$(REDACTED)	No driveway
1520 Eglinton Avenue West	\$(REDACTED)	No driveway
1518 Eglinton Avenue West	\$(REDACTED)	No driveway
1516 Eglinton Avenue West	\$(REDACTED)	No driveway
1514 Eglinton Avenue West	\$(REDACTED)	No driveway
1512 Eglinton Avenue West	\$(REDACTED)	No driveway
1510 Eglinton Avenue West	\$(REDACTED)	No driveway
1508A Eglinton Avenue West	\$(REDACTED)	No driveway
1508 Eglinton Avenue West	\$(REDACTED)	No driveway
1506A Eglinton Avenue West	\$(REDACTED)	No driveway
1506 Eglinton Avenue West	\$(REDACTED)	No driveway
1504A Eglinton Avenue West	\$(REDACTED)	No driveway
1504 Eglinton Avenue West	\$(REDACTED)	No driveway

1502A Eglinton Avenue West	[\$REDACTED]	No driveway	
1502 Eglinton Avenue West	[\$REDACTED]	No driveway	
1500 Eglinton Avenue West	[\$REDACTED]	[\$REDACTED]	
1490 Eglinton Avenue West	[\$REDACTED]	[\$REDACTED]	
1480 Eglinton Avenue West	[\$REDACTED]	No driveway	
1478A Eglinton Avenue West	[\$REDACTED]	No driveway	
1478 Eglinton Avenue West	[\$REDACTED]	No driveway	
1476A Eglinton Avenue West	[\$REDACTED]	No driveway	
1476 Eglinton Avenue West	[\$REDACTED]	No driveway	
1474 Eglinton Avenue West	[\$REDACTED]	No driveway	
1472 Eglinton Avenue West	[\$REDACTED]	No driveway	
1470A Eglinton Avenue West	[\$REDACTED]	No driveway	
1470 Eglinton Avenue West	[\$REDACTED]	No driveway	
1466A Eglinton Avenue West	[\$REDACTED]	No driveway	
1466B Eglinton Avenue West	[\$REDACTED]	No driveway	
1466 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			[\$REDACTED]

**Oakwood Station**

**Station Area 3: Glenholme Avenue to Oakwood Avenue, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
1661A Eglinton Avenue West	[\$REDACTED]	No driveway	
1661 Eglinton Avenue West	[\$REDACTED]	No driveway	
1659A Eglinton Avenue West	[\$REDACTED]	No driveway	
1659 Eglinton Avenue West	[\$REDACTED]	No driveway	
1657 Eglinton Avenue West	[\$REDACTED]	No driveway	
1655A Eglinton Avenue West	[\$REDACTED]	No driveway	
1655 Eglinton Avenue West	[\$REDACTED]	No driveway	

1653A Eglinton Avenue West	[\$REDACTED]	No driveway
1653 Eglinton Avenue West	[\$REDACTED]	No driveway
1651A Eglinton Avenue West	[\$REDACTED]	No driveway
1651 Eglinton Avenue West	[\$REDACTED]	No driveway
1649A Eglinton Avenue West	[\$REDACTED]	No driveway
1649 Eglinton Avenue West	[\$REDACTED]	No driveway
1647A Eglinton Avenue West	[\$REDACTED]	No driveway
1647 Eglinton Avenue West	[\$REDACTED]	No driveway
1645A Eglinton Avenue West	[\$REDACTED]	No driveway
1643 Eglinton Avenue West	[\$REDACTED]	No driveway
1639A Eglinton Avenue West	[\$REDACTED]	No driveway
1639 Eglinton Avenue West	[\$REDACTED]	No driveway
1637A Eglinton Avenue West	[\$REDACTED]	No driveway
1637 Eglinton Avenue West	[\$REDACTED]	No driveway
1635A Eglinton Avenue West	[\$REDACTED]	No driveway
1635 Eglinton Avenue West	[\$REDACTED]	No driveway
1633A Eglinton Avenue West	[\$REDACTED]	No driveway
1633 Eglinton Avenue West	[\$REDACTED]	No driveway
1627 Eglinton Avenue West	[\$REDACTED]	No driveway
1627A Eglinton Avenue West	[\$REDACTED]	No driveway
1625A Eglinton Avenue West	[\$REDACTED]	No driveway
1625 Eglinton Avenue West	[\$REDACTED]	No driveway
1623A Eglinton Avenue West	[\$REDACTED]	No driveway
1623 Eglinton Avenue West	[\$REDACTED]	No driveway
1621A Eglinton Avenue West	[\$REDACTED]	No driveway
1621 Eglinton Avenue West	[\$REDACTED]	No driveway

1603 Eglinton Avenue West	[\$REDACTED] (applies to building existing 2014)	[\$REDACTED]	
1601-BSMT Eglinton Avenue West	[\$REDACTED]	No driveway	
1601 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			[\$REDACTED]

**Oakwood Station**

**Station Area 4: Oakwood Avenue to Alameda Avenue, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
1575 Eglinton Avenue West	[\$REDACTED]	No driveway	
1573 Eglinton Avenue West	[\$REDACTED]	No driveway	
1571 Eglinton Avenue West	[\$REDACTED]	No driveway	
1569 Eglinton Avenue West	[\$REDACTED]	No driveway	
1567A Eglinton Avenue West	[\$REDACTED]	No driveway	
1567 Eglinton Avenue West	[\$REDACTED]	No driveway	
1565B Eglinton Avenue West (upper)	[\$REDACTED]	No driveway	
1565B Eglinton Avenue West (lower)	[\$REDACTED]	No driveway	
1565A Eglinton Avenue West (upper)	[\$REDACTED]	No driveway	
1565A Eglinton Avenue West (lower)	[\$REDACTED]	No driveway	
1563A Eglinton Avenue West	[\$REDACTED]	No driveway	
1563 Eglinton Avenue West	[\$REDACTED]	No driveway	
1561A Eglinton Avenue West	[\$REDACTED]	No driveway	
1561 Eglinton Avenue West	[\$REDACTED]	No driveway	
1559B Eglinton Avenue West (upper)	[\$REDACTED]	No driveway	
1559B Eglinton Avenue West (lower)	[\$REDACTED]	No driveway	
1559A Eglinton Avenue West (upper)	[\$REDACTED]	No driveway	
1559A Eglinton Avenue West (lower)	[\$REDACTED]	No driveway	



1557A Eglinton Avenue West	[\$REDACTED]	No driveway
1557 Eglinton Avenue West	[\$REDACTED]	No driveway
1555 Eglinton Avenue West	[\$REDACTED]	No driveway
1553A Eglinton Avenue West	[\$REDACTED]	No driveway
1553 Eglinton Avenue West	[\$REDACTED]	No driveway
1551A Eglinton Avenue West	[\$REDACTED]	No driveway
1551 Eglinton Avenue West	[\$REDACTED]	No driveway
1549A Eglinton Avenue West	[\$REDACTED]	No driveway
1549 Eglinton Avenue West	[\$REDACTED]	No driveway
1547 Eglinton Avenue West	[\$REDACTED]	No driveway
1545 Eglinton Avenue West	[\$REDACTED]	No driveway
1543 Eglinton Avenue West	[\$REDACTED]	No driveway
1541A Eglinton Avenue West (lower)	[\$REDACTED]	No driveway
1541A Eglinton Avenue West	[\$REDACTED]	No driveway
1541 Eglinton Avenue West (lower)	[\$REDACTED]	No driveway
1541 Eglinton Avenue West	[\$REDACTED]	No driveway
1539A Eglinton Avenue West	[\$REDACTED]	No driveway
1539 Eglinton Avenue West	[\$REDACTED]	No driveway
1537A Eglinton Avenue West	[\$REDACTED]	No driveway
1537 Eglinton Avenue West	[\$REDACTED]	No driveway
1533-1535 Eglinton Avenue West	[\$REDACTED]	No closure permitted
1529 Eglinton Avenue West	[\$REDACTED]	No driveway
Sidewalk Closure		[\$REDACTED]

<b>Bathurst Station</b>		<b>Station Area 1: Hilltop Road to Bathurst Street, north side</b>	
<b>Address</b>	<b>Unit Cost/Door Closure</b>	<b>Unit Cost/Driveway Closure</b>	<b>Sidewalk Closure</b>
898 Eglinton Avenue West	[\$REDACTED]	No driveway	
896A Eglinton Avenue West	[\$REDACTED]	No driveway	
896 Eglinton Avenue West	[\$REDACTED]	No driveway	
894A Eglinton Avenue West	[\$REDACTED]	No driveway	
894 Eglinton Avenue West	[\$REDACTED]	No driveway	
892B Eglinton Avenue West	[\$REDACTED]	No driveway	
892A Eglinton Avenue West	[\$REDACTED]	No driveway	
892 Eglinton Avenue West	[\$REDACTED]	No driveway	
888A Eglinton Avenue West	[\$REDACTED]	No driveway	
888 Eglinton Avenue West	[\$REDACTED]	No driveway	
886 Eglinton Avenue West	[\$REDACTED]	No driveway	
884A Eglinton Avenue West (upper)	[\$REDACTED]	No driveway	
884A Eglinton Avenue West (lower)	[\$REDACTED]	No driveway	
884 Eglinton Avenue West	[\$REDACTED]	No driveway	
882A Eglinton Avenue West (upper)	[\$REDACTED]	No driveway	
882A Eglinton Avenue West (lower)	[\$REDACTED]	No driveway	
882 Eglinton Avenue West (upper)	[\$REDACTED]	No driveway	
882 Eglinton Avenue West (lower)	[\$REDACTED]	No driveway	
880 Eglinton Avenue West	[\$REDACTED]	No driveway	
868 Eglinton Avenue West	[\$REDACTED]	No driveway	
866B Eglinton Avenue West (upper)	[\$REDACTED]	No driveway	
866 Eglinton Avenue West	[\$REDACTED]	No driveway	
864 Eglinton Avenue West	[\$REDACTED]	No driveway	
862 Eglinton Avenue West	[\$REDACTED]	No driveway	

860 Eglinton Avenue West	[\$REDACTED]	No driveway	
858 Eglinton Avenue West	[\$REDACTED]	No driveway	
856 Eglinton Avenue West	[\$REDACTED]	No driveway	
854 Eglinton Avenue West	[\$REDACTED]	No driveway	
852 Eglinton Avenue West	[\$REDACTED]	No driveway	
846 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			

**Bathurst Station**

**Station Area 2: Peveril Hill Road to Bathurst Street, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
861 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			

**Bathurst Station**

**Station Area 3: Bathurst Street to Old Forest Hill Road, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
839 Eglinton Avenue West	[\$REDACTED]	[\$REDACTED]	
825 Eglinton Avenue West	[\$REDACTED]	[\$REDACTED]	
821A Eglinton Avenue West	[\$REDACTED]	No driveway	
821 Eglinton Avenue West	[\$REDACTED]	No driveway	
801 Eglinton Avenue West	[\$REDACTED]	No driveway	
779 Eglinton Avenue West	[\$REDACTED]	No closure permitted	
777 Eglinton Avenue West	[\$REDACTED]	No closure permitted	
Sidewalk Closure			

**Chaplin Station**

**Station Area 1: Gilgorm Road to Latimer Avenue, north side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
572 Eglinton Avenue West	[\$REDACTED]	No driveway	
570A Eglinton Avenue West	[\$REDACTED]	No driveway	
570 Eglinton Avenue West	[\$REDACTED]	No driveway	

564 Eglinton Avenue West	[\$REDACTED]	[\$REDACTED]	
558 Eglinton Avenue West	[\$REDACTED]	No driveway	
556 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			[\$REDACTED]

**Chaplin Station**

**Station Area 2: Chaplin Crescent to Spadina Road, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
None	None	None	
Sidewalk Closure			[\$REDACTED]

**Chaplin Station**

**Station Area 3: Chaplin Crescent to Russell Hill Road, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
617 Eglinton Avenue West	[\$REDACTED]	No driveway	
615 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			[\$REDACTED]

**Avenue Station**

**Station Area 1: Castle Knock Road to Avenue Road, north side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
None	None	None	
Sidewalk Closure			[\$REDACTED]

**Avenue Station**

**Station Area 2: Avenue Road to Oriole Parkway, north side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
306 Eglinton Avenue West	[\$REDACTED]	No driveway	
302A Eglinton Avenue West	[\$REDACTED]	No driveway	
302 Eglinton Avenue West	[\$REDACTED]	No driveway	
300A Eglinton Avenue West	[\$REDACTED]	No driveway	
300 Eglinton Avenue West	[\$REDACTED]	No driveway	
298 Eglinton Avenue West	[\$REDACTED]	No driveway	
296 Eglinton Avenue West	[\$REDACTED]	No driveway	

294A Eglinton Avenue West	\$(REDACTED)	No driveway
294 Eglinton Avenue West	\$(REDACTED)	No driveway
292A Eglinton Avenue West	\$(REDACTED)	No driveway
292 Eglinton Avenue West	\$(REDACTED)	No driveway
290A Eglinton Avenue West	\$(REDACTED)	No driveway
290 Eglinton Avenue West	\$(REDACTED)	No driveway
288A Eglinton Avenue West	\$(REDACTED)	No driveway
288 Eglinton Avenue West	\$(REDACTED)	No driveway
286A Eglinton Avenue West	\$(REDACTED)	No driveway
286 Eglinton Avenue West	\$(REDACTED)	No driveway
284A Eglinton Avenue West	\$(REDACTED)	No driveway
284 Eglinton Avenue West	\$(REDACTED)	No driveway
282A Eglinton Avenue West	\$(REDACTED)	No driveway
282 Eglinton Avenue West	\$(REDACTED)	No driveway
280A Eglinton Avenue West	\$(REDACTED)	No driveway
280 Eglinton Avenue West	\$(REDACTED)	No driveway
272A Eglinton Avenue West	\$(REDACTED)	No driveway
272 Eglinton Avenue West	\$(REDACTED)	No driveway
270B Eglinton Avenue West	\$(REDACTED)	No driveway
270A Eglinton Avenue West	\$(REDACTED)	No driveway
270 Eglinton Avenue West	\$(REDACTED)	No driveway
256 Eglinton Avenue West (west)	\$(REDACTED)	No driveway
256 Eglinton Avenue West (east)	\$(REDACTED)	No driveway
Sidewalk Closure		\$(REDACTED)

**Avenue Station**

**Station Area 3: Oriole Parkway to Edith Drive, north side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
250 Eglinton Avenue West (west)	[\$REDACTED]	No driveway	
250 Eglinton Avenue West (upper, residential)	[\$REDACTED]	No driveway	
250 Eglinton Avenue West (east)	[\$REDACTED]	No driveway	
250 Eglinton Avenue West (centre, second level)	[\$REDACTED]	No driveway	
Sidewalk Closure			

**Avenue Station**

**Station Area 4: Braemar Avenue to Avenue Road, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
333 Eglinton Avenue West, Unit 4	[\$REDACTED]	No driveway	
333 Eglinton Avenue West, Unit 2B	[\$REDACTED]	No driveway	
333 Eglinton Avenue West, Unit 2	[\$REDACTED]	No driveway	
333 Eglinton Avenue West, Unit 1 (west)	[\$REDACTED]	No driveway	
315 Eglinton Avenue West	[\$REDACTED]	No driveway	
313 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			

**Avenue Station**

**Station Area 5: Avenue Road to Highbourne Road, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
None	None	None	
Sidewalk Closure			[\$REDACTED]

**Avenue Station**

**Station Area 6: Highbourne Road to Oriole Parkway, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
500 Oriole Parkway	[\$REDACTED]	No closure permitted	
259 Eglinton Avenue West	[\$REDACTED]	No driveway	
257A Eglinton Avenue West	[\$REDACTED]	No driveway	
257 Eglinton Avenue West	[\$REDACTED]	No driveway	

253A Eglinton Avenue West	[\$REDACTED]	No driveway	
253 Eglinton Avenue West	[\$REDACTED]	No driveway	
243 Eglinton Avenue West (upper)	[\$REDACTED]	No driveway	
243 Eglinton Avenue West (lower, including residential)	[\$REDACTED]	No driveway	
Sidewalk Closure			

**Avenue Station**

**Station Area 7: Oriole Parkway to Eastbourne Avenue, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
211 Eglinton Avenue West	[\$REDACTED]	[\$REDACTED]	
225 Eglinton Avenue West	[\$REDACTED]	[\$REDACTED]	
227 Eglinton Avenue West	[\$REDACTED]	Driveway accounted for in 225 Eglinton Avenue West	
229 Eglinton Avenue West	[\$REDACTED]	Driveway accounted for in 225 Eglinton Avenue West	
Sidewalk Closure			

**Avenue Station**

**Station Area 8: Eastbourne Avenue to Lascelles Boulevard, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
159 Eglinton Avenue West	[\$REDACTED]	[\$REDACTED]	
173 Eglinton Avenue West	[\$REDACTED]	No driveway	
183 Eglinton Avenue West	[\$REDACTED]	[\$REDACTED]	
185 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			

**Yonge/Eglinton Station**

**Station Area 1: Duplex Avenue to Yonge Street, north side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
33 Orchard View Boulevard (door on Eglinton, principal shopping centre entrance)	[\$REDACTED]	No driveway	
30 Eglinton Avenue West	[\$REDACTED]	No driveway	
32 Eglinton Avenue West	[\$REDACTED]	No driveway	

34 Eglinton Avenue West	[\$REDACTED]	No driveway	
36 Eglinton Avenue West	[\$REDACTED]	No driveway	
38 Eglinton Avenue West	[\$REDACTED]	No driveway	
40 Eglinton Avenue West	[\$REDACTED]	No driveway	
42 Eglinton Avenue West	[\$REDACTED]	No driveway	
Sidewalk Closure			[\$REDACTED]

**Yonge/Eglinton Station**

**Station Area 2: Yonge Street to Dunfield Avenue, north side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
10 Eglinton Avenue East (bank – door 1)	[\$REDACTED] (applies to new development with anticipated occupancy of Q2 2018)	No driveway	
10 Eglinton Avenue East (bank – door 2)	[\$REDACTED] (applies to new development with anticipated occupancy of Q2 2018)	No driveway	
10 Eglinton Avenue East (retail – west)	[\$REDACTED] (applies to new development with anticipated occupancy of Q2 2018)	No driveway	
10 Eglinton Avenue East (retail – east)	[\$REDACTED] (applies to new development with anticipated occupancy of Q2 2018)	No driveway	
10 Eglinton Avenue East (office)	[\$REDACTED] (applies to new development with anticipated occupancy of Q2 2018)	No driveway	
10 Eglinton Avenue East (residential)	[\$REDACTED] (applies to new development with anticipated occupancy of Q2 2018)	No driveway	
20 Eglinton Avenue East (west)	[\$REDACTED]	[\$REDACTED]	
20 Eglinton Avenue East (east)	[\$REDACTED]	No driveway	
30 Eglinton Avenue East (lower west)	[\$REDACTED]	No driveway	
30 Eglinton Avenue East (lower centre)	[\$REDACTED]	No driveway	



30 Eglinton Avenue East (upper)	\$(REDACTED)	No driveway	
40 Eglinton Avenue East (west)	\$(REDACTED)	No driveway	
40 Eglinton Avenue East (centre)	\$(REDACTED)	\$(REDACTED)	
40 Eglinton Avenue East (east)	\$(REDACTED)	No driveway	
50 Eglinton Avenue East (west)	\$(REDACTED)	No driveway	
50 Eglinton Avenue East (office)	\$(REDACTED)	No driveway	
50 Eglinton Avenue East (east)	\$(REDACTED)	No driveway	
72 Eglinton Avenue East	\$(REDACTED)	No driveway	
90 Eglinton Avenue East (west left)	\$(REDACTED)	No driveway	
90 Eglinton Avenue East (west right)	\$(REDACTED)	No driveway	
90 Eglinton Avenue East (centre left)	\$(REDACTED)	No driveway	
90 Eglinton Avenue East (centre right)	\$(REDACTED)	No driveway	
Sidewalk Closure			\$(REDACTED)

**Yonge/Eglinton Station**

**Station Area 3: Duplex Avenue to Yonge Street, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
None	None	None	
Sidewalk Closure			\$(REDACTED)

**Yonge/Eglinton Station**

**Station Area 4: Yonge Street to Holly Street, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
43 Eglinton Avenue East (west)	\$(REDACTED)	No driveway	
43 Eglinton Avenue East (centre)	\$(REDACTED)	No driveway	
43 Eglinton Avenue East (east)	\$(REDACTED)	No driveway	
Sidewalk Closure			\$(REDACTED)

**Yonge/Eglinton Station**

**Station Area 5: Holly Street to Dunfield Avenue, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
45 Eglinton Avenue East	\$(REDACTED)	No driveway	

49 Eglinton Avenue East (lower)	[\$REDACTED]	No driveway	
49 Eglinton Avenue East (upper)	[\$REDACTED]	No driveway	
51 Eglinton Avenue East (lower)	[\$REDACTED]	No driveway	
51 Eglinton Avenue East (office)	[\$REDACTED]	No driveway	
55 Eglinton Avenue East (east)	[\$REDACTED]	No driveway	
55 Eglinton Avenue East (office)	[\$REDACTED]	[\$REDACTED]	
55 Eglinton Avenue East (west)	[\$REDACTED]	No driveway	
75 Eglinton Avenue East (east)	[\$REDACTED]	No driveway	
75 Eglinton Avenue East (office)	[\$REDACTED]	No driveway	
75 Eglinton Avenue East (west)	[\$REDACTED]	No driveway	
Sidewalk Closure			[\$REDACTED]

**Yonge/Eglinton Station**

**Station Area 6: Eglinton Avenue to Orchard View Boulevard, west side of Yonge Street**

<b>Address</b>	<b>Unit Cost/Door Closure</b>	<b>Unit Cost/Driveway Closure</b>	<b>Sidewalk Closure</b>
33 Orchard View Boulevard (southernmost door on Yonge Street, combined retail and TTC subway entrance)	[\$REDACTED]	No driveway	
33 Orchard View Boulevard (retail entrance associated with new development)	[\$REDACTED]	No driveway	
33 Orchard View Boulevard (door to staircase associated with new development)	[\$REDACTED]	No driveway	
33 Orchard View Boulevard (new 2300 Yonge St. office lobby)	[\$REDACTED]	No driveway	
33 Orchard View Boulevard (new 2300 Yonge St. office lobby)	[\$REDACTED]	No driveway	
33 Orchard View Boulevard (existing stairs down to shopping centre entrance)	[\$REDACTED]	No driveway	
33 Orchard View Boulevard (existing staircase to movie theatre entrance)	[\$REDACTED]	No driveway	
33 Orchard View Boulevard (existing book store entrance)	[\$REDACTED]	No driveway	
33 Orchard View Boulevard (existing shopping centre entrance)	[\$REDACTED]	No driveway	
33 Orchard View Boulevard (existing shopping centre entrance)	[\$REDACTED]	No driveway	

33 Orchard View Boulevard (existing northernmost door on Yonge Street)	[\$REDACTED]	No driveway	
Sidewalk Closure			[\$REDACTED]

<u>Mount Pleasant Station</u>		Station Area 1: Redpath Avenue to Mount Pleasant Road, north side	
Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
234 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
240 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
244 Eglinton Avenue East	[\$REDACTED]	[\$REDACTED]	
250 Eglinton Avenue East	[\$REDACTED]	No driveway	
250A Eglinton Avenue East	[\$REDACTED]	No driveway	
252 Eglinton Avenue East	[\$REDACTED]	No driveway	
254 Eglinton Avenue East	[\$REDACTED]	No driveway	
254A Eglinton Avenue East	[\$REDACTED]	No driveway	
Sidewalk Closure			[\$REDACTED]

<u>Mount Pleasant Station</u>		Station Area 2: Mount Pleasant Road to Rawlinson Avenue, north side	
Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
801 Mount Pleasant Road	No closure permitted	[\$REDACTED]	
Sidewalk Closure			[\$REDACTED]

<u>Mount Pleasant Station</u>		Station Area 3: Brownlow Avenue to Mount Pleasant Road, south side	
Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
None	None	None	
Sidewalk Closure			[\$REDACTED]

<u>Mount Pleasant Station</u>		Station Area 4: Mount Pleasant Road to Taunton Road, south side	
Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
None	None	None	
Sidewalk Closure			[\$REDACTED]

<u>Bayview Station</u>	Station Area 1: Bruce Park Avenue to Bayview Avenue, north side
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Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
None	None	None	
Sidewalk Closure			\$(REDACTED)

**Bayview Station**

**Station Area 2: Bayview Avenue to Bessborough Drive, north side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
None	None	None	
Sidewalk Closure			\$(REDACTED)

**Bayview Station**

**Station Area 3: Mann Avenue to Bayview Avenue, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
589 Eglinton Avenue East	\$(REDACTED)	No driveway	
591 Eglinton Avenue East	\$(REDACTED)	No closure permitted	
593 Eglinton Avenue East	\$(REDACTED)	No closure permitted	
595 Eglinton Avenue East	\$(REDACTED)	No closure permitted	
601 Eglinton Avenue East	\$(REDACTED)	No closure permitted	
605 Eglinton Avenue East	\$(REDACTED)	No closure permitted	
607 Eglinton Avenue East	\$(REDACTED)	No closure permitted	
Sidewalk Closure			\$(REDACTED)

**Bayview Station**

**Station Area 4: Bayview Avenue to Hanna Road, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
None	None	None	
Sidewalk Closure			\$(REDACTED)

**Laird Station**

**Station Area 1: Sutherland Drive to Laird Drive, north side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
784 Eglinton Avenue East	\$(REDACTED)	No driveway	
786 Eglinton Avenue East	\$(REDACTED)	No driveway	
788 Eglinton Avenue East	\$(REDACTED)	No driveway	
790 Eglinton Avenue East	\$(REDACTED)	No driveway	

792 Eglinton Avenue East	\$(REDACTED)	No driveway
794 Eglinton Avenue East	\$(REDACTED)	No driveway
796 Eglinton Avenue East	\$(REDACTED)	No driveway
796A Eglinton Avenue East	\$(REDACTED)	No driveway
800 Eglinton Avenue East	\$(REDACTED)	No driveway
802 Eglinton Avenue East	\$(REDACTED)	No driveway
804 Eglinton Avenue East	\$(REDACTED)	No driveway
812 Eglinton Avenue East	\$(REDACTED)	No driveway
814 Eglinton Avenue East	\$(REDACTED)	No driveway
816 Eglinton Avenue East	\$(REDACTED)	No driveway
822 Eglinton Avenue East	\$(REDACTED)	No driveway
826 Eglinton Avenue East	\$(REDACTED)	No driveway
830 Eglinton Avenue East	\$(REDACTED)	No driveway
832 Eglinton Avenue East	\$(REDACTED)	\$(REDACTED)
846 Eglinton Avenue East	\$(REDACTED)	No driveway
848 Eglinton Avenue East	\$(REDACTED)	No driveway
850 Eglinton Avenue East	\$(REDACTED)	No driveway
852 Eglinton Avenue East	\$(REDACTED)	No driveway
854 Eglinton Avenue East	\$(REDACTED)	No driveway
858 Eglinton Avenue East	\$(REDACTED)	No driveway
862 Eglinton Avenue East	\$(REDACTED)	No driveway
864 Eglinton Avenue East	\$(REDACTED)	No driveway
866 Eglinton Avenue East	\$(REDACTED)	No driveway
868 Eglinton Avenue East	\$(REDACTED)	No driveway
868-1 Eglinton Avenue East	\$(REDACTED)	No driveway
872 Eglinton Avenue East	\$(REDACTED)	No driveway

874 Eglinton Avenue East	[\$REDACTED]	No driveway	
876 Eglinton Avenue East	[\$REDACTED]	No driveway	
878 Eglinton Avenue East	[\$REDACTED]	No driveway	
Sidewalk Closure			[\$REDACTED]

**Laird Station**

**Station Area 2: Laird Drive to Don Avon Drive, north side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
880 Eglinton Avenue East	[\$REDACTED]	No driveway	
888 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
892 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
894 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
896 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
898 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
Sidewalk Closure			

**Laird Station**

**Station Area 3: Don Avon Drive to Brentcliffe Road, north side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
910 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
912 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
914 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
916 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
918 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
920 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
922 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
924 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
926 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
928 Eglinton Avenue East	No closure permitted	[\$REDACTED]	
930 Eglinton Avenue East	No closure permitted	[\$REDACTED]	

932 Eglinton Avenue East	No closure permitted	\$(REDACTED)	
934 Eglinton Avenue East	No closure permitted	\$(REDACTED)	
936 Eglinton Avenue East	No closure permitted	\$(REDACTED)	
938 Eglinton Avenue East	No closure permitted	\$(REDACTED)	
940 Eglinton Avenue East	No closure permitted	\$(REDACTED)	
942 Eglinton Avenue East	No closure permitted	\$(REDACTED)	
Sidewalk Closure			\$(REDACTED)

**Laird Station**

**Station Area 4: Sutherland Drive to Laird Drive, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
417 Sutherland Drive	No closure permitted	\$(REDACTED)	
795 Eglinton Avenue East	No closure permitted	\$(REDACTED)	
801 Eglinton Avenue East	No closure permitted	\$(REDACTED)	
803 Eglinton Avenue East	No closure permitted	\$(REDACTED)	
Sidewalk Closure			\$(REDACTED)

**Laird Station**

**Station Area 5: Laird Drive to Brentcliffe Road, south side**

Address	Unit Cost/Door Closure	Unit Cost/Driveway Closure	Sidewalk Closure
849 Eglinton Avenue East	No closure permitted	\$(REDACTED)	
939 Eglinton Avenue East	No closure permitted	\$(REDACTED)	
Sidewalk Closure			\$(REDACTED)

Appendix B

Door Closure Report Submittal Requirements

Total Door Closure Summary	Door Closure Target				Actual Door Closures				Percent Variance between viii and iv	Door Closure Adjustment
	Cost of Target Door Closure for monthly period (calculated based on formula in Section 5.1)	Cost of Target Driveway Closure for monthly period (calculated based on formula in Section 5.1)	Cost of Target Sidewalk Closure for monthly period (calculated based on formula in Section 5.1)	Total Target Cost	Cost of Actual Door Closure for monthly period (calculated based on formula in Section 5.1)	Cost of Target Driveway Closure for monthly period (calculated based on formula in Section 5.1)	Cost of Actual Sidewalk Closure for monthly period (calculated based on formula in Section 5.1)	Total Actual Cost		
	i	ii	iii	iv	v	vi	vii	viii	ix	x
Keele Station Area 1										
Keele Station Area 2										
Keele Station Area 3										
Keele Station Area 4										
<b>Keele Station Total</b>										
Dufferin Station Area 1										
Dufferin Station Area 2										
Dufferin Station Area 3										
Dufferin Station Area 4										
<b>Dufferin Station Total</b>										
Oakwood Station Area 1										
Oakwood Station Area 2										
Oakwood Station Area 3										
Oakwood Station Area 4										
<b>Oakwood Station Total</b>										



Total Door Closure Summary	Door Closure Target				Actual Door Closures				Percent Variance between viii and iv	Door Closure Adjustment
	Cost of Target Door Closure for monthly period (calculated based on formula in Section 5.1)	Cost of Target Driveway Closure for monthly period (calculated based on formula in Section 5.1)	Cost of Target Sidewalk Closure for monthly period (calculated based on formula in Section 5.1)	Total Target Cost	Cost of Actual Door Closure for monthly period (calculated based on formula in Section 5.1)	Cost of Target Driveway Closure for monthly period (calculated based on formula in Section 5.1)	Cost of Actual Sidewalk Closure for monthly period (calculated based on formula in Section 5.1)	Total Actual Cost		
Bathurst Station Area 1										
Bathurst Station Area 2										
Bathurst Station Area 3										
<b>Bathurst Station Total</b>										
Chaplin Station Area 1										
Chaplin Station Area 2										
Chaplin Station Area 3										
<b>Chaplin Station Total</b>										
Avenue Station Area 1										
Avenue Station Area 2										
Avenue Station Area 3										
Avenue Station Area 4										
Avenue Station Area 5										
Avenue Station Area 6										
Avenue Station Area 7										
Avenue Station Area 8										
<b>Avenue Station Total</b>										
Yonge Station Area 1										
Yonge Station Area 2										
Yonge Station Area 3										
Yonge Station Area 4										
Yonge Station Area 5										

Total Door Closure Summary	Door Closure Target				Actual Door Closures				Percent Variance between viii and iv	Door Closure Adjustment
	Cost of Target Door Closure for monthly period (calculated based on formula in Section 5.1)	Cost of Target Driveway Closure for monthly period (calculated based on formula in Section 5.1)	Cost of Target Sidewalk Closure for monthly period (calculated based on formula in Section 5.1)	Total Target Cost	Cost of Actual Door Closure for monthly period (calculated based on formula in Section 5.1)	Cost of Target Driveway Closure for monthly period (calculated based on formula in Section 5.1)	Cost of Actual Sidewalk Closure for monthly period (calculated based on formula in Section 5.1)	Total Actual Cost		
<b>Yonge Station Total</b>										
Mount Pleasant Station Area 1										
Mount Pleasant Station Area 2										
Mount Pleasant Station Area 3										
Mount Pleasant Station Area 4										
<b>Mount Pleasant Station Total</b>										
Bayview Station Area 1										
Bayview Station Area 2										
Bayview Station Area 3										
Bayview Station Area 4										
<b>Bayview Station Total</b>										
Laird Station Area 1										
Laird Station Area 2										
Laird Station Area 3										
Laird Station Area 4										
Laird Station Area 5										
<b>Laird Station Total</b>										

**Appendix C**

**Door Closure Target Letter**

**[REDACTED]**

22786152.2

**SCHEDULE 41  
PROCUREMENT MONITORING AND IMPLEMENTATION PLAN**

**[REDACTED]**

**APPENDIX 1**

**FORM OF PROJECT CO DECLARATION**

**Declaration of a Director or Officer of**

**CROSSLINX TRANSIT SOLUTIONS GENERAL PARTNERSHIP**

**(“Project Co”)**

**TO: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**

**AND TO: METROLINX**

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

Project Co has made the proper inquiries and has determined that the requirements of the Procurement Monitoring and Implementation Plan have been complied with by Project Co and its Subcontractors in the immediately previous year.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20●.

\_\_\_\_\_  
Name:

Title:

22786124.2

**SCHEDULE 42  
NON-AFFILIATE CONTRACTOR PLAN**

**[REDACTED]**

**APPENDIX 1**

**FORM OF PROJECT CO DECLARATION**

**Declaration of a Director or Officer of**

**CROSSLINX TRANSIT SOLUTIONS GENERAL PARTNERSHIP**

**(“Project Co”)**

**TO: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**

**AND TO: METROLINX**

I, [●], being the [●] of Project Co and an authorized signatory of Project Co and being duly authorized by Project Co to deliver this declaration, hereby make the following declaration and confirmation for and on behalf of Project Co and without incurring personal liability and that the same may be relied upon by you without further inquiry:

Project Co has made the proper inquiries and has determined that the requirements of the Non-Affiliate Contractor Plan have been complied with by Project Co and its Construction Contractor in the immediately previous year.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20●.

\_\_\_\_\_  
Name:

Title:

22786106.2