

**PROJECT AGREEMENT  
(Redacted Version)**

**TO DESIGN, BUILD AND FINANCE  
ONTARIO LINE – SOUTHERN CIVIL, STATIONS  
AND TUNNEL**

**CONFIDENTIAL**

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**SCHEDULES**

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Schedule 2	-	Completion Documents
Schedule 3	-	Subcontractor’s Direct Agreement
Schedule 4	-	Lenders’ Direct Agreement
Schedule 5	-	Construction Contractor’s Direct Agreement
Schedule 6	-	Independent Certifier Agreement
Schedule 7	-	Mobility Matters
Schedule 8	-	Project Co Parties
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure

Schedule 11	-	Quality Management
Schedule 12	-	Works Schedule Requirements
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Commissioning
Schedule 15	-	Output Specifications
Schedule 16	-	Encumbrances
Schedule 17	-	Environmental Obligations
Schedule 18	-	Communication and Public Engagement Protocol
Schedule 19	-	Liquidated Damages and Construction Enforcement Regime
Schedule 20	-	Warranty Letter of Credit
Schedule 21	-	[Intentionally Deleted]
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Form of Performance Guarantee of Construction Guarantor
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
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Schedule 34	-	Permits, Licences, Approvals and Agreements
Schedule 35	-	Lands
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Schedule 39	-	Form of RSSOM Interface Agreement
Schedule 40	-	Rail Corridor Access and Flagging
Schedule 41	-	Early Works Handover
Schedule 42	-	Payment Procedures
Schedule 43	-	Incentive Payments
Schedule 44	-	Geotechnical Baseline Reports
Schedule 45	-	Integration with RSSOM Project
Schedule 46	-	TTC Station Weekend Closures
Schedule 47	-	Price Adjustment Procedure

**THIS PROJECT AGREEMENT** is entered into as of the 8<sup>th</sup> day of November, 2022

**BETWEEN:**

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

(“**Contracting Authority**”)

**AND:**

**ONTARIO TRANSIT GROUP INC., [REDACTED]**

(“**Project Co**”)

**WHEREAS:**

- A. The Province of Ontario’s New Subway Transit Plan for the Greater Toronto and Hamilton Area includes a number of priority projects, including a 15.5 kilometre subway that will run between Ontario Place/Exhibition through downtown Toronto to the Ontario Science Centre.
- B. In connection with the Ontario Line Subway System, Contracting Authority, with the assistance of IO, wishes to procure the design, construction and financing of a tunnel for the underground portion of the southern alignment between Exhibition Station and a portal location within the Don Yard (the “**South Civil Alignment**”) and for other associated structures required for the Ontario Line Subway System. The Project will integrate the RSSOM Project, the North Civil Project and the Early Works Infrastructure with the Project Co Infrastructure, which collectively will form the Ontario Line Subway System.
- C. Contracting Authority commenced the procurement process for the Project, as hereinafter defined, by issuance of a request for qualifications for the Project on June 2, 2020.
- D. Project Co will carry out the Works, which Works include the design, construction, and financing of the Project Co Infrastructure and the New Third Party Infrastructure (the “**Project**”).
- E. Contracting Authority and Project Co wish to enter into this project agreement (the “**Project Agreement**”) which sets out the terms and conditions upon which Project Co shall perform the Works.
- F. The Project will proceed as a public-private partnership project approved by MOI.
- G. As a result, the Project shall follow five fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
  - 1. The public interest is paramount.
  - 2. Value for money must be demonstrable.

3. Appropriate public control/ownership must be preserved.
  4. Accountability must be maintained.
  5. All processes must be fair, transparent and efficient.
- H. Consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
- I. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that Contracting Authority and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.
- J. Contracting Authority intends to be liable, on a joint and several basis, for all of the obligations of Contracting Authority pursuant to this Project Agreement, save and except as provided for in this Project Agreement.

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

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions and Interpretation**

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

<b>Schedule No.</b>	<b>Description</b>
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Subcontractor's Direct Agreement
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Schedule 15	- Output Specifications
Schedule 16	- Encumbrances

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Schedule 37	-	Intellectual Property
Schedule 38	-	[Intentionally Deleted]
Schedule 39	-	Form of RSSOM Interface Agreement
Schedule 40	-	Rail Corridor Access and Flagging
Schedule 41	-	Early Works Handover
Schedule 42	-	Payment Procedures
Schedule 43	-	Incentive Payments
Schedule 44	-	Geotechnical Baseline Reports
Schedule 45	-	Integration with RSSOM Project
Schedule 46	-	TTC Station Weekend Closures
Schedule 47	-	Price Adjustment Procedure

- (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 the Project Co Proposal Extracts, on Commercial Close, the Request for Proposals and Project Co's proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by Project Co, Contracting Authority or anyone else (including anyone pursuant to Schedule 27 – Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Works, any obligations or liabilities of Project Co, or anything else contained in this Project Agreement.
- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Contracting Authority, no consent, approval or satisfaction of Contracting Authority or the Contracting Authority Representative shall be unreasonably withheld or delayed.



- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Project Co, no consent, approval or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.
- (g) The organization of the Output Specifications into divisions, sections and parts shall not control Project Co in dividing the Works among the Project Co Parties or in establishing the extent of the Works to be performed by a trade.

## 1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
  - (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
  - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
  - (iii) the body of this Project Agreement;
  - (iv) Schedule 1 – Definitions and Interpretation;
  - (v) Schedule 34 – Permits, Licences, Approvals and Agreements;
  - (vi) Schedule 35 – Lands;
  - (vii) Schedule 27 – Dispute Resolution Procedure;
  - (viii) Schedule 42 – Payment Procedures;
  - (ix) Schedule 19 – Liquidated Damages and Construction Enforcement Regime;
  - (x) Schedule 40 – Rail Corridor Access and Flagging;
  - (xi) Schedule 15 – Output Specifications;
  - (xii) Schedule 17 – Environmental Obligations;
  - (xiii) Schedule 25 – Insurance and Performance Security Requirements;
  - (xiv) Schedule 22 – Variation Procedure;
  - (xv) Schedule 10 – Review Procedure;
  - (xvi) Schedule 14 – Commissioning;

- (xvii) Schedule 11 – Quality Management;
  - (xviii) Schedule 45 – Integration with RSSOM Project;
  - (xix) Schedule 41 – Early Works Handover;
  - (xx) Schedule 28 – Refinancing;
  - (xxi) Schedule 23 – Compensation on Termination;
  - (xxii) Schedule 26 – Record Provisions;
  - (xxiii) the other Schedules in the order in which they are listed in Section 1.1(b); and
  - (xxiv) Schedule 13 – Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Works, the provision that applies to the specific part of the Works shall govern for that specific part of the Works.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or Contracting Authority, upon discovery of same, shall immediately give Notice to the Contracting Authority Representative. The Contracting Authority Representative shall, within ten (10) Business Days after such Notice, make a determination of which provision governs and give Notice of such determination, in writing, to Project Co.
- (d) Contracting Authority and Project Co shall comply with the determination of the Contracting Authority Representative pursuant to this Section 1.2 unless Project Co dispute the decision of the Contracting Authority Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

### 1.3 Conflict of Documents

- (a) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and the Lenders' Direct Agreement, the provisions of the Lenders' Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency. Notwithstanding the foregoing, if there is any right or remedy in favour of Contracting Authority set out in the Lenders' Direct Agreement or any part thereof which is not set out or provided for in the Project Agreement, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency.
- (b) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and RSSOM Interface Agreement then, as between Project Co and Contracting Authority, the provisions of the Project Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

### 1.4 Legal Requirements

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

## 2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

### 2.1 Effective Date

- (a) The provisions of Sections 1.1, 1.2, 1.3, 1.4, 2.1, 2.2, 2.3, 2.4, 3.1, 4.14 to 4.20, 5 to 15, 16.4, 17 to 22, 24 to 29, and 39 to 52 and Schedule 1 – Definitions and Interpretation, Schedule 2 – Completion Documents, Schedule 7 – Mobility Matters, Schedule 8 – Project Co Parties, Schedule 9 – Key Individuals, Schedule 10 – Review Procedure, Schedule 11 – Quality Management, Schedule 12 – Works Schedule Requirements, Schedule 13 – Project Co Proposal Extracts, Schedule 16 – Encumbrances, Schedule 17 – Environmental Obligations, Schedule 18 – Communication and Public Engagement Protocol, Schedule 19 – Liquidated Damages and Construction Enforcement Regime, Schedule 20 – Warranty Letter of Credit, Schedule 22 – Variation Procedure, Schedule 25 – Insurance and Performance Security Requirements, Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure, Schedule 29 – Safety, System Assurance and Security, Schedule 32 – Financial Model, Schedule 34 – Permits, Licences, Approvals and Agreements, Schedule 35 – Lands, Schedule 37 – Intellectual Property, Schedule 41 – Early Works Handover, Schedule 44 – Geotechnical Baseline Report, Schedule 45 – Integration with RSSOM Project and Schedule 46 – TTC Station Weekend Closures of this Project Agreement will come into effect on Commercial Close. All other provisions and schedules will come into effect only on Financial Close.

### 2.2 Standby Letter of Credit

- (a) If Project Co has provided Contracting Authority with multiple standby letters of credit in accordance with Section 9.1(2) of the RFP, for purposes of this Section 2.2 each of the multiple irrevocable standby letters of credit is referred to as a Standby Letter of Credit for purposes of this Project Agreement.
- (b) Unless a Standby Letter of Credit is drawn by Contracting Authority in accordance with the provisions of this Project Agreement, Contracting Authority shall release and deliver the Standby Letter(s) of Credit to Project Co on Financial Close.
- (c) Project Co shall ensure that the Standby Letter(s) of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.
- (d) If there are multiple Standby Letters of Credit, Project Co acknowledges and agrees that:
- (i) Contracting Authority may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider in any specified ratable amount;
  - (ii) Contracting Authority may draw on any Standby Letter of Credit provided by any Letter of Credit Provider in a disproportionate amount to such Letter of Credit Provider's contribution to security;
  - (iii) Contracting Authority may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a Project Co Party; and

- (iv) the provision of multiple Standby Letters of Credit shall not in any way prejudice or adversely affect the rights of Contracting Authority to draw on the Standby Letter(s) of Credit in accordance with this Project Agreement, including in a circumstance where the default giving rise to Contracting Authority's right to draw on the Standby Letter(s) of Credit is not the result of any act or omission of the Letter of Credit Provider(s) whose Standby Letter of Credit is drawn upon.

### 2.3 Financial Close

- (a) If Project Co fails to deliver to Contracting Authority any of the documents referred to in Section 1 (*Documents To Be Delivered By Project Co*) of Schedule 2 – Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Contracting Authority of its obligations to deliver the documents referred to Section 2 (*Documents To Be Delivered By Contracting Authority*) of Schedule 2 – Completion Documents) and Contracting Authority does not waive such requirement, Contracting Authority will be entitled to draw on the Standby Letter of Credit and to retain the proceeds thereof as liquidated damages and may terminate this Project Agreement in its entirety by written Notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that Contracting Authority will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by Contracting Authority as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not Contracting Authority incurs or mitigates its damages, and that Contracting Authority shall not have any obligation to mitigate any such damages.
- (b) If Contracting Authority fails to deliver to Project Co any of the documents referred to in Section 2 (*Documents To Be Delivered By Contracting Authority*) 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 to deliver the documents referred to in Section 1 (*Documents To Be Delivered By Project Co*) of Schedule 2 – Completion Documents) 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.
- (c) Project Co shall deliver to Contracting Authority each of the items referred to in Section 3 (*Post-Financial Close Project Co Deliverables*) of Schedule 2 – Completion Documents by the applicable date set out in such Section.
- (d) Contracting Authority shall deliver to Project Co the item referred to in Section 4 (*Post-Financial Close Contracting Authority Deliverables*) of Schedule 2 – Completion Documents by the date set out in such Section.

### 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(c), the Financial Close Target Date will be extended until the date falling ten (10) Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.

- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, Contracting Authority may in its sole discretion either:
- (i) terminate this Project Agreement in its entirety by written Notice having immediate effect; or
  - (ii) direct Project Co to assign to a designee of Contracting Authority which has agreed to assume:
    - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences, Approvals and Agreements; and
    - (B) those contracts between Project Co and any Project Co Party which Contracting Authority elects to be assigned.
- (c) If Contracting Authority exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in Sections 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 any unpaid amount of the Proposal Fee pursuant to Section 10.3.2 (*Proposal Fee*) of the Request for Proposals plus [REDACTED]% of such fee. Contracting Authority's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a release, in form and substance satisfactory to Contracting Authority, that such fee represents full and final satisfaction of any obligation or liability of Contracting Authority and any other Government Entity to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals process.

### 3. GUARANTEED PRICE

#### 3.1 Guaranteed Price and Adjustments

- (a) Project Co represents and warrants that the Guaranteed Price, exclusive of HST, is \$[REDACTED], and is equal to the sum of the Cost of the Works and the Cost of the Financing. The Cost of the Works and the Cost of the Financing are as set out in the Financial Model.
- (b) Project Co represents and warrants that the Project Debt Interest Cost is based upon the Interest Reference Rate. The Project Debt Interest Cost will be adjusted once on, or within the two (2) Business Days immediately prior to, Financial Close on the basis of the actual increase or decrease in the Project Debt Interest Cost resulting directly from any change upward or downward in the Interest Reference Rate as compared to the Interest Reference Rate as at the Financial Submission Deadline.
- (c) The Parties:
- (i) acknowledge that the Project Debt Interest Cost is a component of the Cost of the Financing and that the Project Debt Interest Cost is subject to adjustment under Section 3.1(b) as at the date set out in Section 3.1(b); and

- (ii) acknowledge and agree that subject to adjustments made in accordance with the provisions of this Project Agreement, the final Guaranteed Price shall be determined on the basis of such final adjusted Cost of the Financing and the final adjusted Cost of the Works as of the date set out in Section 3.1(b).
- (d) Subject to the provisions of Section 3.1(c), the Parties agree that the Guaranteed Price will not be subject to adjustment despite changes in the Works, unless such changes in the Works arise pursuant to a Variation Confirmation. The Parties further agree that the Guaranteed Price will only be adjusted where the Project Agreement specifically and expressly refers to an adjustment to the Guaranteed Price, and no claim for an adjustment to the Guaranteed Price on any legal or equitable basis outside of the specific and express rights to an adjustment of the Guaranteed Price set out in the Project Agreement will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price must be provided for in a Variation Confirmation under Schedule 22 – Variation Procedure.
- (e) Project Co acknowledges and agrees that,
  - (i) Project Co has satisfied itself as to the correctness and sufficiency of the Guaranteed Price, and has based the Guaranteed Price on the data, interpretations, necessary information, examinations and satisfaction as to all relevant matters and any further data relevant to the design;
  - (ii) the Guaranteed Price covers all of Project Co’s obligations under the Project Agreement, and all things necessary for the proper design, execution and completion of the Works, and the remedying of any defects; and
  - (iii) the Guaranteed Price includes all premium time and overtime that may be required to perform the Works in accordance with this Project Agreement and Good Industry Practice.

## **4. PAYMENT**

### **4.1 General**

- (a) Subject to the provisions of the Project Agreement (including, for clarity Section 3.1(d)) and in accordance with and subject to Applicable Law respecting holdbacks, Contracting Authority shall make the payments set out in this Section 4.
- (b) Details of payment procedures are set out in Schedule 42 – Payment Procedures.

### **4.2 Acknowledgement by Project Co**

- (a) Project Co acknowledges and agrees with Contracting Authority that Contracting Authority is not responsible for the payment of any base progress payments pursuant to the Design and Construction Contract nor any legislative holdbacks in respect thereof.

### 4.3 Lump Sum Payments

- (a) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the First Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (b) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Second Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (c) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Third Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (d) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Fourth Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (e) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Fifth Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (f) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Sixth Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (g) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Seventh Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (h) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Eighth Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (i) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Ninth Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (j) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Tenth Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (k) Subject to Sections 4.4(b) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Substantial Completion Payment and the applicable HST on the Substantial Completion Payment Date, less any Lane Closure Adjustment or Property Access Closure Adjustment on the Substantial Completion Payment Date.

#### 4.4 Directions on Payments

- (a) Project Co hereby irrevocably directs Contracting Authority to make any Milestone Payment, together with applicable HST, to the Lenders' Agent or as Lenders' Agent may direct. Contracting Authority shall pay the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment and the Tenth Milestone Payment, as applicable, as directed by Project Co in accordance with this Section 4.4(a) and shall not accept any redirection without the consent of the Lenders' Agent. Contracting Authority will pay the amounts that Project Co is entitled to hereunder once the conditions for payment set out in this Project Agreement, if any, have been satisfied. Project Co acknowledges and agrees that payment by Contracting Authority of the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment and the Tenth Milestone Payment, as applicable, to the Lenders' Agent in accordance with this Section 4.4(a) constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment and the Tenth Milestone Payment, as applicable, to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under section 7 of the *Construction Act* (Ontario) pursuant to section 10 of the *Construction Act* (Ontario).
- (b) Project Co hereby irrevocably directs Contracting Authority to make the Substantial Completion Payment, together with applicable HST, to the Lenders' Agent or as the Lenders' Agent may direct. Contracting Authority shall pay the Substantial Completion Payment as directed by Project Co in accordance with this Section 4.4(b) and shall not accept any redirection without the consent of the Lenders' Agent. Contracting Authority will pay the amounts that Project Co is entitled to hereunder once the conditions for payment set out in this Project Agreement, if any, have been satisfied. Project Co acknowledges and agrees that payment by Contracting Authority of the Substantial Completion Payment to the Lenders' Agent in accordance with this Section 4.4(b) constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the Substantial Completion Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under section 7 of the *Construction Act* (Ontario) pursuant to section 10 of the *Construction Act* (Ontario).

#### 4.5 Payment of Legislative Holdback

- (a) Payment of Legislative Holdback shall be made in accordance with Schedule 42 – Payment Procedures.

#### 4.6 Payment of Finishing Holdback

- (a) Payment of Finishing Holdback shall be made in accordance with Schedule 42 – Payment Procedures.



**4.7 Completion Holdback and Seasonal Works Holdback**

- (a) Completion Holdback and Seasonal Works Holdback shall be paid in accordance with Schedule 42 – Payment Procedures.

**4.8 Compensation on Termination**

- (a) If this Project Agreement is terminated pursuant to Sections 34.3(a), 35.2(a)(ii), 36.1, 36.2, 36.3 or 36.4 or 36.6, then:
- (i) Schedule 23 – Compensation on Termination shall apply and Contracting Authority shall pay Project Co any applicable compensation on termination; and
  - (ii) the provisions of Sections 4.3 through 4.7, inclusive, shall no longer apply.
- (b) Project Co hereby irrevocably directs Contracting Authority to make any Compensation Payment to the Lenders' Agent, or as the Lenders' Agent may direct. Contracting Authority shall pay the Compensation Payment as directed by the Lenders' Agent and shall not accept any redirection without the consent of Lenders' Agent. Contracting Authority will pay the Compensation Payment in accordance with the provisions of Schedule 23 – Compensation on Termination. Project Co acknowledges and agrees that payment by Contracting Authority of the Compensation Payment to the Lenders' Agent in accordance with this Section 4.8 constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the Compensation Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under section 7 of the *Construction Act* (Ontario) pursuant to section 10 of the *Construction Act* (Ontario).

**4.9 Payment Due under Insurance Policies**

- (a) In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made in accordance with the provisions of the Insurance Trust Agreement.

**4.10 HST**

- (a) Contracting Authority covenants and agrees to pay to Project Co the HST that may be exigible with respect to any payments made by Contracting Authority to Project Co hereunder.

**4.11 Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
- (i) Contracting Authority to set-off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement (other than any Milestone Payments), any amounts (including any amounts payable in accordance with Section 44, or any amounts payable as liquidated damages pursuant to Schedule 19 – Liquidated Damages and Construction Enforcement Regime) that,

- (A) are due or owed to Contracting Authority from or by Project Co pursuant to the terms of this Project Agreement or by the Construction Guarantor pursuant to the Performance Guarantee of Construction Guarantor; or
  - (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure; and
- (ii) Project Co to set-off against any amounts otherwise due to Contracting Authority pursuant to the terms of this Project Agreement, any amounts (including any amounts payable in accordance with Section 44) that,
- (A) are due or owed to Project Co from or by Contracting Authority pursuant to the terms of this Project Agreement; or
  - (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure.
- (b) Where a set-off, deduction or withholding is being exercised against amounts payable under a Proper Invoice, Contracting Authority shall deliver a notice of non-payment in the prescribed form and manner, no later than fourteen (14) days after receiving the Proper Invoice
- (c) For clarity, Contracting Authority is entitled to exercise its rights in accordance with Section 4.11(a) immediately upon an amount becoming due or owed to Contracting Authority,
- (i) by Project Co pursuant to the terms of this Project Agreement; or
  - (ii) by the Construction Guarantor pursuant to Schedule 24 – Form of Performance Guarantee of Construction Guarantor.

#### **4.12 Effect of Payment**

- (a) Subject to Section 38.2, 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.

#### **4.13 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.

#### **4.14 Taxes**

- (a) All amounts specified in this Project Agreement are expressed exclusive of HST, but inclusive of all other Taxes payable pursuant to Applicable Law. If Project Co is required by Applicable Law to collect any such HST from Contracting Authority, Contracting Authority shall pay such HST to Project Co simultaneously with the amount to which such applicable HST relates or applies. If Contracting Authority is required by Applicable Law to collect any such HST from Project Co,

Project Co shall pay such HST to Contracting Authority simultaneously with the amount of consideration to which such applicable HST relates or applies.

- (b) Contracting Authority shall pay when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Metrolinx Lands, the Project Co Infrastructure, the Existing Infrastructure and the New Third Party Infrastructure.
- (c) Contracting Authority shall not be required to pay any interest and/or penalties that are imposed on or assessed against Project Co or any Project Co Party for non-compliance with Applicable Law.
- (d) If the Canada Revenue Agency, or the Parties, acting reasonably, determine that section 182 of the *Excise Tax Act* (Canada) applies to a payment, or a portion of a payment, made by either Contracting Authority or Project Co: (i) the payor of such a payment or such portion of a payment shall pay such additional amounts as may be necessary in order that the net amount that the payee receives will equal the amount that the payee would have received if section 182 of the *Excise Tax Act* (Canada) had not applied to such payment or such portion of a payment; and (ii) each of Contracting Authority and Project Co shall complete their respective HST returns for the applicable period on the basis that section 182 of the *Excise Tax Act* (Canada) applied to such payment or such portion of a payment.

#### 4.15 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 property or services by Project Co in connection with the performance of the Works, Contracting Authority and Project Co agree to co-operate to determine how such change affects their respective obligations under this Project Agreement to the extent not already addressed in this Project Agreement.

#### 4.16 Changes in Recoverability of Tax Credits

- (a) Contracting Authority will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to Contracting Authority from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Section 4.16, 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 property or service to Contracting Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works 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 4.16, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any property or service to Contracting Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in

the course of carrying out the Works to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

#### **4.17 Information and Assistance Provided by Project Co**

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

#### **4.18 Residency – Income Tax Act (Canada)**

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

#### **4.19 Taxes – General**

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

#### **4.20 Taxes – Indemnity**

- (a) If (i) Project Co becomes a Non-Resident, or (ii) Contracting Authority is or becomes required by Applicable Law to deduct or withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by Contracting Authority under the Project Agreement or under any of the Project Documents, then Contracting Authority 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 (A) Project Co or the Project Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; or (B) Contracting Authority is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes

that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-Resident or otherwise as required by Applicable Law; and all amounts paid or credited by Contracting Authority under this Project Agreement or under any other Ancillary Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.

- (b) If (i) Project Co becomes a Non-Resident, or (ii) Contracting Authority is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by Contracting Authority under the Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless Contracting Authority for (A) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by Contracting Authority in respect of any amounts paid or credited by Contracting Authority to Project Co or any Project Co Party under this Project Agreement or under any other Ancillary Document as a result of either of the foregoing items less any amount withheld or deducted by Contracting Authority in respect of such Taxes, and (B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted (“**Associated Liabilities**”). Payment under this indemnification shall be made within thirty (30) days after the date Contracting Authority makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by Contracting Authority shall be conclusive evidence, absent manifest error, of the amount due from Project Co to Contracting Authority. Contracting Authority shall be entitled to exercise its rights of set-off under Section 4.11 against any amounts owing under this indemnification.

#### **4.21 Price Adjustment Procedure**

- (a) Contracting Authority shall pay to Project Co any amount it is obligated to pay in accordance with Schedule 47 – Price Adjustment Procedure in the amounts and in the manner set out therein.

### **5. SCOPE OF AGREEMENT**

#### **5.1 Scope of Agreement**

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

### **6. REPRESENTATIONS AND WARRANTIES**

#### **6.1 Project Co Representations and Warranties**

- (a) Project Co represents and warrants to Contracting Authority that as of Commercial Close:
- (i) Project Co is a [REDACTED] and validly existing under the laws of the Province of Ontario, is in good standing with [REDACTED] with respect to the filing of annual

reports, and has all the requisite [REDACTED] power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;

- (ii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design and construction of infrastructure and facilities similar to those included in the scope of the Project in scale, scope, type and complexity, and have the required ability, experience, skill and capacity to perform the Works 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:
- (A) reviewed the Background Information as required in Section 7.1 and conducted the investigations in respect of the Lands as required in Section 16.9, and without affecting anything in Section 7, Section 16 and Section 18, has conducted its own additional investigations (other than in respect of the Background Information and the Lands);
  - (B) carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of Contracting Authority (excluding the information listed in Appendix B (*Background Information Exclusions*) to Schedule 1 – Definitions and Interpretation);
  - (C) without affecting anything in Section 7, Section 16 and Section 18, as applicable, reviewed and understood general conditions relating to the performance of the Works including the transportation, handling and storage of materials and availability of labour and the character and availability of equipment, materials and facilities needed to perform the Works; and
- to its knowledge, concluded or determined that nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Works 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 Subdivision D of Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is [REDACTED];
- (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) Project Co has secured the Financing and is in a position to complete the Financing on or before the Financial Close Target Date, subject to the satisfaction of reasonable conditions that are customary in closing financing for projects similar to the Project;

- (xvi) 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;
- (xvii) to the knowledge of Project Co, following the exercise of reasonable due diligence, no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project;
- (xviii) Project Co is not a Restricted Person; and
- (xix) either:
  - (A) the COR-Certified Construction Project Co Party is in possession of its COR Certification in good standing as required under this Project Agreement and has the ability to maintain such COR Certification in good standing at all times during the performance of the Works in accordance with its terms, provisions and conditions; or
  - (B) the COR-Qualified Construction Project Co Party:
    - (I) is in possession of its OHSAS 18001 Accreditation or ISO 45001 Accreditation which remains in good standing and has the ability to maintain such OHSAS 18001 Accreditation or ISO 45001 Accreditation in good standing at all times during the performance of the Works, and
    - (II) has made an application to the IHSA for its COR Certification as required under this Project Agreement.

## 6.2 Contracting Authority Representations and Warranties

- (a) Contracting Authority represents and warrants to Project Co that as of Commercial Close:
  - (i) Contracting Authority is a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and has all of the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement in its own name as a Crown agency of the Province in accordance with section 3 of the *Metrolinx Act, 2006*, S.O. 2006, c. 16;
  - (ii) subject to Sections 6.2(a)(v)(C), (D) and (E), Contracting Authority is entering into this Project Agreement in its own name as a Crown agency of the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind itself personally to this Project Agreement and to provide recourse to the Province in accordance with the provisions of the *Metrolinx Act, 2006*, S.O. 2006, c. 16, including section 35 thereof, and Project Co is entitled to rely upon Contracting Authority'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 Contracting Authority that are required by this Project Agreement to be executed and delivered by Contracting Authority;



- (iii) subject to Sections 6.2(a)(v)(C), (D) and (E), Contracting Authority 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) Contracting Authority has obtained all necessary approvals to enter into this Project Agreement as a Crown agency;
- (v) this Project Agreement has been duly authorized, executed, and delivered by Contracting Authority and constitutes a legal, valid, and binding obligation of Contracting Authority, enforceable against Contracting Authority, subject to the provisions of the *Metrolinx Act, 2006*, S.O. 2006, c. 16, in accordance with its terms, subject only to:
  - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
  - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction may not be available against Contracting Authority 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 Contracting Authority or the Province or the property of Contracting Authority or the Province;
  - (D) any terms and conditions set out in the approval that has been provided in connection with this Project Agreement for the purposes of section 28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12; and
  - (E) with regard to the recourse against the Province, section 35 of the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and the powers of the Minister of Finance to effect set-offs against amounts owing by the Province pursuant to section 43 of the *Financial Administration Act*, R.S.O. 1990, c. F.12;
- (vi) the execution, delivery, and performance by Contracting Authority 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;

- (vii) Contracting Authority has, or will have, licence rights of use and access to, on and over the Metrolinx Lands sufficient to enable Contracting Authority to grant or to cause to be granted to Project Co the access rights contemplated in Section 16.1; and
- (viii) no Contracting Authority Event of Default has occurred and is continuing.

## **7. BACKGROUND INFORMATION**

### **7.1 Review of Background Information**

- (a) Without limiting any of its rights under Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, Project Co acknowledges and agrees that it has and shall be deemed to have:
  - (i) conducted its own review, due diligence and analysis of the Background Information in accordance with Good Industry Practice (which, for clarity, does not include any inspections in respect of the Lands beyond what is required pursuant to Section 16.9);
  - (ii) satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
  - (iii) identified and raised, prior to the Technical Reference Date, any and all ambiguities or issues requiring clarification associated with the Background Information (including the Technical Reports and the Project GBR).

### **7.2 No Warranty for Background Information**

- (a) Except as expressly provided in Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, neither Contracting Authority nor any Province Person or Government Entity gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither Contracting Authority nor any Province Person or Government Entity 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.

### **7.3 No Claims or Liability in Respect of Background Information**

- (a) Except as expressly provided in Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, none of Contracting Authority, any Province Person, or any Government Entity shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not claim for, or seek to recover from Contracting Authority, any Province Person, or any Government Entity, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise, including any claim for extensions of time or for additional payments under this Project Agreement) from:
  - (i) the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party;

- (ii) any claim that the Background Information was incorrect, inaccurate, incomplete, insufficient or unfit for purpose;
- (iii) any misunderstanding or misapprehension in respect of the use of the Background Information by Project Co or any Project Co Party; or
- (iv) any failure (whether before, on, or after the execution and delivery of this Project Agreement) by Contracting Authority, any Province Person or Government Entity to:
  - (A) disclose or make available to Project Co or any Project Co Party any information, documents or data; or
  - (B) review or update the Background Information.

#### 7.4 Exceptions

- (a) Contracting Authority agrees that if, at the date of this Project Agreement, except as described in any Background Information or as otherwise expressly disclosed by Contracting Authority or any Contracting Authority Party or known by Project Co or any Project Co Party, any of the information in the Technical Reports or the Project GBR is, to the actual knowledge of Contracting Authority, incorrect or there is relevant information in the possession or control of Contracting Authority that would make any of the information in the Technical Reports or the Project GBR incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Works or materially adversely affects Project Co's cost of performing the Works, such incorrect information shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

#### 7.5 DSHM Post-RFP Reports

- (a) If, on or before the day that is thirty (30) days prior to Financial Close (the “**DSHM Post-RFP Report Deadline**”), Contracting Authority has delivered additional reports describing any Designated Substances and Hazardous Materials on the Lands (each such report being an “**DSHM Post-RFP Report**” and, collectively, the “**DSHM Post-RFP Reports**”), the provisions of this Section 7.5 shall apply.
- (b) Subject to Section 7.5(c), to the extent that any information contained in any DSHM Post-RFP Report (being information about Designated Substances and Hazardous Materials not described in any DSHM Report) increases Project Co's costs to perform the Works, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation for such additional costs (a “**DSHM Variation**”).
- (c) Project Co shall:
  - (i) not be entitled to any additional time or schedule relief in respect of any delay to the Works resulting from any new information contained in any DSHM Post-RFP Report (being information about Designated Substances and Hazardous Materials not described in any DSHM Report); and
  - (ii) only be entitled to a DSHM Variation where:

- (A) the relevant DSHM Post-RFP Report was delivered by Contracting Authority prior to the DSHM Post-RFP Report Deadline; and
  - (B) Project Co has delivered to Contracting Authority a Project Co Variation Notice in respect of such DSHM Variation prior to the date that is thirty (30) days following Financial Close (“**DSHM Post-RFP Report Variation Deadline**”).
- (d) Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation for any additional costs or delay in respect of the Works resulting from any new information disclosed in a DSHM Post-RFP Report that is delivered following the DSHM Post-RFP Report Deadline, provided that Project Co provides a Project Co Variation Notice in respect of such DSHM Post-RFP Report pursuant to and in accordance with Schedule 22 – Variation Procedure.
- (e) The Parties acknowledge and agree that on the earlier of:
- (i) the DSHM Post-RFP Report Variation Deadline, and
  - (ii) the date upon which the applicable Project Co Variation Notice (if any) is submitted,
- the applicable DSHM Post-RFP Report shall be deemed to be DSHM Reports for all purposes of the Project Agreement as though it had been provided prior to the Technical Reference Date (regardless of whether Project Co submitted a Project Co Variation Notice in respect of such DSHM Post-RFP Report).

## 8. PROJECT DOCUMENTS

### 8.1 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 the same.
- (b) 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 two (2) Business Days after receipt thereof, deliver a copy of such Notice of default to Contracting Authority.
- (c) Upon the written request of Contracting Authority or the Contracting Authority Representative, Project Co will deliver or cause to be delivered to Contracting Authority or the Contracting Authority Representative a copy of any notices or consents delivered or received by Project Co under any of the Project Documents.

### 8.2 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 25.3, 47.3 and 48.2 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 to any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of Contracting Authority, whether actual or potential;
- (iii) breach its obligations (or waive, exercise or allow to lapse any rights it may have) or permit others to breach their obligations (or waive, exercise or allow to lapse any rights they may have) under any Ancillary Document, if any such breach (or waiver, exercise or lapse) would materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or would have the effect of increasing any liability of Contracting Authority, whether actual or potential; or
- (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 8.2(a)(i),

without the prior written consent of Contracting Authority, provided that, where consent is requested pursuant to Section 8.2(a)(i) or Section 8.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 8.2(a)(i) or Section 8.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of Contracting Authority, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 8.2(a)(i), or the entering into of any agreement replacing all or part of any Ancillary Document as described in Section 8.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein relating to changes in Subcontractors, including Section 47.3.

### **8.3 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 the liability of Contracting Authority whether actual or potential, unless such action is a Permitted Borrowing or a Refinancing effected in accordance with the provisions of Schedule 28 – Refinancing.

### **8.4 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.

- (b) Project Co acknowledges and agrees that the Lending Agreements shall provide financing solely in connection with this Project and not with respect to the RSSOM Project or North Civil Project.

## **9. CONTRACTING AUTHORITY RESPONSIBILITIES**

### **9.1 General**

- (a) Contracting Authority shall, at its own cost and risk:
- (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
  - (ii) obtain, maintain, and, as applicable, renew Contracting Authority Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
  - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms; and
  - (iv) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that Contracting Authority shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) Contracting Authority shall, and shall cause all Contracting Authority Parties to, take reasonable steps to minimize undue interference with the provision of the Works by Project Co or any Project Co Party.
- (c) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of Contracting Authority or any Province Person or Government Entity in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude Contracting Authority's board of directors (or any designate appointed pursuant to Section 51.1 of this Project Agreement) from performing, discharging or exercising its duties, responsibilities, and powers under Applicable Law. Project Co further agrees that it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of Contracting Authority's board of directors (or any designate appointed pursuant to Section 51.1 of this Project Agreement) from time to time, subject to Section 29.1(b).
- (d) For greater certainty, Metrolinx shall be liable for all of the obligations of Contracting Authority under this Project Agreement.

## **10. PROJECT CO RESPONSIBILITIES – GENERAL**

### **10.1 Other Business**

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

**10.2 Complete and Operational Project Co Infrastructure and New Third Party Infrastructure**

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

**10.3 General Responsibilities and Standards**

- (a) Project Co shall, at its own cost and risk, perform and complete the Works:
- (i) in accordance with the Project Works Schedules and, in this regard, shall commence the Works no later than the day following Financial Close and, subject to adjustment as provided for in the Project Agreement,
    - (A) achieve Section Substantial Completion in respect of each Project Co Infrastructure Section no later than the applicable No Later Than Dates contemplated in Section 5.1(a) (*Section Substantial Completion*) of Schedule 45 – Integration with RSSOM Project;
    - (B) achieve Substantial Completion by the Scheduled Substantial Completion Date; and
    - (C) achieve Final Completion by the Scheduled Final Completion Date;
  - (ii) in compliance with Applicable Law;
  - (iii) so as to satisfy the Output Specifications;
  - (iv) in accordance with Good Industry Practice;
  - (v) in a manner consistent with the Quality Plans and the Project Co Proposal Extracts;
  - (vi) in a timely and professional manner;
  - (vii) with due regard to the health and safety of persons and property;
  - (viii) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of Contracting Authority, any Province Person or any Government Entity to comply with Applicable Law;
  - (ix) subject to the other provisions of this Project Agreement, in a manner which will not impair the performance of the Governmental Activities; and
  - (x) in accordance with all other terms of this Project Agreement.
- (b) Project Co shall coordinate with the City of Toronto, MTO and the TTC all Construction Activities relating to Existing Third Party Infrastructure owned by each such third party and its

applicable New Third Party Infrastructure, including the provision of any Project Works Schedule relating to such infrastructure, so as to minimize the impact of Construction Activities on such third party's operations and services provided by such third party to the public.

- (c) Project Co shall cooperate with Contracting Authority in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of Contracting Authority's obligations under this Project Agreement.
- (d) Project Co shall cooperate with Contracting Authority as reasonably required by Contracting Authority in respect of Contracting Authority's consultations with the City of Toronto, the TTC, MTO and each Railway Company in relation to the Project and the Works.
- (e) Project Co shall cooperate and assist Contracting Authority in any dispute relating to the Project or the Project Agreement arising out of any of the Third Party Agreements, including attending at hearings, providing information, and doing such other things as Contracting Authority may reasonably require to resolve the dispute.
- (f) Project Co shall promptly, or immediately in the case of a defect which may result in a health and safety matter, notify the Contracting Authority Representative to the extent that Project Co becomes aware of any defect in the property or Existing Third Party Infrastructure of:
  - (i) the City of Toronto, excluding the New City Infrastructure;
  - (ii) the TTC, excluding the New TTC Infrastructure; or
  - (iii) a Railway Company.
- (g) Project Co shall enter into any agreements that may be required by Utility Companies to complete the Works, subject to and in accordance with Section 11.36.
- (h) Project Co shall promptly, or immediately in the case of anything relating to health and safety, notify Contracting Authority with respect to,
  - (i) any injuries to persons on Lands owned by or leased to the City of Toronto, the TTC, or such Railway Company, or damage to any infrastructure or Lands owned by or leased to any of them that occurs during the course of the Works;
  - (ii) any significant developments that affect infrastructure or Lands owned by or leased to the City of Toronto, the TTC, or such Railway Company; and
  - (iii) 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 of Toronto, the TTC, or such Railway Company.
- (i) Project Co shall, at its own cost and risk, promptly, or immediately in the case of anything relating to health or safety, (A) notify Contracting Authority upon the receipt or notice of (and provide Contracting Authority with copies of any correspondence received in relation to), any incident report, investigation report, inspection, order, change or similar correspondence (in each case, whether in draft or final form) issued by the MOL or any other Governmental Authority in



respect of the Works and (B) following a request by Contracting Authority, provide Contracting Authority with a copy of any health and safety investigation report completed by Project Co.

- (j) If Metrolinx executes an agreement with the City of Toronto, the TTC or any third party owner of infrastructure, other than North Civil Project Co, RSSOM Project Co or any TOC Contractor, which affects this Project (each, a “**Third Party Agreement**”) and Metrolinx provides a copy of the Third Party Agreement or a template agreement upon which Metrolinx intends to base a Third Party Agreement (each, a “**Template Third Party Agreement**”) to Project Co, then the following shall apply:

- (i) If, at any time prior to the Technical Reference Date, Metrolinx provides,
- (A) a copy of an executed Third Party Agreement to Project Co; or
  - (B) a copy of a Template Third Party Agreement to Project Co, and Metrolinx subsequently enters into a Third Party Agreement on terms and conditions that are inconsistent with the Template Third Party Agreement but that would not result in a material change to the Works (including, for clarity, if Metrolinx enters into the Third Party Agreement following the Technical Reference Date),

then Project Co shall, at Project Co’s own cost, ensure that Project Co and the Project Co Parties do not contravene or cause Metrolinx to contravene the applicable Third Party Agreement(s).

- (ii) If, at any time following the Technical Reference Date, Metrolinx provides a copy of a Third Party Agreement to Project Co and either (x) Metrolinx did not provide a copy of the applicable Template Third Party Agreement to Project Co prior to the Technical Reference Date in accordance with Section 10.3(j)(i)(B) or (y) such Third Party Agreement contains terms and conditions that are inconsistent with the applicable Template Third Party Agreement and would result in a material change to the Works, then,
- (A) Project Co shall, at Project Co’s own cost, ensure that Project Co and the Project Co Parties do not contravene or cause Metrolinx to contravene the Third Party Agreement; and
  - (B) to the extent that Project Co’s performance of its obligations set out in Section 10.3(j)(ii)(A) requires Project Co to perform any alteration, addition, Demolition, extension or variation to the Works and would not otherwise be required of Project Co under the Project Agreement, then such change shall, subject and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (k) If Project Co has entered into any agreement with a Utility Company with respect to the Works, Project Co shall provide a copy of such agreement to Contracting Authority no later than fifteen (15) days after executing such agreement.

- (l) Project Co shall enter into an Occupancy Agreement within fifteen (15) Business Days of Financial Close with respect to the Project Office as directed by Contracting Authority, a draft form of which is included in the Background Information. The following shall apply with respect to the Occupancy Agreement:
- (i) if Contracting Authority directs Project Co to enter into a final form of Occupancy Agreement that is substantially the same as the draft form of Occupancy Agreement included in the Background Information as at the Technical Reference Date, then Project Co shall enter into such Occupancy Agreement and, at Project Co's own cost, ensure that Project Co and the Project Co Parties comply with and do not contravene such Occupancy Agreement; and
  - (ii) if Contracting Authority directs Project Co to enter into a final form of Occupancy Agreement that contains terms and conditions that are inconsistent with and materially different from the draft form of Occupancy Agreement included in the Background Information as at the Technical Reference Date, then Project Co shall enter into such Occupancy Agreement and, at Project Co's own cost, ensure that Project Co and the Project Co Parties comply with and do not contravene such Occupancy Agreement, provided that such changes shall, subject and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (m) For greater certainty, the Parties hereby acknowledge and agree that:
- (i) the Early Contractor Activities, if any, form part of the Works; and
  - (ii) any Early Contractor Activities performed or completed by Project Co prior to the date hereof are subject to the terms and provisions of this Project Agreement.

#### 10.4 Support Services

- (a) Project Co shall at all times, including following Substantial Completion, perform the obligations set out in Sections 5.9 (*Tier 8 – SIT2 (Site Integration Test 2) Dynamic*), 5.10 (*Tier 9 – Trial-ST (Trial running, Scenario Tests)*) and 5.11 (*Tier 10 – Trial-RT (Trial Running, Resilience Tests)*) of Schedule 14 – Commissioning.

### 11. PROJECT CO RESPONSIBILITIES – DESIGN AND CONSTRUCTION

#### 11.1 Development of Design

- (a) Project Co shall, at its own cost, develop and complete the design of the Project Co Infrastructure and the 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 11.1.
- (b) In order to develop the detailed design of the Project Co Infrastructure and New Third Party Infrastructure, Project Co shall consult with the Stakeholders (which consultation requirements pursuant to the Environmental Assessments are further described in Schedule 17 – Environmental Obligations) and the Contracting Authority Representative and the Contracting Authority Design Team in an interactive process. If the result of any consultation with Stakeholders is a change to the scope, configuration or size of any Project Co Infrastructure or New Third Party Infrastructure

- or a change in the Works, then such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (c) The further development of the design of the Project Co Infrastructure and New Third Party Infrastructure and the process by which it is progressed must fully comply with the requirements of this Project Agreement.
- (d) The Parties agree that Appendix A (*Minimum Works Submittals*) to Schedule 10 – Review Procedure are initial lists of Design Data and other items that will require design review, which Design Data and other items shall include:
- (i) design development drawings, reports, schedules and specifications for the Project Co Infrastructure and New Third Party Infrastructure, progressed from Commercial Close, showing all engineering and non-engineering design information sufficient to allow for the development of working drawing documentation (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 non-engineering design information in accordance with the requirements of this Project Agreement (collectively, the “**Construction Document Submittals**”); and
  - (iii) all other documentation required pursuant to Schedule 10 – Review Procedure.
- (e) Project Co shall submit to the Contracting Authority Representative for review in accordance with Schedule 10 – Review Procedure all Design Data and other items listed in Section 11.1(d).
- (f) The Design Data and other items listed in Section 11.1(d) shall contain, at a minimum, the following additional information:
- (i) all design or construction drawings and specifications necessary to enable the Contracting Authority Representative to review and comment on the design pursuant to Schedule 10 – Review Procedure;
  - (ii) for each of the Construction Document Submittals, a schedule identifying all changes to the relevant documentation that has occurred from the Design Development Submittals; and
  - (iii) 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 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

Infrastructure and/or Lands, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.

- (h) Project Co shall not commence or permit the commencement of construction of any part or parts of the New Third Party Infrastructure, unless Project Co has first obtained the applicable written consents of the applicable third party in each case as set out in this Project Agreement. If, after obtaining such written consent, Project Co commences or permits the commencement of construction of any part or parts of the New Third Party Infrastructure, prior to being entitled to proceed in accordance with this Section 11.1(h) and 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 11.1(h)(i), undo, remove from the New Third Party Infrastructure, and/or Lands, replace and restore, as applicable, any parts of the construction that do not comply with this Project Agreement.
- (i) Neither Contracting Authority nor any Province Person will have any liability:
  - (i) if a document submitted by Project Co and reviewed by Contracting Authority, the Contracting Authority Representative or the Contracting Authority Design Team results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
  - (ii) for any loss or claim arising due to any defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (j) Project Co and Contracting Authority will cooperate with each other in the design review process. Notwithstanding such cooperation by Contracting Authority, such review shall not constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (k) Project Co shall allow the Contracting Authority Representative and Contracting Authority Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the Contracting Authority Representative and/or Contracting Authority Design Team, as applicable, as soon as practicable following receipt of a written request from the Contracting Authority Representative.
- (l) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database which Project Co and Contracting Authority may access remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

## 11.2 Start-Up Meeting

- (a) Within ten (10) Business Days after Commercial Close, Project Co and the Design Team shall attend a start-up meeting (the “**Start-Up Meeting**”) with Contracting Authority to set out the design development process in greater detail.
- (b) The agenda for the Start-Up Meeting shall include the following:
  - (i) Project Co’s plan to develop a successful partnership with Contracting Authority for the purpose of supporting Contracting Authority in achieving its vision, mission and core values;
  - (ii) Project Co’s plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
  - (iii) Project Co’s process to ensure 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 Interim Baseline Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the Contracting Authority Representative to allow sufficient time for review of each Works Submittal by the Contracting Authority Representative, taking into account both the resources available to the Contracting Authority Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Baseline Works Schedule;
  - (vi) Project Co’s plan to successfully integrate feedback from consultations with Stakeholders and the Contracting Authority Design Team;
  - (vii) Project Co’s approach to timing, construction and adjustment; and
  - (viii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation and that takes into account the Document Control and Security Protocol.

## 11.3 Design Workshops

- (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 with the Contracting Authority Design Team (the “**Design Review Meetings**”) upon the following terms:
  - (i) the Project Co Representative shall arrange the Design Review Meetings in consultation with the Contracting Authority Representative;

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

contents of the minutes, notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams, Contracting Authority and Project Co shall be deemed to have approved such minutes; and

- (vii) Contracting Authority and Project Co agree that the subject matter of the Design Review Meetings shall not be regarded as Works Submittals to which Schedule 10 – Review Procedure applies, and that Contracting Authority shall not be bound by the input provided in connection with the Design Review Meetings.
- (b) The Parties shall, together with the Contracting Authority Design Team, hold Design Review Meetings prior to the submission of:
  - (i) each of the Design Development Submittals; and
  - (ii) each of the Construction Document Submittals.
- (c) The purpose of the Design Review Meetings is to facilitate the incorporation of Contracting Authority and the Contracting Authority Design Team input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 – Review Procedure.
- (d) The applicable third party owners of New Third Party Infrastructure may attend Design Review Meetings relating to New Third Party Infrastructure.

#### **11.4 Performance of Design Obligations**

- (a) In the design and engineering of the Project, Project Co, its consultants and the Project Co Parties shall, at a minimum, exercise the standard of care normally exercised by licenced or registered professional architectural and engineering personnel having specialized 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 licenced 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.

#### **11.5 Works Submittals**

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by Contracting Authority prior to Substantial Completion, or after Substantial Completion in respect of the completion and rectification of Minor Deficiencies, and in respect of the rectification of any Works, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by Contracting Authority pursuant to Schedule 10 – Review Procedure.

**11.6 Documents**

- (a) Project Co shall keep one copy of the current digital files of the Project Agreement, Project Documents, Project Works Schedules, Basis of Works Schedule Reports, Works Schedule Reports, submittals, reports, Variation Confirmations, Project Co Variation Notices, Variation Directives, partnering documents, records of meetings and all other documents necessary for the administration of the Project, all in good order and readily accessible and available to Contracting Authority, Lenders' Consultant and Contracting Authority Representative. Project Co shall keep a daily log readily available and accessible to Contracting Authority, Lenders' Consultant and Contracting Authority Representative at all times.
- (b) Project Co shall, where practical, keep one copy of current standards and manufacturers' literature specified in the Project Documents in good order and readily accessible and available to Contracting Authority Representative and Lenders' Consultant and their representatives for the duration of the Works.

**11.7 General Construction Obligations**

- (a) Without limiting Section 10.3:
  - (i) Project Co is solely 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 Infrastructure (including each Project Co Infrastructure Section) and the New Third Party Infrastructure, and all other performance of the Works.
  - (ii) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
    - (A) construct the Works diligently, expeditiously and in a thorough and workman-like manner consistent with Schedule 11 – Quality Management;
    - (B) ensure that,
      - (I) no works other than the Works under this Project Agreement are constructed on the Lands, the Project Co Infrastructure, the New Third Party Infrastructure or the Existing Infrastructure by Project Co, any Project Co Party or any person for whom Project Co is responsible at law; and
      - (II) the Project Co Infrastructure is constructed only on the Metrolinx Lands in accordance with the Output Specifications;
    - (C) protect the Works from all of the elements, casualty and damage;
    - (D) in respect of Plant, equipment, Products and materials incorporated in the Works, use Plant, equipment, Products and materials that:
      - (I) are of a kind that are consistent with the Output Specifications;



- (II) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice, including, with respect to health and safety, so as not to be hazardous or dangerous; and
  - (III) where they differ from the Output Specifications, have been substituted with Contracting Authority's prior written consent in accordance with Section 11.21.
- (iii) Without limiting Project Co's obligations pursuant to Section 11.12 or Project Co's indemnity pursuant to Section 44.1, and subject to Section 11.14, Project Co shall, at all times prior to each applicable Section Substantial Completion Date, and, subject to Section 11.12(j), thereafter any time Project Co is undertaking Construction Activities in respect of an applicable Project Co Infrastructure Section, be responsible for maintaining and securing the Metrolinx Lands for each such Project Co Infrastructure Section to prevent access onto the Metrolinx Lands, the Project Co Infrastructure, the New Third Party Infrastructure and the Existing Infrastructure, in each case in respect of each such Project Co Infrastructure Section, of any persons not entitled to be there, and the licence granted to Project Co pursuant to Section 16.1 shall include rights for Project Co to do so.
- (iv) 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 of Toronto or the TTC is a party that: (A) is applicable to the New Third Party Infrastructure owned by the City of Toronto or the TTC, as applicable; (B) relates to any construction pursuant to this Project Agreement; and (C) was identified by Contracting Authority on or before the Technical Reference Date, as such collective agreements or labour-related agreements may be amended from time to time. To the extent that any such labour-related agreement or any provision of any collective agreement materially changes from the labour-related agreements or collective agreements that were available on the Collective Agreements e-Library Portal or as part of the Background Information as of the Technical Reference Date, then such material change shall, subject and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (b) Project Co shall provide a construction site office for use by Contracting Authority, at the location(s) specified in the Output Specifications, and in accordance with the requirements set out in the Output Specifications.

### **11.8 Permits, Licences, Approvals and Agreements**

- (a) Contracting Authority and Project Co shall comply with all of their respective obligations set out in Schedule 34 – Permits, Licences, Approvals and Agreements.
- (b) Contracting Authority and Project Co shall comply with all Permits, Licences, Approvals and Agreements in accordance with their terms.

## 11.9 Intentionally Deleted

### 11.10 Protection of Works and Property and Reinstatement Work

- (a) Project Co shall protect the Works, including the Project Co Infrastructure and the New Third Party Infrastructure prior to Handover of the New Third Party Infrastructure, the property of Contracting Authority and third parties on and adjacent to the Lands (including any TOC Developments and Adjacent Developments) and the Existing Infrastructure from damage or destruction which may arise as a result of Project Co's operations under this Project Agreement, and Project Co shall be responsible for such damage or destruction, except for any damage or destruction which occurs as a result of acts or omissions by Contracting Authority, any Contracting Authority Party, RSSOM Project Co, any RSSOM Project Co Party, a TOC Contractor or any TOC Contractor Party.
- (b) Unless this Project Agreement is terminated in accordance with its terms, if all or any part of,
- (i) the Works, including the Project Co Infrastructure or the New Third Party Infrastructure (prior to Handover of the New Third Party Infrastructure), is damaged or destroyed at any time prior to the applicable Section Substantial Completion Date or Substantial Completion Date;
  - (ii) the Works, including the Project Co Infrastructure or the New Third Party Infrastructure (prior to Handover of the New Third Party Infrastructure), is damaged or destroyed at any time after the applicable Section Substantial Completion Date or Substantial Completion Date as a result of an act or omission of Project Co or a Project Co Party;
  - (iii) the Existing Infrastructure is damaged or destroyed at any time as a result of an act or omission of Project Co or a Project Co Party;
  - (iv) the property of Contracting Authority on or adjacent to the Lands is damaged or destroyed at any time as a result of any act or omission of Project Co or a Project Co Party; or
  - (v) the property of a third party on or adjacent to the Lands is damaged or destroyed at any time as a result of any act or omission of Project Co or a Project Co Party,
- then,
- (vi) in the case of (i) above, subject to Section 11.10(g) (as applicable), Project Co shall, at its own cost and expense, Make Good such portion of the Works, including the Project Co Infrastructure, the New Third Party Infrastructure, the property of Contracting Authority on or adjacent to the Lands, including the Existing Infrastructure (the “**CA Reinstatement Work**”); and/or
  - (vii) in the case of (ii), (iii), (iv) or (v) above, subject to Section 11.10(g) (as applicable), Project Co shall, at its own cost and expense, upon written notice from Contracting Authority, Make Good such property (the “**Other Reinstatement Work**” and together with the CA Reinstatement Work, the “**Reinstatement Works**”).

- (c) Project Co shall carry out any Reinstatement Works promptly and, in any event, as soon as practicable in the circumstances.
- (d) Except as otherwise expressly provided in this Project Agreement, damage to or destruction of all or any part of the Works, including the Project Co Infrastructure or the New Third Party Infrastructure, shall not terminate this Project Agreement or relieve Project Co of any of its obligations hereunder (including indemnity obligations) or entitle Project Co to any compensation from Contracting Authority. For clarity, after Handover of applicable New Third Party Infrastructure, damage or destruction to the New Third Party Infrastructure shall be dealt with pursuant to the Project Agreement as damage or destruction to the property of third parties.
- (e) Project Co shall not undertake to Make Good any damage or destruction whatsoever to the property of Contracting Authority or a third party on or adjacent to the Lands (other than to the Project Co Infrastructure or the New Third Party Infrastructure prior to Handover of applicable New Third Party Infrastructure) or Existing Third Party Infrastructure, without first consulting Contracting Authority and receiving written instructions from Contracting Authority as to the course of action to be followed.
- (f) Notwithstanding Sections 11.10(b) and 11.10(g), Reinstatement Work carried out by Project Co in respect of Existing Third Party Infrastructure and New Third Party Infrastructure that is not owned by the City of Toronto or the TTC shall be planned and implemented by Project Co in consultation with the applicable third party.
- (g) If the Reinstatement Work is reasonably estimated to cost more than \$[REDACTED] (index linked) or in any other case where the Contracting Authority Representative, having regard to the nature of the damage or destruction, notifies Project Co that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the Final Completion Date and the Contracting Authority Representative acting reasonably considers that the continued application of the Design and Construction Certification Procedure would be able to adequately address the Reinstatement Work without the need for a separate Reinstatement Plan), Project Co shall, as soon as practicable and in any event within twenty (20) Business Days after the occurrence of the damage or destruction or receipt of notification from the Contracting Authority Representative, as the case may be, (or if, with the exercise of all due diligence more than twenty (20) Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction or receipt of notification from the Contracting Authority Representative, as the case may be, as may be reasonably required with the exercise of all due diligence, provided Project Co exercises and continues to exercise all such due diligence) submit to the Contracting Authority Representative pursuant to Schedule 10 – Review Procedure a plan (a “**Reinstatement Plan**”) prepared by Project Co for carrying out the Reinstatement Work setting out, in reasonable detail, *inter alia*:
- (i) a description of the Reinstatement Work required to 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 – Variation Procedure as if such plan were an Estimate,

and the Reinstatement Work must not be commenced until the Contracting Authority Representative consents thereto in accordance with Schedule 10 – Review Procedure except to the extent necessary to address any Emergency or public safety needs. Notwithstanding Section 11.10(e), where there is danger to life or property which arises out of or in connection with the performance of the Works, either Party may, but Project Co shall, immediately take such emergency action as is necessary to remove the danger.

- (h) Project Co shall cause the Reinstatement Work to be carried out in accordance with the Output Specifications and all other applicable requirements under this Project Agreement and, where applicable, Project Co shall also cause the Reinstatement Work to be carried out in accordance with the Reinstatement Plan consented to by the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Design and Construction Certification Procedure. If requested by the Contracting Authority Representative, the persons (and if applicable, a suitable parent entity thereof acceptable to Contracting Authority) retained by Project Co to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work or design work in connection therewith, enter into a construction contract with Project Co and a direct agreement with Contracting Authority in substantially the same forms as the Design and Construction Contract and the Construction Contractor's Direct Agreement.
- (i) In the event any Insurance Proceeds under Insurance Policies as referred to in Schedule 30 – Insurance Trust Agreement are available to carry out the Reinstatement Work, such Insurance Proceeds shall be paid into the Insurance Trust Account and shall be dispensed in accordance with the provisions of the Insurance Trust Agreement to carry out the Reinstatement Work.
- (j) If any Project Co Party has caused damage or destruction to the work of another contractor related to the Project, Project Co agrees upon due notice to settle with such other contractor by negotiation or arbitration in accordance with Section 11.13(g) and Schedule 27 – Dispute Resolution Procedure. If the other contractor makes a claim against Contracting Authority on account of damage or destruction alleged to have been so sustained, the dispute shall be dealt with in substantially the same manner as contemplated in Section 11.13(g) and Schedule 27 – Dispute Resolution Procedure.

#### **11.11 Liability Unaffected**

- (a) Project Co shall not be relieved of any liability or obligation under this Project Agreement by the retainer or 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 Works, to comply with the obligations of Project Co to Contracting Authority in the same manner and to the same extent as Project Co.
- (b) No inspection, review, comment, approval, verification, confirmation, certification, acknowledgement or audit pursuant to the provisions of this Project Agreement by Contracting Authority, the Contracting Authority Representative, Lenders' Consultant, the City of Toronto, the TTC or anyone on their behalf, nor any failure of any of them to do so, shall relieve Project Co from performing or fulfilling any of its obligations under this Project Agreement or be construed as an acceptance of the Works or any part thereof.

**11.12 Safety**

- (a) Project Co shall until the Substantial Completion Date, and following the Substantial Completion Date, solely in relation to Construction Activities:
- (i) comply with the Contractor Site Specific Safety Manual;
  - (ii) keep the Site (including Existing Infrastructure on the Site), the Works, the Project Co Infrastructure and the New Third Party Infrastructure in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site (including Existing Infrastructure on the Site), the Project Co Infrastructure and the New Third Party Infrastructure and in the immediate vicinity of the Site (including Existing Infrastructure on the Site), the Project Co Infrastructure and the New Third Party Infrastructure;
  - (iii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site (including Existing Infrastructure on the Site), the Project Co Infrastructure and the New Third Party Infrastructure of any persons or creatures not entitled to be there;
  - (iv) comply, and cause each Project Co Party to comply,
    - (A) with Applicable Law relating to health and safety, including the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
    - (B) with the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, road safety and operations, as set out in the Project Agreement, including, for clarity, the Output Specifications; and
    - (C) with any direction or instruction (each of which shall be deemed to be Applicable Law) from Transport Canada arising from any contractual arrangement or Board Order involving (I) Transport Canada and Metrolinx or (II) Transport Canada and GO Transit, as applicable, with respect to the Rail Corridor and facilitate and provide cooperation with respect to any inspections by Transport Canada on the Lands;
  - (v) with respect to the Works, identify the Project Co Party that is, or whose partners or members are each, a the COR-Certified Construction Project Co Party or, prior to receipt of COR Certification, a COR-Qualified Construction Project Co Party, with the greatest degree of control over the Works' health and safety matters, and cause said Project Co Party to perform, all of the obligations of the "constructor", and indemnify Contracting Authority, each Province Person and each Government Entity against any and all of the liabilities of the "constructor", under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
  - (vi) provide Contracting Authority with a certificate of good standing from WSIB or any successor thereto once every ninety (90) days; and

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- (vii) facilitate and provide cooperation with respect to any inquiry or investigation of the MOL with respect to the Project.
  - (b) Project Co shall ensure the Project Co Party identified pursuant to Section 11.12(a)(v) above registers the Project with the MOL by way of a Notice of Project, pursuant to the Applicable Law. Project Co shall ensure the Project Co Party identified pursuant to Section 11.12(a)(v) above shall identify as the “constructor” on the Notice of Project.
  - (c) Project Co shall cause the Construction Contractor to (i) deliver at least one copy of the Contractor Site Specific Safety Manual to Contracting Authority in accordance with Schedule 29 – Safety, System Assurance and Security and (ii) keep and maintain at least one copy of the Contractor Site Specific Safety Manual (as it may be amended by the Construction Contractor from time to time) at the Site until the Final Completion Date.
  - (d) Each Project Co Infrastructure Section shall, for all purposes of this Project Agreement, become RSSOM Project Infrastructure (and all risk therefor shall transfer to RSSOM Project Co subject to the other terms of this Project Agreement) upon the earlier of:
    - (i) the applicable Section Substantial Completion Date; and
    - (ii) Substantial Completion.
  - (e) Project Co Infrastructure shall, for all purposes of this Project Agreement, become RSSOM Project Infrastructure (and all risk therefor shall transfer to RSSOM Project Co subject to the other terms of this Project Agreement) upon the Substantial Completion Date.
  - (f) New Third Party Infrastructure shall, for all purposes of this Project Agreement, become Existing Third Party Infrastructure (and all risk therefor shall transfer to the applicable third party subject to the other terms of this Project Agreement) upon 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.
  - (g) At any time that the Works are being carried out in or around the Existing Infrastructure, the Project Co Party identified pursuant to Section 11.12(a)(v) shall at all times:
    - (i) ensure that it complies with all safety requirements set out in the Project Agreement, including those set out in Section 11.12(a) above; and
    - (ii) keep the Existing Infrastructure in a safe and orderly state, as appropriate and in accordance with Good Industry Practice, to avoid any danger to the employees, visitors and other persons attending the Existing Infrastructure.
  - (h) If the MOL determines, pursuant to the *Occupational Health and Safety Act* (Ontario), that the Project Co Party identified pursuant to Section 11.12(a)(v) is not the “constructor” for the Site or any portion thereof, then the following shall apply:

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- (i) all Project Co Parties shall comply with the instructions of the “constructor” relating to matters of health and safety on the Site, methods and manner of construction, and coordination and scheduling of the “constructor’s” works with the Works;
  - (ii) if the activity or presence of Project Co or a Project Co Party on the Site caused, in whole or in part, MOL to determine that the Project Co Party identified pursuant to Section 11.12(a)(v) is not the “constructor” for the Site or any portion thereof, all Project Co Parties will immediately take any necessary remedial action, including vacating the Site to ensure that the MOL determines that the Project Co Party identified pursuant to Section 11.12(a)(v) is the “constructor”;
  - (iii) if a third party is named “constructor” by MOL, no Project Co Party shall interfere with or delay the third party’s work, and shall not do anything whatsoever that causes the third party to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario). All Project Co Parties shall immediately cease and desist any activity that results or has a likelihood of resulting in such interference with or delay of the work of the third party;
  - (iv) if the MOL determines that Contracting Authority or a third party contractor (including RSSOM Project Co) has been designated as the “constructor” under the *Occupational Health and Safety Act* (Ontario), and such determination by the MOL is caused or contributed to by a failure of any Project Co Party to comply with, or a breach by any Project Co Party of, the provisions of the Project Agreement (but only to the extent of such cause or contribution), Project Co shall indemnify Contracting Authority and the Province Persons and each of their respective directors, officers, employees, agents and representatives from and against any and all of the liabilities arising from such determination by the MOL, and all Project Co Parties shall follow all directions of Contracting Authority required to fulfil any obligations Contracting Authority may have as a consequence of being designated the “constructor”; and
  - (v) if the MOL determines that Contracting Authority or a third party contractor (including RSSOM Project Co) has been designated as the “constructor” under the *Occupational Health and Safety Act* (Ontario), and such determination by the MOL is for a reason other than a failure of any Project Co Party to comply with, or a breach by any Project Co Party of, the provisions of the Project Agreement (but only to the extent of such cause or contribution), then, to the extent that Project Co’s performance of its obligations set out in this Section 11.12(h) would result in a material change to the Works and would not otherwise be required of Project Co under the Project Agreement, such change shall, subject and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (i) In the event that a breach by the Project Co Party identified pursuant to Section 11.12(a)(v) of, the provisions of the Project Agreement causes or contributes to (but only to the extent of such cause or contribution) an MOL determination that the Project Co Party identified pursuant to Section 11.12(a)(v) is not the “constructor” for the Site or any portion thereof, or if the Project Co Party identified pursuant to Section 11.12(a)(v) or any Project Co Party is denied access to the Site pursuant to Section 11.12(h)(ii), Project Co will not be eligible for a Delay Event or a Compensation Event.

- (j) Project Co acknowledges and agrees that, following each applicable Section Substantial Completion Date, Project Co's access to, and control of the Site in respect of each applicable Project Co Infrastructure Section may be subject to the activities of Contracting Authority, the Contracting Authority Parties or Other Contractors, and that Project Co may be required to undertake all or a portion of the Works in respect of an applicable Project Co Infrastructure Section under circumstances where a person other than the Project Co Party identified pursuant to Section 11.12(a)(v) is the "constructor" for all or a portion of the Site in respect of each such applicable Project Co Infrastructure Section. Following each applicable Section Substantial Completion Date, Project Co shall:
- (i) provide Contracting Authority with at least fifteen (15) Business Days advance Notice of its intention to undertake Construction Activities on the Site in respect of each such applicable Project Co Infrastructure Section, providing reasonable particulars;
  - (ii) participate with Contracting Authority and any party fulfilling the role of "constructor" in reviewing and coordinating construction schedules, when requested to do so by Contracting Authority;
  - (iii) coordinate its access to the Site in respect of each such applicable Project Co Infrastructure Section with Contracting Authority and any party fulfilling the role of "constructor" in respect of all or a portion of the Site in respect of each such applicable Project Co Infrastructure Section; and
  - (iv) comply with the instructions of any party that is fulfilling the role of "constructor" under the *Occupational Health and Safety Act* (Ontario) relating to matters of health and safety, methods and manner of construction (where applicable), and coordination and scheduling of the Works in respect of each such applicable Project Co Infrastructure Section. Project Co shall not interfere with, and shall not do anything whatsoever that causes the "constructor" to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario).
- (k) Project Co shall comply with Schedule 29 – Safety, System Assurance and Security.
- (l) Project Co shall comply with the requirements set out in Schedule 40 – Rail Corridor Access and Flagging in respect of the interaction between Project Co, CN Rail, VIA Rail, GO Transit and any other users of the Rail Corridor with respect to the activities to be performed in, on, under and/or adjacent to the Rail Corridor.

### 11.13 Additional Works and Third Party Works

- (a) Project Co shall, having regard to Project Co's obligations set out in Section 17, arrange and carry out all coordination of the Works with the Third Party Works directly with the applicable Third Party Contractor.
- (b) Contracting Authority may, in its sole discretion, carry out Additional Works.
- (c) Contracting Authority may, in its sole discretion, assign the responsibility for directing 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.

- (d) In connection with the Additional Works taking place prior to each applicable Section Substantial Completion Date, or thereafter where Project Co is designated as the “constructor” for an applicable Project Co Infrastructure Section, Contracting Authority 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 the Works;
  - (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 11.13(e) and all directions of Project Co in respect of any matter regarding health and safety on the Site, and methods and manner of construction (where applicable); and
    - (C) that require Additional Contractors to comply with Project Co’s coordination and scheduling of the Additional Works; and
  - (iii) ensure that insurance coverage is provided by each Additional Contractor as would be required by a prudent owner similarly situated and coordinate such insurance with the insurance coverage of Project Co and in any event, such insurance shall provide for liability insurance of not less than \$[REDACTED].
- (e) In connection with the Additional Works, if Contracting Authority has assigned responsibilities to Project Co pursuant to this Section 11.13, Project Co shall,
- (i) direct the methods and manner of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works with the Works to be performed under this Project Agreement;
  - (ii) assume overall responsibility for compliance with all aspects of,
    - (A) 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); and
    - (B) the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in the Project Agreement, including, for clarity, the Output Specifications,
- prior to each applicable Section Substantial Completion Date and, exercised in a manner consistent with the *Occupational Health and Safety Act* (Ontario), at any time that Project

Co is acting as a “constructor” on the Site for an applicable Project Co Infrastructure Section following each such applicable Section Substantial Completion Date;

- (iii) provide Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works, as applicable;
  - (iv) participate with Contracting Authority and Additional Contractors in reviewing the construction schedules of Additional Contractors, when directed to do so by Contracting Authority; and
  - (v) if part of the Works is affected by or depends upon, for its proper execution, the Additional Works, promptly (and in any event within thirty (30) days) report to Contracting Authority in writing and prior to proceeding with that part of the Works any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall invalidate any claims against Contracting Authority by reason of such readily apparent deficiencies. Failure by Project Co to report deficiencies that are not readily apparent shall not invalidate claims Project Co may have against Contracting Authority relating to such deficiencies that are not readily apparent.
- (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 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 11.13, if Project Co incurs any additional costs or there is any delay in the Works as a result of any such Additional Works (other than Additional Works that are identified in the Output Specifications and provided such Additional Works are performed by such Additional Contractors by any applicable date set out in the Output Specifications and in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with Contracting Authority),
- then any such delay in the Works or additional costs in respect of the Works shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.
- (g) Claims, disputes, and other matters in question between Project Co and Additional Contractors shall be dealt with by negotiation, adjudication and/or arbitration in a reasonably similar manner as to what is contemplated in Schedule 27 – Dispute Resolution Procedure provided that the Additional Contractors and Contracting Authority have made commercially reasonable efforts to ensure that provisions similar to Schedule 27 – Dispute Resolution Procedure have been included in the contracts between Contracting Authority and the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any Additional Contractor whose contract with Contracting Authority contains a similar agreement to arbitrate.

- (h) In connection with the Additional Works, Project Co may request a Variation as follows:
- (i) Project Co shall have a period of ten (10) Business Days following Notice from Contracting Authority of Contracting Authority's intention to carry out such Additional Works, including a reasonable description of such Additional Works, to request a Variation if such Additional Works are,
    - (A) reasonably expected to make void a warranty made in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice; or
    - (B) reasonably expected to have a material negative consequence on Project Co's ability to perform any of the Works (which for certainty, will include any material increased cost to Project Co in performing any Works);
  - (ii) If Project Co has made a request for a Variation in accordance with Section 11.13(h)(i), Contracting Authority shall, within ten (10) Business Days after such request, either issue a Variation Enquiry or give Notice to Project Co that it does not agree that a Variation is required;
  - (iii) 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 Works for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
  - (iv) If Contracting Authority has, under Section 11.13(h)(ii), given Notice to Project Co that it does not agree that a Variation is required, Contracting Authority shall, within ten (10) Business Days after a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
    - (A) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless Contracting Authority determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void or will not result in any material negative consequence on Project Co's ability to perform any of the Works 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.

#### 11.14 Protest and Trespass

- (a) Except as otherwise provided in this Project Agreement, Contracting Authority shall not be responsible for the presence of any persons participating in a Protest Action (“**Protesters**”) or any other persons otherwise not entitled to be on or around the Lands (“**Trespassers**”). For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Metrolinx Lands shall not be a breach of the obligation of Contracting Authority to grant licence rights of use and access to Project Co on and over the Metrolinx Lands pursuant to Section 16 nor a breach of any other obligation, representation or warranty under this Project Agreement.
- (b) The management of any Protesters or Trespassers shall be the responsibility of Project Co in respect of such parts of the Site and/or Metrolinx Lands (including Existing Infrastructure on the Site and/or Metrolinx Lands and any facilities or infrastructure within such parts of the Site and/or Metrolinx Lands that have not been handed over to RSSOM Project Co or are not under the exclusive control of RSSOM Project Co), New Third Party Infrastructure and Project Co Infrastructure that have not been handed over by and remain under the control of Project Co, to the extent such management is not otherwise the responsibility of the Police Service.
- (c) If Protesters or Trespassers occupy the Site, lands, facilities or infrastructure referred to in Section 11.14(b), or access to such Site, lands, 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 Contracting Authority Representative of such occurrence and of the action which Project Co proposes to take in respect thereof. Project Co may exercise any legal remedy available to it to remove Protesters or Trespassers from the Site, lands, facilities or infrastructure referred to in Section 11.14(b), provided that if Project Co does elect to exercise any such legal remedy, Project Co shall give the Contracting Authority Representative at least 24 hours’ Notice prior to commencing any such legal proceeding (except in a case of Emergency, danger to persons or material destruction or material damage to property where, in such circumstances, such Notice may be given to Contracting Authority less than 24 hours prior to the commencement of such legal proceeding) and shall continually update the Contracting Authority Representative as to the status of any such legal proceeding in reasonable detail and at reasonable intervals, and provided further that:
- (i) Project Co shall not give directly or indirectly to any Protester or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Protester or Trespasser or by other Protesters or Trespassers; and
- (ii) Project Co shall not by virtue of this Section 11.14(c) 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.
- (d) Project Co may request the assistance of Contracting Authority (at the cost of Project Co) to remove Protesters or Trespassers from the Site, lands, facilities or infrastructure, set out in Section 11.14(b) if Project Co demonstrates to Contracting Authority’s reasonable satisfaction that:

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

- (e) If Project Co experiences a Protest Action on the Site (including Existing Infrastructure on the Site), Metrolinx Lands, New Third Party Infrastructure or Project Co Infrastructure, or access by Project Co to the Site (including Existing Infrastructure on the Site), Metrolinx Lands, New Third Party Infrastructure or Project Co Infrastructure is prevented or materially interfered with by a Protest Action, then:
  - (i) the Protest Action shall, subject to and in accordance with Section 30, be treated as a Delay Event provided that Project Co has exhausted all legal remedies available to it to seek injunctive relief or other judicial remedies from a court of first instance and to enforce such injunction or other remedy granted by such court to remove Protesters and Trespassers in such Protest Action from the Site (including Existing Infrastructure on the Site), Metrolinx Lands, New Third Party Infrastructure and Project Co Infrastructure, provided that Project Co shall not be obligated to prosecute injunctive or other judicial remedies beyond the court of first instance with respect to such removal of Protesters and Trespassers; and
  - (ii) Project Co shall be entitled to a Variation in respect of the Direct Costs incurred by Project Co in connection with such Protest Action, subject to and in accordance with Schedule 22 – Variation Procedure, excluding the first \$[REDACTED] of all Direct Costs incurred by Project Co cumulatively in connection with all Protest Actions throughout the Project Term which would have been payable to Project Co in accordance with this Section 11.14(e)(ii),

except to the extent that any delay or Direct Costs incurred by Project Co were caused, or contributed to, by a breach of this Project Agreement by Project Co or any Project Co Party.

- (f) For the purposes of calculating the first \$[REDACTED] of Direct Costs pursuant to Section 11.14(e)(ii) such amount shall not include any amount or amounts 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.

**11.15 Adjacent Developments**

- (a) Project Co acknowledges and agrees that:
- (i) Metrolinx will, subject to this Section 11.15 and Section 11.15A, be responsible for carrying out reviews of development applications in accordance with the Metrolinx Developer Review Process, including the issuance of any corridor development permits as contemplated under the *Building Transit Faster Act* (2020);
  - (ii) Contracting Authority will be responsible for providing development applications and any other submittal materials (as set out in Section 11.15(b)(i)) with respect to Adjacent Developments to Project Co for review; and
  - (iii) Project Co will perform its obligations in respect of such applications and reviews as set out in this Section 11.15.
- (b) In respect of Adjacent Developments, Project Co shall:
- (i) in accordance with the Metrolinx Developer Review Process and the timelines set out in Section 11.15(c), classify, review and comment on, any documents or submission materials provided by Contracting Authority for which Contracting Authority determines, in its sole discretion, could impact the Works or which may be required to integrate such Adjacent Development with the Works (including complete development applications, official plan amendments, zoning by-law amendments, site plan applications/amendments, plans of subdivision, plans of condominium, minor variances, corridor development permit applications and accompanying technical studies and plans);
  - (ii) upon reasonable notice from Contracting Authority (which for certainty shall include any notice provided three (3) Business Days in advance), attend and participate in any meeting with an Adjacent Developer in respect of an Adjacent Development which Contracting Authority determines, in its sole discretion, could impact the Works or which may be required to integrate with the Works;
  - (iii) provide to Contracting Authority all Project documentation in respect of the design and construction of the Works or any elements of the New Third Party Infrastructure that Contracting Authority determines, in its sole discretion, are relevant to the Adjacent Development, which Project documentation Contracting Authority may provide to the applicable Adjacent Developer, provided the applicable Adjacent Developer has executed a confidentiality agreement and a waiver of liability, each in a form and substance satisfactory to Contracting Authority and Project Co, each acting reasonably;
  - (iv) prepare and provide to Contracting Authority any additional documentation in respect of the Works (including the New Third Party Infrastructure) as Contracting Authority may request in its sole discretion in connection with any Adjacent Development and provide to and Adjacent Developer subject to the same limitations as set out in Section 11.15(b)(iii); and

- (v) provide all commercially reasonable assistance to Contracting Authority as may be required to the extent such Adjacent Developments impacts the Works or is required to integrate with the Works as determined by Contracting Authority in its sole discretion.
- (c) As part of the review process described in Section 11.15(b)(i), Project Co shall:
- (i) complete its review of any documents or submission materials provided by Contracting Authority within ten (10) Business Days of receipt of the same (or such other time period as Contracting Authority may permit in its sole discretion), utilizing a standard comment form to be provided by Contracting Authority (as may be amended from time to time, the “**Adjacent Development Comment Form**”); and
  - (ii) using the Adjacent Development Comment Form, identify and describe for Contracting Authority any matter that could negatively impact the Works or the integration of the Works with the applicable Adjacent Development.
- (d) Project Co shall be entitled to compensation for its obligations described in Section 11.15(b) as set out in Section 11.15A.
- (e) In addition to the obligations set out in Section 11.15(b), Project Co shall, at its own cost:
- (i) take such actions as Contracting Authority may reasonably require in order to facilitate development of an Adjacent Development provided that such actions do not result in any additional cost or delay to the Works (in which case Contracting Authority may issue a Variation pursuant to Schedule 22 – Variation Procedure for such work);
  - (ii) permit the Adjacent Developer 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 Adjacent Developer’s project team;
  - (iii) permit an Adjacent Developer to post or affix signage, as required in connection with a development application; and
  - (iv) provide additional copies of Project documentation in respect of the Works (including the Project Co Infrastructure and New Third Party Infrastructure) as Contracting Authority may reasonably require, provided that:
    - (A) the obligation set out in this Section 11.15(e)(iv) shall only apply to documentation that Project Co has prepared, is preparing, will prepare or would otherwise prepare in the ordinary course of the Works; and
    - (B) Contracting Authority may provide such documentation to the applicable Adjacent Developer, subject to the same limitations as set out in Section 11.15(e)(iv).
- (f) Project Co acknowledges and agrees that it shall not be entitled to claim any relief with respect to an Adjacent Development to the extent it failed to carry out any of its obligations in this Section 11.15 (but only to the extent such failure caused or contributed to an applicable claim for relief).

**11.15A Adjacent Development Cash Allowance**

- (a) Project Co shall open the Cash Allowance Account, deposit the Cash Allowance Amount into the Cash Allowance Account on the dates and in the amounts set out in the Financial Model at Financial Close and manage the Cash Allowance Account in accordance with this Section 11.15A.
- (b) The cash flow process applicable to the Cash Allowance Account will be as follows:
- (i) Project Co will deposit the Cash Allowance Amount into the Cash Allowance Account on the dates and in the amounts set out in the Financial Model at Financial Close;
  - (ii) Project Co will hold and manage all monies in the Cash Allowance Account in trust for the benefit of and as directed by Contracting Authority;
  - (iii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account and will be for the benefit of Contracting Authority;
  - (iv) Project Co shall provide a reconciliation of the Cash Allowance Account to Contracting Authority on a monthly basis, as applicable;
  - (v) subject to Project Co's obligation to fund the Cash Allowance Account pursuant to Section 11.15A(b)(i), Contracting Authority shall make deposits into the Cash Allowance Account on agreed upon date(s) in the event that the payment requirements for Cash Allowance Items, including applicable HST, for invoices approved by Contracting Authority, exceed the then balance of the Cash Allowance Account, for clarity, determined on an aggregate basis across all Cash Allowance Items;
  - (vi) if, at Final Completion, there exists a positive balance in the Cash Allowance Account, such balance will be the property of Contracting Authority and will be paid by Project Co to Contracting Authority or as Contracting Authority directs; and
  - (vii) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.
- (c) Project Co shall provide monthly reports, as applicable, to the Contracting Authority Representative that include the following information:
- (i) itemized and aggregate amounts committed to date for all Cash Allowance Items;
  - (ii) itemized and aggregate amounts spent to date for all Cash Allowance Items; and
  - (iii) the projected cost of each remaining Cash Allowance Item and the projected effect of such costs on the Cash Allowance Account.
- (d) In addition to the monthly report, as applicable, described in Section 11.15A(c), Project Co shall, on a monthly basis, as applicable, provide to the Contracting Authority Representative a request for payment approval (each, a "**Request for Payment Approval**") that includes the following information:



- (i) details of all vendor or Project Co Party invoices that are due for payment that month, including relevant supporting documentation;
  - (ii) evidence that the commitment by Project Co to perform the work and activities that constitute Cash Allowance Items has been approved by Contracting Authority. For clarity, any request made by Contracting Authority pursuant to Section 11.15(b) will constitute such approval;
  - (iii) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items;
  - (iv) all costs paid or incurred by Project Co related and attributable to such Cash Allowance Items, with each component of the work, services, supplies, materials or equipment utilized in respect thereof separately itemized and setting forth a general description of such component together with the costs thereof or associated therewith; and
  - (v) sufficient information to demonstrate to Contracting Authority's satisfaction, acting reasonably that Project Co has used commercially reasonable efforts to obtain the best value for money, and has complied with Good Industry Practice, regarding all costs paid or incurred by Project Co related and attributable to such Cash Allowance Items, including using commercially reasonable efforts to mitigate such costs and to ensure that with respect to any work, services, supplies, materials or equipment procured by Project Co regarding such Cash Allowance Items, Project Co has used commercially reasonable efforts to obtain the best value for money therefor, and has complied with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to Contracting Authority.
- (e) Contracting Authority shall, within ten (10) Business Days of receipt of a Request for Payment Approval, advise Project Co, in writing, whether or not payment of the invoices set out in such Request for Payment Approval is approved. Contracting Authority shall only be permitted to withhold its approval if Contracting Authority determines that the Request for Payment Approval does not contain the information that Contracting Authority requires, acting reasonably, to discharge its obligations under this Section 11.15A. If Contracting Authority withholds its approval pursuant to this Section 11.15A(e) and subsequently receives the information that Contracting Authority requires, acting reasonably, to discharge its obligations under this Section 11.15A, it shall, within ten (10) Business Days of its receipt of such information, provide to Project Co, in writing, Contracting Authority's approval of the invoices set out in the aforementioned Request for Payment Approval.
- (f) If Contracting Authority approves the payment of the invoices set out in a Request for Payment Approval, Project Co shall make payment to the relevant vendors or Project Co Party from the Cash Allowance Account.
- (g) Project Co acknowledges and agrees that:
- (i) neither it, nor any Project Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with the Cash Allowance Items;

- (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items shall be attributed solely to and shall benefit the pricing of the Cash Allowance Items;
- (iii) all costs and expenses related to the administration of the Cash Allowance Account, including, without limitation, the preparation of Requests for Payment Approval and any required reporting, shall be borne by Project Co and shall not be charged to the Cash Allowance Account; and
- (iv) the Cash Allowance Amount will be deposited and the Cash Allowance Account will be managed in accordance with the Interim Baseline Works Schedule and the Baseline Works Schedule, if applicable, and any costs, expense or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.

#### 11.16 Defective Works

- (a) Prior to Substantial Completion or Section Substantial Completion, as applicable:
  - (i) Project Co shall promptly Make Good any deficiency, defect or error in the Works or failure of the Works to conform to the Project Agreement, or any deficiency, defect or error in relation to any Product (collectively, a “**Construction Defect**”) whether or not such Construction Defect has been incorporated into the Project Co Infrastructure or the New Third Party Infrastructure and whether or not the Construction Defect is the result of poor workmanship, use of defective Products or equipment or damage through carelessness or other act or omission of Project Co. The correction of Construction Defects shall be at Project Co’s sole cost and expense. Project Co shall Make Good, in a manner acceptable to the Independent Certifier, all Construction Defects, whether or not they are specifically identified by the Independent Certifier, and Project Co shall prioritize the correction of any Construction Defects so as not to interfere with or derogate from the Project Works Schedules, provided that Project Co shall prioritize the correction of any Construction Defects that in the sole discretion of Contracting Authority is determined to adversely affect the day to day operation of Contracting Authority.
  - (ii) Project Co shall Make Good promptly other contractors’ work (other than RSSOM Project Co) destroyed or damaged by such rectifications at Project Co’s expense. Any damage to the work of RSSOM Project Co or any RSSOM Project Co Party shall be dealt with in accordance with Schedule 45 – Integration With RSSOM Project.

#### 11.17 Warranty Obligations

- (a) Project Co represents, warrants and covenants that:
  - (i) the Works, including the Project Co Infrastructure (but, for clarity, not including any Early Works Infrastructure that becomes Project Co Infrastructure upon handover thereof in accordance with Schedule 41 – Early Works Handover), the New Third Party Infrastructure and all Products, parts and workmanship, including those replaced during each Warranty Period, shall,

- (A) conform to the requirements and specifications set out in this Project Agreement, Good Industry Practice, Applicable Law and all professional engineering principles generally accepted as standards of the industry in the Province of Ontario;
  - (B) be free of defects, including design defects, errors and omissions; and
  - (C) be new, of good quality material, of merchantable quality; and
- (ii) materials and equipment shall be of good quality and in compliance with this Project Agreement.
- (b) During each Warranty Period, Project Co shall promptly, at its sole cost and expense, correct and Make Good all Construction Defects and Construction Latent Defects arising in respect of the Works, other than to the extent any Construction Defects (A) have arisen as a result of normal wear and tear, (B) are caused or contributed to by Contracting Authority, RSSOM Project Co, any third party owner of the New Third Party Infrastructure or any Person for whom either of the foregoing are responsible at law, or (C) are caused or contributed to by a Delay Event, Relief Event or Force Majeure (in each of the cases set out in (A)-(C) of this Section 11.17(b), Project Co shall not have liability or obligation therefor) and provided that Contracting Authority gives Project Co Notice of any Construction Latent Defect within five (5) years of the Substantial Completion Date. For greater certainty, Project Co is required to correct and Make Good Construction Defects (except to the extent Construction Defects are excluded from Project Co's liability and obligations pursuant to (A)-(C) of this Section 11.17(b)) related to any Product and any equipment during the applicable Warranty Period despite Project Co having obtained on Contracting Authority's behalf industry-standard or other equipment warranties in accordance with Section 11.17(d).
- (c) The warranties set out in this Section 11.17 shall each cover labour and material, including, the costs of removal and replacement of covering materials. None of the warranties shall limit extended warranties on any Product or any item of equipment called for elsewhere in the Output Specifications or otherwise provided by any manufacturer of such Product or item of equipment. Project Co shall ensure that all extended warranties specified in the Project Agreement are provided and shall, in the case of the New Third Party Infrastructure, assign to the applicable third party owner of the New Third Party Infrastructure, all such extended warranties as the third party owner may direct.
- (d) Project Co shall obtain warranties from the manufacturers of each of the Products and items of equipment for the duration(s) and in accordance with the applicable requirements specified in the Output Specifications in the name of and to the benefit of Project Co, Contracting Authority in the case of Project Co Infrastructure, and the applicable third party owner in the case of New Third Party Infrastructure. Where, in respect of a Product warranty or equipment warranty, the Output Specifications do not specify a specific duration and/or other requirements, Project Co shall obtain industry-standard warranties from the applicable manufacturers in the name of and to the benefit of Project Co and Contracting Authority which shall extend no less than the applicable Warranty Period. Each Product warranty and equipment warranty shall be issued by the applicable manufacturer and delivered to Project Co no later than thirty (30) days prior to each applicable Warranty Period. Project Co shall ensure that each Product warranty and equipment warranty, including any Product warranty or equipment warranty extended under this Section

11.17(d), is fully assigned to Contracting Authority or the third party owner of New Third Party Infrastructure, as applicable, at no cost or expense to Contracting Authority or the third party owner, at the end of each applicable Warranty Period, as such Warranty Period may be extended in accordance with Section 11.18(a).

- (e) Contracting Authority may, in its sole discretion, assign the Project Co warranties set out in this Section 11.17 to the applicable third party owner of the New Third Party Infrastructure, and shall provide Notice to Project Co of any such assignment of Project Co warranties. On the commencement of each Warranty Period for each of the Project Co Infrastructure and the New Third Party Infrastructure, Project Co shall provide at least two copies of each of the compilations of warranty certificates, one compilation for each of the Project Co Infrastructure and one compilation for each category of New Third Party Infrastructure, as categorized by ownership of the New Third Party Infrastructure. Project Co shall update all copies of each of the compilations from time to time as each Warranty Period commences. Each of the compilations shall indicate the start and completion date of each Project Co warranty.
- (f) Subject to Section 11.13, Project Co acknowledges that,
- (i) with respect to the Project Co Infrastructure, Contracting Authority may, in its sole discretion; and
  - (ii) with respect to the New Third Party Infrastructure, the applicable third party owner may, in its sole discretion,

maintain, repair and/or alter any part or parts of the Works during the applicable Warranty Period and Project Co agrees that such work shall not impact any of the warranties provided by Project Co hereunder, provided that such work is carried out in accordance with Good Industry Practice and that such work does not materially alter the affected part or parts of the Works.

#### **11.18 Warranty Work and Prompt Repair of Warranty Work**

- (a) Project Co shall carry out all work, including correcting Construction Defects and Construction Latent Defects, to satisfy the warranties provided pursuant to Section 11.17 and this Section 11.18, and in accordance with the applicable Warranty Period, and Project Co shall also Make Good any damage to other works caused by the repairing of such Construction Defects and Construction Latent Defects (the “**Warranty Work**”). All Warranty Work shall be carried out and completed at Project Co’s sole cost and expense and Warranty Work shall not be the basis of a claim for a Delay Event, a Compensation Event, a Variation, additional compensation or damages. The applicable Warranty Period shall be extended for a further two (2) years from the date of the last Warranty Work completed and accepted by Contracting Authority in respect of the Project Co Infrastructure and by the applicable third party owner in respect of the New Third Party Infrastructure. For clarity, any extension of a Warranty Period for the purposes of a correction shall only apply to the relevant Warranty Work and not the Works as a whole.
- (b) Project Co acknowledges and agrees that, the timely performance of Warranty Work is critical to the ability of Contracting Authority to maintain effective operations of the Project Co Infrastructure, and to the ability of the third party owners to maintain effective operations of the New Third Party Infrastructure. Project Co shall use commercially reasonable efforts to respond to any requirement by Contracting Authority or the third party owner to perform Warranty Work

within the time periods required by Contracting Authority or the third party owner to perform the Warranty Work for the Project Co Infrastructure or the New Third Party Infrastructure. Project Co shall commence and complete Warranty Work as expeditiously as possible and at times convenient to Contracting Authority, which may require work outside normal working hours at Project Co's expense. Any extraordinary measures required to complete such Warranty Work, as directed by Contracting Authority or the applicable third party to accommodate the operation of the Project Co Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure or other aspects of the Project as constructed, shall be at Project Co's sole cost and expense. In relation to critical areas required for effective operations, Project Co shall commence, carry out and complete Warranty Work on an urgent basis with all due haste, taking into account the circumstances and any timelines for commencement and completion as may be communicated by Contracting Authority, with respect to the Project Co Infrastructure, or the third party owner, with respect to the New Third Party Infrastructure, to Project Co.

(c) Project Co acknowledges and agrees that if,

- (i) Contracting Authority with respect to the Project Co Infrastructure; or
- (ii) the third party owner of the New Third Party Infrastructure,

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 11.18(b), Contracting Authority and the applicable third party owner, as applicable, may take such emergency steps as are reasonable and appropriate to correct any defects, deficiencies or failures to comply with the Project Agreement, at Project Co's sole cost and expense. Except in the case of damage caused by Contracting Authority's or the third party owner's own forces, such emergency steps taken by Contracting Authority's or the third party owner's own forces, as applicable, shall not invalidate any Project Co warranties in respect of the Works.

(d) If Project Co fails to carry out the Warranty Work in accordance with Section 11.17, and in the time specified in Section 11.18(b) or subsequently agreed upon, without prejudice to any other right or remedy Contracting Authority may have, Contracting Authority and the third party owner, as applicable, may correct the Works at the sole risk, cost and expense of Project Co and may draw down on the Warranty Security to fund or as reimbursement for such costs and expenses. Without prejudice to the foregoing, if Project Co fails to carry out any Warranty Work in respect of a Project Co Infrastructure Section after the applicable Section Substantial Completion Date but prior to the Substantial Completion Date, Contracting Authority may deduct the cost of such Warranty Work and interest thereon from the Substantial Completion Payment.

(e) Project Co acknowledges and agrees that all rules, requirements and restrictions relating to access, rail safety and operations and track protection, as set out in the Output Specifications, apply to Project Co's performance of its obligations in accordance with Sections 11.17 and 11.18.

(f) After the Handover of applicable New Third Party Infrastructure, Project Co shall be solely responsible for obtaining access from the applicable third party for the purpose of carrying out Warranty Work. Project Co acknowledges that such access to the New Third Party Infrastructure may be subject to such limitations as may be imposed by the applicable third party owner, and that Project Co may be required to obtain Permits, Licences, Approvals and Agreements to access

the New Third Party Infrastructure for the purpose of carrying out Warranty Work. Without limiting Project Co's obligation to carry out the Warranty Work, if Project Co,

- (i) has made commercially reasonable efforts to access New Third Party Infrastructure for the purpose of carrying out Warranty Work and is otherwise in compliance with all of Project Co's obligations pursuant to the Project Agreement; and
- (ii) is denied access to all or a portion of the New Third Party Infrastructure such that Project Co is unable to perform the Warranty Work,

then Project Co shall refer the matter to Contracting Authority and, during the period in which Project Co is denied access to the applicable New Third Party Infrastructure only, Contracting Authority shall not draw down on the Warranty Letter of Credit or the Warranty Cash Amount for Project Co's failure to perform Warranty Work on that portion of the New Third Party Infrastructure.

- (g) The warranties set out in Sections 11.17 and 11.18 shall not deprive Contracting Authority or any third party owner of New Third Party Infrastructure of any other action, right or remedy otherwise available to Contracting Authority or the third party owner at law or in equity, and the periods referred to in this Section 11.18, shall not be construed as a limitation on the time in which Contracting Authority or the third party owner may pursue such other action, right or remedy, provided that the obligations of Project Co specified in Sections 11.17 and 11.18 shall only apply to a Construction Defect or a Construction Latent Defect if the relevant Construction Defect or Construction Latent Defect is notified to Project Co before the end of the applicable Warranty Period.
- (h) Neither test results, nor selection or approval by Contracting Authority or the Contracting Authority Representative of testing entities, nor any other thing in the Project Agreement shall have the effect of limiting or shortening or otherwise affecting in any way whatsoever the duration, effectiveness or content of any guarantee or warranty set forth in any other document or material forming part of the Project Agreement.

#### 11.19 Warranty Security

- (a) Project Co shall either:
  - (i) on or before the Substantial Completion Date, deliver, or cause to be delivered, to Contracting Authority, the Warranty Letter of Credit; or
  - (ii) no later than five (5) Business Days prior to the Substantial Completion Date, provide written Notice to Contracting Authority of Project Co's intention to not deliver the Warranty Letter of Credit, in which case Contracting Authority shall withhold the Warranty Cash Amount in accordance with Section 11.19(c).
- (b) The Warranty Letter of Credit shall be in the amount equal to **[REDACTED]** dollars (**[\$[REDACTED]]**) (the "**Required Amount**").
- (c) Notwithstanding Section 4.3(k), if,

- (i) the Warranty Letter of Credit has not been delivered to Contracting Authority by the Substantial Completion Payment Date, or
- (ii) Project Co provides written Notice to Contracting Authority pursuant to Section 11.19(a)(ii) that it elects not to deliver the Warranty Letter of Credit,

then Contracting Authority may withhold from the Substantial Completion Payment a holdback amount equal to the Required Amount (the “**Warranty Cash Amount**”).

- (d) The Warranty Cash Amount may be withheld by Contracting Authority until the Warranty Security Return Date, and upon the Warranty Security Return Date, the Warranty Cash Amount, less the amount of any claims previously satisfied by a draw in accordance with Section 11.19(f), shall be paid by Contracting Authority to Project Co.
- (e) The withholding of the Warranty Cash Amount in accordance with Section 11.19(c) shall be Contracting Authority’s sole remedy for failure on the part of Project Co to deliver a Warranty Letter of Credit in the Required Amount by the Substantial Completion Payment Date and, for greater certainty, Contracting Authority shall not be entitled to withhold payment of the balance of the Substantial Completion Payment as a result of any such failure on the part of Project Co to deliver a Warranty Letter of Credit in the Required Amount.
- (f) Contracting Authority shall be entitled to draw on the Warranty Security:
  - (i) in an amount equal to the amount of the costs estimated by the Independent Certifier for,
    - (A) Contracting Authority to rectify defects, deficiencies or non-compliant items in the Works, including any costs incurred by Contracting Authority in accordance with Sections 11.17 and 11.18 as a result of Project Co’s failure to comply with its obligations under Sections 11.17 and 11.18; and
    - (B) all other damages suffered by Contracting Authority, excluding,
      - (I) any liquidated damages that Project Co may have incurred pursuant to Schedule 19 – Liquidated Damages and Construction Enforcement Regime; and
      - (II) any Direct Losses arising out of the Project Co indemnities set out in Section 44.1; and
  - (ii) to satisfy any amounts that are due and have remained outstanding for thirty (30) days by Project Co pursuant to the terms of this Project Agreement or by the Construction Guarantor pursuant to Schedule 24 – Form of Performance Guarantee of Construction Guarantor.
- (g) Contracting Authority may make multiple calls on the Warranty Security.
- (h) Intentionally deleted.

- (i) Unless the Warranty Security is fully drawn by Contracting Authority in accordance with the provisions of this Project Agreement, Contracting Authority shall release and deliver the Warranty Security to Project Co on the Warranty Security Return Date.
- (j) In the event that the Warranty Letter of Credit has an expiry date that is prior to the Warranty Security Return Date and Project Co does not renew (or does not cause the renewal of) the Warranty Letter of Credit and does not provide (or cause the provision of) proof of such renewal to Contracting Authority before the date that is twenty (20) days before the Warranty Letter of Credit's expiry date, then at any time during such twenty (20) day period and upon providing prior written Notice to Project Co, Contracting Authority may draw upon the full amount of the Warranty Letter of Credit and deposit the cash proceeds thereof in a segregated bank account selected by Project Co at an Acceptable Issuer and if Project Co does not promptly select such bank account, then such bank account may be selected by Contracting Authority in its sole and absolute discretion and such cash proceeds shall thereupon stand in place of the Warranty Letter of Credit unless Project Co delivers (or causes the delivery of) a replacement Warranty Letter of Credit to Contracting Authority. Contracting Authority shall be entitled to withdraw such cash proceeds in the same manner that it is permitted to draw upon the Warranty Security under Section 11.19(f). Upon the delivery of a replacement Warranty Letter of Credit by Project Co to Contracting Authority, all remaining cash proceeds from such segregated bank account shall be returned to Project Co or as Project Co may direct within five (5) Business Days after the delivery of such replacement Warranty Letter of Credit by Project Co to Contracting Authority.
- (k) No interest will be payable to either Party in respect of any cash proceeds or Warranty Cash Amounts.
- (l) For clarity, if Contracting Authority elects to draw down on the Warranty Security in accordance with this Section 11.19, Contracting Authority shall not be entitled to exercise its rights pursuant to the Performance Guarantee of Construction Guarantor to fund or as reimbursement for the costs and expenses Contracting Authority has already been compensated for pursuant to this Section 11.19.

#### **11.20 Coordination and Minimization of Disruption and Interference**

- (a) Project Co shall perform the Works so as to coordinate with,
  - (i) the operations of, and the performance of any services by, Contracting Authority, any Province Persons, any Governmental Authority, any Other Contractor, any Utility Company, the City of Toronto, the TTC, any other Transit System and any rail system, including the performance of the Governmental Activities and the Other Works;
  - (ii) the construction of the interface, connection or inter-connection between the Project Co Infrastructure, the New Third Party Infrastructure, and any existing transit systems, highway systems, rail systems, rail networks, bus routes, each in accordance with the Output Specifications, and any other Ontario or City of Toronto road or roadway;
  - (iii) all TOC Developments, in accordance with Section 11.10, the Output Specifications and any other term or provision set out in this Project Agreement; and
  - (iv) all Adjacent Developments, in accordance with Sections 11.10 and 11.15.



- (b) Project Co acknowledges and agrees that,
- (i) Project Co has familiarized itself with all operations and activities associated with the Lands, the Existing Infrastructure and the existing transit systems, highway systems and rail systems, and will perform the Works in accordance with, and subject to,
    - (A) this Project Agreement, including all rules, requirements and restrictions relating to access, rail safety and operations and track protection, as set out in the Output Specifications;
    - (B) the Traffic and Transit Management Plan; and
    - (C) the requirements of Contracting Authority and other third parties,in order to maintain normal operations and activities associated with the Lands, the Existing Infrastructure and the existing transit systems, highway systems and the rail systems;
  - (ii) the carrying on of Contracting Authority Activities during construction is a priority for Contracting Authority, and Project Co has reviewed the Project Documents with respect to this;
  - (iii) Project Co shall use all methods required to comply with the instructions set out in this Project Agreement during the performance of the Works, Project Co shall fully cooperate with Contracting Authority in complying with such instructions during the performance of the Works, and any costs incurred by Project Co in complying with said instructions shall be part of the Guaranteed Price; and
  - (iv) the Project Agreement includes specifications which include instructions respecting Contracting Authority's use of the Existing Infrastructure, Project Co has read and understood such instructions and shall comply with the procedures set out therein, and Project Co shall be responsible for any costs and expenses resulting in its failure to comply with these procedures.
- (c) Except as explicitly permitted by Contracting Authority or this Project Agreement, and subject to Project Co's compliance with all applicable Permits, Licences, Approvals and Agreements,
- (i) Project Co shall minimize disturbance to and interference with,
    - (A) the existing transit systems, highway systems, rail systems and the Existing Infrastructure in accordance with this Project Agreement, including with respect to noise, dust control, access to the Lands and the particular requirements in respect of those portions of the Works which are to be carried out within the Existing Infrastructure and in respect of those portions of the Works where connections are being made to the Existing Infrastructure;
    - (B) the construction, operations or maintenance activities of Contracting Authority, any Province Person, any Governmental Authority, any Other

Contractor, any Utility Company, the City of Toronto, the TTC, any other Transit System, and any rail system, and with respect to any road or roadway, including the performance of the Governmental Activities and the Other Works;

- (C) 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 including the Existing Infrastructure (other than the Project Co Infrastructure and the New Third Party Infrastructure), whether under the control or in the possession of Contracting Authority or any other person, and Project Co shall minimize any lane or ramp closures or diversions, track closures or diversions and traffic diversions or restrictions; and
  - (D) the construction, operation or maintenance activities of any TOC Contractor with respect to the applicable TOC Development, in accordance with Section 11.10 and the Output Specifications.
- (d) To the extent that the Project necessitates interference, in any way, with the operation of the existing transit systems, existing highway systems, existing rail systems or Existing Infrastructure, including the imposition of any closures or detours on the existing highway systems, rail systems or Existing Infrastructure, Project Co shall use commercially reasonable efforts to cooperate with Contracting Authority, Province Persons, Governmental Authorities, Other Contractors, Railway Companies, Utility Companies, the City of Toronto, the TTC, any other Transit Systems, rail systems and other relevant third parties to ensure the continued operation of the existing transit systems, highway systems, rail systems and Existing Infrastructure.
- (e) Project Co shall develop and implement protocols in furtherance of its obligations as set out in this Section 11.20 in accordance with the Traffic and Transit Management Plan and the Output Specifications.
- (f) Project Co shall, as required by Contracting Authority, provide all commercially reasonable assistance to facilitate the discussion, agreement and any implementation of proposals with respect to TOC Developments.

### 11.21 Substitutions

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

**11.22 Anti-Racism, Anti-Discrimination and Anti-Harassment Governance Requirements**

- (a) Project Co shall, and shall cause the Construction Contractor to with respect to its activities in Canada, incorporate reasonable processes, policies, controls and procedures in order to establish and maintain a corporate commitment to:
- (i) Anti-Racism, anti-discrimination and anti-harassment practices;
  - (ii) providing opportunities for Equity Deserving Groups, including Indigenous, Black, and other racialized communities; and
  - (iii) eliminating workplace hate and intolerance,

and shall impose requirements for Subcontractors to do the same under their Subcontracts in respect of their activities in Canada.

- (b) Contracting Authority may, in its sole discretion from time to time but not more than once in any twelve-month period, require Project Co to, at its sole cost and expense, cause the obtainment of a third party attestation from a reputable, independent consulting firm with expertise in equity and diversity, regarding the presence and design of the internal processes, policies, controls and procedures of Project Co and/or the Construction Contractor, as applicable, in respect of the matters set out in Section 11.22(a). Such consultant shall be retained by Project Co or the Construction Contractor, as applicable, subject to the consent of Contracting Authority (such consent not to be unreasonably withheld provided that it will not be unreasonable for Contracting Authority to withhold its consent where the proposed consultant (i) is an affiliate of Project Co or the Construction Contractor, as applicable, or (ii) does not have sufficient experience in equity and diversity to undertake the activities described in this Section 11.22(b)). Contracting Authority acknowledges that such consultant may not be independent of Contracting Authority. Project Co, in entering into this Project Agreement, reserves all rights and defences that it may have under Applicable Law, including with respect to the actual or perceived independence of the consultant, and shall not be deemed to have waived any of its rights in this regard. The Parties will work together in good faith to address any issues arising from the audit to the extent they may apply to the Project.
- (c) Project Co shall, and shall cause the Construction Contractor to, take reasonable proactive measures to monitor for, and actively strive to, prevent the occurrence of racism, discrimination and harassment (including Systemic Racism and other forms of racial discrimination and harassment), and respond in a prompt and appropriate manner when any issue of racism, discrimination or harassment arises in its work environment, in order to maximize the likelihood that its work environment is and remains free from racism, discrimination and harassment.
- (d) Contracting Authority may, at any time during the Project Term, require that Project Co provide Contracting Authority with (i) copies of its internal policies, and (ii) evidence of its established internal processes, controls, procedures and measures, in respect of the matters set out in Sections 11.22(a) and 11.22(c). Project Co may provide copies of the same to Contracting Authority within sixty (60) days of Commercial Close.

**11.23 Change in Standards**

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the design and construction of the Project Co Infrastructure and the New Third Party Infrastructure, and that standard has changed between the Technical Reference Date and the date that such compliance is required, then Project Co shall give Notice to Contracting Authority of such change. If, after such Notice, Contracting Authority requires compliance with the changed standard (rather than the standard applicable as of the Technical Reference Date), then, to the extent such change impacts the Works and would not have otherwise been taken into account by compliance with Good Industry Practice as at the Technical Reference Date, such changed standard shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. If Contracting Authority does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the Technical Reference Date, without a Variation therefor. This Section 11.23 shall not apply where a change in a technical standard is also a Change in Law.

**11.24 Subcontractors and Suppliers**

- (a) Project Co shall preserve and protect the rights of the Parties under this Project Agreement with respect to the works to be performed under Subcontract, and shall:
- (i) enter into Subcontracts or written agreements with Project Co Parties to require them to perform their work as provided in the Project Agreement;
  - (ii) incorporate the relevant terms and conditions of the Project Agreement into all contracts or written agreements with Project Co Parties; and
  - (iii) be as fully responsible to Contracting Authority for acts and omissions of the Project Co Parties as for acts and omissions of persons directly employed by Project Co.
- (b) Attached in Part 1 of Schedule 8 – Project Co Parties is a list of all Project Co Parties that Project Co has engaged or caused to be engaged for the performance of the Work as of the date of execution of this Project Agreement. Project Co agrees to update such list from time to time as additional Project Co Parties are engaged. Any of these named Project Co Parties listed by Project Co may be changed by Project Co upon prior Notice to (but without the approval of) the Contracting Authority Representative, provided however, that if the Contracting Authority Representative reasonably objects to any change to a Prequalified Subcontractor that is a Project Co Party, then Project Co shall select an alternative replacement Prequalified Subcontractor to which the Contracting Authority Representative does not reasonably object.
- (c) Project Co hereby agrees to contractually obligate the Construction Contractor to enter into the Construction Contractor's Direct Agreement and, subject to Section 11.24(d), to cause the Construction Contractor to cause each of the other Project Co Parties, including Suppliers leasing any construction machinery and equipment, to enter into the Subcontractor's Direct Agreement, to evidence, among other things, that Contracting Authority shall have the right to cure any default by the Construction Contractor under the Subcontract.
- (d) With the exception of the Subcontracts specifically listed in Part 2 of Schedule 8 – Project Co Parties, none of Project Co, the Construction Contractor or the applicable Project Co Party are

obliged to enter into a Subcontractor's Direct Agreement in respect of Subcontracts having a total estimated cost of \$[REDACTED] or less.

- (e) Subject to Section 11.24(d), Project Co agrees to deliver to Contracting Authority the Subcontractor's Direct Agreements by the applicable due dates set out in Part 2 of Schedule 8 – Project Co Parties. If, following the date that issued for construction Works Submittals are submitted to Contracting Authority in accordance with Schedule 10 – Review Procedure, Project Co is required to enter into any additional Subcontractor's Direct Agreement pursuant to this Section 11.24, Project Co shall deliver such Subcontractor's Direct Agreements to Contracting Authority within thirty (30) days after execution.

### 11.25 COR Certification

- (a) Project Co shall, at its own cost and risk, at all times during the performance of the Works cause a COR-Qualified Construction Project Co Party or COR-Certified Construction Project Co Party, as the case may be, to:
- (i) to the extent a COR-Qualified Construction Project Co Party has not obtained COR Certification prior to Financial Close,
    - (A) use best efforts to obtain its COR Certification no later than eighteen (18) months following Financial Close. In the event that Contracting Authority is satisfied, in its sole discretion, that the COR-Qualified Construction Project Co Party has used best efforts to obtain its COR Certification in accordance with this Section 11.25 and the COR-Qualified Construction Project Co Party has not obtained COR Certification by the end of such eighteen (18) month period, then Contracting Authority shall establish a time period during which the COR-Qualified Construction Project Co Party shall obtain its COR Certification, which time period shall not be less than thirty (30) days; and
    - (B) maintain in good standing and, as applicable, renew its OHSAS 18001 Accreditation or ISO 45001 Accreditation;
  - (ii) once the COR-Qualified Construction Project Co Party is certified (thereafter referred to as a “**COR-Certified Construction Project Co Party**”), maintain in good standing, and, as applicable, renew its COR Certification; and
  - (iii) comply with all requirements of its OHSAS 18001 Accreditation or ISO 45001 Accreditation (if a COR-Qualified Construction Project Co Party) or COR Certification (if a COR-Certified Construction Project Co Party), in accordance with its terms.
- (b) Without limiting any other provision of this Project Agreement, if at any time during the performance of the Works:
- (i) a COR-Qualified Construction Project Co Party fails to obtain its COR Certification in accordance with this Project Agreement and Contracting Authority determines that the failure to obtain the COR Certification is as a result of such COR-Qualified Construction Project Co Party not using best efforts to obtain such certification and Contracting

Authority delivers a Notice to Project Co indicating that a COR-Qualified Construction Project Co Party has failed to obtain its COR Certification in accordance with this Project Agreement;

- (ii) a COR-Qualified Construction Project Co Party fails to maintain its OHSAS 18001 Accreditation or ISO 45001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement; or
- (iii) a COR-Certified Construction Project Co Party fails to maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement, (each a “**H&S Certification Default Event**”);
- (iv) Contracting Authority delivers a Notice to Project Co indicating that Contracting Authority is of the opinion that a COR-Qualified Construction Project Co Party will fail to maintain its OHSAS 18001 Accreditation or ISO 45001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement; or
- (v) Contracting Authority delivers a Notice to Project Co indicating that Contracting Authority is of the opinion that a COR-Certified Construction Project Co Party will fail to maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement,

Project Co shall:

- (vi) immediately upon the occurrence of a H&S Certification Default Event, notify Contracting Authority that a H&S Certification Default Event has occurred, and:
  - (A) produce and deliver to Contracting Authority a report identifying the reasons for the failure to obtain or maintain in good standing the COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be;
  - (B) produce and deliver to Contracting Authority a plan showing the steps that are to be taken to have the COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be, obtained or reinstated in good standing within a period of not more than thirty (30) days (the “**H&S Certification Reinstatement Plan**”), which H&S Certification Reinstatement Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to the H&S Certification Reinstatement Plan, Project Co shall take, and shall cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to take, all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended H&S Certification Reinstatement Plan not more than five (5) Business Days from the date on which such request is made by Contracting Authority;

- (C) no later than five (5) Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Construction Inspection in accordance with Section 15.1(b); and
  - (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 15.1(e), if required; or
- (vii) within five (5) Business Days after receipt of the Notice from Contracting Authority under Section 11.25(b)(iv) or Section 11.25(b)(v):
- (A) produce and deliver to the Contracting Authority Representative a report identifying the manner in which the COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be, shall be maintained in good standing or obtained, as applicable;
  - (B) produce and deliver to the Contracting Authority Representative a plan showing the steps that are to be taken to ensure that the COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be, will be maintained in good standing without interruption (the “**H&S Certification Maintenance Plan**”), which H&S Certification Maintenance Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to the H&S Certification Maintenance Plan, Project Co shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended and H&S Certification Maintenance Plan not more than five (5) Business Days from the date on which such request is made by Contracting Authority;
  - (C) arrange to have conducted a complete H&S Construction Inspection in accordance with Section 15.1(b), and
  - (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 15.1(e), if required.

## 11.26 Demolition Requirements

- (a) Without limiting Project Co’s obligation to perform the Works at all times in accordance with Applicable Law, in respect of any Demolition, Project Co shall, and shall cause each applicable Project Co Party that is performing any part of the Demolition to, at such person’s own cost and risk and at all times during the performance of the Works:
- (i) conduct all work in connection with any Demolition at all times in compliance with section 3 of the Performance Standards Regulation and the Building Code;
  - (ii) ensure that all Project Co Parties having responsibility for the supervision of any such Demolition are qualified as either a professional engineer, limited licence holder or provisional licence holder (as such terms are used in the Performance Standards Regulation) (such person is hereinafter referred to as a “**Demolition Supervisor**”);

- (iii) observe and perform the Demolition in a manner that is consistent with the recommendations set forth in the Demolition Guidelines in all material respects; and
  - (iv) in respect of any Complex Structure Demolition to be conducted by Project Co or any applicable Project Co Party:
    - (A) prepare detailed specifications relating to such Complex Structure Demolition which specifications will include a detailed risk assessment and risk mitigation plan assessing all apparent or inferable risks that might be associated with the Demolition, colour-coded Load-Path Diagrams (which will include a description of the Demolition Requirements set forth herein) to supplement the Site work plans and blueprints relating to the Demolition and all other technical requirements relating to the Complex Structure Demolition (the “**Demolition Specifications**”);
    - (B) at all times when a Complex Structure Demolition is being performed that the Demolition Specifications, Demolition work plans and Load-Path Diagram, be present and available at the Site at which such Complex Structure Demolition is being performed; and
    - (C) ensure at all times when a Complex Structure Demolition is being performed that a Demolition Supervisor will be on the Site at which such Complex Structure Demolition is being performed and actively supervising all activities in respect of the Complex Structure Demolition,
- (collectively the “**Demolition Requirements**”).
- (b) If at any time while any Demolition is being performed pursuant to this Project Agreement, Project Co or any Project Co Party that is performing any part of any Demolition receives Notice from Contracting Authority or any Province Persons or Governmental Authority that the Demolition is being conducted in a manner that is either not in compliance with the Demolition Requirements or not otherwise in accordance with this Project Agreement (such event referred to as a “**Demolition Default Event**”), Project Co shall and shall cause any applicable Project Co Party to:
    - (i) be required immediately upon the occurrence of a Demolition Default Event, notify Contracting Authority that a Demolition Default Event has occurred, unless Contracting Authority was the person that provided Notice of the Demolition Default Event;
    - (ii) cease all work in respect of such Demolition; and
    - (iii) within five (5) Business Days after receipt of a Notice of a Demolition Default Event produce and deliver to the Contracting Authority Representative:
      - (A) a report identifying the reasons for the occurrence of the Demolition Default Event; and
      - (B) a Demolition Plan showing the steps that are to be taken to rectify the Demolition Default Event within a period of not more than thirty (30) days



from the occurrence of the Demolition Default Event, which Demolition Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to such Demolition Plan, Project Co and the applicable Project Co Parties shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended and revised Demolition Plan not more than five (5) Business Days from the date on which such request is made by Contracting Authority.

- (c) No Demolition shall be recommenced at the Site that was the subject of the Demolition Default Event until:
- (i) Contracting Authority is satisfied that Project Co or the applicable Project Co Party has taken all necessary steps to remediate such Demolition Default Event in accordance with Demolition Plan; and
  - (ii) Contracting Authority has received a report, in form and substance satisfactory to Contracting Authority, prepared by a professional engineer that the Demolition Default Event has been remediated and the Site has been properly prepared for the Demolition to proceed in accordance with the Demolition Plan.
- (d) For clarity, Project Co shall not be eligible for a Delay Event or a Compensation Event in connection with a Demolition Default Event or the recommencement of a Demolition pursuant to Section 11.26(c).

#### **11.27 Liquidated Damages and Construction Enforcement Regime**

- (a) Project Co shall comply with Schedule 19 – Liquidated Damages and Construction Enforcement Regime, and shall be liable to Contracting Authority for all liquidated damages and Construction Period Deductions in accordance with the terms of Schedule 19 – Liquidated Damages and Construction Enforcement Regime and this Project Agreement.

#### **11.28 Works, Goods, Equipment, Consumables and Materials**

- (a) Project Co shall cause the Works, including the goods, equipment, consumables and materials used or supplied by it or any contractor or Subcontractor in connection with the Works to be:
- (i) of good quality, and maintained in a safe, serviceable and clean condition, in each case, in accordance with the Output Specifications and Good Industry Practice;
  - (ii) of the type specified in the Output Specifications, if applicable; and
  - (iii) in compliance with all Applicable Law,

and shall, as soon as practicable after receiving a request from the Contracting Authority Representative, supply to the Contracting Authority Representative evidence to demonstrate its compliance with this Section 11.28(a).

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

### 11.29 GO Passenger Charter and TTC By Law No. 1

- (a) Project Co shall, and shall ensure that all Project Co Parties, carry out the Works in a manner that is in compliance with the GO Passenger Charter and the TTC By Law No. 1.
- (b) Project Co shall not, and Project Co shall ensure that the Project Co Parties do not, in any way whatsoever, contravene or cause Metrolinx to contravene the GO Passenger Charter and the TTC By Law No. 1.

### 11.30 Executive Project Meetings

- (a) Subject to Section 11.30(b) and Section 11.30(c), either Party, may, in its sole discretion and from time to time, schedule and hold meetings with senior executives of Contracting Authority, Project Co and the Project Co Parties for such individuals to provide senior executives of Contracting Authority with an update on the progress of and issues with the Project (each is an “**Executive Project Meeting**”).
- (b) Either Party may, in its sole discretion, elect to schedule and hold an Executive Project Meeting upon the delivery of no fewer than ten (10) Business Days’ prior Notice to the other Party.
- (c) The precise date, time and location of each Executive Project Meeting shall be scheduled by Contracting Authority, acting reasonably.
- (d) Contracting Authority shall have the right to request the attendance of specific employees, officers, directors and other representatives of Project Co or any Project Co Party at each Executive Project Meeting, and, if requested to attend such meeting, Project Co shall use commercially reasonable efforts to ensure all such individuals attend.
- (e) No later than five (5) Business Days prior to the date of each Executive Project Meeting, Project Co shall prepare and submit to Contracting Authority a one page (11” x 17” sized) summary (the “**Executive Project Meeting Document**”), which shall include the following information and be current to such date:
- (i) the date of the Executive Project Meeting Document (in month and year format);
  - (ii) Project information, including the name of the Project, the name of Project Co and the names of the Project Co Parties, including their respective representatives in attendance;
  - (iii) a high-level Project schedule in respect of the Works, including Commercial Close, Financial Close, the design development phase, the construction phase, the testing and commissioning phases, the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date if such date is different from the Scheduled Substantial Completion Date, the Scheduled Final Completion Date, and any other material high-level items on the Critical Path of, as applicable, the Interim Baseline Works Schedule or the Baseline Works Schedule;

- (iv) a brief description of the status of the design process to date, including the number of (A) Works Submittals submitted to Contracting Authority pursuant to Schedule 10 – Review Procedure; (B) Works Submittals for which the Contracting Authority Representative has assigned a comment of “NO COMMENT”, “REVIEWED AS NOTED – MINOR ISSUES” or “REVIEWED AS NOTED – MAJOR ISSUES” pursuant to Schedule 10 – Review Procedure; (C) Works Submittals under review by Contracting Authority pursuant to Schedule 10 – Review Procedure; and (D) Works Submittals scheduled to be submitted to Contracting Authority pursuant to Schedule 10 – Review Procedure within six (6) months following the Executive Project Meeting;
  - (v) a brief high-level description of the Construction Activities undertaken since the previous Executive Project Meeting, including three distinct progress photos;
  - (vi) Earned Value Metrics progress per construction month;
  - (vii) a brief description of the top five issues Project Co desires to bring to the attention of Contracting Authority, and any other significant issues that Project Co wishes to discuss with Contracting Authority;
  - (viii) the number of total recordable injuries, lost time injuries, and non-lost time injuries per construction month;
  - (ix) the number of Non-Conformance Reports issued since Financial Close for each construction month by type (i.e. Critical Non-Conformance, Major Non-Conformance, and Minor Non-Conformance);
  - (x) the number of Project Co Permits, Licences, Approvals and Agreements opened and closed with an emphasis on delayed applications; and
  - (xi) any other information requested by Contracting Authority, acting reasonably.
- (f) All discussions at an Executive Project Meeting and documents exchanged between the Parties in respect of an Executive Project Meeting shall be on a without prejudice basis and shall not limit or prejudice any Party’s rights or obligations under this Project Agreement, including under Schedule 27 – Dispute Resolution Procedure.

### 11.31 Tunnel Boring Machine

- (a) The Parties acknowledge the uniqueness of the Tunnel Boring Machine being procured by or on behalf of Project Co or the Construction Contractor for the Project and the extended period of time for the manufacturing of same (as generally reflected in the Project Works Schedule) (the “**Procured TBM**”). The Parties acknowledge that loss of or damage to a Tunnel Boring Machine during the marine transport of same to the Lands (such loss or damage being a “**TBM Marine Event**”) may result in a Critical Path delay to the Project Works Schedule. For purposes of this Section 11.31, the Procured TBM shall include the Tunnel Boring Machine and all of their component parts in the case of transportation of the Tunnel Boring Machine in portions, and “marine transport” shall include the transportation of the Procured TBM over water only, and, for greater clarity, shall not include loading or unloading the Tunnel Boring Machine onto or off of the marine vessel on which it is being transported.

- (b) In the event that a TBM Marine Event occurs that results in demonstrated Critical Path delay to the Project Works Schedule of sixty (60) Business Days or more arising from such TBM Marine Event, Project Co shall be entitled to a Delay Event pursuant to Section 30, provided that:
- (i) Project Co has satisfied the Notice requirements set out in Sections 11.31(f) and 11.31(g); and
  - (ii) the seaworthiness of the vessel used for the marine transport of the Procured TBM did not, directly or indirectly, materially contribute to the TBM Marine Event.
- (c) For clarity, Project Co shall not be entitled to a Delay Event due to the occurrence of a TBM Marine Event in the event that the Critical Path delay to the Project Works Schedule arising therefrom is less than sixty (60) Business Days. If Project Co demonstrates a Critical Path delay of sixty (60) Business Days or more arising from a TBM Marine Event, Project Co shall be entitled to time relief pursuant to Section 30 for the entire duration of such Critical Path delay. Project Co shall take all commercially available measures reasonably appropriate under the circumstances to mitigate any delay arising from any TBM Marine Event.
- (d) Neither Project Co nor its Subcontractors shall be entitled to a Compensation Event or any other monetary compensation whatsoever from Contracting Authority under this Project Agreement as a result of any TBM Marine Event, regardless of the impact of such TBM Marine Event. In that regard, Project Co shall procure (or shall require the procurement of) marine transit insurance and marine delay-in start-up insurance to mitigate the monetary losses arising from or relating to any TBM Marine Event.
- (e) Project Co (or the Construction Contractor) shall use commercially reasonable efforts to include within the purchase agreement (or supply contract, as the case may be) for the Procured TBM the requirement of the vendor or supplier of the Procured TBM to deliver a certificate of seaworthiness with respect to each vessel that will be used in the marine transportation of the Procured TBM to the Lands. If, despite using commercially reasonable efforts, such requirement is not included in the purchase agreement (or supply contract, as the case may be) for the Procured TBM, then Project Co (or the Construction Contractor) shall request and shall use commercially reasonable efforts to obtain a certificate of seaworthiness from either the insurer issuing the marine transit insurance and marine delay-in start-up insurance policies applicable to the Procured TBM, or the operator (or operators) of the marine vessel (or vessels) transporting the Procured TBM. If a certificate of seaworthiness is obtained, Project Co shall promptly deliver same to the Contracting Authority and the Lenders' Agent and such certificate shall establish a rebuttable presumption of the seaworthiness of the vessel (or vessels) transporting the Procured TBM. If a certificate of seaworthiness is not obtained, then the seaworthiness of the vessel (or vessels) transporting the Procured TBM to the Lands will be determined as at the time of the loss without presumption.
- (f) If Project Co believes that a TBM Marine Event has occurred and that as a result Project Co will experience a Critical Path delay to the Project Works Schedule of no less than sixty (60) Business Days, Project Co shall submit written Notice to Contracting Authority of such TBM Marine Event within ten (10) Business Days following the date on which Project Co first became aware of the occurrence of the TBM Marine Event. This Notice shall include (i) preliminary details as to the circumstances of the TBM Marine Event, and (ii) a preliminary estimate of the Critical Path delay attributable to the TBM Marine Event.

- (g) Within twenty (20) days after receipt by Contracting Authority of the Notice from Project Co to referred to in Section 11.31(f), Project Co shall submit to Contracting Authority a detailed written Notice which shall include a delay analysis and the effect that the TBM Marine Event will have on Project Co's ability to perform its obligations under this Project Agreement. As Project Co receives or becomes aware of any further information relating to the TBM Marine Event, it shall submit such further information to Contracting Authority as soon as practicable. Project Co shall supply any further information that Contracting Authority may reasonably require as promptly as practicable after such request.
- (h) Within thirty (30) days after the Notice referred to in Section 11.31(g) has been delivered to Contracting Authority, Project Co and the Contracting Authority shall agree upon the time relief directly attributable to the TBM Marine Event in question (or it shall be determined pursuant to Schedule 27 – Dispute Resolution Procedure), which time relief shall result in a corresponding extension to the Scheduled Substantial Completion Date.

### 11.32 RSSOM Project Integration and Interface Obligations

- (a) The Parties shall enter into and shall perform their respective obligations as set out in the RSSOM Interface Agreement.
- (b) Project Co and Contracting Authority shall comply with the terms of Schedule 45 – Integration with RSSOM Project in connection with integration of the Works with the RSSOM Project Infrastructure.
- (c) The terms of Part A (*South Civil Incentive Regime*) of Schedule 43 – Incentive Payments shall apply with respect to incentives relating to each applicable No Later Than Date.

### 11.33 Early Works Infrastructure

- (a) Project Co and Contracting Authority shall comply with Schedule 41 – Early Works Handover in connection with the Early Works Infrastructure.

### 11.34 Pandemic and Epidemic Plan

- (a) Project Co shall implement and comply with the Pandemic and Epidemic Response and Mitigation Plan. All updates to the Pandemic and Epidemic Response and Mitigation Plan shall be subject to review by Contracting Authority pursuant to Schedule 10 – Review Procedure.
- (b) In the event that a specific pandemic or epidemic (including the COVID-19 pandemic or any subsequent outbreak of COVID-19) is reasonably foreseeable and likely to occur and affect the Works or otherwise occurs and affects the Works, Project Co shall, at its cost, promptly (at the request of Contracting Authority or on its volition) update the Pandemic and Epidemic Response and Mitigation Plan on a monthly basis and submit each update with the next Works Report until such time as the Parties agree, acting reasonably, that either the pandemic or epidemic will not occur and affect the Works or such epidemic or pandemic has ended, no longer affects the Works and no further updates to such plan are required. Following the review by Contracting Authority of each updated Pandemic and Epidemic Response and Mitigation Plan pursuant to Schedule 10 – Review Procedure, Project Co shall, without limiting any other obligation of Project Co under the Project Agreement or Applicable Law, implement such plan in accordance with Schedule 10 –

Review Procedure, at its cost and risk other than as provided for in Section 28.4 and Section 32.1(a)(vii).

- (c) Any Pandemic and Epidemic Response and Mitigation Plan (including any update thereto) or the potential or actual impact of any pandemic or epidemic on the Works may, at the request of a Party, be discussed at any meeting of the Works Committee or at any other meeting between the Parties reasonably requested by a Party during the Project Term. Any Party may, acting reasonably, require that any such other meeting be on a “without prejudice basis”.
- (d) Nothing required pursuant to this Section 11.34 in relation to the Pandemic and Epidemic Response Mitigation Plan shall in any way obviate or detract from Project Co’s right to relief under this Project Agreement relation to a Pandemic and Epidemic Change in Law or a Pandemic and Epidemic Supply Chain Delay.

### 11.35 TOC Developments

- (a) The terms of Part B (*TOC Early Handover Incentive Regime*) of Schedule 43 – Incentive Payments shall apply with respect to incentives relating to each Early Handover Site.
- (b) Project Co shall, at its own cost, provide the assistance described in Sections 11.15(b) and 11.15(e), *mutatis mutandis*, as such applies to the TOC Developments.

### 11.36 Utility Agreements

- (a) For each Utility Agreement to be entered into between Project Co and the subject Utility Company, the form of which was made available as Background Information on or prior to the Technical Reference Date (each being a “**Form of Utility Agreement**”), Project Co shall, or shall cause a Subcontractor to, execute and deliver each such Utility Agreement no later than ninety (90) days after Financial Close, such Utility Agreement to be substantially in the form of the Form of Utility Agreements.
- (b) Project Co acknowledges and agrees that any revisions to the terms or conditions of a Form of Utility Agreement unilaterally proposed or required by Project Co, or are minor or administrative in nature, shall be at Project Co’s cost and risk.
- (c) In the event that Project Co executes and delivers to the Utility Company a completed Utility Agreement in the Form of Utility Agreement or in a form otherwise agreed to between Project Co and the applicable Utility Company as described in Section 11.36(a) and such Utility Company fails to execute and deliver such Utility Agreement within thirty (30) days of the date of the delivery of the Utility Agreement by Project Co to the Utility Company, then:
  - (i) Project Co shall promptly provide Notice to Contracting Authority; and
  - (ii) such failure shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.
- (d) In the event that Project Co executes and delivers a completed Utility Agreement in the Form of Utility Agreement or in a form otherwise agreed to between Project Co and the applicable Utility

Company as described in Section 11.36(a), and such Utility Company executes and delivers such Utility Agreement containing a Post-CC Utility Agreement Amendment (or communicates to Project Co that it will only enter into a Utility Agreement that incorporates a Post-CC Utility Agreement Amendment), then:

- (i) Project Co shall promptly provide Notice to Contracting Authority informing Contracting Authority that a Post-CC Utility Agreement Amendment has been proposed by the subject Utility Company and providing details regarding such Post-CC Utility Agreement Amendment (a “**Post-CC Utility Agreement Amendment Notice**”);
- (ii) Project Co shall, during the thirty (30) day period following the date upon which Contracting Authority receives the Post-CC Utility Agreement Amendment Notice (or such longer period of time as the Parties may otherwise agree), use commercially reasonable efforts to resolve and settle the Post-CC Utility Agreement Amendment with the subject Utility Company; and
- (iii) if:
  - (A) Project Co has complied with its obligations under Sections 11.36(d)(i) and 11.36(d)(ii); and
  - (B) Project Co and the subject Utility Company are unable to resolve and settle the Post-CC Utility Agreement Amendment resulting in Project Co and such Utility Company failing to enter into the subject Utility Agreement, and such failure to enter into such Utility Agreement will materially adversely interfere with Project Co’s ability to perform the Works or will materially adversely affect Project Co’s cost of performing the Works, then:
    - (I) Project Co shall promptly provide Notice to Contracting Authority of the matters described in Section 11.36(d)(iii)(B); and
    - (II) subject to and in accordance with Schedule 22 – Variation Procedure, Project Co shall be entitled to a Variation.
- (e) If, pursuant to and in accordance with a Utility Agreement, the subject Utility Company identifies to Project Co, and requires the performance of, any works relating to the Utility Infrastructure that is the subject matter of such Utility Agreement, and in Project Co’s reasonable opinion, such works are unreasonable and unnecessary for Project Co to perform as part of the Works, or are otherwise outside the scope of work contemplated by such Utility Agreement, and if the performance of such works will or is likely to affect the Works so as to cause a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, in delivering Critical RSSOM Infrastructure Works by the applicable Critical RSSOM Infrastructure Works Deadline, in delivering Critical Works by the applicable Critical Works Deadline or in delivering Critical Data by the applicable Critical Data Deadline:
  - (i) Project Co shall promptly deliver Notice to Contracting Authority describing such works and providing such opinion; and

- (ii) without limiting or prejudice to any right of Contracting Authority under the Project Agreement, Project Co may deliver a Project Co Variation Notice to Contracting Authority pursuant to and in accordance with Schedule 22 – Variation Procedure in respect of such works.
- (f) Where a Utility Agreement requires Project Co to comply with a technical standard in respect of the design or construction of certain Utility Infrastructure as part of the Works, and that standard has changed between Technical Reference Date and the date that such compliance is required, then Project Co shall give Notice to Contracting Authority of such change. If after such Notice, Contracting Authority requires compliance with the changed standard (rather than the standard applicable as of the Technical Reference Date), then, to the extent such change impacts the design or construction of such Utility Infrastructure and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. If Contracting Authority does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the Technical Reference Date, without a Variation therefor. This Section 11.36(f) shall not apply where a change in a technical standard is also a Change in Law.

## 12. REPRESENTATIVES

### 12.1 The Contracting Authority Representative

- (a) Subject to the limitations set out in Section 12.1(d), the Contracting Authority Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the Contracting Authority Representative and such other functions and powers of Contracting Authority under this Project Agreement as Contracting Authority may notify Project Co from time to time.
- (b) Contracting Authority may, from time to time by written Notice to Project Co, change the Contracting Authority Representative. Such change shall have effect on the later of the date of delivery of such Notice and the date specified in such Notice.
- (c) During any period when no Contracting Authority Representative has been appointed, or when the Contracting Authority Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Contracting Authority Representative's functions under this Project Agreement, Contracting Authority shall perform or may, by written Notice to Project Co, promptly appoint an alternative Contracting Authority Representative to perform the functions which would otherwise be performed by the Contracting Authority Representative. Upon receipt of such written Notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative Contracting Authority Representative which is permitted by this Project Agreement as being authorized by Contracting Authority, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The Contracting Authority Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.



- (e) Subject to the limitations set out in Section 12.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the Contracting Authority Representative which is explicitly authorized by this Project Agreement as being authorized by Contracting Authority, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

## 12.2 The Project Co Representative

- (a) Subject to the limitations set out in Section 12.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of Contracting Authority.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written Notice to Contracting Authority, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise be performed by the Project Co Representative, provided that, Project Co must seek Contracting Authority's consent in accordance with Section 12.2(b) if such alternative Project Co Representative is in place for more than one-hundred and eighty (180) days. Upon receipt of such written Notice, Contracting Authority and the Contracting Authority Representative shall be entitled to treat any act of such alternative Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and Contracting Authority and the Contracting Authority Representative shall not be required to determine whether authority has in fact been given.
- (d) The Project Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.
- (e) Subject to the limitations set out in Section 12.2(d), unless otherwise notified in writing, Contracting Authority and the Contracting Authority Representative shall be entitled to treat any act of the Project Co Representative which is explicitly authorized by this Project Agreement as being authorized by Project Co, and Contracting Authority and the Contracting Authority Representative shall not be required to determine whether authority has in fact been given.

## 12.3 Communications to Representatives

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

## 12.4 Key Individuals

- (a) The individuals who are critical to the performance of the Works are identified in Schedule 9 – Key Individuals.

- (b) If it becomes necessary for Project Co to replace any individual identified in Schedule 9 – Key Individuals, Project Co shall nominate a competent suitably qualified and experienced permanent replacement or replacements, having regard to the qualifications set out in Schedule 9 – Key Individuals, as soon as practicable and provide Contracting Authority with relevant information on the proposed replacement and shall consult with Contracting Authority before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 – Key Individuals without the prior written consent of Contracting Authority, which consent shall not be withheld or delayed where Project Co is compliant with Section 12.4(c) and the proposed replacement is suitably qualified and experienced, having regard to the qualifications set out in Schedule 9 – Key Individuals.
- (c) If Contracting Authority determines, acting reasonably, that it is in the best interests of Contracting Authority that any individual identified in Schedule 9 – Key Individuals be replaced, Contracting Authority shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within sixty (60) days after receipt by Project Co of such Notice, Project Co shall provide Contracting Authority with relevant information on the proposed replacement and shall consult with Contracting Authority before finalizing the appointment of such replacement.

### **13. WORKS SCHEDULE REQUIREMENTS AND WORKS REPORT**

#### **13.1 Completion of the Works**

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

#### **13.2 Works Schedule Requirements**

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

#### **13.3 Notification of Early Substantial Completion**

- (a) Unless Project Co obtains the prior written consent of Contracting Authority, in Contracting Authority's sole discretion, Project Co shall not be entitled to the Substantial Completion Certificate prior to, and the Substantial Completion Date and Substantial Completion Payment Date shall not be earlier than, the Scheduled Substantial Completion Date.
- (b) If Project Co advises Contracting Authority that Project Co expects to be able to achieve Substantial Completion prior to the Scheduled Substantial Completion Date, the Contracting Authority Representative shall be entitled to require Project Co to produce and submit to the Contracting Authority Representative a revised Progress Works Schedule (or Recovery Works Schedule, as applicable) showing the manner and the periods in which the Works shall be performed and what the revised date for Substantial Completion would be so as to enable Contracting Authority to consider at its sole discretion:

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

All costs associated with any such modifications to this Project Agreement shall be borne by Project Co.

#### 13.4 Works Report

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Baseline Works Schedule and, within fifteen (15) Business Days after 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 Contracting Authority 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) a table setting out and responding to items of Project Agreement non-compliance and deficiencies in ongoing Works as identified by Contracting Authority and Project Co;
  - (iii) a Progress Works Schedule, Basis of Works Schedule Report, and Works Schedule Report all in accordance with Schedule 12 – Works Schedule Requirements;
  - (iv) 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;
  - (v) a narrative description of the status of any Proceeding at Risk Matter that has not been resolved pursuant to Section 14.6, in accordance with Schedule 27 – Dispute Resolution Procedure or otherwise;
  - (vi) an update on those matters set out in Schedule 33 – Works Report Requirements;
  - (vii) a report on the then applicable Integration Demerit Points Incurred (identified by reference to those incurred under Part A, Part B, Part C and Part D of Appendix C to Schedule 45 – Integration with RSSOM Project), each as calculated at the time of the applicable Works Report, if any;
  - (viii) a detailed, narrative description of all issues relating to Warranty Work and warranties set out in Sections 11.17 and 11.18; and
  - (ix) any other information specifically requested by Contracting Authority on the progress of the Works,

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

- (b) Project Co shall use, and shall ensure that the Construction Contractor uses, the contract management software system specified by Contracting Authority. The contract management software system will be Primavera Unifier Version: 20.12.6.1 b-06182021-05.

## 14. WORKS COMMITTEE

### 14.1 Establishment

- (a) The Parties shall, within thirty (30) days following Financial Close, establish a committee (the “**Works Committee**”) consisting of:
- (i) four representatives appointed by Contracting Authority from time to time, one of whom shall be the Contracting Authority Representative; and
  - (ii) the following three representatives appointed by Project Co:
    - (A) the Project Co Representative;
    - (B) one representative of the Construction Contractor; and
    - (C) such other representative appointed by Project Co from time to time
- (b) The Independent Certifier shall be entitled, but not required, to attend meetings as a non-voting member of the Works Committee. The representatives of the CDB shall be entitled to, but are not required to, attend meetings as non-voting members of the Works Committee. Members of the Works Committee (or the Integration Committee pursuant to Section 3.2(a) (*Function and Role*) of the RSSOM Interface Agreement) may invite, on prior Notice to all members, such advisors, consultants and other third parties (including, for greater certainty, representatives from RSSOM Project Co, having due regard to any reasonable concerns specified by Project Co relating to the protection of Project Co’s Confidential Information or Sensitive Information) as they require from time to time to attend meetings and to provide briefings to the Works Committee members.
- (c) The Contracting Authority Representative shall be the chairperson of the Works Committee.

### 14.2 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.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
- (i) any design, construction and commissioning issues;
  - (ii) the Project Works Schedules, the Basis of Works Schedule Reports, the Works Schedule Reports and any other matter relating to the schedule for completion of the Works;
  - (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 matters relating to the integration, handover, acceptance and commissioning to RSSOM Project Co, and any matters arising from the RSSOM Interface Agreement affecting the Works;
  - (vii) any special matters referred to the Works Committee by Contracting Authority or Project Co;
  - (viii) any Proceeding at Risk Matters referred to the Works Committee in accordance with Section 14.6;
  - (ix) any community and media relations issues in accordance with Schedule 18 – Communication and Public Engagement Protocol;
  - (x) any issues related to the Traffic and Transit Management Plan and any issues related to the rules, requirements and restrictions relating to access, rail safety and operations and track protection, as set out in the Output Specifications;
  - (xi) monitoring the Project Co Commissioning Plan;
  - (xii) any issues related to Schedule 7 – Mobility Matters or Schedule 19 – Liquidated Damages and Construction Enforcement Regime; and
  - (xiii) any other issues pertaining to the Works.
- (c) Subject to Section 14.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
  - (ii) any change to the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
  - (iii) any Variation;
  - (iv) any change that may materially adversely affect Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date; or

- (v) any matter with respect to which Contracting Authority has a right of consent or in respect of which Contracting Authority may exercise discretion pursuant to this Project Agreement.

### 14.3 Term of Works Committee

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

### 14.4 Replacement of Committee Members

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

### 14.5 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 Representatives or the Contracting Authority 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 (5) 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 in the City of Toronto. 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) Three representatives appointed by Contracting Authority (one of whom shall be the Contracting Authority Representative) and two representatives appointed by Project Co (one of whom shall be the Project Co Representative) 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 (5) Business Days after the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority notifies Project Co within five (5) Business Days after receipt of the minutes that Contracting Authority disagrees with the contents of the minutes, Project Co and Contracting Authority shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by Contracting Authority during regular business hours.

#### 14.6 Proceeding at Risk

- (a) If at any time:
  - (i) in the reasonable opinion of Contracting Authority, Project Co is performing the Works in a manner that may result in Project Co becoming unable to satisfy the requirements for Substantial Completion; or
  - (ii) the Contracting Authority Representative has noted a Works Submittal as “REVIEWED AS NOTED – MAJOR ISSUES” in accordance with Schedule 10 – Review Procedure, (each of the matters described in Sections 14.6(a)(i) and 14.6(a)(ii) a “**Proceeding at Risk Matter**”),

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

- (b) Following the issuance of a Proceeding at Risk Notice, the Contracting Authority Representative and the Project Co Representative, together with the other members of the Works Committee, shall each promptly and diligently make a reasonable *bona fide* effort to resolve the Proceeding at Risk Matter.
- (c) Following the issuance of a Proceeding at Risk Notice, Contracting Authority may, in its sole discretion, give notice to the Lenders’ Agent pursuant to Section 15 (*Proceeding At Risk and Project Co Delay Notices*) of the Lenders’ Direct Agreement of the Proceeding at Risk Matter, together with a copy of the Proceeding at Risk Notice.

- (d) Following the issuance of a Proceeding at Risk Notice, either Party may refer the Proceeding at Risk Matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (e) Nothing set out in this Section 14.6 or in a Proceeding at Risk Notice or any act undertaken by a Party or omission of a Party pursuant to this Section 14.6, shall relieve Project Co of the risk and responsibility for the Works under this Project Agreement and for meeting all of Project Co's obligations under and satisfying all requirements of this Project Agreement, and no such notice, act or omission shall create any new or additional obligations or liabilities for Contracting Authority under this Project Agreement.

## 15. QUALITY MANAGEMENT

### 15.1 Quality Management

- (a) Project Co and Contracting Authority shall comply with the provisions of Schedule 11 – Quality Management.
- (b) Subject to Section 15.1(c), Project Co shall cause the Construction Contractor, at its sole cost and expense, to conduct an inspection of its facilities, its health and safety management systems and construction vehicles on an annual basis until Final Completion or as otherwise required in accordance with Sections 11.25(b)(vi)(C) or 11.25(b)(vii)(C) (each, an “**H&S Construction Inspection**”), which H&S Construction Inspections shall:
  - (i) be conducted by a Certified H&S Inspector, and
  - (ii) during the performance of the Works, include, at a minimum,
    - (A) a review of general compliance with all applicable *Occupational Health and Safety Act* (Ontario) requirements, compliance with all safety manuals applicable to any portion of the Lands at which the Works are being conducted, including the Contractor Site Specific Safety Manual; and
    - (B) a review of the Construction Contractor's job hazard analysis documentation on any portion of the Lands which could endanger or put at risk the safety of any person working on any portion of the Lands.
- (c) The first H&S Construction Inspection shall occur no later than the 90<sup>th</sup> day following Financial Close or, if that day is not a Business Day, on the Business Day immediately succeeding such day.
- (d) Project Co shall cause the results of each H&S Construction Inspection (such results referred to as the “**H&S Construction Inspection Report**”) to be delivered to Contracting Authority and the Works Committee not more than five (5) Business Days from the date on which a H&S Construction Inspection is completed. An H&S Construction Inspection Report arising from an H&S Construction Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Inspection Report was issued.



- (e) To the extent an H&S Construction Inspection Report discloses any non-compliance by the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, with the terms of the COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be, Contracting Authority shall have the right to require Project Co to cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, at its sole cost and expense:
- (i) to take any corrective and remedial action required by the H&S Construction Inspection Report to correct any such non-compliance and Project Co shall cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to comply with all instructions given by the Certified H&S Inspector in respect of actions required to be taken to correct any such non-compliance;
  - (ii) to arrange to have conducted by a Certified H&S Inspector such follow-up H&S Construction Inspections of those facilities and health management systems associated with the non-compliances identified in the relevant H&S Construction Inspection Report (each, an “**H&S Construction Re-Inspection**”) within three (3) Business Days from the date on which any such request is made by Contracting Authority, until any and all corrective and remedial actions required by the Certified H&S Inspector with respect to the correction of each identified non-compliance is completed to the satisfaction of the Certified H&S Inspector; and
  - (iii) to cause the results of each H&S Construction Re-Inspection (such results referred to as the “**H&S Construction Re-Inspection Report**”) to be delivered to Contracting Authority and the Works Committee not more than three (3) Business Days from the date on which a H&S Construction Re-Inspection is completed. An H&S Construction Re-Inspection Report arising from an H&S Construction Re-Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Re-Inspection Report was issued.

## 16. LAND ACCESS AND INVESTIGATION

### 16.1 Access to Metrolinx Lands

- (a) Subject to this Section 16 and the provisions of Schedule 35 – Lands and Schedule 40 – Rail Corridor Access and Flagging, including any restrictions on the use and access to the Metrolinx Lands set out in Schedule 35 – Lands or Schedule 40 – Rail Corridor Access and Flagging, Contracting Authority 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 non-exclusive licence rights of use and access to on and over the Metrolinx Lands as are required by Project Co and such Project Co Parties and sufficient (subject to Project Co obtaining the Project Co Permits, Licences, Approvals and Agreements and performing its obligations described therein and subject to the timing and extent of the grant of use and access to the Metrolinx Lands set out in Schedule 35 – Lands) to allow Project Co and such Project Co Parties to perform that part of the Works to be performed on Metrolinx Lands. The rights granted to Project Co pursuant to this Section 16.1(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 lands that comprise the Metrolinx Lands as set out in Schedule 35 – Lands.
- (b) 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.
- (c) In consideration for the use and access rights granted pursuant to Section 16.1(a) Project Co shall provide the Works subject to and in accordance with this Project Agreement.
- (d) Without derogating from any of Contracting Authority’s rights hereunder, and subject to any restrictions set out in Schedule 35 – Lands, Schedule 40 – Rail Corridor Access and Flagging and the RSSOM Interface Agreement, Contracting Authority acknowledges that, in respect of the Works, Project Co and the Project Co Parties require, and Contracting Authority shall provide, access to the Metrolinx Lands, the RSSOM Project Infrastructure and the TOC Developments on the Metrolinx Lands without material interference by Contracting Authority or any Province Person for such period of time identified in Section 16.1(a). Project Co further acknowledges that following each applicable Section Substantial Completion Date, Project Co’s access to the Metrolinx Lands for each such applicable Project Co Infrastructure Section shall be subject to the Contracting Authority Activities and Other Works.
- (e) Subject to Section 16.1(f), none of the rights granted pursuant to this Section 16.1 shall grant access to,
  - (i) any lands beyond the boundaries of the Metrolinx Lands, or to any lands other than the Metrolinx Lands, other than easements and similar interests of Contracting Authority which benefit the Metrolinx Lands, obtained after the Technical Reference Date, to the extent the same are necessary for the Works or exceed any restrictions set out in Schedule 35 – Lands; or
  - (ii) any facilities or infrastructure of Contracting Authority, the City of Toronto, the TTC, Utility Companies, Railway Companies, or any other third parties, except as set out in Schedule 35 – Lands (which access, if any, is subject to Section 16.1(b)).
- (f) Contracting Authority shall provide Project Co with limited and non-exclusive access to the Existing Metrolinx Infrastructure, to the extent necessary to perform the Works and subject to such reasonable conditions as are imposed by Contracting Authority.
- (g) The use and access rights provided in this Section 16.1 shall automatically terminate as of the Termination Date, save and except for any 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 16.1 shall not entitle Project Co or any Project Co Party to extract any mineral from the Metrolinx Lands for use in the Works.
- (i) Contracting Authority shall acquire use of and access to the Metrolinx Lands described in Schedule 35 – Lands on or prior to the applicable commencement date for access set out in

Schedule 35 – Lands. Contracting Authority shall provide Notice to Project Co of the commencement of access rights to the Metrolinx Lands as such access is obtained by Contracting Authority.

## 16.2 Non-Exclusive Rights to Metrolinx Lands and 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 Contracting Authority and any person authorized by Contracting Authority may occupy and possess the Metrolinx Lands, the Project Co Infrastructure, the New Third Party Infrastructure and the Existing 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 16.2(a), Project Co acknowledges that Contracting Authority may from time to time use or develop (including by way of subdivision or expansion), 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 Works. 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 Works, 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, Schedule 40 – Rail Corridor Access and Flagging, and the Output Specifications.
- (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 the Metrolinx Lands, in which case, access to the Metrolinx Lands is provided for in accordance with Schedule 35 – Lands and any Permits, Licences, Approvals and Agreements. 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 owned by third parties.
- (d) Project Co acknowledges and agrees that Contracting Authority has no authority to and is not obligated to grant the use of or access to any lands that are not Metrolinx Lands, which use and access must be sought by Project Co or the Project Co Parties from each third party owner or rights holder of such lands in accordance with this Project Agreement, Applicable Law, any Permits, Licences, Approvals and Agreements and any other requirements imposed by such third party.
- (e) Project Co shall ensure that no Project Co Party uses or accesses (including trespasses upon) any lands of a third party land owner or rights holder during and for the purpose of the performance of the Works, (i) save and except as otherwise set out in this Project Agreement or permitted by Applicable Law, or (ii) unless Project Co has obtained the permission of such third party for such use or access and, in such an event, only in accordance with any and all terms and conditions of such permission.

### 16.3 Naming and Signage

- (a) Project Co acknowledges that Contracting Authority and the applicable owners of the New Third Party Infrastructure and the Existing Third Party Infrastructure reserve and retain,
- (i) all rights to designate the name for the Project Co Infrastructure, the New Third Party Infrastructure and the Existing Infrastructure, and any part thereof 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 Infrastructure, the New Third Party Infrastructure and the Existing Infrastructure; and
  - (iii) all rights, Trademarks, naming or branding regarding any part of the Project Co Infrastructure, the New Third Party Infrastructure and the Existing Infrastructure.
- (b) Without limiting Contracting Authority's rights pursuant to Section 16.3(a), with the prior written consent of Contracting Authority, which may take into consideration,
- (i) any applicable governmental or other guidelines, including the guidelines set out in the Output Specifications or Schedule 18 – Communication and Public Engagement Protocol and Schedule 35 – Lands; and
  - (ii) any provision or restriction set out in 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, provided that such signage is erected and maintained in accordance with the requirements and restrictions set out in this Project Agreement, including the Output Specifications and Schedule 18 – Communication and Public Engagement Protocol.

### 16.4 No Interest in Land, Facilities or Infrastructure

- (a) Project Co acknowledges and agrees that neither Project Co nor the Lenders shall acquire any estate, right, title or ownership interest in the Lands or any part of the Project Co Infrastructure, the New Third Party Infrastructure or the Existing Infrastructure, or any other interest in land, facilities or infrastructure pursuant to this Project Agreement, the Project Documents or otherwise. Notwithstanding any provision herein or in any of the Project Documents to the contrary, all fee simple interest in and freehold title to the Lands, or any part thereof, and the Project, shall at all times remain unencumbered by any interest of Project Co or the Lenders.

### 16.5 Non-Disturbance Agreement

- (a) If Contracting Authority mortgages, charges or otherwise encumbers the Metrolinx Lands, Contracting Authority shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement, in form satisfactory to Project Co and the Lenders' Agent, acting reasonably, executed by the mortgagee, chargee or other encumbrancer of the Metrolinx Lands permitting Project Co and the Lenders' Agent to access and use the Metrolinx Lands under the use and access granted pursuant to this Section 16 and the Lenders' Direct Agreement,

respectively, free from interference from the mortgagee, chargee or other encumbrancer or any person claiming by or through the mortgagee, chargee or other encumbrancer. This Section 16.5 shall not apply in respect of any portion of the Metrolinx Lands used or developed pursuant to Section 16.2(b) if neither the licence granted pursuant to this Section 16 nor the Works pertain to such portion of the Metrolinx Lands.

#### 16.6 Additional Lands / Adjustments to Metrolinx Lands Available to Project Co

- (a) Project Co may propose, by written request to Contracting Authority, that Contracting Authority acquire ownership of, or obtain rights or interests in or to additional lands which, in Project Co's opinion, would improve the efficiency of Project Co's performance of the Works (each an "**Additional Lands Request**").
- (b) Project Co shall include in each Additional Lands Request,
  - (i) for each of the Additional Lands requested, supporting reasons, justifications and detailed plans evidencing, at a minimum,
    - (A) how each of the proposed Additional Lands would improve the efficiency of the delivery of the Works; and
    - (B) that the lands, rights or interests, if acquired, would be sufficient, but not excessive, to achieve the objective described in Section 16.6(b)(i)(A);
  - (ii) the legal description related to the Additional Lands being proposed, together with all relevant parcel register for property identifier documents and, if the Additional Lands cannot be fully legally defined, a sketch depicting the location and limits of the Additional Lands and a legal survey of such Additional Lands to establish the boundaries. Whenever the Additional Lands are part of a larger lands parcel, the legal survey must define a smaller parcel sufficient for delivery of the Works;
  - (iii) a plan for conducting any necessary investigations of the Additional Lands including, with respect to contamination and other environmental conditions, utilities, geotechnical conditions, fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, located on, in or under such lands (a "**Site Investigation Plan**"). If required by Contracting Authority, Project Co shall implement the Site Investigation Plan and shall provide all reports prepared or issued in connection with the Site Investigation Plan ("**Site Investigation Reports**") to Contracting Authority. Contracting Authority shall be an addressee of all such Site Investigation Reports and shall be entitled to rely on the Site Investigation Reports;
  - (iv) where the Additional Lands will contain New City Infrastructure that is for the City of Toronto, written confirmation from the City of Toronto that it will accept: (A) such New City Infrastructure; and (B) in accordance with this Section 16.6, conveyance by Contracting Authority of the applicable Additional Lands in connection with the Handover of such New City Infrastructure; and

- (v) any savings in Direct Costs to Project Co that will result in a reduction in the compensation payable to Project Co in accordance with Section 1.11(a) (*Reduction in Works*) of Schedule 22 – Variation Procedure.
- (c) Project Co shall promptly provide such additional information as Contracting Authority may request from time to time in relation to the Additional Lands Request.
- (d) Contracting Authority may, in its sole discretion, accept or reject any Additional Lands Request, or prescribe conditions, restrictions and requirements in connection with its agreement to an Additional Lands Request. In the event that Contracting Authority agrees to an Additional Lands Request, such acquisition shall become part of the Metrolinx Lands once acquired and shall, subject to and in accordance with this Section 16.6 and Schedule 22 – Variation Procedure, result in a Variation, provided that such additional lands, rights or interests shall become “**Additional Lands**” and part of the Metrolinx Lands only if and when,
  - (i) Contracting Authority has issued a Variation Confirmation pursuant to Schedule 22 – Variation Procedure; and
  - (ii) Contracting Authority has successfully acquired or obtained such rights, title or interest in the proposed Additional Lands.
- (e) Project Co acknowledges and agrees that any decision of Contracting Authority pursuant to Section 16.6(d) shall be final and binding on the Parties and in the event that Contracting Authority does not agree to an acquisition of Additional Lands pursuant to Section 16.6(d), Project Co acknowledges and agrees that Contracting Authority’s decision or determination shall not be subject to dispute resolution pursuant to Schedule 27 – Dispute Resolution Procedure.
- (f) Additional Lands acquired or obtained by Contracting Authority pursuant to this Section 16.6 shall constitute Metrolinx Lands for the purposes of this Project Agreement, provided that, notwithstanding anything to the contrary in this Project Agreement:
  - (i) Project Co shall be responsible for and shall indemnify and hold harmless Contracting Authority and the Province Persons from and against all costs, risks, obligations, and liabilities in respect of, or arising in connection with, such Additional Lands (and any portion of such Additional Lands comprising the Site) including claims relating to Site Conditions thereon and therein, including with respect to Geotechnical Site Conditions, Contamination, Items of Interest or Value, Major Existing Infrastructure, Contracting Authority Utility Infrastructure, Mislocated Utility Infrastructure or Species-at-Risk;
  - (ii) Contracting Authority provides no representation or warranty, and shall have no obligation to Project Co, in respect of, or arising in connection with, any Additional Lands (and any portion of Additional Lands comprising a Site), including for certainty, pursuant to Sections 6.2, 9.1, 11.14, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, other than to grant or cause to be granted to Project Co and the Project Co Parties, non-exclusive license rights of use and access to, on and over the Additional Lands to allow Project Co and such Project Co Parties to carry out those Works to be performed on the Additional Lands;

- (iii) to the extent related to or arising in connection with the Additional Lands Request or Additional Lands, Project Co shall not be entitled to claim any cost or schedule relief, including any Delay Event, Compensation Event, Relief Event or event of Force Majeure. In no event will Contracting Authority be liable for any delay by Contracting Authority, any Contracting Authority Party or any third party in:
  - (A) reviewing or processing Additional Lands Requests; or
  - (B) acquiring or obtaining Additional Lands,pursuant to this Section 16.6; and
- (iv) Project Co shall be solely responsible for and shall indemnify and hold harmless Contracting Authority from and against all costs and expenses of Contracting Authority in connection with any Additional Lands Request, (including, for clarity, any costs incurred by Contracting Authority in acquiring or obtaining any rights or interests in the Additional Lands) whether or not such Additional Lands Request results in the acquisition or obtainment of Additional Lands.
- (g) Project Co shall be entitled to acquire ownership of or obtain rights or interests in or to any properties at its own cost and expense, however, such properties shall not, for the purposes of this Project Agreement, form part of the Metrolinx Lands and no Project Co Infrastructure shall be located on, or rely in any way upon, any properties which Project Co acquires ownership of or obtains rights or interests in or to pursuant to this Section 16.6(g).

## 16.7 Changes to Lands

- (a) Notwithstanding any other provision in this Project Agreement, the Parties acknowledge and agree that prior to the date on which Project Co is given access to the Metrolinx Lands in accordance with Schedule 35 – Lands, any alteration or variation to or in the Metrolinx Lands described in Schedule 35 – Lands or the dates by which Contracting Authority grants to Project Co access to the Metrolinx Lands pursuant to Section 16.1(a) shall be effected by way of Variation, subject to and in accordance with Schedule 22 – Variation Procedure.

## 16.8 Adequacy of the Lands

- (a) Without limiting any of Project Co's rights under Sections 7.4, 16.1(d), 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, Project Co acknowledges and agrees that it has and shall be deemed to have satisfied itself as to:
  - (i) the adequacy of the Lands, 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;
  - (ii) the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Lands; and
  - (iii) the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.

**16.9 Inspection and Investigation of the Lands**

- (a) Without limiting any of its rights under Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, Project Co acknowledges and agrees that it has and shall be deemed to have, as of the Technical Reference Date, conducted a visual inspection of the Lands in accordance with Good Industry Practice (the “**Project Co Land Inspections**”). For greater certainty, the Parties acknowledge and agree that for those Lands which are not publicly accessible and for which Project Co was not provided access to prior to the Technical Reference Date, Project Co shall be deemed only to have (i) conducted its visual inspection from publicly accessible lands adjacent to the Lands and (ii) reviewed any video in respect of such Lands that was provided as Background Information prior to the Technical Reference Date.
- (b) Without limiting any of Project Co’s rights under Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7 and without affecting the visual inspections deemed to have occurred as part of the Project Co Land Inspections, Project Co acknowledges and agrees that nothing in this Section 16.9 shall relieve Project Co from its obligations, following Financial Close, to conduct all necessary investigations on the Lands in accordance with Good Industry Practice prior to commencing the Works (or any applicable portion of the Works).

**16.10 No Warranty in Respect of Lands**

- (a) Except as provided in Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, neither Contracting Authority, nor any Province Person or Government Entity gives any warranty or undertaking of any nature whatsoever in respect of the Lands, including:
- (i) the nature or condition of the Lands;
  - (ii) any Existing Infrastructure or other buildings, structures and works, on, over or under the Lands; or
  - (iii) any Site Conditions in respect of the Lands.

**16.11 No Claims in Respect of Lands**

- (a) Except as expressly provided in Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, Project Co shall not be entitled to make any claim of any nature whatsoever against Contracting Authority or any Province Person on any grounds relating to the Lands, the Existing Infrastructure or the Site Conditions including:
- (i) the fact that Project Co was not provided any opportunity to inspect the Lands prior to the Technical Reference Date, other than the visual inspection conducted pursuant to Section 16.9;
  - (ii) any claim that the Lands are inadequate; or
  - (iii) any claim that incorrect, inaccurate, incomplete or insufficient information on any matter relating to the Lands, the Existing Infrastructure or the Site Conditions was given to it by any person, whether or not Contracting Authority or a Province Person.



**17. ENCUMBRANCES****17.1 Project Co Shall Perform Obligations Under Encumbrances**

- (a) Project Co's access to and use of the Lands or any part thereof granted in Section 16 shall be subject to the Encumbrances.
- (b) Subject to Section 17.2, Project Co shall perform all obligations of Contracting Authority under all Encumbrances for or on behalf of Contracting Authority, other than:
  - (i) obligations which Project Co is not legally capable of performing for or on behalf of Contracting Authority; and
  - (ii) obligations which the applicable counterparty to such Encumbrance formally relieves or waives Project Co from performing, with the consent of Contracting Authority, in its sole discretion (and if such relief or waiver is not consented to by Contracting Authority, and subject to Section 17.1(b)(i), Project Co shall perform such obligations in accordance with this Section 17).
- (c) Project Co, whether before, during or after the completion of the Works, shall not in any manner breach the Encumbrances.

**17.2 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 Lands or any part of them or any interest therein (i) due to an act or omission of Project Co or any Project Co Party, or (ii) arising in relation to the Works.
- (b) Project Co does not have title to the 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 Lands or any part thereof, except:
  - (i) as may be expressly agreed to in writing by Contracting Authority or the applicable third party owner of the Lands;
  - (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 17.2(c)(i) and 17.3(a).
- (c) In the event that the Lands or any part thereof or any interest therein becomes subject to any Encumbrance following Financial Close,
  - (i) due to an act or omission of Project Co or any Project Co Party (which has not been consented to in writing by Contracting Authority), or arising in relation to the Works, 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 after Project Co becoming aware of the creation, filing, issuance or registration of such Encumbrance, then, without prejudice to

any other rights or remedies it may have, Contracting Authority may take whatever steps it deems necessary and appropriate, in its sole discretion, to terminate, remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand, and Project Co hereby appoints Contracting Authority as Project Co's attorney to execute any removal, vacating, termination or discharge of an Encumbrance referred to in this Section 17.2(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 17.2(c)(i) are outstanding;

- (ii) due to an act or omission of Project Co or any Project Co Party (which has been consented to in writing by Contracting Authority), or arising in relation to the Works, Project Co shall perform all obligations under such Encumbrance in accordance with Sections 17.1 and 17.3 (as is applicable) and at its sole cost and expense; or
- (iii) which is not due to an act or omission of Project Co or any Project Co Party, or which has not arisen in relation to the Works, prior to performing obligations under any such Encumbrance, Project Co shall promptly notify Contracting Authority of any such Encumbrance and Contracting Authority may elect, in its sole discretion, to:
  - (A) have such Encumbrance be removed, vacated or discharged;
  - (B) perform the required obligations thereunder; or
  - (C) instruct Project Co to perform the required obligations thereunder.
- (d) For the purposes of this Section 17, if,
  - (i) an encumbrance otherwise identified in Sections (b) (vii), (viii) or (ix) 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 Lands for the purposes of the Works; or
  - (ii) an encumbrance otherwise identified in Sections (b) (vii), (viii) or (ix) of Schedule 16 – Encumbrances was not disclosed to Project Co, and such encumbrance materially interferes with the use of the Lands for the purposes of the Works,Contracting Authority shall be entitled to the same election as set out in Section 17.2(c)(iii), subject to Section 17.2(e). Project Co shall promptly notify Contracting Authority of any such encumbrance upon Project Co becoming aware of such encumbrance.
- (e) If Project Co is instructed to perform obligations under an Encumbrance pursuant to Section 17.2(c)(iii) or Section 17.2(d), which performance imposes costs or delays in the performance of Works, such performance shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

**17.3 Construction Act (Ontario)**

- (a) The Parties acknowledge that Section 17.2 shall apply to claims for liens made against the Lands pursuant to the *Construction Act* (Ontario) and shall also apply to claims made against Contracting Authority or the holdback under the *Construction Act* (Ontario) as though such a claim were an Encumbrance against the Lands as referred to therein.
- (b) Project Co shall comply with the holdback requirements under the *Construction Act* (Ontario) with respect to each Subcontractor.
- (c) Project Co acknowledges that, notwithstanding that the same may be permitted under the *Construction Act* (Ontario), there will be no early release of any amount of the Legislative Holdback which Contracting Authority is required to retain under the *Construction Act* (Ontario) prior to the Legislative Holdback Payment Date, and that the same will be paid solely in accordance with Section 4.5.
- (d) Project Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the *Construction Act* (Ontario), require that a certificate of completion under section 33(1) of the *Construction Act* (Ontario) 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.
- (e) Project Co shall promptly provide Contracting Authority with a copy of any materials which are provided to the Lenders to evidence compliance with the *Construction Act* (Ontario).
- (f) Upon request by Contracting Authority, Project Co shall perform and deliver to Contracting Authority a sub-search of title on the Lands or any part thereof. Contracting Authority shall pay the reasonable costs of any such search except (i) a search that reveals Encumbrances that are not permitted by this Project Agreement, (ii) a search requested based on a reasonable suspicion that an Encumbrance that is not permitted by this Project Agreement has been registered on title to the Lands, and (iii) a search requested for the purpose of confirming that an Encumbrance that is not permitted by this Project Agreement has been discharged from title to the Lands.
- (g) Project Co shall cause a Payment Certifier to be appointed under the Design and Construction Contract and shall cause such Payment Certifier to certify the substantial performance of the Design and Construction Contract in accordance with the *Construction Act* (Ontario).

**18. SITE CONDITIONS****18.1 Acceptance of Lands, Existing Infrastructure and Site Conditions**

- (a) Project Co agrees to accept the Lands and the Existing Infrastructure on an “as is, where is” basis, and shall be responsible for all Site Conditions thereon, except in respect of:
  - (i) Geotechnical Site Conditions;
  - (ii) Contamination;

- (iii) Items of Interest or Value;
- (iv) Major Existing Infrastructure;
- (v) Utility Infrastructure; and
- (vi) Species-at-Risk,

its responsibility for which shall be only as described in Sections 18.2 to 18.7, respectively.

- (b) For greater certainty, except as expressly set out in this Project Agreement, nothing in this Section 18 shall relieve Project Co from performing any of its obligations hereunder (including its obligations under Section 10.3 and Section 11.12).

## 18.2 Geotechnical Site Conditions

- (a) **“Differing Geotechnical Site Condition”** means any Geotechnical Site Condition which is the subject of a Geotechnical Baseline Statement to the extent that it differs from such Geotechnical Baseline Statement as determined in accordance with Schedule 44 – Geotechnical Baseline Report, provided that such difference was not:
  - (i) within the Knowledge of the Project Manager as of the Financial Submission Deadline;  
or
  - (ii) caused or contributed to by Project Co or a Project Co Party.
- (b) Project Co shall be responsible, at its sole cost and expense, for all Geotechnical Site Conditions other than Differing Geotechnical Site Conditions (including any delays, additional costs, or actions required as a result of such Geotechnical Site Conditions).
- (c) Any Differing Geotechnical Site Condition experienced by Project Co shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.
- (d) Upon the discovery of any Differing Geotechnical Site Condition, Project Co shall immediately inform the Contracting Authority Representative.
- (e) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Differing Geotechnical Site Condition, then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority’s cost, subject to and in accordance with Section 18.2(f).
- (f) If Section 18.2(e) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works as a result of instructions given by Contracting Authority pursuant to Section 18.2(e), then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variation Procedure.

- (g) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.2(c) shall be referred to the CDB for a decision pursuant to Section 4.5(a) (*CDB to Resolve Disputes*) of Schedule 27 – Dispute Resolution Procedure.

### 18.3 Contamination

- (a) **“Project Co Known Contamination”** means any Contamination or Designated Substances and Hazardous Materials that:
- (i) was within the Knowledge of the Project Manager as of the Financial Submission Deadline;
  - (ii) is described in any DSHM Report, but only to the extent of Contaminated Materials and Designated Substances and Hazardous Materials described therein;
  - (iii) is an Identified Contaminated Material;
  - (iv) is described in a Geotechnical Baseline Statement;
  - (v) was readily apparent from the Project Co Land Inspections; or
  - (vi) is caused or contributed to by Project Co or any Project Co Party but only to the extent of such cause or contribution (**“Project Co Caused Contamination”**).
- (b) **“Project Co On-Site Contamination”** means any Project Co Known Contamination that is on, in or under the Lands (including any such Project Co Known Contamination while migrating on, in or under the Lands).
- (c) **“Project Co Off-Site Migrating Contamination”** means:
- (i) any Project Co Known Contamination (other than Project Co Caused Contamination) migrating to or from the Lands to the extent such migration to or from the Lands is caused by Project Co or a Project Co Party other than as a result of the Tunnel Construction Work;
  - (ii) any Project Co Caused Contamination migrating to or from the Lands; and
  - (iii) any Contamination migrating to or from the Lands that is caused by a negligent act or omission of Project Co or a Project Co Party,
- including while each of the above is on the Lands.
- (d) **“Project Co Contamination”** means the Project Co On-Site Contamination and the Project Co Off-Site Migrating Contamination.
- (e) **“Contracting Authority Contamination”** means all Contamination on, in or under the Lands or migrating to or from the Lands, other than Project Co Contamination provided that, in the case of Contamination that is described in a Geotechnical Baseline Statement, Contracting Authority shall only be responsible for such Contamination to the extent that it differs from such

Geotechnical Baseline Statement as determined in accordance with Schedule 44 – Geotechnical Baseline Report.

- (f) Project Co shall be responsible, at its sole cost and expense, for
  - (i) the Project Co Contamination; and
  - (ii) any Worsened Contamination.
- (g) Any Contracting Authority Contamination encountered by Project Co shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.
- (h) Upon the discovery of any Contamination, Project Co shall immediately inform the Contracting Authority 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 Contracting Authority’s cost pursuant to Section 18.3(g) in respect of any Contracting Authority Contamination; and
  - (ii) at its own cost in respect of all Project Co Contamination or Worsened Contamination.
- (i) 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 18.3(h) in respect of any Contracting Authority Contamination until the Contracting Authority 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.
- (j) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Contamination which are in addition to any required pursuant to Section 18.3(h), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority’s cost, pursuant to Section 18.3(k).
- (k) If Section 18.3(j) requires Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of any Contracting Authority Contamination, or as a result of any instructions given by Contracting Authority pursuant to Section 18.3(j), then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variation Procedure.
- (l) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.3(g) shall be referred to the CDB for a decision pursuant to Section 4.5(a) (*CDB to Resolve Disputes*) of Schedule 27 – Dispute Resolution Procedure.

#### **18.4 Items of Geological, Historical 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, in or under the Lands (collectively the “**Items of Interest or Value**”) are or shall be the sole

and absolute property of Contracting Authority or the owner of the relevant property, as applicable.

- (b) **“Project Co Items of Interest or Value”** shall mean any Items of Interest or Value that:
- (i) were within the Knowledge of the Project Manager as of the Financial Submission Deadline; or
  - (ii) were described in the Archaeological Reports, the Cultural Heritage Reports or the Environmental Assessments as of the Technical Reference Date.
- (c) **“Contracting Authority Items of Interest or Value”** means all Items of Interest or Value other than the Project Co Items of Interest or Value.
- (d) Project Co shall be responsible, at its sole cost and expense, for the Project Co Items of Interest and Value.
- (e) Any Contracting Authority Items of Interest or Value encountered by Project Co shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.
- (f) Upon the discovery of any Items of Interest or Value, Project Co shall:
- (i) promptly inform the Contracting Authority Representative of such discovery; and
  - (ii) take all steps not to disturb the Items of Interest or Value and, if necessary, cease any Works in so far as performing such Works would endanger the Items of Interest or Value or prevent or impede their excavation, take all necessary steps to preserve and ensure the preservation of the Items of Interest or Value in the same position and condition in which it was found, and comply, and ensure that all Project Co Parties comply, with the requirements of Schedule 17 – Environmental Obligations, the Metrolinx Interim Heritage Management Protocol (2013), Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremations Services Act* (Ontario) and the *Standards & Guidelines for Conservation of Provincial Heritage Properties issued under the Ontario Heritage Act* (Ontario):
    - (A) at Contracting Authority’s cost pursuant to Section 18.4(e) in respect of any Contracting Authority Items of Interest or Value; and
    - (B) at its own cost in respect of any Project Co Item of Interest or Value.
- (g) In the event that Contracting Authority wishes Project Co to perform actions in respect of any discovery of any Items of Interest or Value which are in addition to any required pursuant to Section 18.4(f), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority’s cost subject to and in accordance with Section 18.4(h).

- (h) If Section 18.4(g) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works, as a result of any instructions given by Contracting Authority pursuant to Section 18.4(g), then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variation Procedure.
- (i) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.4(e) shall be referred to the CDB for a decision pursuant to Section 4.5(a) (*CDB to Resolve Disputes*) of Schedule 27 – Dispute Resolution Procedure.

### 18.5 Major Existing Infrastructure Condition

- (a) **“Differing Major Existing Infrastructure Condition”** means any Major Existing Infrastructure Condition to the extent that it differs from the information provided in the applicable Major Existing Infrastructure Condition Report (including any Major Existing Infrastructure Condition that was not described or contained in such Major Existing Infrastructure Report) provided that such difference was not:
  - (i) within the Knowledge of the Project Manager as of the Financial Submission Deadline;
  - (ii) readily apparent from the Project Co Land Inspections; or
  - (iii) caused or contributed to by Project Co or a Project Co Party (a **“Project Co Caused Differing Major Existing Infrastructure Condition”**).
- (b) Project Co shall have no claims against Contracting Authority in respect of any Major Existing Infrastructure or Major Existing Infrastructure Conditions except for Differing Major Existing Infrastructure Conditions.
- (c) Any Differing Major Existing Infrastructure Condition encountered by Project Co shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.
- (d) Upon the discovery of a Differing Major Existing Infrastructure Condition or a Project Co Caused Differing Major Existing Infrastructure Condition, Project Co shall immediately inform the Contracting Authority Representative.
- (e) Except to the extent required to mitigate an Emergency or to comply with Applicable Law, Project Co shall not undertake any work in respect of any Differing Major Existing Infrastructure Condition or Project Co Caused Differing Major Existing Infrastructure Condition until the Contracting Authority Representative has been given a reasonable opportunity to review the nature and extent of the defect and has instructed Project Co to proceed with such work.
- (f) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Differing Major Existing Infrastructure Condition or Project Co Caused Differing Major Existing Infrastructure Condition then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions:



- (i) at Contracting Authority’s cost subject to and in accordance with Section 18.5(g) in respect of any Differing Major Existing Infrastructure Condition; and
  - (ii) at its own cost in respect of any Project Co Caused Differing Major Existing Infrastructure Condition.
- (g) If Section 18.5(f)(i) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works, then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variation Procedure.
- (h) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.5(c) shall be referred to the CDB for a decision pursuant to Section 4.5(a) (*CDB to Resolve Disputes*) of Schedule 27 – Dispute Resolution Procedure.

### 18.6 Mislocated or Unknown Utility Infrastructure

- (a) **“Project Co Utility Infrastructure”** shall mean all Utility Infrastructure on, in or under the Lands that:
- (i) was within the Knowledge of the Project Manager, as of the Financial Submission Deadline;
  - (ii) was described in the Subsurface Utility Engineering (SUE) Reports as of the Technical Reference Date other than Mislocated Utility Infrastructure;
  - (iii) was readily apparent from the Project Co Land Inspections;
  - (iv) is a service connection; or
  - (v) is any of the following owned by the City of Toronto:
    - (A) watermains of nominal diameter less than 150mm;
    - (B) combined sewers or storm sewers of nominal diameter less than 300mm;
    - (C) sanitary sewers of nominal diameter less than 250mm; and
    - (D) street lighting and traffic signal cables.
- (b) **“Contracting Authority Utility Infrastructure”** means:
- (i) any Mislocated Utility Infrastructure; and
  - (ii) any other Utility Infrastructure on, or in the Lands, other than Project Co Utility Infrastructure.
- (c) Project Co shall be responsible, at its sole cost and expense, for all Project Co Utility Infrastructure.

- (d) Any Contracting Authority Utility Infrastructure encountered by Project Co shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.
- (e) Project Co shall promptly notify Contracting Authority in writing upon the discovery of any Contracting Authority Utility Infrastructure.
- (f) Project Co shall not undertake any work in respect of any Contracting Authority Utility Infrastructure until the Contracting Authority Representative has been given a reasonable opportunity to review the nature and extent of the Contracting Authority Utility Infrastructure and has instructed Project Co to proceed with such work.
- (g) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Contracting Authority Utility Infrastructure then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority's cost, subject to and in accordance with Section 18.6(h).
- (h) If Section 18.6(g) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works, then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variation Procedure.
- (i) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.6(d) shall be referred to the CDB for a decision pursuant to Section 4.5(a) (*CDB to Resolve Disputes*) of Schedule 27 – Dispute Resolution Procedure.

### 18.7 Species-at-Risk

- (a) “**Project Co Species-at-Risk**” shall mean any Species-at-Risk which may be found on, in, at, or under the Lands:
  - (i) that were Species-at-Risk as of the Technical Submission Deadline and the occurrence of which was described in the Environmental Assessments (including the location in which it was found);
  - (ii) the occurrence of which is caused or contributed to by a failure of Project Co to comply with, or a breach by Project Co of, the provisions of the Project Agreement (but only to the extent of such cause or contribution); or
  - (iii) that are new populations of Species-at-Risk in locations on the Lands caused by a failure of Project Co to comply with, or a breach by Project Co of, the provisions of the Project Agreement and which resulted in the creation of conditions deemed suitable habitat for Species-at-Risk in accordance with Applicable Law.
- (b) “**Contracting Authority Species-at-Risk**” shall mean any Species-at-Risk which may be found on, in, at, or under the Lands other than Project Co Species-at-Risk.
- (c) Project Co shall be responsible, at its sole cost and expense, for all Project Co Species-at-Risk.

- (d) Any Contracting Authority Species-at-Risk encountered by Project Co shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.
- (e) Upon the discovery of any Species-at-Risk, Project Co shall immediately inform the Contracting Authority Representative, and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and the provisions of the Output Specifications and Schedule 17 – Environmental Obligations in respect thereof (including taking all necessary steps to preserve the respective habitat and relocate the Species-at-Risk):
- (i) at Contracting Authority’s cost pursuant to Section 18.7(d) in respect of Contracting Authority Species-at-Risk; and
  - (ii) at its own cost in respect of Project Co Species-at-Risk.
- (f) In the event that Contracting Authority wishes Project Co to perform any actions which are in addition to any required pursuant to Section 18.7(e), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority’s cost pursuant to Section 18.7(g).
- (g) If Section 18.7(f) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works as a result of any Contracting Authority Species-at-Risk or as a result of any instructions given by Contracting Authority pursuant to Section 18.7(f), then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variation Procedure.
- (h) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.7(d) shall be referred to the CDB for a decision pursuant to Section 4.5(a) (*CDB to Resolve Disputes*) of Schedule 27 – Dispute Resolution Procedure.

### 18.8 Site Condition Contingency Fund and Gainshare Payments

- (a) Following Commercial Close, Contracting Authority shall establish a contingency fund in the amount of \$[REDACTED] (the “**Site Condition Contingency Fund**”) for the Compensation Events arising from the events set out in Sections 30.1(a)(v), 30.1(a)(vi), 30.1(a)(vii), 30.1(a)(viii), 30.1(a)(ix) and 30.1(a)(x), and any Variations related to such events (each, a “**Site Condition Event**”).
- (b) If it has been determined, in accordance with Section 31.2(b), that a Site Condition Event has occurred, provided that Project Co complies with its obligations as set out in Sections 30 and 31, Contracting Authority shall draw from the Site Condition Contingency Fund in order to make payment to Project Co for that Site Condition Event, subject to and in accordance with Section 31.
- (c) Contracting Authority shall provide a reconciliation of the Site Condition Contingency Fund upon each payment to Project Co in accordance with Section 18.8(b). The reconciliation shall consist of the amount drawn from the fund to date and the remaining balance of the fund to date.

- (d) Project Co shall be entitled to payment of a gainshare amount with respect to the remaining balance in the Site Condition Contingency Fund as of the Substantial Completion Date, subject to and in accordance with the following rules:
- (i) Subject to Section 18.8(d)(ii), if, on the Substantial Completion Date, there exists a positive balance in the Site Condition Contingency Fund, Project Co shall be entitled to **[REDACTED]**% of such remaining amount (the “**Site Condition Gainshare Amount (Substantial Completion)**”). The Site Condition Gainshare Amount (Substantial Completion) shall be paid by Contracting Authority to Project Co as directed by Project Co no later than thirty (30) days following the Substantial Completion Date.
  - (ii) If, on the Substantial Completion Date, the aggregate amount of Project Co claims for Site Condition Events exceed the initial size of the Site Condition Contingency Fund, Project Co is not entitled to payment of any gainshare amount or any payment whatsoever with respect to the remaining balance of the Site Condition Contingency Fund.
  - (iii) For clarity, if, on the Substantial Completion Date, the Site Condition Contingency Fund has been depleted such that there is zero or a negative balance remaining in the Site Condition Contingency Fund, Project Co is not entitled to payment of any gainshare amount or any additional payment whatsoever with respect to the Site Condition Contingency Fund.
- (e) If, prior to the Substantial Completion Date,
- (i) Contracting Authority terminates the Project Agreement for convenience in accordance with Section 36.3; or
  - (ii) Project Co terminates the Project Agreement for a Contracting Authority Event of Default in accordance with Section 35.2(a)(ii),

then Project Co shall be entitled to payment of a gainshare amount with respect to the balance of the Site Condition Contingency Fund remaining as of the Termination Date, subject to and in accordance with the following rules:

- (iii) Subject to Section 18.8(e)(iv), if, on the Termination Date, there exists a positive balance in the Site Condition Contingency Fund, Project Co shall be entitled to a gainshare amount determined by the following formula (the “**Site Condition Gainshare Amount (Termination)**”):

**[REDACTED]**

The Site Condition Gainshare Amount (Termination) shall be paid by Contracting Authority to Project Co as directed by Project Co no later than thirty (30) days following the Termination Date.

- (iv) If, on the Termination Date, the aggregate amount of Project Co claims for Site Condition Events exceed the adjusted size of the Site Condition Contingency Fund, as calculated in accordance with the formula set out in this Section 18.8(e)(iv), Project Co is not entitled

to payment of any gainshare amount or any payment whatsoever with respect to the remaining balance of the Site Condition Contingency Fund.

**[REDACTED]**

- (v) Project Co shall not be entitled to payment in accordance with this Section 18.8(e) unless Project Co has commenced underground tunneling Construction Activities for the Tunnel.
  - (vi) For clarity, if, on the Termination Date, the Site Condition Contingency Fund has been depleted such that there is zero or a negative balance remaining in the Site Condition Contingency Fund, Project Co is not entitled to payment of any gainshare amount or any additional payment whatsoever with respect to the Site Condition Contingency Fund.
  - (vii) For clarity, Project Co shall not be entitled to any gainshare amount or any payment whatsoever with respect to the remaining balance of the Site Condition Contingency Fund if the Project Agreement is terminated by either Party in any way other than as set out in Section 36.3 or Section 35.2(a)(ii).
- (f) Project Co acknowledges and agrees that,
- (i) the establishment and funding of the Site Condition Contingency Fund in accordance with Section 18.8(a) is a one-time event, and Contracting Authority shall not, and shall not be under any obligation to, insert additional funds into the Site Condition Contingency Fund at any time;
  - (ii) Contracting Authority shall hold and manage the Site Condition Contingency Fund in a manner as determined by Contracting Authority, in its sole discretion; and
  - (iii) neither Project Co, nor any Project Co Party, shall be entitled to any interest that may be earned on the amount in the Site Condition Contingency Fund, and any such interest shall be for the benefit of Contracting Authority.
- (g) The establishment of the Site Condition Contingency Fund is not intended to derogate, in any way, from Project Co's right to a Compensation Event, subject to and in accordance with Sections 30 and 31 of the Project Agreement. For clarity, if the Site Condition Contingency Fund is depleted in full, Project Co shall remain entitled to claim for Compensation Events arising from the events set out in Sections 30.1(a)(v), 30.1(a)(vi), 30.1(a)(vii), 30.1(a)(viii), 30.1(a)(ix) and 30.1(a)(x), subject to and in accordance with the terms of the Project Agreement.

**19. INTENTIONALLY DELETED**

**20. CONTRACTING AUTHORITY ACCESS AND MONITORING**

**20.1 Contracting Authority Access During the Works**

- (a) Subject to Section 20.1(b) but without limiting any of Contracting Authority's rights in respect of the Lands, the Project Co 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 Project Co shall not restrict the access of Contracting Authority, the Province Persons, and the Government Entities and their respective representatives or RSSOM Project Co or any RSSOM Project Co Party (if, in case of RSSOM Project Co or any RSSOM Project Co Party such persons accompany Contracting Authority or if Project Co has received reasonable notice from Contracting Authority of access by such persons), to,

- (i) the Lands, the Project Co Infrastructure, the New Third Party Infrastructure or 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; or
- (ii) the Lands, the Project Co Infrastructure, or the New Third Party Infrastructure for the purpose of their respective operations.

For clarity, nothing in this Section 20.1 shall restrict or impede Contracting Authority's or any other third party owner's right to use and access the Existing Infrastructure or any part of the Lands not required at that time for Project Co's performance of the Works in accordance with the terms hereof.

- (b) In exercising their access rights under Section 20.1(a), Contracting Authority shall, and shall cause the Province Persons, the Government Entities, and their respective representatives, to:
  - (i) provide reasonable prior Notice appropriate to the circumstances (other than for any offices or other facilities provided for the use of Contracting Authority, Province Persons and/or Government Entities);
  - (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; and
  - (iii) if required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

## 20.2 Increased Monitoring

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

**20.3 Right to Uncover**

- (a) Project Co shall ensure that Contracting Authority is afforded advance Notice of, and that Contracting Authority is afforded a full opportunity to witness, all inspection and test activity in accordance with the Inspection and Test Plan. If Project Co does not provide such Notice and opportunity, Project Co shall at the request of Contracting Authority uncover any relevant part of the Works which have been covered up or otherwise put out of view or remove any relevant part of the Works that have been proceeded with in order to permit Contracting Authority to witness the relevant inspection or test activity. Project Co shall bear all costs of any such uncovering or removal, regardless of whether or not any defect is discovered in the relevant Works.
- (b) Contracting Authority shall have the right, at any time prior to the Final Completion Date, to request Project Co to uncover or open up and inspect (or allow Contracting Authority to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where Contracting Authority reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When Contracting Authority makes such a request, Contracting Authority shall include reasonably detailed reasons with such request.
- (c) If an inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to Contracting Authority and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (d) If an inspection shows that the relevant part or parts of the Works is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, the exercise by Contracting Authority of its rights pursuant to this Section 20.3 shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

**20.4 No Relief from Obligations**

- (a) The Parties acknowledge that the exercise by Contracting Authority or the Contracting Authority Representative of the rights under this Section 20 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Section 20.

**20.5 Access by Others**

- (a) Subject to Section 20.5(b) and subject to and in accordance with Section 11.13 (to the extent applicable), Project Co shall ensure that throughout the Project Term, without prejudice to any access rights of any such person as a member of the general public or pursuant to Applicable Law, that it does not restrict access to the Lands, Project Co Infrastructure, Existing Infrastructure, or New Third Party Infrastructure for:
- (i) the Independent Certifier to the extent required to perform its obligations pursuant to Schedule 6 – Independent Certifier Agreement;

- (ii) inspectors and other persons authorized to act on behalf of Contracting Authority and owners of New Third Party Infrastructure and Existing Third Party Infrastructure, for inspection and/or acceptance purposes;
  - (iii) all Other Contractors, including the owners or operators of any Third Party Facilities and their agents at all reasonable times to exercise any right or power or perform any duty or obligation under any Applicable Law or the Utility Agreements, Railway Orders or encroachment permits, provided that, prior to each applicable Section Substantial Completion Date, and any time after each applicable Section Substantial Completion Date where Project Co is acting as the “constructor” in respect of an applicable Project Co Infrastructure Section in accordance with the *Occupational Health and Safety Act* (Ontario), 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, the operation of the Existing Infrastructure or any Works;
  - (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, prior to each applicable Section Substantial Completion Date, and any time after each applicable Section Substantial Completion Date where Project Co is acting as the “constructor” in respect of an applicable Project Co Infrastructure Section in accordance with the *Occupational Health and Safety Act* (Ontario), 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, the operation of the Existing Infrastructure or any Works;
  - (v) any Province Persons, Other Contractors, owners or operators of Third Party Facilities, Governmental Authorities, Emergency Service Providers, Utility Companies, Railway Companies, the City of Toronto, the TTC, any other Transit Systems and rail systems 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 Infrastructure, the New Third Party Infrastructure and Existing Infrastructure owned or operated by such person or in which such person has any interest, provided that, prior to each applicable Section Substantial Completion Date, and any time after each applicable Section Substantial Completion Date where Project Co is acting as the “constructor” in respect of an applicable Project Co Infrastructure Section in accordance with the *Occupational Health and Safety Act* (Ontario), 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, the operation of the Existing Infrastructure or any Works; and
  - (vi) any Province Person to undertake emergency training in relation to the Project Co Infrastructure.
- (b) Subject to Section 20.5(c), Contracting Authority shall require persons accessing Site(s) on the Metrolinx Lands in accordance with access rights under Section 20.5(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 20.5(b) shall not apply,
- (i) to Additional Contractors, who shall instead comply with any instructions or procedures made by Project Co pursuant to Section 11.13;
  - (ii) in the case of access rights described in Section 20.5(a) for the purpose of responding to an Emergency;
  - (iii) for the purposes of responding to an emergency declared by Contracting Authority or by a Governmental Authority; and
  - (iv) in a circumstance where the requirements of Section 20.5(b) are inconsistent with the requirements of the applicable Governmental Authority or Emergency Service Provider.

## **20.6 Public Use**

- (a) Project Co shall have no right to grant, to the general public, the right to use either the Project Co Infrastructure or the New Third Party Infrastructure. It shall be the right of Contracting Authority to grant the right of use to the general public to the Project Co Infrastructure. It shall be the right of the applicable third party owner of the New Third Party Infrastructure to grant the right of use to the general public to the New Third Party Infrastructure.
- (b) Except as otherwise expressly provided in this Project Agreement, including in respect of Contracting Authority pursuant to Schedule 7 – Mobility Matters, Project Co shall not have any claim whatsoever against Contracting Authority, any Province Person, any Emergency Service Providers or any other Governmental Authority for, or in respect of any lane or ramp closure or diversion or any track closure or diversion, including any such 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 Infrastructure or the New Third Party Infrastructure, at any time.

## **21. ENVIRONMENTAL REQUIREMENTS**

### **21.1 Environmental Requirements**

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

**22. INDEPENDENT CERTIFIER AND COMBINED DISPUTE RESOLUTION BOARD****22.1 Appointment of Independent Certifier**

- (a) On or prior to Financial Close, the Parties shall appoint an independent and 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 22.7(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.

**22.2 Role of Independent Certifier**

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

**22.3 Changes to Terms of Appointment of Independent Certifier**

- (a) Neither Contracting Authority nor Project Co shall without the other's prior written approval:
- (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
  - (ii) vary the terms of the Independent Certifier Agreement or the services performed or to be performed by the Independent Certifier.
- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Agreement.

**22.4 Right to Change Appointment of Independent Certifier**

- (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 thirty (30) days' Notice to the Independent Certifier. If such Notice is given, then, pursuant to Section 22.7, a new Independent Certifier will be appointed. The Parties agree that, notwithstanding the thirty (30) days' Notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

**22.5 Cooperation of Independent Certifier**

- (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.

**22.6 Payment of Independent Certifier**

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

**22.7 Replacement of Independent Certifier**

- (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 five (5) Business Days after the termination of the original Independent Certifier's appointment, then a replacement Independent Certifier shall be chosen as follows:
- (i) each Party shall, within five (5) Business Days thereafter, select three 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.

**22.8 Combined Dispute Resolution Board**

- (a) The Parties shall:
- (i) appoint and maintain the appointment of the CDB and ensure that the CDB is kept informed of the performance of the Parties' obligations under this Project Agreement and of any Disputes under this Project Agreement, pursuant to and in accordance with Schedule 27 – Dispute Resolution Procedure;

- (ii) deliver the reports, notices and other documents to the CDB described in Schedule 27 – Dispute Resolution Procedure; and
- (iii) resolve Disputes under this Project Agreement using the CDB pursuant to and in accordance with Schedule 27 – Dispute Resolution Procedure.

## **23. COMMISSIONING AND COMPLETION**

### **23.1 Commissioning Activities**

- (a) Project Co shall perform all Commissioning pursuant to Schedule 14 – Commissioning. Commissioning in accordance with Schedule 14 – Commissioning shall take place in respect of each Project Co Infrastructure Section, and subject to Section 23.2(c), in respect of any other Project Co Infrastructure as needed to achieve Substantial Completion of the entirety of the Project. For certainty, all plans and reports delivered as contemplated in Schedule 14 – Commissioning shall be prepared in a manner that contemplates Commissioning of Project Co Infrastructure in each applicable Project Co Infrastructure Section.

### **23.2 Commencement of Commissioning**

- (a) Project Co shall give thirty (30) days' written Notice to the Independent Certifier and the Contracting Authority Representative of the proposed commencement of the Commissioning in respect of each Project Co Infrastructure Section, and, subject to Section 23.2(c), of the Commissioning in respect of Project Co Infrastructure to achieve Substantial Completion of the Project.
- (b) Project Co shall give at least five (5) Business Days' Notice to, and shall invite, the Independent Certifier and the Contracting Authority Representative to witness, and to comment on, each aspect of the Commissioning in respect of each Project Co Infrastructure Section (which shall not take place prior to the date of proposed commencement of Commissioning set out in the Notice delivered under Section 23.2(a)). Project Co shall, together with such Notice, provide all information that the Independent Certifier and the Contracting Authority Representative may reasonably require in relation thereto, including:
  - (i) tests proposed;
  - (ii) test methodology; and
  - (iii) expected test results.
- (c) Upon Commissioning of each Project Co Infrastructure Section taking place in accordance with the terms hereof, and Section Substantial Completion being achieved in respect of each Project Co Infrastructure Section, if any part of the Project has not yet achieved Substantial Completion, Project Co may give Notice of the Commissioning thereof pursuant to Section 23.2 and the terms of this Section 23 shall apply in respect of the Commissioning of the relevant Project Co Infrastructure with all references herein to Project Co Infrastructure Section being deemed to refer to such Project Co Infrastructure.

**23.3 Section Substantial Completion Certificates and Substantial Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least ten (10) Business Days' Notice prior to the date upon which Project Co anticipates delivering each Section Substantial Completion Notice (each a "**Section Substantial Completion 10-Day Notice**") and the Substantial Completion Notice (the "**Substantial Completion 10-Day Notice**"), as applicable.
- (b) Project Co shall deliver Notice to the Independent Certifier and the Contracting Authority Representative upon the satisfaction of:
- (i) all of the requirements for each Section Substantial Completion (each a "**Section Substantial Completion Notice**"); and
  - (ii) the Substantial Completion under this Project Agreement (the "**Substantial Completion Notice**").
- (c) Each Section Substantial Completion Notice and the Substantial Completion Notice shall:
- (i) describe, in reasonable detail, the satisfaction of the requirements for each applicable Section Substantial Completion and Substantial Completion;
  - (ii) include as appendices all of the applicable Section Substantial Completion Deliverables described in the Section Substantial Completion Deliverables List and the Substantial Completion Deliverables described in the Substantial Completion Deliverables List, as applicable; and
  - (iii) include Project Co's opinion that the conditions for issuance of each applicable Section Substantial Completion Certificate and the Substantial Completion Certificate, as applicable, under this Project Agreement have been satisfied.
- (d) Within two (2) Business Days of receiving each Section Substantial Completion Notice and the Substantial Completion Notice, as applicable, from Project Co, the Independent Certifier shall review the applicable Section Substantial Completion Notice or Substantial Completion Notice to determine whether or not the Section Substantial Completion Notice or Substantial Completion Notice, as applicable, includes all of the applicable Section Substantial Completion Deliverables described in the Section Substantial Completion Deliverables List or the Substantial Completion Deliverables described in the Substantial Completion Deliverables List, as applicable. For the purposes of this Section 23.3(d), if a Section Substantial Completion Notice or the Substantial Completion Notice contains a Section Substantial Completion Deliverable or Substantial Completion Deliverable, as applicable, that, in the reasonable opinion of the Independent Certifier, is of such poor quality that it would impede, in a material way, the ability of Contracting Authority and the Independent Certifier to assess whether or not the requirements for an applicable Section Substantial Completion or Substantial Completion, as applicable, under this Project Agreement have been satisfied, then such Section Substantial Completion Deliverable or Substantial Completion Deliverable, as applicable, shall be deemed to have not been included as part of the applicable Section Substantial Completion Notice or Substantial Completion Notice, as applicable. Following such review and determination by the Independent Certifier and before

the expiry of the applicable two (2) Business Day period, the Independent Certifier shall either deliver notice to Project Co and Contracting Authority:

- (i) confirming, as applicable, that:
  - (A) the applicable Section Substantial Completion Notice includes all of the Section Substantial Completion Deliverables described in the Section Substantial Completion Deliverables List (the “**IC Section Substantial Completion Deliverables Confirmation**”), or
  - (B) the Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List (the “**IC Substantial Completion Deliverables Confirmation**”); or
- (ii) setting out, as applicable:
  - (A) a list of the Section Substantial Completion Deliverables that were not included in the Section Substantial Completion Notice (an “**IC Section Substantial Completion Deliverables Deficiencies List**”); or
  - (B) a list of the Substantial Completion Deliverables that were not included in the Substantial Completion Notice (an “**IC Substantial Completion Deliverables Deficiencies List**”).
- (e) If the Independent Certifier provides a notice to Project Co and Contracting Authority setting out an IC Section Substantial Completion Deliverables Deficiencies List or IC Substantial Completion Deliverables Deficiencies List, as applicable, pursuant to Section 23.3(d), then Project Co shall subsequently submit a new and replacement version of the applicable Section Substantial Completion Notice or Substantial Completion Notice pursuant to Section 23.3(b), which, for greater certainty, includes all of the applicable Section Substantial Completion Deliverables or Substantial Completion Deliverables, as applicable, and the process described in Section 23.3(d) shall be repeated until the applicable IC Section Substantial Completion Deliverables Confirmation or IC Substantial Completion Deliverables Confirmation is provided by the Independent Certifier to Project Co and Contracting Authority.
- (f) Contracting Authority shall, within five (5) Business Days after receipt of an IC Section Substantial Completion Deliverables Confirmation or the IC Substantial Completion Deliverables Confirmation, as applicable, provide the Independent Certifier and Project Co with Contracting Authority’s opinion as to whether the conditions for issuance of the applicable Section Substantial Completion Certificate or Substantial Completion Certificate have been satisfied or, if applicable, any reasons as to why Contracting Authority considers that the applicable Section Substantial Completion Certificate or Substantial Completion Certificate should not be issued.
- (g) Within five (5) Business Days after Project Co’s receipt of Contracting Authority’s applicable opinion pursuant to Section 23.3(f), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the applicable Section Substantial Completion Certificate or Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, to determine whether any Section Minor Deficiencies or

Minor Deficiencies exist in respect of the applicable Project Co Infrastructure Section or Project Co Infrastructure, and to issue to Contracting Authority and to Project Co either:

- (i) the applicable Section Substantial Completion Certificate or Substantial Completion Certificate confirming the date of issue as the applicable Section Substantial Completion Date or Substantial Completion Date and setting out the Section Minor Deficiencies List for the applicable Project Co Infrastructure Section(s) or the Minor Deficiencies List, in each case if applicable, in accordance with Section 23.6; 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 applicable Section Substantial Completion Certificate or Substantial Completion Certificate.
- (h) Where the Independent Certifier has issued a report in accordance with Section 23.3(g)(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 five (5) Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Commissioning in a timely manner. Upon completion thereof, and for each subsequent application for Section Substantial Completion or Substantial Completion, as applicable, Project Co shall submit a new Section Substantial Completion 10-Day Notice or Substantial Completion 10-Day Notice, as applicable and a new Section Substantial Completion Notice or Substantial Completion Notice, as applicable and the process described in Sections 23.3(d) to 23.3(h), inclusive, shall be repeated until the applicable Section Substantial Completion Certificate or Substantial Completion Certificate has been issued.

- (i) In the event that the applicable Section Substantial Completion Certificate or Substantial Completion Certificate has not been issued within thirty (30) days after the later of (x) the delivery of a Section Substantial Completion 10-Day Notice or Substantial Completion 10-Day Notice, as applicable, or (y) the delivery of a Section Substantial Completion Notice or Substantial Completion Notice, as applicable, such Section Substantial Completion 10-Day Notice or Substantial Completion 10-Day Notice, as applicable, or Section Substantial Completion Notice or Substantial Completion Notice, as applicable, shall be deemed to have been rescinded by Project Co and Project Co shall be required to deliver a new Section Substantial Completion 10-Day Notice (unless Contracting Authority otherwise agrees in respect of such Section Substantial Completion 10-Day Notice) or Substantial Completion 10-Day Notice, as applicable, in order to initiate a new application for an applicable Section Substantial Completion or Substantial Completion.

- (j) For greater certainty, the Independent Certifier's decision to issue the Section IC Substantial Completion Deliverables Confirmation or the IC Substantial Completion Deliverables Confirmation, as applicable, shall not limit or otherwise affect:
- (i) any of Project Co's obligations under this Project Agreement to satisfy the requirements of Section Substantial Completion or Substantial Completion, as applicable; or
  - (ii) the opinion of Contracting Authority or the determination of the Independent Certifier as to whether the conditions for issuance of an applicable Section Substantial Completion Certificate or the Substantial Completion Certificate have been satisfied pursuant to Section 23.3(f) and Section 23.3(g) respectively.
- (k) The Independent Certifier's decision to issue or not to issue a Section Substantial Completion Certificate or the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the applicable Section Substantial Completion Date or the Substantial Completion Payment Date, and a Dispute in relation to the Substantial Completion Payment 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 a Section Substantial Completion Certificate or the Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.
- (l) Unless otherwise specified in the Output Specifications, Project Co shall provide As-Built Drawings, Record Drawings and specifications, Design Data, spare parts that are expressly referenced in the Output Specifications, and Shop Drawings in respect of a Project Co Infrastructure Section as soon as possible after delivery of the applicable Section Substantial Completion Notice and in any event no later than the applicable Section Substantial Completion Date.
- (m) The submission of a Section Substantial Completion Notice or the Substantial Completion Notice by Project Co in accordance with Section 23.3(b) shall:
- (i) in respect of a Section Substantial Completion Notice constitute a waiver by Project Co of all claims whatsoever against Contracting Authority under this Project Agreement in respect of the applicable Project Co Infrastructure Section, arising prior to the submission of the Section Substantial Completion Notice; and
  - (ii) in respect of the Substantial Completion Notice constitute a waiver by Project Co of all other claims, whatsoever against Contracting Authority under this Project Agreement arising prior to the submission of the Substantial Completion Notice,
- except, in the case of both Sections 23.3(m)(i) and 23.3(m)(ii), (x) without prejudice to specific notice requirements in this Project Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) arising prior to the submission of the applicable Section Substantial Completion Notice or the Substantial Completion Notice and still unsettled, and (y) any claim which could not reasonably have been known to Project Co or a Project Co Party at such time following due diligence.



- (n) Project Co, Contracting Authority and the Independent Certifier acknowledge and agree that Section Substantial Completion in respect of a Project Co Infrastructure Section shall be deemed to satisfy the Substantial Completion test contemplated in Section 23 in respect of such Project Co Infrastructure Section and all Project Co Infrastructure contained therein, and shall not be revisited at the time of review by the Independent Certifier (or Contracting Authority) of Substantial Completion of the Project as a whole.

#### 23.4 Operation and Maintenance Manuals

- (a) Project Co shall prepare and deliver to Contracting Authority draft copies of all necessary operation and maintenance manuals for:
- (i) a Project Co Infrastructure Section in the format set out in the Output Specifications no later than thirty (30) days prior to the applicable Section Substantial Completion Date; and
  - (ii) the New Third Party Infrastructure in the format set out in the Output Specifications no later than thirty (30) days prior to the Substantial Completion Date.

#### 23.5 Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables

- (a) Project Co shall deliver a Notice (the “**Countdown Notice**”) to Contracting Authority and the Independent Certifier specifying the date on which Project Co anticipates that an applicable Section Substantial Completion will be achieved (the “**Anticipated Section Substantial Completion Date**”) and the 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 ninety (90) days prior to the applicable Anticipated Section Substantial Completion Date or Anticipated Substantial Completion Date. If:
- (i) Project Co fails to deliver a Countdown Notice not less than ninety (90) days prior to the applicable No Later Than Date, the Anticipated Section Substantial Completion Date shall be deemed to be the same date as the applicable No Later Than Date; or
  - (ii) Project Co fails to deliver the Countdown Notice not less than ninety (90) 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 13.3(a), any Anticipated Section Substantial Completion Date or the Anticipated Substantial Completion Date, as applicable, shall not be earlier than the applicable No Later Than Date or the Scheduled Substantial Completion Date, as applicable, without the prior written consent of Contracting Authority, in its sole discretion.
- (d) Within fifteen (15) Business Days of the Independent Certifier’s receipt of the applicable Countdown Notice in accordance with Section 23.5(a), the Independent Certifier, in consultation with Project Co and Contracting Authority, shall prepare and deliver to Project Co and Contracting Authority:

- (i) a list of deliverables (the “**Section Substantial Completion Deliverables List**”) that (A) are to be appended to and form part of the applicable Section Substantial Completion Notice to be submitted by Project Co pursuant to Section 23.3(b), and (B) will constitute a minimum amount of evidence necessary for Project Co, in the applicable Section Substantial Completion Notice, to describe, in reasonable detail, the satisfaction of the requirements for the applicable Section Substantial Completion and to support Project Co’s opinion that the conditions for issuance of the applicable Section Substantial Completion Certificate have been satisfied (collectively, the “**Section Substantial Completion Deliverables**”); and
  - (ii) a list of deliverables (the “**Substantial Completion Deliverables List**”) that (A) are to be appended to and form part of the Substantial Completion Notice to be submitted by Project Co pursuant to Section 23.3(b), and (B) will constitute a minimum amount of evidence necessary for Project Co, in the Substantial Completion Notice, to describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion and to support Project Co’s opinion that the conditions for issuance of the Substantial Completion Certificate have been satisfied (collectively, the “**Substantial Completion Deliverables**”).
- (e) From time to time until the date that is sixty (60) days prior to an Anticipated Section Substantial Completion Date or the Anticipated Substantial Completion Date, as applicable, the Independent Certifier, in consultation with Project Co and Contracting Authority, may amend the applicable Section Substantial Completion Deliverables List or the Substantial Completion Deliverables List, including to set out any additional Section Substantial Completion Deliverables or Substantial Completion Deliverables, as applicable, not identified in the applicable Section Substantial Completion Deliverables List or Substantial Completion Deliverables List pursuant to Section 23.5(d). Each amended Section Substantial Completion Deliverables List or Substantial Completion Deliverables List, as applicable, shall, following its preparation, be deemed to be the applicable Section Substantial Completion Deliverables List or the Substantial Completion Deliverables List for the purposes of this Project Agreement and be promptly delivered to Project Co and Contracting Authority.
- (f) For greater certainty, nothing in Section 23.5(d) or Section 23.5(e) limits or otherwise affects any of Project Co’s obligations under this Project Agreement to satisfy the requirements of any Section Substantial Completion or Substantial Completion or to describe, in reasonable detail, the satisfaction of such requirements in the applicable Section Substantial Completion Notice or the Substantial Completion Notice pursuant to Section 23.3(b).

### **23.6 Section Minor Deficiencies and Minor Deficiencies**

- (a) In the event that any Section Minor Deficiencies or Minor Deficiencies, as applicable, exist when Project Co gives a Section Substantial Completion Notice or the Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and Contracting Authority, shall prepare:
- (i) in respect of a Section Substantial Completion Notice, a list of all Section Minor Deficiencies in respect of the applicable Project Co Infrastructure Section (each a “**Section Minor Deficiencies List**”) identified at that time; and

- (ii) in respect of the Substantial Completion Notice, a list of all other Minor Deficiencies (the “**Minor Deficiencies List**”) identified at that time,
- and, in either case, an estimate of the cost for Contracting Authority and the time for Project Co, to complete and rectify such Section Minor Deficiencies or Minor Deficiencies, as applicable.
- (b) Contracting Authority may withhold from the Substantial Completion Payment a holdback amount that is **[REDACTED]**% of the amount estimated by the Independent Certifier for Contracting Authority, to complete and rectify:
- (i) all Section Minor Deficiencies identified on a Section Minor Deficiencies List that have not been rectified as of the Substantial Completion Date; and
- (ii) all other Minor Deficiencies identified on the Minor Deficiencies List,
- (collectively, the “**Completion Holdback**”), which holdback shall be held in an interest bearing account.
- (c) Each Section Minor Deficiencies List and the Minor Deficiencies List will contain the schedule for the completion and rectification of the applicable Section Minor Deficiencies or Minor Deficiencies. The timeframe for the completion or rectification of each Section Minor Deficiency or Minor Deficiency shall be no later than six (6) months following the applicable Section Substantial Completion Date or the Substantial Completion Date, other than for Section Minor Deficiencies or Minor Deficiencies that are seasonal in nature and cannot be completed within six (6) months following the applicable Section Substantial Completion Date or the Substantial Completion Date (“**Seasonal Minor Deficiencies**”).
- (d) The Independent Certifier must prepare the applicable Section Minor Deficiencies List or the Minor Deficiencies List in relation to the applicable Section Substantial Completion Notice or the Substantial Completion Notice as soon as reasonably practicable, and, in any event, before the applicable Section Substantial Completion Certificate or Substantial Completion Certificate is issued, but shall not withhold the applicable Section Substantial Completion Certificate or the Substantial Completion Certificate by reason solely that there are Section Minor Deficiencies or Minor Deficiencies, as applicable.
- (e) No later than twenty (20) Business Days prior to the Anticipated Final Completion Date, Contracting Authority may direct the Independent Certifier to amend, in consultation with Project Co and Contracting Authority, an applicable Section Minor Deficiencies List or the Minor Deficiencies List on one occasion to include a list of any and all Section Minor Deficiencies or Minor Deficiencies, as applicable, that were identified after the preparation of, or not included in, the applicable Section Minor Deficiencies List or the Minor Deficiencies List pursuant to Section 23.6(a). The Independent Certifier shall prepare the applicable amended Section Minor Deficiencies List or Minor Deficiencies List as soon as reasonably practicable and, in any event, within ten (10) Business Days after such applicable direction given by Contracting Authority. The amended applicable Section Minor Deficiencies List or Minor Deficiencies List shall, following its preparation, be deemed to be the applicable Section Minor Deficiencies List or Minor Deficiencies List for the purposes of this Project Agreement, including for the purposes of Sections 23.6 to 23.7 inclusive. The amount of the Completion Holdback or the Seasonal Works Holdback, as applicable, shall not be affected by the amended Minor Deficiencies List. The

achievement of an applicable Section Substantial Completion shall not be revisited at the time of delivery of an amended applicable Section Minor Deficiencies List.

- (f) Where the Independent Certifier has been directed by Contracting Authority to amend a Section Minor Deficiencies List or the Minor Deficiencies List pursuant to Section 23.6(e), the Independent Certifier shall specify a completion and rectification time for any newly added Section Minor Deficiencies or Minor Deficiencies, as applicable, that is no greater than ten (10) Business Days from the date of the issuance of such amended Section Minor Deficiencies List or Minor Deficiencies List.
- (g) Contracting Authority may, in its sole discretion, waive any requirement for any Section Substantial Completion or Substantial Completion, and the failure to meet any such requirement shall constitute a Section Minor Deficiency or Minor Deficiency, as applicable.

### **23.7 Completion and Rectification of Section Minor Deficiencies and Minor Deficiencies**

- (a) Project Co shall rectify any applicable Section Minor Deficiencies or Minor Deficiencies at a time determined by Contracting Authority, acting reasonably, in a manner consistent with the time periods set out in Sections 23.6(c) and 23.7(c). Contracting Authority shall cause RSSOM Project Co to grant access to any RSSOM Project Infrastructure and the Lands on which such infrastructure is situated on in order to carry out the rectifying of such Section Minor Deficiencies or Minor Deficiencies, as applicable.
- (b) In rectifying any Section Minor Deficiencies or the Minor Deficiencies, Project Co shall not, and shall ensure any Project Co Party does not, cause,
  - (i) any interference with or disruption of the RSSOM Project Infrastructure;
  - (ii) any restrictions or other impairment of the public's use and enjoyment of the Project Co Infrastructure (if the rectification of the applicable Section Minor Deficiencies or Minor Deficiencies is occurring after Revenue Service Commencement), the New Third Party Infrastructure, the Existing Infrastructure, or any portion thereof; and
  - (iii) any disruption of the operations of Contracting Authority, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works.
- (c) Project Co shall complete and rectify all Section Minor Deficiencies and Minor Deficiencies:
  - (i) within forty-five (45) days after the issuance of the applicable Section Minor Deficiencies List or Minor Deficiencies List pursuant to Section 23.6(a) for all Section Minor Deficiencies or Minor Deficiencies other than Seasonal Minor Deficiencies where no time for completion and rectification has been specified by the Independent Certifier;
  - (ii) within the time for completion and rectification of any Section Minor Deficiency or Minor Deficiency where such a time was specified by the Independent Certifier in the applicable Section Minor Deficiencies List or Minor Deficiencies List;

- (iii) no later than six (6) months following the applicable Section Substantial Completion Date or the Substantial Completion Date for all Section Minor Deficiencies or Minor Deficiencies other than Seasonal Minor Deficiencies; and
  - (iv) no later than six (6) months following the Minor Deficiencies Completion Date for all Seasonal Minor Deficiencies.
- (d) Project Co acknowledges and agrees that the completion and rectification of Section Minor Deficiencies and Minor Deficiencies may require work outside of normal working hours in order to accommodate the RSSOM Project Infrastructure, the efficient operation of the Project Co Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure, or any portion thereof and to ensure compliance with the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in the Project Agreement, including, for clarity, the Output Specifications and Schedule 40 – Rail Corridor Access and Flagging.

### 23.8 Failure to Rectify Section Minor Deficiencies and Minor Deficiencies

- (a) If Project Co fails to complete and rectify any Section Minor Deficiency or any Minor Deficiency within the time for its completion and rectification specified in Section 23.7, Contracting Authority may engage others (including RSSOM Project Co) to perform the work necessary to complete and rectify such Section Minor Deficiency or Minor Deficiency at the risk and cost of Project Co, and Contracting Authority may deduct such cost from the Substantial Completion Payment (in the case of work necessary to complete and rectify a Section Minor Deficiency), the Completion Holdback or the Seasonal Works Holdback, as applicable, and interest accrued thereon.
- (b) Where, following Substantial Completion, there exist incomplete or unrectified Seasonal Minor Deficiencies and all other Section Minor Deficiencies and Minor Deficiencies have been completed or rectified, within two (2) Business Days after completion and rectification of all Section Minor Deficiencies and Minor Deficiencies, in each case, other than Seasonal Minor Deficiencies (the “**Minor Deficiencies Completion Date**”), Contracting Authority shall release to Project Co the amount of the Completion Holdback less:
- (i) a holdback amount that is the greater of:
    - (A) **[REDACTED]**% of the amount estimated by the Independent Certifier pursuant to Section 23.6(a) for Contracting Authority to complete and rectify all remaining Seasonal Minor Deficiencies identified by the Independent Certifier; and
    - (B) **[REDACTED]**% of the Completion Holdback,  
  
(the “**Seasonal Works Holdback**”), which holdback shall be held in an interest bearing account;
  - (ii) any amounts deducted in accordance with Section 23.8(a), together with all interest accrued thereon and applicable HST; and

- (iii) the amount of any Finishing Holdback required to be maintained by Contracting Authority as at such date, which Finishing Holdback amount shall be paid by Contracting Authority to Project Co in accordance with Schedule 42 – Payment Procedures.
- (c) Within two (2) Business Days after Final Completion, Contracting Authority shall release to Project Co the amount of the Completion Holdback or the Seasonal Works Holdback, as applicable (less any amounts deducted in accordance with Section 23.8(a), together with all interest accrued thereon and applicable HST) less the amount of any Finishing Holdback required to be maintained by Contracting Authority as at such date, which Finishing Holdback amount shall be paid by Contracting Authority to Project Co in accordance with Schedule 42 – Payment Procedures. Where Contracting Authority exercises its rights pursuant to 23.8(a), if the cost of such completion and rectification exceeds the amount of the Completion Holdback or the Seasonal Works Holdback, as applicable, and interest, then Project Co shall reimburse Contracting Authority for all such excess cost.

### 23.9 Final Completion Countdown Notice

- (a) Project Co shall deliver a Notice (the “**Final Completion Countdown Notice**”) to Contracting Authority and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Final Completion Date) on which Project Co anticipates that Final Completion will be achieved (the “**Anticipated Final Completion Date**”).
- (b) The Final Completion Countdown Notice shall be delivered not less than sixty (60) days prior to the Anticipated Final Completion Date. If Project Co fails to deliver the Final Completion Countdown Notice not less than sixty (60) days prior to the Scheduled Final Completion Date, the Anticipated Final Completion Date shall be deemed to be the same date as the Scheduled Final Completion Date.

### 23.10 Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least ten (10) Business Days’ Notice prior to the date upon which Project Co anticipates delivering the Final Completion Notice.
- (b) Project Co shall give the Independent Certifier and the Contracting Authority Representative Notice (the “**Final Completion Notice**”) upon the satisfaction of all requirements for Final Completion, which Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Final Completion, including the completion and rectification of all Minor Deficiencies, including, for certainty, any unrectified Section Minor Deficiencies, together with Project Co’s opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied. The Final Completion Notice shall also include the following documentation:
  - (i) Project Co’s written request for release of the Completion Holdback or the Seasonal Works Holdback, as applicable, including a declaration that no written notice of lien arising in relation to the performance of the Works has been received by it that has not been withdrawn by the lien claimant;
  - (ii) Project Co’s Statutory Declaration CCDC 9A (2001);

- (iii) Project Co's WSIB Certificate of Clearance; and
  - (iv) a written statement that the Works have been performed to the requirements of the Ancillary Documents, itemizing approved changes in the Works, the Independent Certifier's written instructions, and modifications required by Governmental Authorities.
- (c) Contracting Authority shall, within five (5) Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with Contracting Authority's opinion as to whether the conditions for issuance of the 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 five (5) Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 23.10(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, and to issue to Contracting Authority and to Project Co either:
- (i) the Final Completion Certificate confirming the date of issue as the Final Completion Date; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate, including any items on the Minor Deficiencies List which remain outstanding.
- (e) Where the Independent Certifier has issued a report in accordance with Section 23.10(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 five (5) Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Commissioning that needs to be undertaken as a result of the rectification actions,
- and Project Co shall perform all such additional rectification actions in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 23.10(c) to 23.10(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) The submission of the Final Completion Notice by Project Co in accordance with Section 23.10(b), shall constitute a waiver by Project Co of all claims whatsoever against Contracting Authority, arising prior to the submission of the Final Completion Notice, except:
- (i) without prejudice to specific notice requirements in this Project Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) prior to the Final Completion Notice and still unsettled; and
  - (ii) any claim which could not reasonably have been known to Project Co or a Project Co Party at such time following due diligence.

### 23.11 Effect of Certificates/Use

- (a) The issue of a Section Substantial Completion Certificate, a Substantial Completion Certificate or the Final Completion Certificate, the commencement of use by Contracting Authority or the public of any part of the Project Co Infrastructure or New Third Party 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, the amended Minor Deficiencies List described in Section 23.6(e); or
  - (ii) be construed as an approval by Contracting Authority of the Works or the way in which they have been carried out.

### 23.12 Inspection, Commissioning and Handover of New City Infrastructure

- (a) Project Co acknowledges and agrees that New City Infrastructure will be inspected, commissioned and handed over to the City of Toronto upon completion of New City Infrastructure.
- (b) For the purposes of this Section 23.12, Contracting Authority may delegate the responsibility for carrying out interim inspections, final inspections, warranty inspections and Handover activities, on behalf of Contracting Authority, to the City of Toronto, in respect of the New City Infrastructure, by providing Notice to Project Co of any such delegation (any such Notice referred to as a “**Notice of Delegation**”), and Contracting Authority may, in its sole discretion, and at any time revise such delegation by Notice to Project Co. For clarity, Contracting Authority may delegate the foregoing responsibility in respect of all or any component of New City Infrastructure. Project Co acknowledges and agrees that, for the purposes of this Section 23.12, Project Co shall Handover all New City Infrastructure directly to Contracting Authority unless Contracting Authority has delivered to Project Co a Notice of Delegation in respect of the New City Infrastructure, in which case, Project Co shall Handover such New City Infrastructure directly to the City of Toronto.
- (c) No later than five (5) days prior to the anticipated completion of the New City Infrastructure, Project Co shall provide Notice to Contracting Authority or, where a Notice of Delegation has been provided to Project Co, Project Co shall provide Notice to the City of Toronto, in respect of



the New City Infrastructure, of the date on which the New City Infrastructure will be completed and ready for inspection and testing. Project Co and Contracting Authority, or Project Co and the City of Toronto (where a Notice of Delegation has been provided) shall carry out a joint inspection of such New City Infrastructure. Such joint inspection shall occur no later than ninety (90) days after the date of completion of the New City Infrastructure. The inspection and testing of the New City Infrastructure pursuant to this Section 23.12(c) shall follow the inspection and testing requirements set out in the Inspection and Test Plan. Such inspection shall be for the purposes of:

- (i) assessing whether the New City Infrastructure has been constructed in accordance with the Output Specifications and is otherwise in compliance with the requirements in the Project Agreement; and
  - (ii) identifying any defects or deficiencies to the New City Infrastructure that Project Co must correct, repair or restore before Project Co completes the Commissioning of the New City Infrastructure before the Handover of the New City Infrastructure to the City of Toronto.
- (d) Prior to final inspection of the New City Infrastructure, Project Co shall:
- (i) prepare a record of the following, and submit it to Contracting Authority for review in accordance with Schedule 10 – Review Procedure at least thirty (30) Business Days before the final inspection:
    - (A) a list of the New City Infrastructure to be inspected;
    - (B) the tests, inspection methods and procedures to be used and performed and the standards that apply in respect of tests, inspection methods and procedures, which test and inspection shall follow the inspection and testing requirements set out in the Inspection and Test Plan;
    - (C) the scheduled date for testing and inspection of New City Infrastructure;
    - (D) a list of the names and employers of persons to represent Project Co and Contracting Authority or, if a Notice of Delegation has been issued in respect of the New City Infrastructure, a list of the names and employers of persons to represent Project Co and the City of Toronto, in respect of New City Infrastructure, at the inspection; and
    - (E) a list of existing systems that may be impacted by the tests and inspection;
  - (ii) ensure that:
    - (A) all defects and deficiencies that have been identified during any interim inspections Contracting Authority and the City of Toronto, in respect of New City Infrastructure, have been rectified; and
    - (B) any damage to the New City Infrastructure is repaired by Project Co subject to and in accordance with Section 11.10 of this Project Agreement.

- (e) Project Co shall prepare a record of each inspection carried out pursuant to Section 23.12(c) in inspection report format including: (i) a list of defects or deficiencies to the New City Infrastructure identified during the inspection; and (ii) actions to be taken by Project Co to correct each defect or deficiency and to rectify the damage. Project Co shall submit the inspection reports to Contracting Authority within three (3) Business Days after each inspection for review in accordance with Schedule 10 – Review Procedure.
- (f) After the inspection of the New City Infrastructure pursuant to Section 23.12(c), Project Co shall make all arrangements in respect of the New City Infrastructure to,
- (i) correct all defects and deficiencies to the New City Infrastructure and repair any damage to the New City Infrastructure;
  - (ii) complete Commissioning of the New City Infrastructure in accordance with Schedule 14 – Commissioning;
  - (iii) in respect of New City Infrastructure, comply with all requirements in respect of New City Infrastructure set out in Appendix B (*New City Infrastructure*) of Schedule 14 – Commissioning (including, for clarity, those set out in Attachment 1 (*Form of New City Infrastructure Certification*) of Appendix B (*New City Infrastructure*)) prior to, and as a pre-condition of Handover of New City Infrastructure;
  - (iv) complete Handover of the New City Infrastructure to Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of the New City Infrastructure, complete Handover to the City of Toronto, in respect of the New City Infrastructure; and
  - (v) seek, receive, and document confirmation from Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of the New City Infrastructure, seek, receive, and document confirmation from the City of Toronto, in respect of the New City Infrastructure, as applicable, that such Commissioning and Handover has been completed.
- (g) Project Co shall provide Notice to Contracting Authority when Project Co has completed Commissioning and has achieved Handover of the New City Infrastructure to the City of Toronto. Such Notice to Contracting Authority shall include the following:
- (i) a clear identification of the New City Infrastructure that is the subject of the Notice;
  - (ii) the date of Handover of the New City Infrastructure (as set out in the written confirmation required by Section 23.12(g)(iii)); and
  - (iii) a written confirmation, signed by an authorized representative of the City of Toronto, in respect of the New City Infrastructure, that Commissioning and Handover of the New City Infrastructure has been completed, including the confirmed date of Handover.
- (h) the City of Toronto and Contracting Authority, in respect of the New City Infrastructure, and Contracting Authority, may,

- (i) at any time and from time to time, on providing thirty (30) Business Days' Notice to Project Co, require a joint interim inspection of the New City Infrastructure to be carried out for the purposes of:
    - (A) assessing whether such New City Infrastructure has been constructed in accordance with the Output Specifications and is otherwise in compliance with the requirements of the Project Agreement; and
    - (B) identifying any defects or deficiencies to the New City Infrastructure;
  - (ii) at any time and from time to time, on providing thirty (30) Business Days' Notice to Project Co, require a joint warranty inspection to be carried out in respect of the New City Infrastructure for the purpose of identifying any defects or deficiencies.
- (i) In addition to the warranty inspections that may be performed from time to time pursuant to Section 23.12(h), a joint warranty inspection of the New City Infrastructure shall be carried out no earlier than sixty (60) days and no later than thirty (30) days prior to the end of the applicable Warranty Period for such New City Infrastructure.
- (j) In the event of a dispute between Project Co and Contracting Authority (including Contracting Authority as a representative of the interests of the City of Toronto with respect to final inspection, Commissioning or Handover of the New City Infrastructure), the following shall apply:
- (i) Project Co shall make commercially reasonable efforts to resolve all outstanding concerns of Contracting Authority and the City of Toronto in a prompt manner; and
  - (ii) any Commissioning or Handover issue that is unresolved after the expiration of ninety (90) days after Project Co and Contracting Authority, or Project Co and the applicable third party owner (where a Notice of Delegation has been provided), have carried out the joint inspection pursuant to Section 23.12(c) shall be referred to the Independent Certifier for final determination on an expedited basis with such final determination being made no later than the earlier of (A) sixty (60) days from the date of referral; and (B) the Substantial Completion Date.

### **23.13 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 TTC on a component by component basis and from time to time.
- (b) No later than five (5) days prior to the anticipated completion of New TTC Infrastructure, Project Co shall provide Notice to Contracting Authority, and to the TTC, of the date on which the New TTC Infrastructure will be completed and ready for inspection. Contracting Authority shall inspect the New TTC Infrastructure no later than ninety (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 TTC.
- (c) For the purposes of this Section 23.13, Contracting Authority shall be deemed to have delegated the responsibility for carrying out interim and final inspections, and Commissioning and Handover activities, on behalf of Contracting Authority, to the TTC. Contracting Authority may, in its sole discretion, revise such delegation by Notice to Project Co. For clarity, for the purposes of this Section 23.13 Project Co shall Handover all New TTC Infrastructure directly to the TTC.
- (d) After the inspection of the New TTC Infrastructure, pursuant to Section 23.13(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 to the TTC; and
  - (iii) seek, receive, and document confirmation from the TTC that such commissioning and Handover has been completed.
- (e) Project Co shall provide Notice to Contracting Authority when the New TTC Infrastructure has been commissioned and has achieved Handover to the TTC. 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 23.13(e)(iii)); and
  - (iii) a written confirmation, signed by an authorized representative of the TTC, that commissioning and Handover of the applicable New TTC Infrastructure has been completed including the confirmed date of Handover.
- (f) The TTC 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 TTC 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 of any construction activity within the TTC Zone of Influence and commissioning and Handover activities in respect of the New TTC Infrastructure and shall report to Contracting Authority on the status of all such inspections, commissioning and Handover in accordance with this Section 23.13 and on a regular basis as part of the Works Report.

**24. HUMAN RESOURCES****24.1 Admittance of Personnel**

- (a) Contracting Authority shall have the right to order the removal from the Lands, the Project Co Infrastructure or the New Third Party Infrastructure of any person employed by (or acting on behalf of) Project Co, or any Project Co Party, whose presence, in the reasonable opinion of Contracting Authority is likely to have an adverse effect on the Other Works or the Governmental Activities or who, in the reasonable opinion of Contracting Authority is not a fit and proper person to be on the Lands, the Project Co Infrastructure or the New Third Party Infrastructure for any reason, including a failure to comply with any Contracting Authority policy or any immediate obligation of Contracting Authority to ensure the safety and well-being of persons on the Lands, the Project Co Infrastructure and the New Third Party Infrastructure.
- (b) Any action taken under this Section 24.1 shall promptly be confirmed by Contracting Authority in writing to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.
- (c) Any decision of Contracting Authority made pursuant to this Section 24.1 shall be final and conclusive.

**24.2 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 Works with the requisite level of skill and experience to perform the Works 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 Project Works Schedules;
  - (ii) all 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 Works receive such training and supervision as is necessary to ensure the proper performance of this Project Agreement and compliance with all health and safety rules, procedures and requirements, Authority Requirements and the Contracting Authority HR Policy; and
  - (iii) it creates and maintains, and causes all Project Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the performance of the Works to ensure the proper performance of this Project Agreement.

**24.3 Notification of 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 Works:

- (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 Lands, the Project Co Infrastructure or the New Third Party Infrastructure to perform any Works, without the prior written consent of Contracting Authority, in its sole discretion.
- (c) To the extent permitted by Applicable Law, Project Co shall ensure that Contracting Authority is kept immediately notified and 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 Works who, subsequent to the commencement of such employment or engagement, (i) has been arrested or detained; (ii) receives a Relevant Conviction; or (iii) is charged with an offence that could lead to a Relevant Conviction (of which Project Co or a Project Co Party becomes aware or whose previous Relevant Convictions become known to Project Co or a Project Co Party). Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to Contracting Authority as contemplated in this Section 24.3.

#### **24.4 Disciplinary Action**

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

#### **24.5 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 Works (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, 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 directly issued to Contracting Authority and all Project Co Parties.

**24.6 Management Organizations**

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

**24.7 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.

**25. CONTRACTING AUTHORITY'S REMEDIAL RIGHTS****25.1 Exercise of Remedial Rights**

- (a) Contracting Authority may exercise all rights set out in this Section 25 at any time and from time to time if:
- (i) Contracting Authority, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:
- (A) does or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any Province Person;
  - (B) does or can reasonably be expected to materially prejudice the performance of any Governmental Activities;
  - (C) may potentially compromise Contracting Authority's reputation or integrity, or the nature of the public transit system in the City of Toronto or the Province of Ontario, so as to affect public confidence in that system or the Project; or
  - (D) does or could reasonably be expected to materially prejudice the construction of the RSSOM Project or the operations of the Ontario Line Subway System in a manner for which this Project Agreement does not otherwise provide a remedy,

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 25.1(a)(i)(A), 25.1(a)(i)(B) or 25.1(a)(i)(D), Contracting Authority shall not exercise its rights under this Section 25 unless Project Co has failed to cure the relevant breach, act or omission within five (5) Business Days after Notice from Contracting Authority or, if such breach, act or omission cannot reasonably be cured

within such five (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 25.1(a)(i)(A), 25.1(a)(i)(B) and 25.1(a)(i)(D) actually occur; and

- (F) in respect of Section 25.1(a)(i)(C), Contracting Authority shall not exercise its rights under this Section 25 unless Project Co has failed to cure the relevant breach, act or omission within five (5) Business Days after Notice from Contracting Authority or, if such breach, act or omission cannot reasonably be cured within such five (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 has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to its COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be, in accordance with Section 11.25, or Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to H&S Construction Inspections in accordance with Section 15.1(b), or to perform its obligations to rectify any non-compliance noted in any H&S Construction Inspection Report in accordance with Section 15.1(e);
- (iii) Project Co has not performed or is not performing its obligations in respect of the Demolition Requirements in accordance with Section 11.26 or Project Co has not performed or is not performing its obligations to rectify any Demolition Default Event in accordance with Section 11.26; or
- (iv) Project Co has failed to comply with any written direction issued by or on behalf of Contracting Authority.

## 25.2 Emergency

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, Contracting Authority may exercise all of the rights set out in this Section 25 at any time and from time to time if Contracting Authority, acting reasonably, considers the circumstances to constitute an Emergency.

## 25.3 Rectification

- (a) Without prejudice to Contracting Authority's rights under Section 34 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 25.1 or 25.2, Contracting Authority may, by written Notice, require Project Co to take such steps as Contracting Authority, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of Subcontractors or a limited suspension of the performance of the Works, and Project Co shall use commercially reasonable efforts to comply with Contracting Authority's requirements as soon as reasonably practicable.



- (b) If Contracting Authority gives Notice to Project Co pursuant to Section 25.3(a) and either:
- (i) Project Co does not either confirm, within five (5) Business Days after such Notice or such shorter period as is appropriate in the case of an Emergency that it is willing to take the steps required in such Notice or present an alternative plan to Contracting Authority to mitigate, rectify and protect against such circumstances that Contracting Authority may accept or reject acting reasonably; or
  - (ii) Project Co fails to take the steps required in such Notice or accepted alternative plan within such time as set out in such Notice or accepted alternative plan or within such longer time as Contracting Authority, acting reasonably, shall think fit,

then Contracting Authority may take such steps as it considers to be appropriate, acting reasonably, including requiring the termination and replacement of Subcontractors, either themselves or by engaging others (including a third party) to take any such steps.

- (c) Notwithstanding the foregoing provisions of this Section 25.3, in the event of an Emergency, the Notice under Section 25.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and Contracting Authority may, prior to Project Co's confirmation under Section 25.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.

#### 25.4 Costs and Expenses

- (a) Subject to Contracting Authority's obligations pursuant to Sections 25.5 and 25.6:
- (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of Contracting Authority's rights pursuant to this Section 25; and
  - (ii) Project Co shall reimburse Contracting Authority for all reasonable costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights pursuant to this Section 25, including in relation to Contracting Authority taking such steps, either itself or by engaging others (including a third party) to take any such steps as Contracting Authority considers appropriate and as are in accordance with this Section 25.

#### 25.5 Reimbursement Events

- (a) In this Section 25.5, 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 Contracting Authority, a Contracting Authority Party, RSSOM Project Co, a RSSOM Project Co Party, North Civil Project Co, a North Civil Project Co Party, a TOC Contractor or any TOC Contractor Party; or
  - (ii) an Emergency, except to the extent that such Emergency is caused or contributed to by an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement.

- (b) If Contracting Authority either takes steps itself or requires Project Co to take steps in accordance with this Section 25 as a result of a Reimbursement Event:
- (i) Contracting Authority shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of Contracting Authority's rights pursuant to this Section 25 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
  - (ii) Contracting Authority shall bear all costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights pursuant to this Section 25.

## 25.6 Reimbursement if Improper Exercise of Rights

- (a) If Contracting Authority exercises its rights pursuant to this Section 25, but Contracting Authority was not entitled to do so, Contracting Authority shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of Contracting Authority issued as a result of Contracting Authority having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not Contracting Authority is entitled to exercise its rights pursuant to this Section 25 before taking any such action that Contracting Authority may require and Project Co shall comply with all of Contracting Authority's requirements. Only concurrently with or after complying with Contracting Authority's requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

## 25A. MILESTONE PAYMENTS

### 25A.1 Milestone Payment Completion Countdown Notice

- (a) For each of the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment and the Tenth Milestone Payment, Project Co shall deliver a notice (the "**Milestone Payment Completion Countdown Notice**") to Contracting Authority and the Independent Certifier specifying the date on which Project Co anticipates the applicable requirements for Milestone Payment Completion shall be satisfied (the "**Anticipated Milestone Payment Completion Date**").
- (b) Each Milestone Payment Completion Countdown Notice shall be delivered no later than ninety (90) days prior to the applicable Scheduled Milestone Payment Completion Date. If Project Co fails to deliver a Milestone Payment Completion Countdown Notice not less than ninety (90) days prior to the Scheduled First Milestone Payment Completion Date, the Scheduled Second Milestone Payment Completion Date, the Scheduled Third Milestone Payment Completion Date, the Scheduled Fourth Milestone Payment Completion Date, the Scheduled Fifth Milestone Payment Completion Date, the Scheduled Sixth Milestone Payment Completion Date, the Scheduled Seventh Milestone Payment Completion Date, the Scheduled Eighth Milestone

Payment Completion Date, the Scheduled Ninth Milestone Payment Completion Date or the Scheduled Tenth Milestone Payment Completion Date, applicable Anticipated Milestone Payment Completion Date shall be deemed to be the same date as the Scheduled First Milestone Payment Completion Date, the Scheduled Second Milestone Payment Completion Date, the Scheduled Third Milestone Payment Completion Date, the Scheduled Fourth Milestone Payment Completion Date, the Scheduled Fifth Milestone Payment Completion Date, the Scheduled Sixth Milestone Payment Completion Date, the Scheduled Seventh Milestone Payment Completion Date, the Scheduled Eighth Milestone Payment Completion Date, the Scheduled Ninth Milestone Payment Completion Date or the Scheduled Tenth Milestone Payment Completion Date, as applicable.

- (c) Project Co acknowledges and agrees that Contracting Authority requires a minimum of ninety (90) days' notice prior to each applicable Anticipated Milestone Payment Completion Date.

### 25A.2 Certification of Milestone Payments

- (a) Project Co shall give Contracting Authority and the Independent Certifier at least ten (10) Business Days' notice prior to the date upon which Project Co anticipates the applicable requirements for Milestone Payment Completion shall be satisfied.
- (b) Project Co shall give Contracting Authority and the Independent Certifier notice (the "**Milestone Payment Completion Notice**"), upon the satisfaction of the applicable requirements for Milestone Payment Completion which shall:
- (i) describe, in reasonable detail, the satisfaction of requirements for Milestone Payment Completion, together with Project Co's opinion as to whether the conditions for Milestone Payment Completion have been satisfied;
  - (ii) in the case of Debt Financing, include evidence that Private Capital Invested amounts have been drawn, advanced, paid, funded or released, as the case may be, to Project Co. Acceptable evidence would include wire transfer statements, bank statements or any other acceptable form of certification or document that is agreed to in writing among Contracting Authority, Project Co and the Independent Certifier;
  - (iii) include all construction progress reports relating to the applicable requirements for Milestone Payment Completion for the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment and the Tenth Milestone Payment, as applicable, certified by the Lenders' Consultant.
- (c) Project Co shall, and shall cause the Lenders' Consultant to, co-operate with the Independent Certifier to permit the Independent Certifier to verify the Lenders' Consultant's construction progress reports.
- (d) Contracting Authority shall, within five (5) Business Days after receipt of each Milestone Payment Completion Notice, provide Project Co and the Independent Certifier with Contracting Authority's opinion as to whether Project Co has satisfied the applicable requirement for Milestone Payment Completion for the First Milestone Payment, the Second Milestone Payment,

the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment or the Tenth Milestone Payment, as applicable, and, if applicable, any reasons as to why it considered that Project Co has not satisfied the applicable requirements for Milestone Payment Completion for the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment or the Tenth Milestone Payment, as applicable.

- (e) Within five (5) Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 25A.2(d), the Parties shall cause the Independent Certifier to determine whether the applicable requirements for Milestone Payment Completion for the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment or the Tenth Milestone Payment, as applicable, have been met, having regard to the opinions of both Project Co and Contracting Authority, and to issue to Contracting Authority and Project Co either:
- (i) a notice that the requirements for Milestone Payment Completion for the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment or the Tenth Milestone Payment, as applicable, have been met (the "**First Milestone Payment Completion Date**", the "**Second Milestone Payment Completion Date**", the "**Third Milestone Payment Completion Date**", the "**Fourth Milestone Payment Completion Date**", the "**Fifth Milestone Payment Completion Date**", the "**Sixth Milestone Payment Completion Date**", the "**Seventh Milestone Payment Completion Date**", the "**Eighth Milestone Payment Completion Date**", the "**Ninth Milestone Payment Completion Date**" or the "**Tenth Milestone Payment Completion Date**", as applicable); or
  - (ii) a report setting out the percentage of the Funded Capital Costs that the Independent Certifier considers remains to be completed in order to satisfy the applicable requirements for Milestone Payment Completion for the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment or the Tenth Milestone Payment, as applicable.
- (f) Where the Independent Certifier has issued a report in accordance with Section 25A.2(e)(ii), Project Co shall, within five (5) Business Days after receipt of such report, provide the Independent Certifier and Contracting Authority with a letter which acknowledges the percentage of the Funded Capital Costs that remains to be completed (as set out in the Independent Certifier's report) to achieve the applicable requirements for Milestone Payment Completion and includes a schedule for completing such Work as it relates to the percentage of the Funded Capital Costs that remains to be completed. Upon completion thereof, Project Co may give a further Milestone Payment Completion Notice and then Sections 25A.2(d) to (f), inclusive, shall be repeated until the Independent Certifier issues a notice pursuant to Section 25A.2(e)(i).

- (g) The Independent Certifier's decision to issue or not issue a notice that the requirements for Milestone Payment Completion for the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment or the Tenth Milestone Payment, as applicable, have been met shall be final and binding on the Parties solely in respect of determining the applicable Milestone Payment Completion Date and no Dispute in relation to a Milestone Payment Completion Date shall be subject to resolution pursuant to Schedule 27 – Dispute Resolution Procedure.
- (h) Where the Independent Certifier has issued a notice in accordance with Section 25A.2(e)(i), Contracting Authority shall make the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment or the Tenth Milestone Payment on the applicable Milestone Payment Date.

## **26. RECORDS, INFORMATION, AUDIT AND CLAIMS MANAGEMENT**

### **26.1 Records Provisions**

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

### **26.2 Information and General Audit Rights**

- (a) Project Co shall provide, and shall cause each Subcontractor to provide, to Contracting Authority all information, reports, documents, records and the like, including as referred to in Schedule 26 – Record Provisions, in the possession of, or available to, Project Co as Contracting Authority may reasonably require from time to time for any purpose in connection with this Project Agreement, other than 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 Construction Contractor shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to Contracting Authority, and shall require each Subcontractor, including the Construction Contractor, to provide to Contracting Authority (at Contracting Authority's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 26.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as Contracting Authority may reasonably require from time to time to enable Contracting Authority to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Lands, the Project Co 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 Contracting Authority with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Works, the Lands, the Project Co Infrastructure and the New Third Party Infrastructure, and Project Co shall include relevant terms in all Subcontracts to this effect.

- (d) Project Co shall promptly notify Contracting Authority of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 – Record Provisions, which are required to be provided to or available to Contracting Authority hereunder, shall be subject and open to inspection and audit by Contracting Authority at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless Contracting Authority and Project Co otherwise agree. Contracting Authority shall also have the right to monitor and audit the performance of any and all parts of the Works wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of Contracting Authority (as it may designate in writing from time to time, which may include RSSOM Project Co or any RSSOM Project Co Party, subject to and in accordance with Section 40) monitoring and auditing such parts of the Works, including providing them with access and copies (at Contracting Authority's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works. Except as otherwise provided herein, all of Contracting Authority's costs for the inspections, audits and monitoring shall be borne by Contracting Authority.
- (f) In conducting an audit of Project Co under Section 26.2(e) or as otherwise provided under this Project Agreement, Contracting Authority shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at Contracting Authority's reasonable cost) of all books and records of Project Co required to be provided to or available to Contracting Authority hereunder, upon reasonable Notice and at reasonable times. Project Co shall fully cooperate with Contracting Authority and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with Contracting Authority all matters arising from such audits, including the refunding of monies to Contracting Authority where applicable. At the reasonable request of Contracting Authority's auditors, Project Co shall provide such information, reports, documents and records as Contracting Authority's auditors may reasonably require, other than Sensitive Information.
- (g) Contracting Authority's rights pursuant to this Section 26.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) Contracting Authority's rights pursuant to this Section 26.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law. Contracting Authority's right pursuant to this Section 26.2 may also be exercised by the Auditor General of Ontario, His Majesty the King in right of Canada and the Auditor General of Canada without the requirement for further action on the part of Contracting Authority.
- (i) Without limiting the generality of Section 26.2(a) and subject to Section 40.4, in the event that Contracting Authority is required to provide information, including financial information, in

relation to the Project, to the Province for corporate or financial reporting purposes, Project Co shall provide such information to Contracting Authority as Contracting Authority may reasonably require in order to comply with its corporate or financial reporting obligations. Project Co acknowledges and agrees that such information may include Sensitive Information.

### 26.3 Lenders' Consultant Reports

- (a) Project Co shall cause the Lenders' Agent to cause, in accordance with Section 5(k) (*Agreements and Security*) of Schedule 4 – Lenders' Direct Agreement, the Lenders' Consultant to provide Contracting Authority a copy of any written assessment or report of the Works under the Design and Construction Contract, including any certificate of payment, concurrently with its delivery to the Lenders' Agent.

### 26.4 Claims Management

- (a) In addition to Project Co's obligations pursuant to Sections 26.2(d), 27, 42 and 44, Project Co shall promptly notify Contracting Authority of all actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, the Construction Contractor by any third party (other than any Project Co Party) at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) (each, for the purposes of this Section 26.4, a "**Public Claim**") and shall provide Contracting Authority with details of the same.
- (b) Project Co may, at any time, propose a process for the timely and efficient exchange of the information required in Section 26.4(a) subject to Contracting Authority's approval, not to be unreasonably withheld.
- (c) Project Co shall, at all times, respond to any Public Claim in a timely manner and so as not to compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of the public transit system in the City of Toronto or the Province of Ontario, so as to affect public confidence in that system or the Project.
- (d) Contracting Authority may, at any time and in its sole discretion, upon written notice to Project Co, defend, dispute or otherwise take conduct of such Public Claim in the name of Project Co at Contracting Authority's own expense in which case Contracting Authority shall indemnify Project Co for all losses it may incur in connection with such Public Claim (except to the extent that such losses were caused by a breach of this Project Agreement by Project Co, including a breach of Section 26.4(c), above).
- (e) In the event Contracting Authority takes conduct of a Public Claim pursuant to this Section 26.4, Project Co shall give Contracting Authority all reasonable cooperation, access and assistance in respect of such Public Claim, and the provisions of Section 44.3 shall apply as if Project Co is the Beneficiary and Contracting Authority is the Indemnifier.

**27. COMMUNICATIONS****27.1 Communications**

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

**28. CHANGES IN LAW****28.1 Performance after Change in Law**

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

**28.2 Works Change in Law**

- (a) On the occurrence of a Works Change in Law:
- (i) either Party may give Notice to the other of the need for a Variation as a result of such Works Change in Law;
  - (ii) the Parties shall meet within ten (10) Business Days after such Notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within ten (10) Business Days after this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
  - (iii) Contracting Authority shall, within ten (10) Business Days after 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 Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
    - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
    - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and



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

### 28.3 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 Works in accordance with Schedule 22 – Variation Procedure. Any such compensation shall be calculated in accordance with this Section 28.3.
- (b) On the occurrence of a Relevant Change in Law:
- (i) either Party may give Notice to the other of the need for a Variation as a result of such Relevant Change in Law;
  - (ii) the Parties shall meet within ten (10) Business Days after such Notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within ten (10) Business Days after this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
  - (iii) Contracting Authority shall, within ten (10) Business Days after 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, Approvals and Agreements required in respect of the Variation;
    - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
    - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
    - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
      - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to

- minimize any increase in costs arising from such Relevant Change in Law; and
- (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
- (F) any entitlement to compensation payable shall be in accordance with this Section 28.3, and any calculation of compensation shall take into consideration, *inter alia*:
- (I) any failure by a Party to comply with Section 28.3(b)(iii)(E);
  - (II) any increase or decrease in its costs resulting from such Relevant Change in Law; and
  - (III) 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 30 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 28.3, and Section 31 shall be construed accordingly.

#### 28.4 Pandemic and Epidemic Change in Law

- (a) Subject to Section 28.4(d) on the occurrence of a Pandemic and Epidemic 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 Works (“**Pandemic and Epidemic Change in Law Compensation**”). Any such compensation shall be calculated in accordance with this Section 28.4.
- (b) On the occurrence of a Pandemic and Epidemic Change in Law:
- (i) either Party may give notice to the other of the need for a Variation as a result of such Pandemic and Epidemic Change in Law;
  - (ii) the Parties shall meet within ten (10) Business Days of such notice (or such longer period of time agreed to between the Parties, acting reasonably) to consult with respect to the effect of the Pandemic and Epidemic Change in Law and to reach an agreement on whether a Variation is required as a result of such Pandemic and Epidemic Change in Law, and, if the Parties have not, within ten (10) Business Days (or such longer period of time agreed to between the Parties, acting reasonably) of this meeting, reached an agreement, either Party may refer the question of whether a Pandemic and Epidemic

Change in Law has occurred or the effect of any Pandemic and Epidemic Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and

- (iii) Contracting Authority shall, within ten (10) Business Days (or such longer period of time agreed to between the Parties, acting reasonably) 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) no profit shall be payable to Project Co, the Construction Contractor or any Subcontractor as Pandemic and Epidemic Change in Law Compensation and accordingly:
    - (I) any Pandemic and Epidemic Change in Law Compensation shall include Overhead calculated in accordance with Appendix C (*Calculation of Overhead For Purposes of Pandemic and Epidemic Change In Law Compensation*) to Schedule 22 – Variation Procedure; and
    - (II) Overhead and Profit pursuant to Appendix B (*Calculation of Overhead and Profit*) to Schedule 22 – Variation Procedure shall not apply;
  - (B) 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 Pandemic and Epidemic Change in Law;
  - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
  - (D) without limiting any requirement of this Project Agreement, including Schedule 22 – Variation Procedure, Project Co shall provide Contracting Authority with any evidence and proper documentation Contracting Authority may reasonably require in order to assess the reasonableness of the Pandemic and Epidemic Change in Law Compensation. The Parties agree that evidence and proper documentation shall include:
    - (I) proof of the Pandemic and Epidemic Change in Law;
    - (II) any proposed changes to the Critical Path of the Works;
    - (III) detailed information quantifying the change in costs incurred or to be incurred by Project Co and its Subcontractors in performing the Works related to the Pandemic and Epidemic Change in Law, including information on the financial impact of the Pandemic and Epidemic Change in Law on Project Co and its Subcontractors, invoices, proof of payments, and information setting out overhead, labour rates, unit rates, and other prices and quantities for materials, products, supplies, equipment, services, facilities and transportation

and any other Direct Cost described in Appendix A (*Calculation of Direct Cost*) of Schedule 22 – Variation Procedure; and

- (IV) information confirming any amounts described in Section 28.4(b)(iii)(G)(III) received or that will or are likely to be received by Project Co and its Subcontractors.
  - (E) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Pandemic and Epidemic Change in Law as soon as reasonably practicable;
  - (F) 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 Pandemic and Epidemic Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Pandemic and Epidemic Change in Law; and
    - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Pandemic and Epidemic Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Pandemic and Epidemic Change in Law; and
  - (G) any entitlement to Pandemic and Epidemic Change in Law Compensation payable shall be in accordance with this Section 28.4, and any calculation of such compensation shall take into consideration, *inter alia*:
    - (I) any failure by a Party to comply with Section 28.4(b)(iii)(D) or Section 28.4(b)(iii)(F);
    - (II) any increase or decrease in its costs resulting from such Pandemic and Epidemic Change in Law; and
    - (III) any amount which Project Co or a Subcontractor:
      - (1) 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; or
      - (2) receives as financial relief or support from a Governmental Authority.
- (c) Project Co shall not be entitled to any payment or compensation or, except as expressly provided in Section 30 or otherwise in this Project Agreement, relief in respect of any Pandemic and

Epidemic Change in Law, or the consequences thereof, other than in accordance with this Section 28.4, and Section 31 shall be construed accordingly.

- (d) Project Co shall not be entitled to any relief under this Section 28.4 for a Pandemic and Epidemic Supply Chain Delay that may result from a Pandemic and Epidemic Change in Law. Any relief or compensation for Project Co for any Pandemic and Epidemic Supply Chain Delay shall be addressed under Section 32 of this Project Agreement.

## 29. VARIATIONS

### 29.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 – Variation Procedure shall apply in respect of Variations.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of Contracting Authority to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.
- (c) Without limiting Project Co’s obligations pursuant to Section 11.11(a) 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.

### 29.2 Innovation and Value Engineering

- (a) Project Co acknowledges that Contracting Authority at all times desires to reduce the overall cost to Contracting Authority of the Project, and Project Co agrees to cooperate, explore and work with Contracting Authority in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the “**Innovation Proposal**”) by Notice to Contracting Authority.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
  - (i) any Variation Enquiry initiated by Contracting Authority;
  - (ii) any Variation resulting from a Change in Law; or
  - (iii) any change to the Contracting Authority Activities.
- (d) The Innovation Proposal must:
  - (i) set out sufficient detail to enable Contracting Authority to evaluate the Innovation Proposal in full;

- (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;
  - (iii) request Contracting Authority to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes Contracting Authority requires as a result;
  - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and Contracting Authority;
  - (v) indicate if there are any dates by which a decision by Contracting Authority must be made;
  - (vi) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
  - (vii) include such other information and documentation as may be reasonably requested by Contracting Authority to fully evaluate and consider the Innovation Proposal.
- (e) Contracting Authority shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
- (i) the Innovation Proposal affects the quality of the Works, the Project Co Infrastructure, the New Third Party Infrastructure, or the likelihood of successful completion of the Works;
  - (ii) the Innovation Proposal will benefit or interfere with the efficient operation of the Project Co Infrastructure, the New Third Party Infrastructure or the performance of the Contracting Authority Activities;
  - (iii) the Innovation Proposal will interfere with the relationship between Contracting Authority and third parties;
  - (iv) the financial strength of Project Co is sufficient to deliver the changed Works;
  - (v) the residual value of the Project Co Infrastructure, or the New Third Party Infrastructure is affected;
  - (vi) the Innovation Proposal materially affects the risks or costs to which Contracting Authority is exposed; or
  - (vii) any other matter Contracting Authority considers relevant.
- (f) Contracting Authority may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) Contracting Authority may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If Contracting Authority accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation

Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.

- (i) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of a Subcontractor to decrease, the net savings in the costs of Project Co and/or the Subcontractor will be shared equally by Project Co and Contracting Authority, and Contracting Authority's share of the net savings shall, if the Parties agree, be reflected in a lump sum payment.
- (j) If an Innovation Proposal causes or will cause the costs of Contracting Authority to decrease, the net savings in the costs of Contracting Authority will be shared:
  - (i) equally by Project Co and Contracting Authority following the implementation of the Innovation Proposal until the Termination Date; and
  - (ii) thereafter, Contracting Authority shall be entitled to the full benefit of the net savings in costs (if applicable),

and Project Co's share of the net savings shall be reflected in a lump sum payment.

### 30. DELAY EVENTS

#### 30.1 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 causes a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, delivering Critical Works by the applicable Critical Works Deadline, delivering Critical Data by the applicable Critical Data Deadline, achieving Section Substantial Completion for any Project Co Infrastructure Section by the applicable No Later Than Date or causing any Project Co Infrastructure Subsection to be Access Ready by the applicable No Later Than Date:
  - (i) the implementation of a Variation to the extent that Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
  - (ii) subject to compliance by Project Co with the provisions of Section 11.13, 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 11.13(f);
  - (iii) a requirement that Project Co perform obligations under an Encumbrance pursuant to Section 17.2(c)(iii) or Section 17.2(d), which performance imposes costs or delays in the performance of the Works;
  - (iv) any breach by Contracting Authority of any of Contracting Authority's obligations under this Project Agreement (including any delay by Contracting Authority in giving access to the Metrolinx Lands pursuant to Section 16.1, any obstruction of the rights afforded to Project Co under Section 16.1 or any delay by Contracting Authority in carrying out its

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;

- (v) any Differing Geotechnical Site Condition pursuant to Section 18.2(c);
- (vi) any Contracting Authority Contamination pursuant to Section 18.3(g);
- (vii) any Contracting Authority Items of Interest or Value pursuant to Section 18.4(e);
- (viii) any Differing Major Existing Infrastructure Condition pursuant to Section 18.5(c);
- (ix) any Contracting Authority Utility Infrastructure pursuant to Section 18.6(d);
- (x) any Contracting Authority Species-at-Risk pursuant to Section 18.7(d);
- (xi) an uncovering of the Works pursuant to Section 20.3 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 opening up of the Works was reasonable in the light of other defects or non-compliance previously discovered by Contracting Authority in respect of the same or a similar component of the Works or subset of the Works;
- (xii) a requirement pursuant to Schedule 27 – Dispute Resolution Procedure for Project Co to proceed in accordance with the written instructions of Contracting Authority during the pendency of a Dispute, to the extent that the Dispute is subsequently determined in Project Co’s favour;
- (xiii) subject to and in accordance with Schedule 34 – Permits, Licences, Approvals and Agreements,
  - (A) the occurrence of any Additional PLAA Completion Requirements, as set out in Section 8.1(d) (*Pre-Submission Consultation*) of Schedule 34 – Permits, Licences, Approvals and Agreements;
  - (B) an Issuing Authority rejects a Listed Project Co PLAA Application solely due to a failure by Project Co to include documentation and information, or satisfy an obligation, that was not set out in the applicable Completion Checklist or the Additional PLAA Completion Requirements, as set out in Section 9.2(d) (*Rejection by Issuing Authority of Listed Project Co PLAA Application*) of Schedule 34 – Permits, Licences, Approvals and Agreements;
  - (C) if an Issuing Authority fails to issue a Listed Project Co PLAA or notify Project Co that it refuses to issue a Listed Project Co PLAA on or before the Listed Project Co PLAA Deadline, as set out in Section 9.4(a) (*Failure to Make a Determination*) of Schedule 34 – Permits, Licences, Approvals and Agreements;



- (D) if an Issuing Authority has refused to issue a Listed Project Co PLAA for any reason other than Project Co failing to comply with the applicable Listed Project Co PLAA Requirements, as set out in Section 9.5(d) (*Refusal to Issue a Listed Project Co PLAA*) of Schedule 34 – Permits, Licences, Approvals and Agreements;
  - (E) if an Issuing Authority has issued a Listed Project Co PLAA with terms and conditions that are inconsistent with Listed Project Co PLAA Requirements, as set out in Section 9.6(c) (*Issuance of Listed Project Co PLAAs*) of Schedule 34 – Permits, Licences, Approvals and Agreements; or
  - (F) Contracting Authority’s failure to obtain or renew a Contracting Authority Permit, Licence, Approval or Agreement on or before the date listed in Appendix A (*Contracting Authority Permits, Licences, Approvals and Agreements*) of Schedule 34 – Permits, Licences, Approvals and Agreements;
- (xiv) [intentionally deleted];
- (xv) provided the then applicable Integration Demerit Points Incurred do not exceed the Integration Demerit Points Relief Threshold:
- (A) damage, costs or delays arising from any act or omission of RSSOM Project Co or a RSSOM Project Co Party (unless such act is expressly contemplated in this Project Agreement) including any such damage to or destruction of Project Co Infrastructure caused by RSSOM Project Co or a RSSOM Project Co Party;
  - (B) if Contracting Authority fails to provide any Critical RSSOM Infrastructure Data on or prior to the applicable Critical RSSOM Infrastructure Data Deadline; or
  - (C) if any Critical RSSOM Infrastructure Works are not Critical RSSOM Infrastructure Works Complete on or prior to the applicable Critical RSSOM Infrastructure Works Deadline, or cease to be Critical RSSOM Infrastructure Works Complete thereafter,
- except, in each case, to the extent caused or contributed to by an act or omission of Project Co or a Project Co Party;
- (xvi) an Early Works Section Handover Date occurring on a day after the applicable No Later Than Date;
- (xvii) an Early Works Construction Defect which Project Co may claim pursuant to the terms of Schedule 41 – Early Works Handover, except to the extent caused or contributed to by an act or omission of Project Co or a Project Co Party;
- (xviii) a Relief Event;
- (xix) an event of Force Majeure;

- (xx) a Relevant Change in Law;
- (xxi) a TBM Marine Event pursuant to Section 11.31(b);
- (xxii) a Pandemic and Epidemic Change in Law;
- (xxiii) subject to and in accordance with Section 11.36, a failure of a Utility Company to execute and deliver a completed Utility Agreement in the Form of Utility Agreement applicable to such Utility Company or in a form otherwise agreed to between Project Co and such Utility Company;
- (xxiv) subject to compliance by Project Co with the provisions of Section 11.20:
  - (A) a failure by Contracting Authority to complete or to cause the completion of the Utilities Preparatory Activities on or before the dates set out in Appendix Q (*Utilities Preparatory Activities*) of the Output Specifications, subject to and in accordance with the terms and conditions of Section 3.1.12.7(i) (*Preparatory Activities*) of the Output Specifications; or
  - (B) a failure by a Utility Company to perform any such Utility Company's obligations set out in Section 3.1.12.7(h) (*Specific Requirements*), provided Project Co has complied with the provisions of Section 3.1.12.7(h) (*Specific Requirements*) of the Output Specifications;
- (xxv) a stop work order issued by a Governmental Authority in respect of the Project Co Infrastructure, the New Third Party 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;
- (xxvi) a Protest Action, subject to and in accordance with Section 11.14(e);
- (xxvii) an amendment to the Access Opportunities Calendar or the Multi-Year Calendar to take into account changes to Railway Operations that are not Planned Railway Operations Changes, in accordance with Section 3.2(c) (*Access Opportunities Calendar*) of Schedule 40 – Rail Corridor Access and Flagging;
- (xxviii) for all Categories of Access and Subcategories of Access except for a Major Track Closure, a reduction to the length of time that Project Co will be allowed for a Permitted Rail Corridor Access after the issuance of a Rail Corridor Access Permit, if the reduction is equal to or exceeds the greater of fifteen minutes in total or ten percent of the total planned duration for Rail Corridor Access under the applicable Rail Corridor Access Permit (measured from the date and time the Railway Flag Person was scheduled to arrive at the location of the applicable Works on the Rail Corridor), in accordance with Section 8.1(a)(i)(B) (*Reduction in the Time Allocated for a Permitted Rail Corridor Access*) of Schedule 40 – Rail Corridor Access and Flagging;
- (xxix) for Major Track Closures, a reduction to the length of time that Project Co will be allowed for a Permitted Rail Corridor Access after the issuance of a Rail Corridor Access Permit, if the reduction is for greater than two hours in total, in accordance with Section

8.1(a)(ii)(B) (*Reduction in the Time Allocated for a Permitted Rail Corridor Access*) of Schedule 40 – Rail Corridor Access and Flagging;

- (xxx) for Non-Disruptive Accesses or White Period Accesses, subject to Section 4.3(d) (*Booking Requests*) of Schedule 40 – Rail Corridor Access and Flagging, a delay to the date or time for any requested Rail Corridor Access after the submission by Project Co of a Booking Request (but in any event prior to the issuance by Metrolinx of a Rail Corridor Access Permit), if Metrolinx fails to give Project Co at least twenty (20) Business Days' prior Notice of the delay or if the delay is for more than seven (7) days, in accordance with Section 8.2(a)(i)(B) (*Delay of a Requested Rail Corridor Access*) of Schedule 40 – Rail Corridor Access and Flagging;
- (xxxii) for Platform Closures or Minor Track Closures, subject to Section 4.3(d) (*Booking Requests*) of Schedule 40 – Rail Corridor Access and Flagging, a delay to the date or time for any requested Rail Corridor Access after the submission by Project Co of a Booking Request (but in any event prior to the issuance by Metrolinx of a Rail Corridor Access Permit), if Metrolinx fails to give Project Co at least eighty (80) Business Days' prior Notice of the delay or if the delay is for more than seven (7) days, in accordance with Section 8.2(a)(ii)(B) (*Delay of a Requested Rail Corridor Access*) of Schedule 40 – Rail Corridor Access and Flagging;
- (xxxiii) an evacuation or shutdown of the Rail Corridor as a result of an Emergency Rail Situation, provided that the Emergency Rail Situation did not arise as a result of an act or omission of Project Co or a Project Co Party, in accordance with Section 10.1(c) (*General – Rail Corridor Safety*) of Schedule 40 – Rail Corridor Access and Flagging;
- (xxxiiii) if Metrolinx, in its sole discretion, elects not to implement any or any portion of the Planned Railway Operation Changes, in accordance with Section 3.2(d)(i) (*Access Opportunities Calendar*) of Schedule 40 – Rail Corridor Access and Flagging;
- (xxxv) for all Categories of Access and Subcategories of Access except for a Major Track Closure, if Metrolinx reduces more than twenty-five percent of the total number of Permitted Rail Corridor Accesses, each by less than ten percent of the total planned duration for Rail Corridor Access under the applicable Rail Corridor Access Permit (measured from the date and time the Railway Flag Person was scheduled to arrive at the location of the applicable Works on the Rail Corridor), in accordance with Section 8.1(a)(i)(C) (*Reduction in the Time Allocated for a Permitted Rail Corridor Access*) of Schedule 40 – Rail Corridor Access and Flagging;
- (xxxvi) for all Categories of Access and Subcategories of Access except for a Major Track Closure, if Metrolinx reduces more than seventy-five percent of the total number of Permitted Rail Corridor Accesses, each by less than fifteen minutes, in accordance with Section 8.1(a)(i)(D) (*Reduction in the Time Allocated for a Permitted Rail Corridor Access*) of Schedule 40 – Rail Corridor Access and Flagging;
- (xxxvii) for Major Track Closures, subject to Section 4.3(d) (*Booking Requests*) of Schedule 40 – Rail Corridor Access and Flagging, if Metrolinx delays the date or time for any requested Rail Corridor Access after the submission by Project Co of a Booking Request (but in any event prior to the issuance by Metrolinx of a Rail Corridor Access Permit), if

Metrolinx fails to give Project Co at least one-hundred and fifty-five (155) Business Days' prior Notice of the delay or if the delay is for more than seven (7) days, in accordance with Section 8.2(a)(iii)(B) (*Delay of a Requested Rail Corridor Access*) of Schedule 40 – Rail Corridor Access and Flagging;

(xxxvii) for all Categories of Access and Subcategories of Access, subject to Section 4.3(d) (*Booking Requests*) of Schedule 40 – Rail Corridor Access and Flagging, if Metrolinx delays a requested Rail Corridor Access in a Booking Request pursuant to Sections 8.2(a)(i)(A), 8.2(a)(ii)(A) or 8.2(a)(iii)(A) (*Delay of a Requested Rail Corridor Access*) of Schedule 40 – Rail Corridor Access and Flagging, as applicable, without identifying an alternative date and time for the Rail Corridor Access in accordance with the time period set out in Section 8.2(a)(iv) (*Delay of a Requested Rail Corridor Access*) of Schedule 40 – Rail Corridor Access and Flagging, in accordance with Section 8.2(a)(iv) (*Delay of a Requested Rail Corridor Access*) of Schedule 40 – Rail Corridor Access and Flagging;

(xxxviii) subject to compliance by Project Co with the provisions of Sections 4.4 and 4.5 (*Warranty Claims, Warranty Work and Seasonal Minor Deficiencies*) of Schedule 41 – Early Works Handover, damage, costs or delays caused by an act or omission of an Early Works Contractor while performing Early Works Warranty Work or completing Seasonal Minor Deficiencies (each as defined in Schedule 41 – Early Works Handover) in the circumstances described in Section 4.7 (*Warranty Claims, Warranty Work and Seasonal Minor Deficiencies*) of Schedule 41 – Early Works Handover; or

(xxxix) if Contracting Authority cancels or reschedules a TTC Station Weekend Closure in the circumstances described in Section 3(l) (*Scheduling and Cancelling TTC Station Weekend Closures*) of Schedule 46 – TTC Station Weekend Closures.

## 30.2 Consequences of a Delay Event

- (a) Project Co shall provide written Notice to the Contracting Authority Representative, the CDB and the Independent Certifier within five (5) Business Days after becoming aware of the occurrence of any event or circumstances described in Section 30.1(a)(ii), Section 30.1(a)(iii), Section 30.1(a)(iv), Section 30.1(a)(v), Section 30.1(a)(vi), Section 30.1(a)(vii), Section 30.1(a)(viii), Section 30.1(a)(ix), Section 30.1(a)(x), Section 30.1(a)(xi), Section 30.1(a)(xiii), Section 30.1(a)(xv), Section 30.1(a)(xvi), Section 30.1(a)(xvii), Section 30.1(a)(xxii), Section 30.1(a)(xxiii), Section 30.1(a)(xxiv), Section 30.1(a)(xxv), Section 30.1(a)(xxvi), Section 30.1(a)(xxvii), Section 30.1(a)(xxviii), Section 30.1(a)(xxix), Section 30.1(a)(xxx), Section 30.1(a)(xxxii), Section 30.1(a)(xxxiii), Section 30.1(a)(xxxiv), Section 30.1(a)(xxxv), Section 30.1(a)(xxxvi), Section 30.1(a)(xxxvii), Section 30.1(a)(xxxviii) or Section 30.1(a)(xxxix), which, at the time of its occurrence, is reasonably likely to form the basis of a future claim by Project Co for relief under Section 30.2(e) as a Delay Event.
- (b) Project Co shall, within ten (10) Business Days (or such longer period of time as the Parties may agree) after delivering such notification under Section 30.2(a), provide further written details to the Contracting Authority Representative, the CDB and the Independent Certifier which shall include:

- (i) identification of the category of Delay Event on which Project Co's future claim for relief would be based if such event or circumstances were to form the basis of a claim for relief as a Delay Event;
  - (ii) details of the event or circumstances forming the basis of Project Co's notification under Section 30.2(a);
  - (iii) details of the contemporary records which Project Co shall thereafter maintain to substantiate its claim for extra time if the event or circumstances detailed in accordance with Section 30.2(b)(ii) forms the basis of a future claim by Project Co for relief as a Delay Event;
  - (iv) details of the consequences (whether direct or indirect, financial or non-financial) that such event or circumstances may have upon the Scheduled Substantial Completion Date, any Critical Works Deadline, any Critical Data Deadline or any No Later Than Date if such event or circumstances forms the basis of a future claim by Project Co for relief as a Delay Event;
  - (v) details of any measures that Project Co proposes to adopt to prevent such event or circumstances from forming the basis of a future claim by Project Co for relief as a Delay Event or to mitigate the consequences of such claim if such event or circumstances were to become a Delay Event; and
  - (vi) in respect of the circumstances described in Section 30.1(a)(v) or Section 30.1(a)(vi), such additional information as may be required by Schedule 44 – Geotechnical Baseline Report.
- (c) As soon as possible but in any event within three (3) Business Days after Project Co receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances disclosed in Section 30.2(a), Project Co shall submit further particulars based on such information to the Contracting Authority Representative, the CDB and the Independent Certifier.
- (d) The Contracting Authority Representative shall, after receipt of written details under Section 30.2(b), or of further particulars under Section 30.2(c), be entitled by written Notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall comply with such further requests and afford the Contracting Authority Representative, the CDB and the Independent Certifier reasonable facilities for their investigations, including on-site inspection.
- (e) In addition to complying with its obligations under Sections 30.2(a) and 30.2(b), Project Co shall provide written Notice to the Contracting Authority Representative, the CDB and the Independent Certifier within five (5) Business Days of: (A) becoming aware that an event or circumstances has satisfied, or will satisfy, in the opinion of Project Co, the applicable definition of a Delay Event, or (B) becoming aware of the occurrence of an event to which Section 30.2(j) applies. Project Co shall, within ten (10) Business Days after such notification, provide further written details of the Delay Event or the event to which Section 30.2(j) applies to the Contracting Authority Representative, the CDB and the Independent Certifier, including, if and as applicable, to substitute or supplement the information given in Sections 30.2(a), 30.2(b) and 30.2(c), to

substantiate or support Project Co's claim which shall include, to the extent not previously provided:

- (i) a statement of which Delay Event (or event pursuant to Section 30.2(j)) upon which the claim is based;
  - (ii) details of the circumstances from which the Delay Event (or event pursuant to Section 30.2(j)) arises;
  - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time or pursuant to Section 30.2(j);
  - (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, any Critical Works Deadline, any Critical Data Deadline or any No Later Than Date, including a Critical Path analysis of the event or circumstance indicating the impact upon the Scheduled Substantial Completion Date; and
  - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event or event pursuant to Section 30.2(j).
- (f) As soon as possible, but in any event within three (3) Business Days after Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim under Section 30.2(e), Project Co shall submit further particulars based on such information to the Contracting Authority Representative, the CDB and the Independent Certifier.
- (g) The Contracting Authority Representative shall, after receipt of written details under Section 30.2(e), or of further particulars under Section 30.2(f), be entitled by written Notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall comply with such further requests and afford the Contracting Authority Representative, the CDB and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including on-site inspection.
- (h) Subject to the provisions of this Section 30, the Contracting Authority Representative shall allow Project Co an extension of time equal to the delay to the Scheduled Substantial Completion Date, any Critical Works Deadline, any Critical Data Deadline or any No Later Than Date caused by the Delay Event and shall fix a revised Scheduled Substantial Completion Date, Critical Works Deadline, Critical Data Deadline or No Later Than Date, as applicable, as soon as reasonably practicable and in any event within ten (10) Business Days following the later of:
- (i) the date of receipt by the Contracting Authority Representative of Project Co's Notice given in accordance with Section 30.2(e) and the date of receipt of adequate further particulars (if such are required under Section 30.2(f)), whichever is later; and
  - (ii) the date of receipt by the Contracting Authority Representative of any supplemental information supplied by Project Co or requested by Contracting Authority in accordance

with Section 30.2(f) and the date of receipt of any further particulars (if such are required under Section 30.2(g)), whichever is later.

- (i) If:
- (i) the Contracting Authority Representative declines to fix a revised Scheduled Substantial Completion Date, Critical Works Deadline, Critical Data Deadline or No Later Than Date;
  - (ii) Project Co considers that a different Scheduled Substantial Completion Date, Critical Works Deadline, Critical Data Deadline or No Later Than Date should be fixed; or
  - (iii) there is a dispute as to whether a Delay Event has occurred,
- then Project Co shall be entitled to refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (j) Subject to Project Co meeting the obligations set out in Section 30.2 and Section 30.3, if,
- (i) a Municipal Lane Closure is directly caused or extended by one or more of the events set out in Section 30.1(a), whether or not such event constitutes a Delay Event, such Municipal Lane Closure or extension thereof shall not be included in the Aggregate Actual Lane Closures or the Aggregate Actual Lane Closure Cost for the relevant Road Section for the purposes of calculating the Lane Closure Adjustment in accordance with the process set out in Schedule 7 – Mobility Matters;
  - (ii) a Property Access Closure is directly caused or extended by one or more of the events set out in Section 30.1(a), whether or not such event constitutes a Delay Event, such Property Access Closure or extension thereof shall not be included in the Aggregate Actual Property Access Closures or the Aggregate Actual Property Access Closures Cost for the relevant Property Access Area for the purposes of calculating the Property Access Closure Adjustment in accordance with the process set out in Schedule 36 – Property Access Matters;
  - (iii) for clarity, Sections 30.2(j)(i) and 30.2(j)(ii) shall apply only to the extent that a Municipal Lane Closure or Property Access Closure was not contemplated by the Aggregate Target Lane Closures or Aggregate Target Property Access Closures and not merely because a Municipal Lane Closure or Property Access Closure has been deferred; and
  - (iv) a Construction Period Quality Failure,
    - (A) has been assessed in accordance with Schedule 19 – Liquidated Damages and Construction Enforcement Regime; and
    - (B) has arisen from a Non-Conformance that has been directly caused by one or more of the events set out in Section 30.1(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 in accordance with Section 6 (*Construction Enforcement Regime*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime.

- (k) To the extent that Project Co does not comply with its obligations under Sections 30.2(a), (b), (c), (d), (e), (f) or (g), and subject to Section 30.2(l), such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 30.
- (l) If Project Co does not provide further written details to the Contracting Authority Representative, the CDB and the Independent Certifier as required under Section 30.2(b) within the ten (10) Business Day period referred to in such Section, Project Co acknowledges and agrees that, after a further ten (10) Business Days, Project Co shall not be entitled to rely upon, and Contracting Authority shall not be obligated to consider, the Notice given under Section 30.2(a) for the purposes of determining Project Co's entitlement to relief under this Section 30.
- (m) If the Works are behind schedule for a reason other than a Delay Event, or if a Project Co Party delays the progress of any portion of the Works necessary to complete the Works on schedule, Project Co shall use all reasonable measures to bring the Works back on schedule. Project Co shall exercise all means within its discretion, such as directing any Project Co Party that is creating delays to increase their labour forces and equipment, to improve the organization and expediting of the Works, or to work overtime as may be necessary. Project Co shall provide any additional supervision, coordination and expediting, including overtime by its own personnel as may be required to achieve this end. The costs and expenses incurred by the use of such measures and overtime shall be borne by Project Co and/or the Project Co Parties and there shall be no adjustment to the Guaranteed Price as a result of such costs and expenses and for clarity, no extension to the Scheduled Substantial Completion Date, any Critical Works Deadline, any Critical Data Deadline or any No Later Than Date.
- (n) Where there are concurrent delays, some of which are caused by Contracting Authority or others for whom Contracting Authority is responsible, and some of which are caused by Project Co or others for whom Project Co is responsible, Project Co shall not be entitled to an extension in the Scheduled Substantial Completion Date, any applicable Critical Works Deadline, any applicable Critical Data Deadline or any applicable No Later Than Date, to the extent of the concurrent delays. Concurrent delays are those that are caused by two or more independent events, and which each affect the Scheduled Substantial Completion Date, or the same Critical Works Deadline, the same Critical Data Deadline or the same No Later Than Date, as applicable, where the time period over which such delays occur overlap in time, but only for the duration of the overlap.
- (o) In no event shall the extension of time for a Delay Event be more than the necessary extension of the Critical Path as a result of the Delay Event.

### 30.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Delay Event, 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; and
  - (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 30.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 30.

## 31. COMPENSATION EVENTS

### 31.1 Definition

- (a) For the purposes of this Project Agreement, “**Compensation Event**” means any event referred to in Section 30.1(a)(ii), Section 30.1(a)(iii), Section 30.1(a)(iv), Section 30.1(a)(v), Section 30.1(a)(vi), Section 30.1(a)(vii), Section 30.1(a)(viii), Section 30.1(a)(ix), Section 30.1(a)(x), Section 30.1(a)(xi), Section 30.1(a)(xii), Section 30.1(a)(xiii), Section 30.1(a)(xv), Section 30.1(a)(xvi), Section 30.1(a)(xvii), Section 30.1(a)(xxiii), Section 30.1(a)(xxiv), Section 30.1(a)(xxv), Section 30.1(a)(xxvii), Section 30.1(a)(xxviii), Section 30.1(a)(xxix), Section 30.1(a)(xxx), Section 30.1(a)(xxxi), Section 30.1(a)(xxxii), Section 30.1(a)(xxxiii), Section 30.1(a)(xxxiv), Section 30.1(a)(xxxv), Section 30.1(a)(xxxvi), Section 30.1(a)(xxxvii), Section 30.1(a)(xxxviii) or Section 30.1(a)(xxxix), 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.

### 31.2 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 31. 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 30.1(a)(i);
  - (ii) Section 33, in the case of a Delay Event referred to in Section 30.1(a)(xix);
  - (iii) Section 32, in the case of a Delay Event referred to in Section 30.1(a)(xviii);
  - (iv) Section 28, in the case of a Delay Event referred to in Section 30.1(a)(xx);
  - (v) Section 28.4, in the case of a Delay Event referred to in Section 30.1(a)(xxii); and
  - (vi) Section 11.14(e)(ii), in the case of a Delay Event referred to in Section 30.1(a)(xxvi).
- (b) Subject to Sections 31.2(c), 31.3 and 31.4, if it is agreed, or determined in accordance with Schedule 27 – Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such

compensation will include amounts which, but for the Delay Event, would have been paid by Contracting Authority to Project Co. Project Co shall promptly provide the Contracting Authority Representative with any information the Contracting Authority Representative may require in order to determine the amount of such compensation.

- (c) If Contracting Authority is required to compensate Project Co pursuant to this Section 31.2, then Contracting Authority may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably.
- (d) To the extent that Project Co does not comply with its obligations under Sections 30.2(a), (b), (c), (d), (e), (f) or (g), and subject to Section 30.2(l), such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 31.
- (e) If an event listed in Sections 30.1(a)(i) to 30.1(a)(xxxix) caused Project Co to be delayed as of the time of the applicable Scheduled Milestone Payment Completion Date, when delay is measured in accordance with Section 30.2, and such delay resulted in Project Co failing to achieve Milestone Payment Completion for any Milestone Payment, and to the extent that such failure was not caused, or contributed to, by Project Co or any Project Co Party,
  - (i) in the case of the First Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the First Milestone Payment arising from the applicable period of delay, subject to Section 31.3 and without duplication of any amounts already paid by Contracting Authority in accordance with Section 31.2;
  - (ii) in the case of the Second Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the Second Milestone Payment arising from the applicable period of delay, subject to Section 31.3 and without duplication of any amounts already paid by Contracting Authority in accordance with Section 31.2 including any amounts already paid pursuant to Section 31.2(e)(i);
  - (iii) in the case of the Third Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the Third Milestone Payment arising from the applicable period of delay, subject to Section 31.3 and without duplication of any amounts already paid by Contracting Authority in accordance with Section 31.2 including any amounts already paid pursuant to Sections 31.2(e)(i) and 31.2(e)(ii);
  - (iv) in the case of the Fourth Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the Fourth Milestone Payment arising from the applicable period of delay, subject to Section 31.3 and without duplication of any amounts already paid by Contracting Authority in accordance with Section 31.2 including any amounts already paid pursuant to Sections 31.2(e)(i), 31.2(e)(ii) and 31.2(e)(iii);
  - (v) in the case of the Fifth Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the Fifth Milestone Payment arising from the applicable period of delay, subject to Section 31.3 and without duplication of any amounts already paid by Contracting Authority in accordance with

Section 31.2 including any amounts already paid pursuant to Sections 31.2(e)(i), 31.2(e)(ii), 31.2(e)(iii) and 31.2(e)(iv);

- (vi) in the case of the Sixth Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the Sixth Milestone Payment arising from the applicable period of delay, subject to Section 31.3 and without duplication of any amounts already paid by Contracting Authority in accordance with Section 31.2 including any amounts already paid pursuant to Sections 31.2(e)(i), 31.2(e)(ii), 31.2(e)(iii), 31.2(e)(iv) and 31.2(e)(v);
- (vii) in the case of the Seventh Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the Seventh Milestone Payment arising from the applicable period of delay, subject to Section 31.3 and without duplication of any amounts already paid by Contracting Authority in accordance with Section 31.2 including any amounts already paid pursuant to Sections 31.2(e)(i), 31.2(e)(ii), 31.2(e)(iii), 31.2(e)(iv), 31.2(e)(v) and 31.2(e)(vi);
- (viii) in the case of the Eighth Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the Eighth Milestone Payment arising from the applicable period of delay, subject to Section 31.3 and without duplication of any amounts already paid by Contracting Authority in accordance with Section 31.2 including any amounts already paid pursuant to Sections 31.2(e)(i), 31.2(e)(ii), 31.2(e)(iii), 31.2(e)(iv), 31.2(e)(v), 31.2(e)(vi) and 31.2(e)(vii);
- (ix) in the case of the Ninth Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the Ninth Milestone Payment arising from the applicable period of delay, subject to Section 31.3 and without duplication of any amounts already paid by Contracting Authority in accordance with Section 31.2 including any amounts already paid pursuant to Sections 31.2(e)(i), 31.2(e)(ii), 31.2(e)(iii), 31.2(e)(iv), 31.2(e)(v), 31.2(e)(vi), 31.2(e)(vii) and 31.2(e)(viii);
- (x) in the case of the Tenth Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the Tenth Milestone Payment arising from the applicable period of delay, subject to Section 31.3 and without duplication of any amounts already paid by Contracting Authority in accordance with Section 31.2 including any amounts already paid pursuant to Sections 31.2(e)(i), 31.2(e)(ii), 31.2(e)(iii), 31.2(e)(iv), 31.2(e)(v), 31.2(e)(vi), 31.2(e)(vii), 31.2(e)(viii) and 31.2(e)(ix);
- (xi) all compensation owed to Project Co arising from Sections 31.2(e)(i), 31.2(e)(ii), 31.2(e)(iii) and 31.2(e)(iv) shall be calculated as of the applicable Milestone Payment Completion Date and shall be limited to only the compensation set out in Sections 31.2(e)(i), 31.2(e)(ii), 31.2(e)(iii) and 31.2(e)(iv); and
- (xii) any amount payable by Contracting Authority pursuant to Section 31.2(e) shall be payable on the applicable Milestone Payment Completion Date.

### 31.3 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 31 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 31.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 31.

### 31.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 31 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.

## 32. RELIEF EVENTS

### 32.1 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, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute Force Majeure) or earthquake;
  - (ii) failure by any Utility Company, local authority or other like body to perform works or provide services (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 32.1(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 32.1(a)(ii) shall not apply

in circumstances where Project Co has entered into an 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 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 that is not a Protest Action and that falls short of an event of Force Majeure;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the Project Co Infrastructure, the New Third Party Infrastructure or construction industry (or a significant sector of that industry) in the Province of Ontario; or
- (vii) the occurrence of a Pandemic and Epidemic Supply Chain Delay,

provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of the Party claiming relief and/or (i) in the case of Project Co claiming relief, as a result of any act or omission of any Project Co Party and (ii) in the case of Contracting Authority claiming relief, as a result of any act or omission of any Contracting Authority Party.

### 32.2 Consequences of a Relief Event

- (a) Subject to Section 32.3, no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 36.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement, 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).
- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 30.1(a)(xviii):
  - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 30; and
  - (ii) in respect of a Relief Event referred to in Sections 32.1(a)(ii) (but only in respect of failure by a Utility Company to perform works or provide services), 32.1(a)(v), 32.1(a)(vi) or 32.1(a)(vii), on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Contracting Authority Default Termination Sum or Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, Contracting Authority shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Senior Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the Contracting Authority Default

Termination Sum or Non-Default 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 and the effects of the Relief Event continue for one-hundred and eighty (180) days from the date on which the Party affected gives Notice to the other Party pursuant to Section 32.3(c) and provided:

- (i) the effects of the Relief Event continue during such period to prevent Project Co from performing a material part of its obligations under this Project Agreement; and
- (ii) neither Party has terminated the Project Agreement pursuant to Section 36.1(a),

then, commencing after such one-hundred and eighty (180) day period, such Relief Event shall be treated as a Compensation Event pursuant to Section 31.1(a). For greater clarity, the entitlement to compensation shall only apply with respect to the period of time after such one-hundred and eighty (180) days during which the conditions set out in this Section 32.2(c) are met.

- (d) If a Relief Event occurs, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 32.2(b)(ii), 32.2(c) and 38.
- (e) Subject to Section 38, 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 32.

### **32.3 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 32.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 32.
- (c) The Party claiming relief shall give written Notice to the other Party within five (5) Business Days after such Party becoming aware of the relevant Relief Event. Such initial Notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written Notice shall be given by the Party claiming relief to the other Party within a further five (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 32.3(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 32.3(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.

### 32.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 32 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.

## 33. FORCE MAJEURE

### 33.1 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 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 Infrastructure and/or the Lands from any event referred to in Section 33.1(a)(i);
  - (iv) pressure waves caused by devices traveling at supersonic speeds; or
  - (v) the discovery of any Species-at-Risk, or Items of Interest or Value, which, as a result of Applicable Law, requires the Works to be abandoned.

### 33.2 Consequences of Force Majeure

- (a) Subject to Section 33.3, 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 30.1(a)(xix):
- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 30; and

- (ii) on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Contracting Authority Default Termination Sum or Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, Contracting Authority shall pay to Project Co an amount equal to the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or that accrued in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the Contracting Authority Default Termination Sum or Non-Default Termination Sum, as applicable, together with interest thereon at the rate 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 33.2(b)(ii) and 38.
- (d) Subject to the provisions of this Section 33, 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 Municipal 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; and
  - (ii) a Property Access Closure that is directly caused or extended by the occurrence of an event of Force Majeure shall not be included in the Aggregate Actual Property Access Closures or the Aggregate Actual Property Access Closures Cost for the relevant Property Access Area for the purposes of calculating the Property Access Closure Adjustment in accordance with the process set out in Schedule 36 – Property Access Matters.
- (e) Subject to Section 38, 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 33.

### **33.3 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, including efforts to minimize any negative impact of the event of Force Majeure on the Project Works Schedules.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 33.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 33.



- (c) The Party claiming relief shall give written Notice to the other Party within five (5) Business Days after such Party becoming aware of the relevant event of Force Majeure. Such initial Notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written Notice shall be given by the Party claiming relief to the other Party within a further five (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 33.3(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 33.3(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.

### 33.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 33 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.

### 33.5 Modifications

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 – Dispute Resolution Procedure shall not apply to a failure of Contracting Authority and Project Co to reach agreement pursuant to this Section 33.5.

## 34. PROJECT CO DEFAULT

### 34.1 Project Co Events of Default

- (a) For the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
  - (i) the occurrence of any of the following events other than as a consequence of a breach by Contracting Authority of its payment obligations hereunder:
    - (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a

receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co's assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, Contracting Authority, a Contracting Authority Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the Works or of the Contracting Authority Activities (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within ninety (90) days after 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 34.1(a)(i);

- (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 34.1(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 34.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within three hundred and sixty-five (365) days after the Scheduled Substantial Completion Date (the "**Longstop Date**");

- (iii) Project Co:
  - (A) failing to deliver a Recovery Works Schedule under Section 14.1(b)(i) (*Failure to Maintain Schedule for the Works*) of Schedule 12 – Works Schedule Requirements;
  - (B) delivering a Recovery Works Schedule under Section 14.1(b)(i) (*Failure to Maintain Schedule for the Works*) of Schedule 12 – Works Schedule Requirements which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
  - (C) delivering a Recovery Works Schedule under Section 14.1(b)(i) (*Failure to Maintain Schedule for the Works*) of Schedule 12 – Works Schedule Requirements that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 14.1(c)(ii) (*Failure to Maintain Schedule for the Works*) of Schedule 12 – Works Schedule Requirements;
- (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Works, or the Governmental Activities, or that may compromise (A) Contracting Authority’s reputation or integrity, or (B) the nature of the public transit system in the City of Toronto or the Province of Ontario so as to affect public confidence in the public transit system in the City of Toronto or the Province of Ontario 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 ten (10) Business Days after receipt of Notice of the same from Contracting Authority;
- (v) Project Co committing a breach of Sections 40 or 41;
- (vi) Project Co committing a breach of its obligations under this Project Agreement (other than a breach that is otherwise referred to in Sections 34.1(a)(i) to (v) inclusive or (vii) to (xvii) inclusive) which has or will have a material adverse effect on the Governmental Activities other than where such breach is a consequence of a breach by Contracting Authority of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
  - (A) Project Co shall:
    - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on Contracting Authority and the performance of Contracting Authority’s operations and the Contracting Authority Activities;
    - (II) put forward, within seven (7) Business Days after receipt of Notice of such breach from Contracting Authority, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and

the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within ninety (90) days after 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;
- (vii) Project Co wholly abandoning the Works for a period which exceeds three (3) Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement;
- (viii) Project Co failing to comply with Sections 47.1 or 47.3;
- (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 47.4;
- (x) Project Co failing to remove an Encumbrance that arose (i) due to an act or omission of Project Co or any Project Co Party (other than any Encumbrance derived through Contracting Authority), or (ii) in relation to the Works, in either case, within forty-five (45) days following 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;
- (xi) Project Co failing to pay any sum or sums due to Contracting Authority under this Project Agreement, which sum or sums are not being disputed in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set-off by Project Co pursuant to Section 4.11(a)(ii), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and such failure continues for forty-five (45) days from receipt by Project Co of a Notice of non-payment from Contracting Authority;
- (xii) Project Co failing to comply with Section 48;
- (xiii) Project Co failing to comply with Section 8.3 or Schedule 28 – Refinancing;
- (xiv) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement, and:

- (A) in respect of insurance, such breach by Project Co is not remedied within ten (10) Business Days after the occurrence of the breach; and
  - (B) in respect of a bond or security, such breach by Project Co is not remedied within five (5) Business Days after Project Co becoming aware of such breach;
- (xv) Project Co failing to comply with any determination, decision, order or award made against Project Co in accordance with Schedule 27 – Dispute Resolution Procedure;
- (xvi) a default by Project Co or any Project Co Party under any of the Ancillary Documents following the expiry of any applicable notice and cure periods thereunder; or
- (xvii) liquidated damages being payable by Project Co pursuant to Section 5.1 (*Failure to Achieve Section Substantial Completion, Subsection RSSOM Access Date or Deliver Critical Data or Critical Works on Time*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime, in an amount equal to, or in excess of, in aggregate, the Integration Milestones LD Liability Cap.

### 34.2 Notification of Occurrence

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

### 34.3 Right to Termination

- (a) On the occurrence of a Project Co Event of Default, or at any time after Contracting Authority becomes aware of a Project Co Event of Default (and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation that a Project Co Event of Default has occurred in accordance with Schedule 27 – Dispute Resolution Procedure or the Integration Dispute Resolution Procedure, as applicable), Contracting Authority may, subject to Section 34.4, 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.
- (b) Notwithstanding Section 34.3(a) above, on the occurrence of a Project Co Event of Default set out in Sections 34.1(a)(i), 34.1(a)(ix) (but only in respect of a breach of Sections 47.4(a) or 47.4(b)(i)) or 34.1(a)(xii), Contracting Authority may, subject to Section 34.4, terminate this Project Agreement in its entirety by written Notice having immediate effect, prior to and without the need to obtain confirmation through Schedule 27 – Dispute Resolution Procedure, such Notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice.

### 34.4 Remedy Provisions

- (a) In the case of a Project Co Event of Default referred to in Sections 34.1(a)(i)(B), 34.1(a)(i)(C), 34.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 34.1(a)(i)(D) is

analogous to a Project Co Event of Default referred to in Section 34.1(a)(i)(B) or 34.1(a)(i)(C)), 34.1(a)(iii), 34.1(a)(iv), 34.1(a)(v), 34.1(a)(vii), 34.1(a)(viii), 34.1(a)(ix), (where the Project Co Event of Default referred to in Section 34.1(a)(ix) is capable of being remedied), 34.1(a)(xi), 34.1(a)(xiii), 34.1(a)(xiv) (where the Project Co Event of Default referred to in Section 34.1(a)(xiv) is not in respect of insurance), 34.1(a)(xv) or 34.1(a)(xvi), Contracting Authority shall, prior to being entitled to terminate this Project Agreement, give Notice of default to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice, and Project Co shall:

- (i) within seven (7) Business Days after 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 forty-five (45) days after the Notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to Contracting Authority, acting reasonably; and
  - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 34.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond forty-five (45) days from the Notice of default, Contracting Authority shall have five (5) Business Days from receipt of the same within which to notify Project Co that Contracting Authority does not accept such longer period in the plan and schedule and that the forty-five (45) day limit will apply, failing which Contracting Authority shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a Notice of default was given under Section 34.4(a), occurs and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on Contracting Authority and the Governmental Activities; or
  - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 34.4(a)(i); or
  - (iii) such Project Co Event of Default is not remedied within forty-five (45) days after such Notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 34.4(a) and (b); or
  - (iv) where Project Co puts forward a plan and schedule pursuant to Section 34.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

then Contracting Authority may terminate this Project Agreement in its entirety by written Notice with immediate effect, such Notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice.

- (d) Notwithstanding that Contracting Authority may give the Notice referred to in Section 34.4(a), and without prejudice to the other rights of Contracting Authority in this Section 34.4, at any time during which a Project Co Event of Default is continuing, Contracting Authority may, at Project Co's risk and expense, take such steps as Contracting Authority considers appropriate, either 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 34.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and Contracting Authority shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

### 34.5 Contracting Authority Costs

- (a) Project Co shall reimburse Contracting Authority for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Contracting Authority in exercising its rights under this Section 34, including any relevant increased administrative expenses. Contracting Authority shall take commercially reasonable steps to mitigate such costs.

### 34.6 No Other Rights to Terminate

- (a) Contracting Authority shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 34 and 36.

## 35. CONTRACTING AUTHORITY DEFAULT

### 35.1 Contracting Authority Events of Default

- (a) For the purposes of this Project Agreement, "**Contracting Authority Event of Default**" means any one or more of the following events or circumstances:
  - (i) Contracting Authority failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set-off by Contracting Authority pursuant to Section 4.11(a), and which sum or sums, either singly or in aggregate, exceed(s) **[\$REDACTED]** (index linked), and:
    - (A) in respect of the Substantial Completion Payment or Legislative Holdback, such failure continues for a period of ten (10) Business Days;
    - (B) respect of the First Milestone Payment, Second Milestone Payment, Third Milestone Payment, Fourth Milestone Payment, Fifth Milestone Payment,

Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment or the Tenth Milestone Payment, such failure continues for a period of thirty (30) days; or

- (C) in respect of any other payment due and payable by Contracting Authority to Project Co under this Project Agreement, such failure continues for a period of ninety (90) days,

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

- (ii) Contracting Authority committing a material breach of its obligations under Section 16 (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 all or substantially all of its remaining Works obligations under this Project Agreement for a continuous period of not less than sixty (60) days, and after receipt of a Notice of such breach from Project Co, Contracting Authority failing to remedy such breach in accordance with all of the following:

- (A) Contracting Authority shall:

- (I) immediately commence and thereafter diligently continue to remedy the breach and to use commercially reasonable efforts to mitigate any adverse effects on Project Co;
- (II) put forward, within five (5) Business Days of receipt of the Notice referred to in this Section 35.1(a)(ii), 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 day shall in any event be within sixty (60) days of such Notice, 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; or

- (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its remaining Works 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 sixty (60) days, provided that, for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences, Approvals and Agreements shall not constitute an “act of any Governmental Authority”.



**35.2 Project Co's Options**

- (a) On the occurrence of a Contracting Authority Event of Default and while the same is continuing, Project Co may give Notice to Contracting Authority of the occurrence of such Contracting Authority Event of Default, which Notice will specify the details thereof, and, 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 until such time as Contracting Authority has remedied such Contracting Authority Event of Default; or
  - (ii) if such Contracting Authority Event of Default has not been remedied within thirty (30) days after receipt by Contracting Authority of Notice of the occurrence of such Contracting Authority Event of Default, terminate this Project Agreement in its entirety by Notice in writing having immediate effect.

**35.3 Project Co's Costs**

- (a) Contracting Authority shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Project Co in exercising its rights under this Section 35, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

**35.4 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.

**36. RELIEF EVENT AND NON DEFAULT TERMINATION****36.1 Termination for Relief Event**

- (a) If a Relief Event occurs and the effects of the Relief Event continue for one-hundred and eighty (180) days from the date on which the Party affected gives Notice to the other Party pursuant to Section 32.3(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 all or substantially all of its obligations under this Project Agreement.

**36.2 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 33.5 within one-hundred and eighty (180) days after 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 all or substantially all of its obligations under this Project Agreement.

### **36.3 Termination for Convenience**

- (a) Contracting Authority shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on one-hundred and eighty (180) days written Notice to Project Co.
- (b) In the event of Notice being given by Contracting Authority in accordance with this Section 36.3, Contracting Authority shall, at any time before the expiration of such Notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works where such Works have not yet been commenced.

### **36.4 Termination for Site Condition Event**

- (a) If a Site Condition Event occurs which entitles Project Co to Delay Event relief pursuant to Section 30, and the effects of the Site Condition Event continue for one-hundred and eighty (180) days from the date on which either Party becomes aware of such event, Contracting Authority may, at any time thereafter, terminate this Project Agreement by written Notice to Project Co having immediate effect, provided that the effects of the Site Condition Event continue during such period to prevent either Party from performing a material part of its obligations under the Project Agreement.

### **36.5 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

### **36.6 Termination due to Protest Action**

- (a) If a Protest Action occurs which entitles Project Co to Delay Event relief pursuant to Section 30 and the effects of such Protest Action continue for one-hundred and eighty (180) days from the date on which Project Co gives Notice to Contracting Authority pursuant to Section 30.2(a), Contracting Authority may, at any time thereafter, terminate this Project Agreement by written Notice to Project Co having immediate effect, provided that the effects of such Protest Action continue during such period.

## **37. EFFECT OF TERMINATION**

### **37.1 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 36.4, this Section 37 shall apply in respect of such termination.

**37.2 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.

**37.3 Continuing Performance**

- (a) Subject to any exercise by Contracting Authority of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 – Compensation on Termination) notwithstanding the giving of any Notice of default or Notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 37.

**37.4 Effect of Notice of Termination**

- (a) On the service of a Notice of termination, or termination on the Expiry Date pursuant to Section 36.4:
- (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to Contracting Authority as shall not already have been transferred to Contracting Authority pursuant to Section 43.1, Project Co shall transfer to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than the Encumbrances caused or consented to by Contracting Authority), such part of the Works, the Project Co Infrastructure, and the New Third Party Infrastructure as shall have been constructed and such items of the Plant, infrastructure and equipment as shall have been procured by Project Co, and, if Contracting Authority so elects:
- (A) all Plant, equipment and materials (other than those referred to in Section 37.4(a)(i)(B)) on or near to the Lands shall remain available to Contracting Authority for the purposes of completing the Works; and
- (B) all construction Plant and equipment shall remain available to Contracting Authority for the purposes of completing the Works, subject to payment by Contracting Authority of the Construction Contractor's reasonable charges;
- (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to Contracting Authority (to the extent such items have not already been delivered to Contracting Authority) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works, the Project Co Infrastructure, and the New Third Party Infrastructure;

- (iii) in so far as title shall not have already passed to Contracting Authority pursuant to Section 43.1 or Section 37.4(a)(i), Project Co shall hand over to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than any Encumbrances caused or consented to by Contracting Authority), the Project Co Infrastructure and the New Third Party Infrastructure together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Works and all facilities and equipment, and to the extent that any such assets or rights are not capable of being transferred by Project Co to Contracting Authority, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by Contracting Authority in order to enable 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 Contracting Authority so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Design and Construction Contract), 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 Works or to protect the interests of Project Co, shall be novated or assigned to Contracting Authority or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of the Design and Construction Contract with the Construction Contractor shall be made by Contracting Authority pursuant to, and subject to, the terms of the Construction Contractor's Direct Agreement;
- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if Contracting Authority so elects, execute such sale) to Contracting Authority at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 – Dispute Resolution Procedure), free from all Encumbrances (other than any Encumbrances caused or consented to by Contracting Authority), all or any part of the stocks of material and other assets, road vehicles, construction equipment, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the Project Co Infrastructure, and reasonably required by Contracting Authority in connection with the operation of the Project Co Infrastructure;
- (vi) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to Contracting Authority, free from all Encumbrances (other than any Encumbrances caused or consented to by Contracting Authority), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical Plant and equipment used or made available by Project Co under this Project Agreement and included in the Project Co Infrastructure and the New Third Party Infrastructure; and
- (vii) Project Co shall deliver to Contracting Authority all information, reports, documents, records and the like referred to in Section 26, including as referred to in Schedule 26 – Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to Contracting Authority).

**37.5 Ownership of Information**

- (a) Subject to Section 39, all information obtained by Project Co, including the As-Built Drawings, Record Drawings, and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, static building information, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Works accumulated over the course of the Project Term shall be the property of Contracting Authority and upon termination of this Project Agreement shall be provided or returned to Contracting Authority, as applicable, in electronic format acceptable to Contracting Authority, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

**37.6 Provision in Subcontracts**

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that Contracting Authority shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 37.

**37.7 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:
- (i) as soon as practicable remove from the Lands all property belonging to Project Co or any Project Co Party that is not acquired by Contracting Authority pursuant to Section 37.4 or otherwise, and, if Project Co has not done so within sixty (60) days after any Notice from Contracting Authority requiring it to do so, Contracting Authority may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
  - (ii) forthwith deliver to the Contracting Authority Representative:
    - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Project Co Infrastructure; and
    - (B) to the extent transferable and without prejudice to Contracting Authority's rights pursuant to Section 39, any Copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Project Co Infrastructure; and
  - (iii) as soon as practicable vacate the Lands and shall leave the Lands and the Project Co Infrastructure in a safe, clean and orderly condition.

**37.8 Termination upon Aforesaid Transfer**

- (a) On completion of Project Co's obligations pursuant to this Section 37, this Project Agreement shall terminate and, except as provided in Section 37.9, all rights and obligations of Contracting

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

### 37.9 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;
  - (ii) Sections 1, 4.11, 4.12, 4.13, 4.14, 6, 7, 8, 11.17, 11.18, 11.19, 11.27, 11.32(b), 16.4, 17.2, 17.3(a), 17.3(b), 18.1, 18.2, 18.3(a), 18.3(f), 18.4(a), 18.4(d), 18.5(a), 18.5(b), 18.6(a), 18.6(c), 18.7(a), 18.7(c), 22.6, 23.11, 25, 26, 34.5, 35.3, 36.5, 37, 38, 39 (with the exception of 39.4(b)), 40, 41, 42.3, 43, 44, 45, 46, 48.3, 49.1, 49.5, 52.4, 52.8, 52.9, 52.10, 52.11, 52.12 of this Project Agreement, Schedule 1 – Definitions and Interpretation, Schedule 7 – Mobility Matters, Schedule 14 – Commissioning, Schedule 19 – Liquidated Damages and Construction Enforcement Regime, Schedule 20 – Warranty Letter of Credit, Schedule 23 – Compensation on Termination, Sections 1.2 to 1.8 (*General Requirements*) of Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure, Schedule 32 – Financial Model, Sections 1 (*Interpretation*) and 2 (*Ownership*), and 3.2 to 3.9 (*Licences*) of Schedule 37 of Schedule 37 – Intellectual Property; and
  - (iii) any other provisions of this Project Agreement which are expressed to survive termination or which are required to give effect to or to import such provisions which survive termination or which apply 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 36.4. For clarity, any termination of this Project Agreement shall be without prejudice to, and shall not affect, the Performance Guarantee of Construction Guarantor, which shall survive the termination of this Project Agreement, including termination on the Expiry Date pursuant to Section 36.4, in respect of any and all of such surviving provisions of the Project Agreement.

## 38. COMPENSATION ON TERMINATION

### 38.1 Compensation on Termination

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

### 38.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 38.2(b), any compensation paid pursuant to this Section 38, including pursuant to Schedule 23 – Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and Contracting Authority, and each shall be released from all liability to the other in

relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and Contracting Authority shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.

- (b) Section 38.2(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 4.11 or taken into account pursuant to Schedule 23 – Compensation on Termination in determining or agreeing upon the Contracting Authority Default Termination Sum, Non-Default Termination Sum, Project Co Default Termination Sum or any other termination sum, as the case may be; and
  - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 37.9 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.

## **39. INTELLECTUAL PROPERTY**

### **39.1 Ownership of Intellectual Property**

- (a) Subject to Section 39.3(a), the Ownership of Intellectual Property shall be as set out in Schedule 37 – Intellectual Property. Project Co and Contracting Authority shall each comply with the requirements of Schedule 37 – Intellectual Property.

### **39.2 Licences 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.

### **39.3 Representation and Warranty**

- (a) Project Co represents, warrants and covenants to Contracting Authority that:
- (i) Project Co has and shall have the full and unencumbered right to provide all rights and licences granted to, and to confirm the extension of all waivers of moral rights waived in favour of, Contracting Authority in this Project Agreement and to make all assignments of Intellectual Property as contemplated in this Project Agreement and to otherwise fully comply with the terms and requirements of Schedule 37 – Intellectual Property and its obligations therein;
  - (ii) any Intellectual Property licences to Contracting Authority pursuant to this Project Agreement does not and shall not infringe, and is not and shall not be misappropriation of, any third party Intellectual Property rights;
  - (iii) as of Commercial Close:

- (A) Project Co has not received any alleged infringement or misappropriation notices from third parties regarding any Intellectual Property Rights; 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 Section 39.1(a) and Schedule 37 – Intellectual Property.

#### 39.4 Jointly Developed Materials

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

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

- (iv) Contracting Authority shall be the sole and exclusive owner of all right, title and interest in and to the Contracting Authority Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and Project Co shall, at the request of Contracting Authority, execute such further agreements and cause the Subcontractors to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision;
- (v) the City of Toronto shall be the sole and exclusive owner of all right, title and interest in and to the City of Toronto Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and that Project Co shall, at the request of the City of Toronto, 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
- (vi) the TTC 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 TTC, execute such further agreements and cause the Subcontractors to execute any and all assignments,



waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.

- (b) Contracting Authority hereby grants Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Subcontractor, to use the Contracting Authority Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable. For clarity, the licence granted to Project Co in accordance with this Section 39.4(b) shall not extend to any City of Toronto 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) Contracting Authority, in the case of the Contracting Authority Jointly Developed Materials;
  - (ii) the City of Toronto, in the case of the City of Toronto Jointly Developed Materials; and
  - (iii) the TTC, in the case of the TTC Jointly Developed Materials.
- (d) In the event of any inconsistency between this Section 39.4 and any provision of Schedule 37 – Intellectual Property, the wording of this Section 39.4 shall prevail.

### **39.5 Maintenance of Data**

- (a) To the extent that any of the data, materials and documents referred to in this Section 39 or Schedule 37 – Intellectual Property are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of Contracting Authority, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable Contracting Authority or its nominee to access and otherwise Use (subject to the payment by Contracting Authority of any relevant fee) such data, materials and documents in accordance with rights granted pursuant to Schedule 37 – Intellectual Property.
- (b) For the purposes of Section 39.5(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 39.5(a), Project Co shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in this Section 39 in accordance with Good Industry Practice. Project Co shall submit to the Contracting Authority Representative Project Co’s proposals for the back-up and storage in safe custody of such data, materials and documents and Contracting Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the Contracting Authority Representative has not objected. Project Co may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Contracting Authority Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 39.5(c) may be referred for resolution in

accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

### **39.6 Contracting Authority Trademarks**

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

### **39.7 Confidential Information**

- (a) It is expressly acknowledged and agreed that nothing in this Section 39 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.

### **39.8 Government Use of Documents**

- (a) Project Co hereby disclaims any right, title or interest of any nature whatsoever it may have in or to this Project Agreement that might prohibit or otherwise interfere with Contracting Authority's or IO's ability to use this Project Agreement in any manner desired by Contracting Authority or IO.
- (b) Project Co hereby consents to the use by Contracting Authority and/or IO of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by Contracting Authority (in consultation with Project Co) of any information supplied in confidence to Contracting Authority and/or IO by Project Co in circumstances where disclosure may be refused under Sections 17(1) or 21(1) of FIPPA.

### **39.9 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 Materials, the Intellectual Property of Contracting Authority, the Intellectual Property of any Contracting Authority Party or any third party provided by Contracting Authority, the Confidential Information of Contracting Authority, or the Confidential Information of any Contracting Authority Party or any third party provided by Contracting Authority, including the Output Specifications unless such use is otherwise permitted pursuant to this Project Agreement in order to enable Project Co and the Project Co Parties to meet Project Co's obligations under this Project Agreement.
- (b) Project Co hereby covenants and agrees that it will not make any commercial use, including use in any other request for proposal or similar procurement process, of the Project Data, the

Intellectual Property Rights, the Jointly Developed Materials, the Intellectual Property of Contracting Authority, the Intellectual Property of any Contracting Authority Party or any third party provided by Contracting Authority, the Confidential Information of Contracting Authority, or the Confidential Information of any Contracting Authority Party or any third party provided by Contracting Authority, including the Output Specifications, or any other drawings, reports, documents, plans, formulae, calculations, manuals, or other data that was created specifically for the Project or was based upon the Project Data, the Intellectual Property Rights, the Jointly Developed Materials, the Intellectual Property of Contracting Authority, the Intellectual Property of any Contracting Authority Party provided by Contracting Authority, the Confidential Information of Contracting Authority, or the Confidential Information of any Contracting Authority Party provided by Contracting Authority, including the Output Specifications.

- (c) Nothing in this Section 39.9 shall be deemed to grant to any party (including any Subcontractor or any personnel thereof) any right or licence in respect of any other party's or other persons' Intellectual Property.

#### **40. CONFIDENTIALITY**

##### **40.1 Restrictions on Use and Disclosure**

- (a) Except as otherwise expressly authorized hereunder, a Receiving Party may only use Confidential Information as reasonably required for the purposes of enabling that Receiving Party to perform its obligations or enforce its rights under this Project Agreement.
- (b) Except as otherwise expressly authorized hereunder, and subject to Section 40.1(c), a Receiving Party may only disclose or grant access to Confidential Information to:
- (i) those agents, directors, officers, employees and professional advisors of that Receiving Party who need to use that Confidential Information to enable that Receiving Party to perform its obligations or enforce its rights under this Project Agreement; or
  - (ii) such persons as Disclosing Party may specifically consent in writing.
- (c) The Receiving Party must ensure that any recipient of Confidential Information pursuant to Sections 40.1, 40.2 or 40.3(b)(iii) and 40.3(b)(iv) is bound by written obligations regarding the Handling of that Confidential Information that are substantially similar to those set out in this Project Agreement (including, in particular, Section 40 and, to the extent applicable, Section 41).
- (d) The Receiving Party will remain fully liable for any breach of the obligations regarding the Handling of that Confidential Information that is attributable to any person to whom Receiving Party has disclosed or granted access to such Confidential Information pursuant to Sections 40.1, 40.2 or 40.3.
- (e) Without limiting the generality of this Section 40, Project Co shall comply with the document control and security protocol submitted by Project Co in accordance with Schedule 10 – Review Procedure; such protocol shall prescribe limitations on the use, disclosure and storage of this Project Agreement and any other Confidential Information of Contracting Authority specified by Contracting Authority, (the “**Document Control and Security Protocol**”). The Document Control and Security Protocol shall be the first document submitted by Project Co pursuant to

Schedule 10 – Review Procedure and, in any event, shall be submitted within five (5) Business Days following Financial Close.

#### 40.2 Confidentiality Exceptions – Project Co

- (a) Subject to Sections 40.1(c) and 40.1(d), Project Co may disclose the Confidential Information of Contracting Authority to:
- (i) the Lenders and prospective Lenders, including any trustee or agent of the Lenders, the Lenders' Agent and their respective professional advisors, to the extent reasonably required in connection with the raising or syndication of the financing or any sub-participation in the financing of the Works or which Project Co is obliged to supply by the terms of the Lending Agreements; and
  - (ii) any Project Co Party and their professional advisors, to the extent necessary for the performance by that Project Co Party of obligations under this Project Agreement.

#### 40.3 Confidentiality Exceptions – Contracting Authority

- (a) Notwithstanding any other provision of this Project Agreement that restricts the use of information, Contracting Authority and/or IO may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, including but not limited to the development by Contracting Authority or the Province of alternate procurement and financing policies and frameworks. Contracting Authority and/or IO will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (b) Notwithstanding any other provision of this Project Agreement that restricts the use or disclosure of information, and subject to Section 40.1(d), Contracting Authority may disclose:
- (i) any Confidential Information of Project Co (including the Financial Model) to any Government Entity for any governmental purpose whatsoever;
  - (ii) any Confidential Information of Project Co (excluding the Financial Model) to any Governmental Authority for budgetary purposes or in connection with the negotiation or performance of any funding or other agreements with a Governmental Authority;
  - (iii) any Confidential Information of Project Co (excluding the Financial Model and any Sensitive Information) to RSSOM Project Co or any RSSOM Project Co Party for the purpose of designing, constructing, operating or maintaining the Ontario Line Subway System (for greater certainty, Project Co acknowledges and agrees that any Confidential Information that is required to be disclosed to RSSOM Project Co pursuant to the applicable requirements of the Project Agreement, including Schedule 10 – Review Procedure, the Output Specifications, Schedule 45 – Integration with RSSOM Project and the RSSOM Interface Agreement (including the Integration Dispute Resolution Procedure) shall not be considered Sensitive Information), subject to Section 40.1(c); and
  - (iv) any Confidential Information of Project Co (excluding the Financial Model and any Sensitive Information) to a TOC Contractor or TOC Contractor Party for the purposes of facilitating TOC Developments, subject to Section 40.1(c).

#### 40.4 Certain Voluntary Disclosures

- (a) As a separate disclosure right from Contracting Authority's other disclosure rights set out in this Section 40 or otherwise in this Project Agreement, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that Contracting Authority and IO 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 Contracting Authority, in its sole discretion, may consider appropriate, provided that:
- (i) in determining what to disclose under this Section 40.4(a), Contracting Authority will be guided by the relevant principles in FIPPA, and Contracting Authority will not disclose any information if (had an access request under FIPPA been made for such information) that information would be exempt from disclosure under section 17(1) of FIPPA, provided that Contracting Authority may override the notional application of section 17(1) of FIPPA if it determines that there is a compelling public interest in the disclosure of the information which clearly outweighs the public interest in limiting the disclosure of that information; and
  - (ii) prior to disclosing or publishing such information under this Section 40.4(a):
    - (A) Contracting Authority shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed based on a notional application of section 17(1) of FIPPA (and taking into account the foregoing public interest override); and
    - (B) if Project Co, acting in good faith, contends that any of the information not redacted constitutes information that (if an access request under FIPPA been made for such information) that information would be exempt from disclosure under section 17(1) of FIPPA and not subject to a compelling public interest override, the dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, and Contracting Authority shall not disclose any information in dispute under this Section 40.4(a) until a determination is made.

#### 40.5 Legally Compelled Disclosure

- (a) If a Receiving Party is legally compelled to disclose any Confidential Information, it shall:
- (i) provide the Disclosing Party with prompt Notice (unless prohibited by Applicable Law from doing so) to allow the Disclosing Party to seek any appropriate remedies and cooperate with the Disclosing Party and its legal counsel in connection therewith; and
  - (ii) disclose only that portion of the Confidential Information that it is legally required to disclose by Applicable Law.

- (b) This Section 40.5 shall not apply to a requirement for Contracting Authority to disclose records pursuant to Section 40.6(a) or Section 40.7(a).

#### **40.6 Digital and Data Directive**

- (a) Notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that this Project Agreement and any or all of the terms thereof are subject to the Digital and Data Directive, which requires Ontario ministries and agencies to disclose or publish certain data.

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

- (a) The Parties acknowledge and agree that FIPPA applies to Contracting Authority and IO, and that Contracting Authority and IO are required to fully comply with FIPPA. Contracting Authority shall, within the applicable time periods provided in FIPPA for a party to exercise rights to prevent disclosure of information, advise Project Co of any request for access to the Confidential Information of Project Co (or any Project Co Party) under FIPPA.
- (b) If a request is made to Project Co under FIPPA for access to any records, Project Co shall immediately refer that request to Contracting Authority.
- (c) Where requested by Contracting Authority to enable Contracting Authority to respond to an access request under FIPPA, Project Co shall compile all responsive records in its custody or control that are under the control of Contracting Authority for the purposes of FIPPA, and shall provide copies of all such responsive records within three (3) Business Days of receipt of Contracting Authority's request. If Contracting Authority has extended the time to respond to the access request under FIPPA, Contracting Authority shall provide Project Co with a reasonable extension to the foregoing three (3) Business Day period.

#### **40.8 Safeguards**

- (a) A Receiving Party shall protect all Confidential Information from loss, theft, or other unauthorized Handling (and, where Project Co or a Project Co Party is the Receiving Party, the unavailability or loss of integrity of the Confidential Information of Contracting Authority), with the same degree of care as it uses to protect its own confidential information of a similar nature or character from such occurrences, but in no event with less than a reasonable degree of care.
- (b) A Receiving Party shall:
- (i) promptly notify the Disclosing Party in writing of any incident of loss, theft or unauthorized Handling of Confidential Information (and where the Receiving Party is Project Co, the unavailability or loss of integrity of the Confidential Information), or any attempt to effect any of the foregoing, of which it becomes aware;
  - (ii) promptly give the Disclosing Party details of such incident or attempt, and assist the Disclosing Party in investigating or preventing the recurrence of same;

- (iii) cooperate with the Disclosing Party in any litigation and investigation involving third parties deemed necessary by the Disclosing Party to protect its Confidential Information, to the extent such litigation or investigation is related to this Project Agreement;
- (iv) take all actions necessary or requested by the Disclosing Party to mitigate the effects and to minimize any damage resulting from any such incident or attempt (including taking all commercially reasonable steps to enforce against any person that is engaging in any such activities any rights the Receiving Party has to require such person to cease such activities); and
- (v) promptly use best efforts to prevent a recurrence of any such incident or attempt.

#### **40.9 Delivery**

- (a) Receiving Party shall provide the Confidential Information to the Disclosing Party upon demand by the Disclosing Party. This Section 40.9 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.

#### **40.10 Exceptions to Confidential Information**

- (a) Information of a Disclosing Party, other than Personal Information, will not be considered to be Confidential Information in the following circumstances:
  - (i) the Disclosing Party advises the Receiving Party 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 Receiving Party;
  - (iii) the information is a matter of public record or in the public domain;
  - (iv) the information was in the possession of the Receiving Party prior to its disclosure by the Disclosing Party, as evidenced by written records, and the Receiving Party came into possession of such information without being in breach of this Project Agreement or any other agreement with the Disclosing Party;
  - (v) the information is received by the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, as evidenced by written records, provided that to the best of the Receiving Party's knowledge such source is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Receiving Party by a contractual, legal or fiduciary obligation;
  - (vi) the information was independently developed by the Receiving Party without access to the Confidential Information, as evidenced by written records; or

- (vii) the information is disclosed to Contracting Authority upon a termination of this Project Agreement, pursuant to Section 37 or is otherwise required by Contracting Authority for the purposes of performing (or having performed) the Works, including the design or construction of the Project Co Infrastructure, or any other operations or services the same as, or similar to, the Works.
- (b) Subject to Section 40.3(b), the Parties acknowledge and agree that the Guaranteed Price, but not any breakdown thereof, is not the Confidential Information of Project Co and may be disclosed by Contracting Authority.

#### **40.11 Survival of Confidentiality**

- (a) The obligations in Section 40 will cease on the date that is thirty-five (35) years after the Termination Date and accordingly shall survive the termination of the Project Agreement.

#### **40.12 Confidentiality of Intellectual Property**

- (a) Nothing in this Section 40 shall prevent Contracting Authority from exercising any right granted to Contracting Authority pursuant to Schedule 37 – Intellectual Property. Contracting Authority shall have the right to disclose Confidential Information of Project Co Parties when exercising the rights granted pursuant to Schedule 37 – Intellectual Property in accordance therewith.

### **41. PERSONAL INFORMATION**

#### **41.1 Handling Personal Information**

- (a) Project Co acknowledges the importance of maintaining the privacy of Personal Information and compliance with Applicable Privacy Law.
- (b) Project Co shall not subcontract or delegate to any third party any of the Works that involve or may involve the Handling of Personal Information without the express consent of Contracting Authority and without obtaining written contractual commitments of such third party substantially the same as those hereunder (including, for greater certainty, Sections 40 and 41).
- (c) Project Co shall, and shall require each Project Co Party to, only Handle Personal Information: (i) with the prior consent of Contracting Authority; and (ii) to the extent necessary to perform Project Co's obligations under this Project Agreement.
- (d) Project Co shall, and shall require each Project Co Party to, at all times comply with all applicable requirements of the Output Specifications and Applicable Privacy Law when Handling or supporting the Handling of Personal Information.

#### **41.2 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 Handling, unavailability or loss of integrity in accordance with this Project Agreement (including, for greater certainty, Sections 40 and 41).



- (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 Works and that are subject to binding obligations to protect Personal Information no less stringent than those hereunder (including, for greater certainty, those imposed by Sections 40 and 41).
- (c) 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 41.
- (d) Contracting Authority may from time to time require that Project Co and any Project Co Party, or member of its or their staff, execute and deliver within two (2) Business Days after such request an agreement satisfactory to Contracting Authority, acting reasonably, requiring such person to protect Personal Information in accordance with this Project Agreement (including, for greater certainty, Sections 40 and 41).

#### **41.3 Return or Destruction of Personal Information**

- (a) Upon termination of this Project Agreement or upon request of Contracting Authority, whichever comes first, Project Co shall immediately cease all use of and return to Contracting Authority or, at the direction of Contracting Authority, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized Handling (and, in the event of a return of Personal Information, loss of availability or loss of integrity).
- (b) To the extent that any of the Works involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to Section 41.3(a), 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.

#### **41.4 Privacy Incidents, Inspections, Investigations, Audits, Inquiries**

- (a) Project Co shall allow Contracting Authority on reasonable Notice to inspect any Personal Information in the custody of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 41 including the measures and systems used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of Contracting Authority with respect to Project Co or each Project Co Party's Handling of Personal Information.
- (b) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to Contracting Authority and to any Governmental Authority with jurisdiction or oversight over Applicable Privacy Law in connection with any investigations, audits or inquiries made under Applicable Privacy Law.

**41.5 Conflict and Survival**

- (a) To the extent of any conflict or inconsistency between this Section 41 and any other provision of the Project Agreement, this Section 41 shall prevail.
- (b) The obligations in this Section 41 shall survive the termination of this Project Agreement.

**42. INSURANCE AND PERFORMANCE SECURITY****42.1 General Requirements**

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

**42.2 No Relief from Liabilities and Obligations**

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

**42.3 Performance Guarantee of Construction Guarantor**

- (a) At all times during the Project Term and, in respect of the provisions described in Section 37.9, following the Project Term, Project Co shall ensure that a valid and binding Performance Guarantee of Construction Guarantor in favour of Contracting Authority from the Construction Guarantor (or a party of comparable financial strength, capacity and stability, as determined by Contracting Authority acting in its sole discretion) and in the form of guarantee attached as Schedule 24 – Form of Performance Guarantee of Construction Guarantor, is in place and enforceable by Contracting Authority.

**43. TITLE****43.1 Title**

- (a) Title to each item and part of the Project Co Infrastructure or the New Third Party Infrastructure, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to Contracting Authority (or as Contracting Authority may direct) upon the receipt of such item on the 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 Infrastructure and the New Third Party Infrastructure or are to be affixed or attached to the Project Co Infrastructure and the New Third Party Infrastructure prior to Substantial Completion shall pass to Contracting Authority (or as Contracting Authority may direct) at the time that such items are included in the Project Co Infrastructure and the New Third Party Infrastructure or are affixed or attached to the Project Co Infrastructure and the New Third Party Infrastructure.

**44. INDEMNITIES****44.1 Project Co Indemnities to Contracting Authority**

- (a) Project Co shall indemnify and save harmless Contracting Authority and the Province Persons and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
- (i) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
  - (ii) any physical loss of or damage to all or any part of the Lands, lands owned by Metrolinx that are adjacent to the Lands (but that are not Metrolinx Lands), the Project Co Infrastructure, any part of the New Third Party Infrastructure, the Existing Infrastructure, or to any equipment, assets or other property forming part thereof;
  - (iii) the death or personal injury of any person;
  - (iv) any physical loss of or damage to property or assets of any third party (other than RSSOM Project Co) including, for clarity, any physical loss of or damage to Existing Third Party Infrastructure, or New Third Party Infrastructure;
  - (v) save to the extent relating to a claim for Injurious Affection (without prejudice to Section 44.1(a)(ix)), any other loss or damage of any third party (other than RSSOM Project Co or any RSSOM Project Co Party)
  - (vi) any fines or penalties levied or imposed under Applicable Law with respect to privacy;
  - (vii) any physical loss of or damage to property or assets of RSSOM Project Co including, for clarity, any physical loss of or damage to any RSSOM Project Infrastructure;
  - (viii) any loss or damage of RSSOM Project Co resulting from a third party claim against RSSOM Project Co; or
  - (ix) Injurious Affection claims made by third parties,  
  
in the case of Sections 44.1(a)(i) to 44.1(a)(vi), 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 Sections 44.1(a)(vii) to 44.1(a)(ix), 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 44.1(f), except, in all cases, to the extent caused, or contributed to, by
  - (x) the breach of this Project Agreement by Contracting Authority; or
  - (xi) in respect of Section 44.1(a)(i), any deliberate or negligent act or omission of Contracting Authority or any Province Person; or

- (xii) in respect of Sections 44.1(a)(ii), 44.1(a)(iii), 44.1(a)(iv), 44.1(a)(v), 44.1(a)(vi), 44.1(a)(vii) or 44.1(a)(viii), any act or omission of Contracting Authority or any Province Person.
- (b) Project Co shall indemnify and save harmless Contracting Authority 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 Contracting Authority 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, Approvals and Agreements, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences, Approvals and Agreements in accordance with this Project Agreement;
  - (ii) any Project Co On-Site Contamination that is Project Co Caused Contamination, any Project Co Off-Site Migrating Contamination or any Worsened Contamination; or
  - (iii) the provision of assistance by Contracting Authority to Project Co pursuant to Section 11.14(d),
- except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by Contracting Authority or by any act or omission of Contracting Authority or any Contracting Authority Party.
- (d) Without prejudice to Contracting Authority's rights under Section 34 and any other rights under this Project Agreement, if Contracting Authority exercises its step-in rights under the Construction Contractor's Direct Agreement, Project Co shall indemnify Contracting Authority for all obligations of Project Co assumed by Contracting Authority under the Design and Construction Contract, as the case may be, and for all reasonable costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights.
- (e) Project Co shall indemnify Contracting Authority for damages suffered or incurred on account of (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to Contracting Authority under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by Contracting Authority, or from the date identified (if any) applicable to an amount determined as payable by Project Co to Contracting Authority under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

- (f) The Project Co indemnity set out in Section 44.1(a)(ix) 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 3.8 (*Procedures For Determining and Reporting Property Access Closures and Property Access Closure Adjustments*) of Schedule 36 – Property Access Matters. For clarity,
- (i) this Section 44.1(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 3.8 (*Procedures For Determining and Reporting Property Access Closures and Property Access Closure Adjustments*) of Schedule 36 – Property Access Matters; and
  - (ii) to the extent that Project Co is obliged to pay a Property Access Closure Adjustment in respect of the specific property or properties that gave rise to the third party Injurious Affection claim that is the subject of the indemnity pursuant to this Section 44.1(f), such Property Access Closure Adjustment amount shall be applied to decrease the quantum of Project Co's indemnity to Contracting Authority in respect of the corresponding third party Injurious Affection claim.
- (g) Project Co shall defend, in accordance with the procedures of Section 44.3, and indemnify and save harmless Contracting Authority and the Province Persons, and any Governmental Authority 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 39.3;
  - (ii) any claim, suit, action or proceeding by a person alleging that (x) any Intellectual Property licenced or assigned to and used by Contracting Authority, any Province Person or any Governmental Authority pursuant to this Project Agreement; or (y) any Intellectual Property or other materials used by Project Co or any Project Co Party or any Subcontractor in the performance of the Works and the Project, infringes or misappropriates any Intellectual Property rights of that person, other than where such claim, suit, action or proceeding is directly caused by,
    - (A) the use of such Intellectual Property by Contracting Authority not in accordance with this Project Agreement or the applicable Technical Information; or
    - (B) the use of such Intellectual Property by Contracting Authority in combination with other products, software or equipment not supplied by or on behalf of Project Co or the Subcontractors and not authorized by any of them;
  - (iii) any claim, suit, action or proceeding arising out of the alleged infringement or misappropriation of any rights in or to any Project Data or Intellectual Property Rights or the use thereof by Contracting Authority Party, any Province Persons or any Governmental Authority or due to the use of any materials, machinery or equipment in connection with the Works infringes any rights in or to any Intellectual Property of a

third party unless such infringement has arisen out of the use of any Project Data or Intellectual Property Rights by Contracting Authority, a Contracting Authority or a Province Person otherwise than in accordance with the terms of this Project Agreement or the applicable Technical Information; 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 Contracting Authority Supplied Third Party Intellectual Property in breach of Sections 3.1(a)(ii), 3.1(b), 3.1(c) or 3.1(d) (*Licences*) of Schedule 37 – Intellectual Property.
- (h) Without limiting and in addition to the obligations in Section 44.1(g), if, as a result of a claim under Section 44.1(g)(i) or Section 44.1(g)(ii), all or any part of any Intellectual Property licensed or assigned to and used by Contracting Authority pursuant to this Project Agreement; or any Intellectual Property or other materials used by Project Co or any Subcontractor in the performance of the Works and the Project (any or all of the foregoing the “**Infringing Material**”) becomes, or in Project Co’s opinion is likely to be, enjoined from use, Project Co will:
  - (i) give Notice to Contracting Authority of the same; and
  - (ii) at its sole option and expense, either:
    - (A) procure for itself and Contracting Authority, to the extent required, the right to continue to use the infringing element or component of the Infringing Material as contemplated in this Project Agreement; or
    - (B) modify the infringing element or component of the Infringing Material so that it is non-infringing without materially affecting the quality, performance and functionality of such infringing element or component, or replace the infringing element or component with a substitute of materially equivalent quality, performance and functionality.

#### 44.2 Contracting Authority Indemnities to Project Co

- (a) Contracting Authority shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
  - (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or breach of this Project Agreement by Contracting Authority or any act or omission of any Province Person, or any act or omission of RSSOM Project Co or any TOC Contractor (but only where such act or omission of such TOC Contractor is in connection with it carrying out work on a TOC Development), except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
  - (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or

involving or relating to, breach of this Project Agreement by Contracting Authority or any deliberate or negligent act or omission of any Province Person, or any deliberate or negligent act or omission of RSSOM Project Co or any TOC Contractor (but only where such act or omission of such TOC Contractor is in connection with it carrying out work on a TOC Development), 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;

- (iii) any loss or damage of any third party (other than RSSOM Project Co or any TOC Contractor (but only where such loss or damage of such TOC Contractor is in connection with it carrying out work on a TOC Development)), arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by Contracting Authority, any deliberate or negligent act or omission of any other Province Person, or any act or omission of RSSOM Project Co or any TOC Contractor (but only where such act or omission of such TOC Contractor is in connection with it carrying out work on a TOC Development), 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
- (iv) any Direct Losses or Indirect Losses of CN Rail or any person claiming through CN Rail, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, a CN Rail Train Delay,

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

- (b) Contracting Authority shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Contracting Authority set out in Section 6.2(a).
- (c) Contracting Authority shall indemnify Project Co for damages suffered or incurred on account of (i) any payment not duly made by Contracting Authority pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Contracting Authority; or (iii) an amount determined as payable by Contracting Authority to Project Co under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by Contracting Authority to Project Co under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

#### 44.3 Conduct of Claims

- (a) This Section 44.3 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 44, the Beneficiary shall give written Notice to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Business Days after 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 44.3(d), 44.3(e) and 44.3(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 44.3 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 44.3(c);



- (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 ten (10) Business Days following the Indemnifier's receipt of the Notice from the Beneficiary under Section 44.3(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 44.3(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 44.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where Contracting Authority is the Beneficiary, Contracting Authority may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such Notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any Notice pursuant to this Section 44.3(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 44.3 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.

#### **44.4 Mitigation – Indemnity Claims**

- (a) For greater certainty, Section 52.4 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.

#### 44.5 Integration Disputes

- (a) Despite any provision in this Section 44 to which Schedule 27 – Dispute Resolution Procedure applies, the provisions of the Integration Dispute Resolution Procedure in the form attached as Appendix A (*Integration Dispute Resolution Procedure*) to Schedule 39 – Form of RSSOM Interface Agreement apply and shall govern in respect of all Integration Disputes under:
- (i) Sections 44.1(a)(vii) or 44.1(a)(viii); or
  - (ii) Sections 44.2(a)(i), 44.2(a)(ii) or 44.2(a)(iii) arising, directly or indirectly, out of, or in consequence of, or involving or relating to any act or omission or any deliberate or negligent act or omission (as applicable) of RSSOM Project Co.

#### 45. LIMITS ON LIABILITY

##### 45.1 Indirect Losses

- (a) Subject to Section 45.1(b) and without prejudice to 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;
  - (iii) a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party;
  - (iv) for damages sustained by Contracting Authority or any Contracting Authority Party in respect of delay claims arising from delay to any project, except the RSSOM Project, that is managed or controlled by Contracting Authority that is caused by Project Co failing to achieve Substantial Completion by the Scheduled Substantial Completion Date; or
  - (v) without prejudice to Sections 45.1(a)(i) to 45.1(a)(iv), with respect to the indemnity in Section 44.1(a)(viii), a claim for:
    - (A) loss of profits, loss of use, loss of production, loss of business or loss of business opportunity of RSSOM Project Co or a RSSOM Project Co Party; or
    - (B) RSSOM Project Co Debt Service Amounts,
- (collectively, “**Indirect Losses**”).
- (b) With respect to the indemnity in Section 44.1(a)(i) only, the exceptions in Sections 45.1(a)(ii) (insofar as it relates to loss of use) and 45.1(a)(iii) shall not apply as a result of, or in relation to, Contracting Authority's loss of use of the Project Co Infrastructure, the New Third Party

Infrastructure and/or the Existing Infrastructure or a portion thereof, which for the purposes of Section 44.1(a)(i), shall be Direct Losses (but for greater certainty, nothing in this Section 45.1(b) shall apply to Contracting Authority's loss of profits, loss of production, loss of business or loss of business opportunity which shall remain Indirect Losses).

#### 45.2 No Liability in Tort

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

#### 45.3 Sole Remedy

- (a) Nothing in this Project Agreement shall prevent or restrict the right of Contracting Authority to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (b) 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.
- (c) The following shall apply with respect to the deductions and liquidated damages set out in the Project Agreement:
- (i) the liquidated damages paid by Project Co pursuant to Section 2.3(a) shall be Contracting Authority's sole remedy for Project Co's failure to deliver to Contracting Authority any of the documents referred to in Section 1 of Schedule 2 – Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Contracting Authority of its obligations under Section 2 (*Documents To Be Delivered By Contracting Authority*) of Schedule 2 – Completion Documents)) if Contracting Authority does not waive such requirement;
  - (ii) the liquidated damages paid by Project Co pursuant to Section 3.1(a) (*Train Delay*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime shall be Contracting Authority's sole remedy for any individual Train Delay or any Incident of Train Delay contemplated in such Section 3.1(a);
  - (iii) the liquidated damages paid by Project Co pursuant to Section 3.1(c) (*Train Delay*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime shall be Contracting Authority's sole remedy for any actual Incident of Train Delay which has caused an individual Train Cancellation contemplated in such Section 3.1(c);

- (iv) the liquidated damages paid by Project Co pursuant to Section 3.1(d) (*Train Delay*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime shall be Contracting Authority’s sole remedy for Alternative Transportation Events contemplated in such Section 3.1(d);
  - (v) the liquidated damages paid by Project Co pursuant to Section 3.2 (*Rail Corridor Access*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime shall be Contracting Authority’s sole remedy for a Failure to Vacate contemplated in such Section 3.2;
  - (vi) the amounts deducted from the Substantial Completion Payment pursuant to Schedule 7 – Mobility Matters shall be Contracting Authority’s sole remedy with respect to exceedances in Municipal Lane Closures, which exceedances are contemplated in Schedule 7 – Mobility Matters;
  - (vii) the liquidated damages paid by Project Co pursuant to Section 4.1 (*Failure to Achieve Substantial Completion*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime shall be the sole remedy of Contracting Authority and Province Persons for Specified Costs that may be claimed by Contracting Authority and Province Persons as a result of Project Co failing to achieve the requirements for the Substantial Completion Certificate and a Substantial Completion Certificate not being issued on or before the Substantial Completion LD Commencement Date, but shall not be Contracting Authority’s sole remedy with respect to amounts that are not Specified Costs in connection with Project Co failing to achieve the requirements for the Substantial Completion Certificate and a Substantial Completion Certificate not being issued on or before the Substantial Completion LD Commencement Date;
  - (viii) the liquidated damages paid by Project Co pursuant to Section 5.1 (*Failure to Achieve Section Substantial Completion, Subsection RSSOM Access Date or Deliver Critical Data or Critical Works on Time*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime shall be Contracting Authority’s sole remedy for an Integration Milestone Delay;
  - (ix) the amounts deducted from the Substantial Completion Payment pursuant to Section 6 (*Construction Enforcement Regime*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime shall not be Contracting Authority’s sole remedy in respect of Project Co’s failure to perform its obligations in accordance with the Project Agreement; and
  - (x) the liquidated damages paid by Project Co pursuant to Sections 3(i) or 3(j) (*Scheduling and Cancelling TTC Station Weekend Closures*) of Schedule 46 – TTC Station Weekend Closures shall be Contracting Authority’s sole remedy for Project Co cancelling any TTC Station Weekend Closure in the circumstances described in such Sections 3(i) or 3(j).
- (d) For certainty, the unavailability of relief pursuant to Section 30 and Section 31 as a result of any action or omission by Project Co or a Project Co Party shall not be considered a remedy for purposes of this Section 45.3 and the determination of the sole remedy available in the relevant circumstances.

**45.4 Maximum Liability**

- (a) Subject to Section 45.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 44 shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or Performance Security proceeds (other than any parent company performance guarantee, including the Performance Guarantee of Construction Guarantor) received or which will be received pursuant to performance security or 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.
- (b) Project Co’s maximum aggregate liability in respect of all claims under Section 44.1(a)(i) shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or Performance Security proceeds (other than any parent company performance guarantee, including the Performance Guarantee of Construction Guarantor) received or which will be received pursuant to performance security or 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 45.4 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 45.4 shall restrict or limit, or establish any maximum liability, in respect of any amount payable, by Project Co to Contracting Authority, as the Lane Closure Adjustments pursuant to Schedule 7 – Mobility Matters, the Property Access Closure Adjustments pursuant to Schedule 36 – Property Access Matters or as liquidated damages in respect of Integration Milestone Delays pursuant to Section 5.1 (*Failure to Achieve Section Substantial Completion, Subsection RSSOM Access Date or Deliver Critical Data or Critical Works on Time*) of Schedule 19 – Liquidated Damages.

**45.5 Maximum Liability for Liquidated Damages and Total Construction Period Deductions**

- (a) Project Co’s maximum aggregate liability in respect of its obligations to pay the liquidated damages described in Section 3 (*Liquidated Damages – Train Delays*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime shall not exceed \$[REDACTED].
- (b) Project Co’s maximum aggregate liability in respect of its obligations to pay the liquidated damages described in (i) Section 4.1 (*Failure to Achieve Substantial Completion*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime; and (ii) Section 6.2 (*Calculation of the Total Construction Period Deduction and the Construction Period Deductions*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime, shall not exceed \$[REDACTED].
- (c) Project Co’s maximum aggregate liability in respect of all Integration Milestone Delays shall not exceed \$[REDACTED] (the “**Integration Milestones LD Liability Cap**”).
- (d) This limit shall be index linked and shall be exclusive of any insurance or Performance Security proceeds (other than any parent company performance guarantee, including the Performance Guarantee of Construction Guarantor) received or which will be received pursuant to Performance Security or 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.

- (e) Nothing in this Section 45.5 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

#### **46. DISPUTE RESOLUTION PROCEDURE**

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

#### **47. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL**

##### **47.1 Project Co Assignment**

- (a) Project Co shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Project Agreement or any Ancillary Document without the prior written consent of Contracting Authority, which consent may be withheld in the sole discretion of Contracting Authority, 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) Contracting Authority's reputation or integrity, or (ii) the nature of the public transit system in the City of Toronto or the Province of Ontario, so as to affect public confidence in the public transit system in the City of Toronto or the Province of Ontario or the Project.
- (b) Section 47.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if Contracting Authority so requires.

##### **47.2 Contracting Authority Assignment**

- (a) Contracting Authority may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and Contracting Authority are parties:
  - (i) to the Province;
  - (ii) as may be required to comply with Applicable Law;
  - (iii) to any minister of the Province;
  - (iv) to an agency of the Province having the legal capacity, power, authority and ability to become a party to and to perform the obligations of Contracting Authority under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of Contracting Authority's obligations hereunder and under the other Project Documents to which Contracting Authority is a party in respect of the period from and after the assignment; and

- (v) in circumstances other than those described in Sections 47.2(a)(i) to 47.2(a)(iv) with the prior written consent of Project Co; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of Contracting Authority hereunder and under any agreement in connection with this Project Agreement to which Project Co and Contracting Authority are parties in respect of the period from and after the assignment.
- (b) Contracting Authority shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of their interest in this Project Agreement in accordance with this Section 47.2.

### 47.3 Subcontracting

- (a) Project Co shall not subcontract any interest in this Project Agreement or the Design and Construction Contract, and shall not permit the Construction Contractor to subcontract any interest in the Design and Construction Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities may compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of the public transit system in the City of Toronto or the Province of Ontario so as to affect public confidence in the public transit system in the City of Toronto or the Province of Ontario or the Project.
- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor unless Project Co has complied with Sections 8.2(a), 47.3(c) and 47.3(d) or received the prior written consent of Contracting Authority.
- (c) Subject to Section 47.3(d), if the Design and Construction Contract 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 Construction Contractor shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to Contracting Authority's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor, 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 Construction Contractor's Direct Agreement entered into by the person so replaced, unless any material variations are approved by Contracting Authority, acting reasonably.

### 47.4 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;

- (ii) where the person acquiring the ownership interest is a person whose standing or activities may compromise (A) Contracting Authority's reputation or integrity, or (B) the nature of the public transit system in the City of Toronto or the Province of Ontario so as to affect public confidence in the public transit system in the City of Toronto or the Province of Ontario or the Project; or
  - (iii) if such Change in Ownership would have a material adverse effect on the performance of the Works or the Governmental Activities.
- (c) In the event that:
- (i) a person having Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project becomes a Restricted Person, or
  - (ii) a person who, directly or indirectly, has an Economic Interest in Project Co or the Project becomes a Restricted Person as set out in paragraph (a)(i) of the definition of Restricted Person,
- Contracting Authority may:
- (iii) in the case of an individual who becomes a Restricted Person, require that such Restricted Person be divested of his or her Direct or Indirect Power or Control or Economic Interest, as applicable; or
  - (iv) in any other circumstance, require a Change in Ownership so that the Restricted Person shall be divested of its Direct or Indirect Power or Control,
- in each case, on such terms as are satisfactory to Contracting Authority's, in its discretion.
- (d) Project Co shall provide Notice to Contracting Authority of any Change in Ownership of Project Co or of any Control Party, as the case may be, that is not a Change in Control within five (5) Business Days after such Change in Ownership, and such Notice shall include 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.
- (e) Subject to Sections 47.4(a), 47.4(b), 47.4(c) and 47.4(d), no Change in Control of Project Co, or of any Control Party, shall be permitted without the prior written consent of Contracting Authority.
- (f) Project Co shall provide Notice to Contracting Authority of any proposed Change in Control of Project Co or of any Control Party, as the case may be, not less than twenty (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; and

- (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.

Following the delivery to Contracting Authority of the Notice referred to in this Section 47.4(f), Project Co shall provide Contracting Authority with such other information pertaining to the proposed Change in Control as Contracting Authority may reasonably request.

- (g) Upon request by Project Co and delivery of the information required by Contracting Authority, Contracting Authority shall advise Project Co whether the person described in such particulars is a Restricted Person or a person whose standing or activities may compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of the public transit system in the City of Toronto or the Province of Ontario so as to affect public confidence in the public transit system the City of Toronto or the Province of Ontario or the Project.
- (h) Notwithstanding the definition of "Control Parties" set out in Schedule 1 – Definitions and Interpretation, this Section 47.4 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
- (i) Section 47.4(d) shall not apply to a Change in Ownership of a Control Party that arises from a change in the shareholdings of such Control Party or an Affiliate of such Control Party (the "**Relevant Entity**") owned by an employee of such Relevant Entity, unless such changes individually or in the aggregate determined since the date of this Project Agreement, would result in a Change in Control of Project Co, in which case Section 47.4(f) shall apply.

#### 47.5 Contracting Authority's Due Diligence

- (a) Project Co shall promptly reimburse Contracting Authority for Contracting Authority's reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of Contracting Authority pursuant to, or Contracting Authority's determination of Project Co's compliance with, Sections 47.1, 47.3 or 47.4, whether or not such consent is granted.

### 48. PROHIBITED ACTS

#### 48.1 Definition

- (a) The term "**Prohibited Act**" means:
  - (i) offering, giving or agreeing to give to Contracting Authority or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
    - (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Project Agreement or any

other agreement with Contracting Authority or any public body in connection with the Project; or

- (B) for showing or not showing favour or disfavour to any person in relation to this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project,

provided that this Section 48.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to Contracting Authority or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, Contracting Authority or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to Contracting Authority, provided that this Section 48.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to Contracting Authority or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project without contravening the intent of this Section 48;
- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud Contracting Authority or any other public body.

## 48.2 Remedies

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then Contracting Authority shall be entitled to act in accordance with the following:
- (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then Contracting Authority may give written Notice to Project Co and Section 34 shall apply;
- (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then Contracting Authority may give written Notice to Project Co and Section 34 shall apply, unless, within thirty (30) days

after receipt of such Notice, Project Co terminates the employee's employment and ensures that the relevant part of the Works shall be performed by another person;

- (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then Contracting Authority may give written Notice to Project Co and Section 34 shall apply, unless, within thirty (30) days after receipt of such Notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Works shall be performed by another person, where relevant, in accordance with Section 47.3;
  - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then Contracting Authority may give Notice to Project Co and Section 34 shall apply, unless, within thirty (30) days after receipt of such Notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Works 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 48.2(a)(i) to 48.2(a)(iv), then Contracting Authority may give Notice to Project Co and Section 34 shall apply, unless, within thirty (30) days after 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 Works shall be performed by another person.
- (b) Any Notice of termination under this Section 48.2 shall specify:
- (i) the nature of the Prohibited Act;
  - (ii) the identity of the person whom Contracting Authority believes has committed the Prohibited Act; and
  - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 48.2, Contracting Authority shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 48.

### **48.3 Permitted Payments**

- (a) Nothing contained in this Section 48 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.

### **48.4 Notification**

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

**48.5 Replacement of Project Co Party**

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 48, 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.

**49. NOTICES****49.1 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, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Project Co:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

If to Contracting Authority:

Metrolinx  
2 Queen Street East, 11<sup>th</sup> Floor  
Toronto, Ontario  
M5C 3G7

Attn.: [REDACTED]

Email: [REDACTED]

**49.2 Notices to Representatives**

- (a) In addition to the Notice requirements set out in Section 49.1, where any Notice is to be provided or submitted to the Contracting Authority Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Project Co Representative: [REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

If to the Contracting Authority  
Representative:

Metrolinx  
2 Queen Street East, 11<sup>th</sup> Floor  
Toronto, Ontario, M5C 3G7

Attn.: [REDACTED]

Email: [REDACTED]

with a copy to:

Ontario Infrastructure and Lands Corporation  
1 Dundas Street West, 20<sup>th</sup> Floor  
Toronto, Ontario  
M5G 1Z3

Email: [REDACTED]

#### 49.3 Electronic Submission

- (a) Where any Notice is provided or submitted to a Party via electronic submission, an original of the Notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 49.3.

#### 49.4 Change of Contact Information

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 49.1 or 49.2 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.

#### 49.5 Deemed Receipt of Notices

- (a) Subject to Sections 49.5(b), 49.5(c) and 49.5(d):
- (i) a Notice given by registered mail shall be deemed to have been received on the third (3<sup>rd</sup>) 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 electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.

- (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 electronic submission in accordance with this Section 49.
- (c) If any Notice delivered by hand or transmitted by electronic submission 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 electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such Notice was successful.

#### **49.6 Service on Contracting Authority**

- (a) Where any Notice is required to be served on Contracting Authority, the obligation to serve such Notice shall be fulfilled by serving it on Contracting Authority in accordance with the provisions of this Section 49.

### **50. EMERGENCY MATTERS**

#### **50.1 Emergency**

- (a) From Financial Close until the completion of the Works, upon the occurrence of an Emergency, Project Co shall comply with the Contractor Site Specific Safety Manual.
- (b) If, in respect of any Emergency, Contracting Authority notifies Project Co that it requires compliance with any additional or overriding procedures as may be determined by Contracting Authority or any other statutory body, then Project Co shall, subject to Schedule 22 – Variation Procedure (if compliance with such procedures constitutes a Variation), comply with such procedures (whether such procedures are specific to the particular Emergency or of general application and on the basis that such procedures shall take precedence to the extent that they overlap with the procedures mentioned in Section 50.1(a)).

### **51. CONTRACTING AUTHORITY'S DESIGNATE**

#### **51.1 Right to Designate**

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Project Agreement (including review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to Contracting Authority for review, approval, comment, evaluation or otherwise as described in this Project Agreement, engagement in discussions, consultations and meetings with Project Co, submission of Notices and documentation to Contracting Authority, issuances of Notices, documentation, Variation Confirmations and related matters) and Project Co may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, Notices, consents, approvals,

waivers, and comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co in writing that such designated person is no longer the person designated by the Crown hereunder and such Notice shall have effect on the later of the date of delivery of such Notice and the date specified in the written Notice. The Crown shall advise Project Co in writing of any designation hereunder. The rights and obligations of the Parties to this Project Agreement shall be in no way affected by reason of any such designation. Project Co acknowledges the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 51.1(a).

- (b) At any time and from time to time, Contracting Authority may designate the Delivery Partner or IO, as applicable, to carry out any of Contracting Authority's rights or obligations relating to the Works and Project Co may deal with the Delivery Partner or IO, as applicable, in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, and comments relating to such construction oversight and management matters and decisions determined by the Delivery Partner or IO, as applicable, from time to time, until Contracting Authority has notified Project Co in writing that such designated Delivery Partner or IO, as applicable, is no longer the person designated by Contracting Authority hereunder in respect of such matters 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. Contracting Authority 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 Contracting Authority to delegate responsibilities hereunder as set forth in this Section 51.1(b).

## 52. GENERAL

### 52.1 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.

### 52.2 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. No further waiver in writing is required in order to give effect to the waivers provided for in accordance with the terms of Sections 23.3(m) and 23.10(g).
- (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.

**52.3 Relationship Between the Parties**

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

**52.4 General Duty to Mitigate**

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

**52.5 Actual Knowledge**

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



**52.6 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.

**52.7 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 52.7 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.

**52.8 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.

**52.9 Enurement**

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

**52.10 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, both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Project Agreement affects the rights, protections and immunities of the Crown under the *Crown Liability and Proceedings Act* (Ontario).

#### **52.11 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.

#### **52.12 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.

#### **52.13 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.

#### **52.14 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, operation 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.

#### **52.15 Proof of Authority**

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

#### **52.16 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 of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy

by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

#### **52.17 Province Persons and Contracting Authority Parties as Third Party Beneficiaries**

- (a) All provisions expressed to be for the benefit of a Province Person or Contracting Authority Party, as applicable, are:
- (i) intended for the benefit of each Province Person, or Contracting Authority Party, as applicable and, if so set out in the relevant Section, each Province Person's or Contracting Authority Party's, as applicable, directors, officers employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, in respect of each Province Person, the "**Province Person Third Party Beneficiaries**", and in respect of each Contracting Authority Party, the "**Contracting Authority Third Party Beneficiaries**"); and
  - (ii) are in addition to, and not in substitution for, any other rights that the Province Person Third Party Beneficiaries may have in contract or otherwise.
- (b) Contracting Authority shall hold the rights and benefits of each provision of this Project Agreement which is to the benefit of each Province Person or Contracting Authority Party, as applicable, in trust for and on behalf of the Province Person Third Party Beneficiaries or Contracting Authority Third Party Beneficiaries, as applicable, and Contracting Authority hereby accepts such trust and agree to hold the benefit of and enforce performance of such covenants on behalf of the Province Person Third Party Beneficiaries or Contracting Authority Third Party Beneficiaries, as applicable.

#### **52.18 Time is of the Essence**

- (a) Time is of the essence in this Project Agreement.

#### **52.19 Copyright Notice**

- (a) The Parties acknowledge that the King'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.

**METROLINX**

By:

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

Title: [REDACTED]

I have authority to bind the corporation.

Project Agreement – South Civil  
Signature Page

---

**Confidential**

ONTARIO TRANSIT GROUP INC.

By:

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

Title: [REDACTED]

By:

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

Title: [REDACTED]

We have authority to bind the corporation.

## SCHEDULE 1

## DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
  - 1.1 “**Acceptable Issuer**” means any of the Schedule I Canadian chartered banks or any other financial institutions approved by Contracting Authority in Contracting Authority’s sole and absolute discretion, in each case, whose current long-term issuer rating is at least “A” by Standard & Poor’s and “A2” by Moody’s Investor Services or an equivalent rating by another party acceptable to Contracting Authority, in its sole and absolute discretion.
  - 1.2 “**Access Opportunities Calendar**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
  - 1.3 “**Access Ready**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
  - 1.4 “**Account Trustee**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
  - 1.5 “**Additional Contractor**” means any independent contractor (not being, for the avoidance of doubt, any of the Early Works Contractors, Third Party Contractors or Project Co) or Contracting Authority’s own forces, engaged by Contracting Authority to carry out the Additional Works. For greater certainty, (i) RSSOM Project Co shall be considered to be an Additional Contractor (subject to the terms of Schedule 45 – Integration with RSSOM Project) and (ii) a TOC Contractor and TOC Contractor Parties shall be considered to be an Additional Contractor when carrying out Additional Works.
  - 1.6 “**Additional Lands**” has the meaning given in Section 16.6(d) (*Additional Lands/Adjustments to Metrolinx Lands Available to Project Co*) of the Project Agreement.
  - 1.7 “**Additional Lands Request**” has the meaning given in Section 16.6(a) (*Additional Lands/Adjustments to Metrolinx Lands Available to Project Co*) of the Project Agreement.
  - 1.8 “**Additional PLAA Completion Requirements**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
  - 1.9 “**Additional Works**” means those works or services, (i) in relation to any of the Project Co Infrastructure or in relation to any New Third Party Infrastructure; or (ii) being carried out on the Site or Existing Metrolinx Infrastructure, which are not Works and which are to be carried out by an Additional Contractor, including works or services to be performed either before or after Substantial Completion.
  - 1.10 “**Adjacent Developer**” means a developer or applicant in respect of any Adjacent Development who, or whose lands, is subject to the *Building Transit Faster Act (2020)*.
  - 1.11 “**Adjacent Development Comment Form**” has the meaning given in Section 11.15(c)(i) (*Adjacent Developments*) of the Project Agreement.
  - 1.12 “**Adjacent Developments**” means any development works or like activity, which is subject to the *Building Transit Faster Act (2020)*, carried out during the Project Term by or on behalf of any

- third party adjacent to the Lands, Project Co Infrastructure or New Third Party Infrastructure and which otherwise affects or may potentially affect any part of the Works, the Lands or the Project Co Infrastructure or New Third Party Infrastructure, other than the TOC Developments.
- 1.13 “**Adjudication**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.14 “**Adjudicator**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.15 “**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 the unitholders, shareholders, partners or owners of Project Co, as applicable, and any person or entity controlling, controlled by or under common control with Project Co where “control” of any person or entity shall mean the ownership, directly or indirectly, of securities of such person or entity having the power to elect a majority of directors or similar authority or to otherwise control the decisions made on behalf of such person or entity.
- 1.16 “**Aggregate Actual Lane Closure Cost**” or “**AALCC**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.17 “**Aggregate Actual Lane Closures**” or “**AALC**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.18 “**Aggregate Actual Property Access Closures**” has the meaning given in Schedule 36 – Property Access Matters.
- 1.19 “**Aggregate Actual Property Access Closures Cost**” has the meaning given in Schedule 36 – Property Access Matters.
- 1.20 “**Aggregate Target Lane Closures**” or “**ATLC**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.21 “**Aggregate Target Property Access Closures**” has the meaning given in Schedule 36 – Property Access Matters.
- 1.22 “**Ancillary Documents**” means the Design and Construction Contract, and the Performance Security.
- 1.23 “**Anti-Racism**” means a process, a systematic method of analysis, and a proactive course of action rooted in the recognition of the existence of racism, including Systemic Racism, which actively seeks to identify, challenge, prevent, and mitigate racially inequitable outcomes and power imbalances between groups and change the structures that sustain inequities.
- 1.24 “**Anticipated COVID-19 Impact End Date**” means [REDACTED].
- 1.25 “**Anticipated Final Completion Date**” has the meaning given in Section 23.9(a) (*Final Completion Countdown Notice*) of the Project Agreement.
- 1.26 “**Anticipated Milestone Payment Completion Date**” has the meaning given in Section 25A.1(a) (*Milestone Payment Completion Countdown Notice*) of the Project Agreement.

- 1.27 “**Anticipated Section Substantial Completion Date**” has the meaning given in Section 23.5(a) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of the Project Agreement.
- 1.28 “**Anticipated Substantial Completion Date**” has the meaning given in Section 23.5(a) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of the Project Agreement.
- 1.29 “**Applicable Law**” means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
  - (b) any Authority Requirement; and
  - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, Contracting Authority, any Contracting Authority Party or any Province Person.
- 1.30 “**Applicable Privacy Law**” means any Applicable Law that relates to the Handling of Personal Information, including FIPPA.
- 1.31 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.32 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.33 “**Archaeological Reports**” means the archaeological reports set out in Appendix B to Schedule 17 – Environmental Obligations.
- 1.34 “**As-Built Drawings**” means drawings prepared by Project Co in a format and with content and details that Contracting Authority, acting reasonably, considers appropriate.
- 1.35 “**Associated Liabilities**” has the meaning given in Section 4.20(b) (*Taxes – Indemnity*) of the Project Agreement.
- 1.36 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority and includes, for clarity, any direction or instruction from Transport Canada arising from any contractual arrangement or Board Orders involving Transport Canada and Metrolinx.
- 1.37 “**Background Information**” means, other than any Critical RSSOM Infrastructure Data and RSSOM Infrastructure Technical Specifications, any and all drawings, reports (including the Environmental Reports, the Archaeological Reports, the Cultural Heritage Reports, the Environmental Assessments, the Subsurface Utility Engineering (SUE) Reports, the Project GBR, except to the extent set out in Schedule 44 – Geotechnical Baseline Reports (and any other report given or otherwise referred to in the Output Specifications), as well as studies, plans, data, documents, or other information, given or made available to Project Co or any Project Co Party by



Contracting Authority or any Contracting Authority Party, or which was obtained from or through any other sources prior to the date of the Project Agreement, excluding the information listed in Appendix B to this Schedule 1.

- 1.38 “**Bank**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.39 “**Bankruptcy and Insolvency Act (Canada)**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended from time to time.
- 1.40 “**Baseline Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.41 “**Basis of Works Schedule Report**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.42 “**Beneficiary**” has the meaning given in Section 44.3(a) (*Conduct of Claims*) of the Project Agreement.
- 1.43 “**BIM**” has the meaning given in the Output Specifications.
- 1.44 “**Board Order**” means a legal order issued by the Canadian Transportation Agency imposing a constraint on the operation of the railway.
- 1.45 “**Bonds**” means, collectively, the Performance Bond and the Labour and Material Payment Bond.
- 1.46 “**Booking Request**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.47 “**Building Code**” means the regulations made under section 34 of the *Building Code Act*, S.O. 1992, c.23 (Ontario), as amended from time to time.
- 1.48 “**Building Transit Faster Act (2020)**” means the Building Transit Faster Act, 2020, S.O. 2020, c. 12, and the regulations enacted thereunder, all as amended from time to time.
- 1.49 “**Built to Specification and Design**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.50 “**Business Corporations Act (Ontario)**” means the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended from time to time.
- 1.51 “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.
- 1.52 “**CA Reinstatement Work**” has the meaning given in Section 11.10(b)(vi) (*Protection of Works and Property and Reinstatement Work*) of the Project Agreement.
- 1.53 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.54 “**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.

- 1.55 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.56 “**Car**” means any subway or metro car to be supplied by RSSOM Project Co and which will be used to carry passengers on the Ontario Line Subway System.
- 1.57 “**Cash Allowance Account**” means Account No. [REDACTED] at [REDACTED].
- 1.58 “**Cash Allowance Amount**” means \$[REDACTED] for the Cash Allowance Items.
- 1.59 “**Cash Allowance Items**” means the work and activities to be performed by Project Co pursuant to Section 11.15(b) (*Adjacent Developments*) of the Project Agreement.
- 1.60 “**Category of Access**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.61 “**Centre Platform**” has the meaning given in the Output Specifications.
- 1.62 “**CDB**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.63 “**CDB Chair**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.64 “**CDB Member Agreement**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.65 “**CDB Member Statement**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.66 “**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.
- 1.67 “**Certification Services**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.68 “**Certification Services Variation**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.69 “**Certified H&S Inspector**” means an individual who is an employee or contractor of the IHSA and has the necessary credentials recognized by the COR Program for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 15.1(b) (*Quality Management*) of the Project Agreement.

- 1.70 “**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.
- 1.71 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario in each case after the Technical Reference Date.
- 1.72 “**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.
- 1.73 “**CIDB Chair**” has the meaning given in Appendix A of Schedule 39 – Form of RSSOM Interface Agreement.
- 1.74 “**CIDB Member Agreement**” has the meaning given in Appendix A of Schedule 39 – Form of RSSOM Interface Agreement.
- 1.75 “**CIDB Member Statement**” has the meaning given in Appendix A of Schedule 39 – Form of RSSOM Interface Agreement.
- 1.76 “**CIDB Technical Member**” has the meaning given in Appendix A of Schedule 39 – Form of RSSOM Interface Agreement.
- 1.77 “**City of Toronto**” means the City of Toronto and all operating divisions thereof.
- 1.78 “**City of Toronto Act (Ontario)**” means the *City of Toronto Act (Ontario)*, 2006, S.O. 2006, C. 11, Sched. A, as amended from time to time.
- 1.79 “**City of Toronto Jointly Developed Materials**” has the meaning given in Section 39.4(a)(ii) (*Jointly Developed Materials*) of the Project Agreement.
- 1.80 “**City of Toronto Standards**” means the standards of the City of Toronto as set out in the Output Specifications.
- 1.81 “**City Road Allowance**” has the meaning given in Schedule 35 – Lands.
- 1.82 “**Civil Structures**” has the meaning given in the Output Specifications.

- 1.83 “**CN Rail**” means the Canadian National Railway Company, and its successors.
- 1.84 “**Collective Agreements e-Library Portal**” means the website found at the following link: [https://sp.ltc.gov.on.ca/sites/mol/drs/ca/Pages/default\\_en.aspx](https://sp.ltc.gov.on.ca/sites/mol/drs/ca/Pages/default_en.aspx), as may be amended from time to time.
- 1.85 “**Commercial Close**” means the date of the Project Agreement.
- 1.86 “**Commissioning**” has the meaning given in Schedule 14 – Commissioning.
- 1.87 “**Commissioning Submittals**” has the meaning given in Schedule 14 – Commissioning.
- 1.88 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 – Commissioning;
  - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards; and
  - (c) recommended by the manufacturer of any part of the Project Co Infrastructure or the New Third Party Infrastructure.
- 1.89 “**Companies’ Creditors Arrangement Act (Canada)**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended from time to time.
- 1.90 “**Compensation Event**” has the meaning given in Section 31.1(a) (*Compensation Events*) of the Project Agreement.
- 1.91 “**Compensation Payment**” means the Contracting Authority Default Termination Sum, the Project Co Default Termination Sum or the Non-Default Termination Sum.
- 1.92 “**Complaints Protocol**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.93 “**Completion Checklist**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.94 “**Completion Holdback**” has the meaning given in Section 23.6(b) (*Section Minor Deficiencies and Minor Deficiencies*) of the Project Agreement.
- 1.95 “**Complex Structure Demolition**” means any Demolition where any one or more of the following is applicable:
- (a) significant structural elements, such as girders, columns, shearwalls or slabs, are being removed, de-stressed, altered or removed;
  - (b) large penetrations are being created through slabs;
  - (c) any Demolition that may cause the collapse of any building or structure (or any portion thereof) and such collapse may directly impact adjacent occupied areas of a building or

structure and potentially jeopardize the safety of workers, staff or the general public using such building or structure;

- (d) the Demolition of any building or structure (or any portion thereof) has the potential to result in any materials collapsing onto or interfering with any pedestrian right-of-way or into an occupied part of any building or structure; and
  - (e) any apparent or inferable risk associated with the Demolition poses a significant risk to workers, the public or adjacent property.
- 1.96 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of one Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) (directly or indirectly), whether before or after Commercial Close.
- 1.97 “**Construction Act (Ontario)**” means the *Construction Act*, R.S.O. 1990, c.C.30, and regulations enacted thereunder, all as amended from time to time and subject to the application of the transition provisions in section 87.3 of the *Construction Act* (Ontario).
- 1.98 “**Construction Activities**” means construction, demolition, rehabilitation, Reinstatement Work, rectification work, Warranty 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 Infrastructure and the New Third Party Infrastructure;
  - (b) comprises the assessment of any Project Co Infrastructure or New Third Party Infrastructure;
  - (c) may affect the structural integrity of any Project Co Infrastructure or New Third Party Infrastructure, and including any such aspect of the Works carried out as part of any Force Majeure event, Relief Event, Variation, or Innovation Proposal accepted by Contracting Authority; or
  - (d) comprises Construction Clearing and Grubbing.
- 1.99 “**Construction Certificate**” means a certificate with contents described in Attachment 2 to Appendix A (*Minimum Works Submittals*) of Schedule 10 – Review Procedure.
- 1.100 “**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).
- 1.101 “**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.
- 1.102 “**Construction Contractor’s Direct Agreement**” means the direct agreement between Contracting Authority, Project Co, the Construction Contractor and the Construction Guarantors in the form set out in Schedule 5 – Construction Contractor’s Direct Agreement.

- 1.103 “**Construction Defect**” has the meaning given in Section 11.16(a)(i) (*Defective Works*) of the Project Agreement.
- 1.104 “**Construction Document Submittals**” has the meaning given in Section 11.1(d)(ii) (*Development of Design*) of the Project Agreement.
- 1.105 “**Construction Guarantors**” means [REDACTED] and “**Construction Guarantor**” means any one of them.
- 1.106 “**Construction Integration Working Group**” has the meaning given in Schedule 39 – Form of RSSOM Interface Agreement.
- 1.107 “**Construction Latent Defect**” means a Construction Defect that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Works if such inspection took place prior to the expiry of the applicable Warranty Period in respect of such Construction Defect set out in paragraph (a) of the definition of Warranty Period.
- 1.108 “**Construction Management Plan**” has the meaning given in the Output Specifications.
- 1.109 “**Construction Period Deductions**” has the meaning given in Schedule 19 – Liquidated Damages and Construction Enforcement Regime.
- 1.110 “**Construction Period Quality Failure**” has the meaning given in Schedule 19 – Liquidated Damages and Construction Enforcement Regime.
- 1.111 “**Construction Quality Management Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.112 “**Contamination**” means the presence of any (a) Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws or (b) Contaminated Materials. If Contamination is present in soil, surface water, sediment or groundwater, then the soil, surface water, sediment or groundwater, as applicable, containing the Contamination shall also be deemed to be Contamination for the purposes of the Project Agreement.
- 1.113 “**Contaminated Materials**” means any equipment, tank, container, conduit, structure, or thing that contains, is associated with, or is impacted by any Hazardous Substance.
- 1.114 “**Contracting Authority**” means Metrolinx.
- 1.115 “**Contracting Authority Activities**” means all governmental services and activities provided in connection or otherwise associated with the Ontario Line Subway System, or Contracting Authority’s work with respect to the Province of Ontario’s New Subway Transit Plan.
- 1.116 “**Contracting Authority Contamination**” has the meaning given in Section 18.3(e) (*Contamination*) of the Project Agreement.
- 1.117 “**Contracting Authority Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.

- 1.118 “**Contracting Authority Design Team**” means any of Contracting Authority, its agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the Project Co Infrastructure or the New Third Party Infrastructure or the Contracting Authority Activities, but excluding Project Co and any Project Co Party.
- 1.119 “**Contracting Authority Event of Default**” has the meaning given in Section 35.1(a) (*Contracting Authority Events of Default*) of the Project Agreement.
- 1.120 “**Contracting Authority HR Policy**” means Contracting Authority’s human resources policies and guidelines, as they may be amended from time to time and provided to Project Co in writing.
- 1.121 “**Contracting Authority Items of Interest or Value**” has the meaning given in Section 18.4(c) (*Items of Geological, Historical or Archaeological Interest or Value*) of the Project Agreement.
- 1.122 “**Contracting Authority Jointly Developed Materials**” has the meaning given in Section 39.4(a)(i) (*Jointly Developed Materials*) of the Project Agreement.
- 1.123 “**Contracting Authority Party**” means any of Contracting Authority’s agents, contractors and subcontractors of any tier (including the Delivery Partner) engaged with respect to the Works and its or their directors, officers and employees, but excluding Project Co and any Project Co Party, RSSOM Project Co and any RSSOM Project Co Party, and North Civil Project Co and any North Civil Project Co Party, and “**Contracting Authority Parties**” shall be construed accordingly.
- 1.124 “**Contracting Authority Permits, Licences, Approvals and Agreements**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.125 “**Contracting Authority Representative**” means the person designated as such by Contracting Authority on or prior to the date of the Project Agreement and any permitted replacement.
- 1.126 “**Contracting Authority Species-at-Risk**” has the meaning given in Section 18.7(b) (*Species-at-Risk*) of the Project Agreement.
- 1.127 “**Contracting Authority Supplied Third Party Intellectual Property**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.128 “**Contracting Authority Taxes**” means taxes, or payments in lieu of taxes, imposed on Contracting Authority and HST and property taxes for which Contracting Authority is responsible pursuant to Section 4.14 (*Taxes*) of the Project Agreement.
- 1.129 “**Contracting Authority Third Party Beneficiaries**” has the meaning given in Section 52.17(a)(i) (*Province Persons and Contracting Authority Parties as Third Party Beneficiaries*) of the Project Agreement.
- 1.130 “**Contracting Authority Trademarks**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.131 “**Contracting Authority Utility Infrastructure**” has the meaning given in Section 18.6(b) (*Mislocated or Unknown Utility Infrastructure*) of the Project Agreement.

- 1.132 “**Contractor Site Specific Safety Manual**” has the meaning given in Schedule 29 – Safety, System Assurance and Security.
- 1.133 “**Control Party**” means:
- (a) any person with any form of direct ownership interest in Project Co;
  - (b) [REDACTED].
- 1.134 “**Copyrights**” means all copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by multinational treaties or conventions.
- 1.135 “**COR Certification**” means, in respect of a person, receipt by such person of its (i) Certificate of Recognition; and (ii) Letter of Good Standing.
- 1.136 “**COR Program**” means the national safety program known as “The Certificate of Recognition (COR™)”, being a safety program that enables persons to assess their health and safety management systems to manage risks, establish controls, and minimize the incidence of injury and illness to their workers, and being nationally trademarked and endorsed by participating members of the Canadian Federation of Construction Safety Associations, or such other national safety program approved by Contracting Authority.
- 1.137 “**COR-Certified Construction Project Co Party**” has the meaning given in Section 11.25(a)(ii) (*COR Certification*) of the Project Agreement.
- 1.138 “**COR-Qualified Construction Project Co Party**” means one of the following:
- (a) where the Construction Contractor is a single legal entity, the Construction Contractor;
  - (b) where the Construction Contractor is a joint venture, each member of the joint venture; or
  - (c) where the Construction Contractor is a partnership, each partner of the partnership,
- provided that each such person has current OHSAS 18001 Accreditation or ISO 45001 Accreditation in good standing.
- 1.139 “**Corrected Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.140 “**Corrective Action**” has the meaning given in Schedule 11 – Quality Management.
- 1.141 “**Corrective Actions Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.142 “**Cost of the Financing**” means all costs and expenses incurred in connection with the Financing pursuant to the Lending Agreements, including all interest, fees, expense reimbursements, pre-payment and breakage costs and all other costs and expenses, as set out in Schedule 32 – Financial Model.



- 1.143 “**Cost of the Works**” means the cost to Project Co of performing the Works as set out in Schedule 32 – Financial Model and shall include all amounts to be included in the Cost of the Works set out in the Project Agreement.
- 1.144 “**Countdown Notice**” has the meaning given in Section 23.5(a) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of the Project Agreement.
- 1.145 “**COVID-19 Change in Law Reference Date**” means the date that is seven (7) days prior to the Technical Submission Deadline.
- 1.146 “**COVID-19 Emergency Public Health Physical Distancing Requirements**” means the requirements under the applicable regulations and orders made under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, S.O. 2020, c. 17 in effect as of the COVID-19 Change in Law Reference Date or any substantially similar Applicable Law with respect to COVID-19 regarding physical distancing requirements of at least two meters.
- 1.147 “**CP Rail**” means Canadian Pacific Railway Company Ltd., and its successors.
- 1.148 “**CP Rail Corridor Lands**” has the meaning given in Schedule 35 – Lands.
- 1.149 “**CPI**” means, as at the date of the Project Agreement, CPI XFET and, thereafter, the latest available Consumer Price Index Canada (all items) as published by Statistics Canada from time to time (whether preliminary or final), 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, most closely resembles such index.
- 1.150 “**CPI XFET**” means the Consumer Price Index excluding food, energy and the effect of changes in indirect taxes.
- 1.151 “**CPI<sub>n</sub>**” is the value of CPI on April 1 of the relevant year, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date.
- 1.152 “**CPI<sub>o</sub>**” is the value of CPI at Financial Close, to be determined by reference to the relevant index in the month immediately preceding Financial Close.
- 1.153 “**Critical Data**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.154 “**Critical Data Deadline**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.155 “**Critical Non-Conformance**” means any Non-Conformance, or combination of Major Non-Conformances, that:
- (a) in the reasonable opinion of Contracting Authority, demonstrates that Project Co is performing the Works in a manner that may result in Project Co becoming unable to satisfy the requirements for Substantial Completion;
  - (b) is persistent, ongoing and repeated; or

- (c) in the reasonable opinion of Contracting Authority, by its continued existence or through the process of rectification, would:
- (i) result or is reasonably expected to result in material disruption to the public or a materially adverse disruption to vehicular or rail traffic flow or the public transit system in the City of Toronto;
  - (ii) prejudice or is reasonably expected to materially prejudice the performance of any Governmental Activities;
  - (iii) create or is reasonably expected to create a serious threat to the health, safety or security of any person, including any user of any part of or the whole of the Project Co Infrastructure, New Third Party Infrastructure and/or Existing Infrastructure, volunteers and visitors to the Project Co Infrastructure, New Third Party Infrastructure and/or Existing Infrastructure, and members of the public;
  - (iv) materially increase Contracting Authority’s risk or transfer risk to Contracting Authority or any Contracting Authority Party;
  - (v) materially adversely affect the ability of any Contracting Authority Party, Other Contractor, each Railway Company or GO Transit to perform their activities as permitted or contemplated by the Project Agreement;
  - (vi) materially adversely affect or change the Critical Path of the Project as defined in the Progress Works Schedule, adversely affect Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date, require a material resequencing of the Works or cause any delay in achieving Substantial Completion;
  - (vii) potentially compromise the reputation or integrity of Contracting Authority and/or any Contracting Authority Party or the nature of the public transit system in the City of Toronto or the Province of Ontario so as to affect public confidence in the public transit system in the City of Toronto or the Province of Ontario or the Project; or
  - (viii) materially adversely affect the ability of the Contracting Authority to achieve the dates set out in Appendix A of Schedule 45 – Integration with RSSOM Project.

1.156 “**Critical Path**” has the meaning given in Schedule 12 – Works Schedule Requirements.

1.157 “**Critical RSSOM Infrastructure Data**” has the meaning given in Schedule 45 – Integration with RSSOM Project.

1.158 “**Critical RSSOM Infrastructure Data Deadline**” has the meaning given in Schedule 45 – Integration with RSSOM Project.

1.159 “**Critical RSSOM Infrastructure Works**” has the meaning given in Schedule 45 – Integration with RSSOM Project.

- 1.160 “**Critical RSSOM Infrastructure Works Complete**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.161 “**Critical RSSOM Infrastructure Works Deadline**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.162 “**Critical Works**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.163 “**Critical Works Complete**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.164 “**Critical Works Deadline**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.165 “**Cross Passage**” has the meaning given in the Output Specifications.
- 1.166 “**Crown**” means His Majesty the King in right of Ontario.
- 1.167 “**Crown Agency Act (Ontario)**” means the *Crown Agency Act*, R.S.O. 1990, c. 48, as amended from time to time.
- 1.168 “**Crown Liability and Proceedings Act (Ontario)**” means the *Crown Liability and Proceedings Act*, 2019, R.S.O. 1990, c. P.27, as amended from time to time.
- 1.169 “**CSA Standards**” means, at the applicable time, the Canadian Standards Association standards.
- 1.170 “**Cultural Heritage Reports**” means the cultural heritage reports set out in Appendix B to Schedule 17 – Environmental Obligations.
- 1.171 “**Debt Financing**” means Senior Debt Amount and Junior Debt Amount provided by the Lenders to finance the costs of the Project pursuant to the Lending Agreements, excluding any acceleration penalty, default interest, and enforcement costs imposed under any of the Lending Agreements.
- 1.172 “**Delay Event**” has the meaning given in Section 30.1(a) (*Delay Events – Definition*) of the Project Agreement.
- 1.173 “**Delivery Partner**” means a third party designated by the Crown to provide construction oversight and management services on behalf of the Contracting Authority.
- 1.174 “**Demolition**” means the removal of a building or structure, as the case may be, or of any material part of a building or structure.
- 1.175 “**Demolition Default Event**” has the meaning given in Section 11.26(b) (*Demolition Requirements*) of the Project Agreement.
- 1.176 “**Demolition Guidelines**” means those guidelines set forth in the document entitled “Professional Engineers Providing Services for Demolition of Buildings and other Structures” published by the Professional Standards Committee established by the Professional Engineers of Ontario and having a publication date of April, 2011.

- 1.177 “**Demolition Plan**” means a plan or other document prepared by a Professional Engineer, limited licence holder or provisional licence holder in accordance with subsection (3) of the Performance Standards Regulation with respect to the Demolition of a building or structure, and includes any changes to the plan or other document that are made by a Professional Engineer, limited licence holder or provisional licence holder.
- 1.178 “**Demolition Requirements**” has the meaning given in Section 11.26(a) (*Demolition Requirements*) of the Project Agreement.
- 1.179 “**Demolition Specifications**” means those specifications relating to any Demolition prepared by Project Co in accordance with Section 11.26(a)(iv)(A) (*Demolition Requirements*) of the Project Agreement.
- 1.180 “**Demolition Supervisor**” has the meaning given in Section 11.26(a)(ii) (*Demolition Requirements*) of the Project Agreement.
- 1.181 “**Design and Construction Certification Procedure**” means the procedures set out in Section 2.3(a) (*Design and Construction Certification*) of Schedule 11 – Quality Management.
- 1.182 “**Design and Construction Contract**” means the design and construction contract between Project Co and the Construction Contractor dated on or about the date of Financial Close.
- 1.183 “**Design and Construction Data**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.184 “**Design Certificate**” means a certificate with contents described in Attachment 1 to Appendix A (*Minimum Works Submittals*) of Schedule 10 – Review Procedure.
- 1.185 “**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 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.
- 1.186 “**Design Development Submittal**” has the meaning given in Section 11.1(d)(i) (*Development of Design*) of the Project Agreement.
- 1.187 “**Design Integration Working Group**” has the meaning given in Schedule 39 – Form of RSSOM Interface Agreement.
- 1.188 “**Design Quality Management Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.189 “**Design Review Meetings**” has the meaning given in Section 11.3(a) (*Design Workshops*) of the Project Agreement.
- 1.190 “**Design Team**” means:
- (a) [REDACTED],

engaged by the Construction Contractor to design the Project Co Infrastructure and the New Third Party Infrastructure and any substitute design team engaged by the Construction Contractor or Project Co as may be permitted by the Project Agreement.

- 1.191 “**Designated Substances and Hazardous Materials**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.192 “**Development Approvals**” means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences, Approvals and Agreements, required from time to time for construction of the Project Co Infrastructure and the New Third Party Infrastructure.
- 1.193 “**Differing Geotechnical Site Condition**” has the meaning given in Section 18.2(a) (*Geotechnical Site Conditions*) of the Project Agreement.
- 1.194 “**Differing Major Existing Infrastructure Condition**” has the meaning given in Section 18.5(a) (*Major Existing Infrastructure Condition*) of the Project Agreement.
- 1.195 “**Digital and Data Directive**” means the Management Board of Cabinet’s Digital and Data Directive dated February 1, 2021 as may be amended or superseded from time to time.
- 1.196 “**Direct Cost**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.197 “**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.
- 1.198 “**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.
- 1.199 “**Disclosing Party**” has the meaning given in the definition of Confidential Information.
- 1.200 “**Discriminatory Change in Law**” means any Change in Law which applies expressly to:

- (a) transit systems, including subways or metros whose design, construction, and financing are procured by a contract similar to the Project Agreement and not to other similar transit systems;
- (b) the Project Co Infrastructure or New Third Party Infrastructure and not to other transit systems, including subways or metros;
- (c) Project Co and not to other persons; or
- (d) persons undertaking projects for design, construction, and financing that are procured by a contract similar to the Project Agreement and not to other persons undertaking similar projects procured on a different basis,

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

- (e) where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
- (f) solely on the basis that its effect on Project Co is greater than its effect on other companies; or
- (g) where such Change in Law affects companies generally.

- 1.201 “**Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.202 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 – Dispute Resolution Procedure.
- 1.203 “**Document Control and Security Protocol**” has the meaning given in Section 40.1(e) (*Restrictions on Use and Disclosure*) of the Project Agreement.
- 1.204 “**DSHM Post-RFP Report Deadline**” has the meaning given in Section 7.5(a) (*DSHM Post-RFP Reports*) of the Project Agreement.
- 1.205 “**DSHM Post-RFP Report Variation Deadline**” has the meaning given in Section 7.5(c)(ii)(B) (*DSHM Post-RFP Reports*) of the Project Agreement.
- 1.206 “**DSHM Post-RFP Reports**” has the meaning given in Section 7.5(a) (*DSHM Post-RFP Reports*) of the Project Agreement.
- 1.207 “**DSHM Reports**” means the Designated Substances and Hazardous Materials reports set out in Appendix B to Schedule 17 – Environmental Obligations.
- 1.208 “**DSHM Variation**” has the meaning given in Section 7.5(b) (*DSHM Post-RFP Reports*) of the Project Agreement.
- 1.209 “**Early Contractor Activities**” has the meaning given in the Request for Proposals.
- 1.210 “**Early Handover Site**” has the meaning given in Part B of Schedule 43 – Incentive Payments.

- 1.211 “**Early Works Construction Defect**” has the meaning set out in Schedule 41 – Early Works Handover.
- 1.212 “**Early Works Contractor**” means each of the contractors delivering the Early Works Infrastructure.
- 1.213 “**Early Works Infrastructure**” means the infrastructure that each Early Works Contractor designs, constructs, installs, tests, supplies, delivers and commissions and hands over to Project Co as contemplated in Schedule 41 – Early Works Handover.
- 1.214 “**Early Works Infrastructure Section**” has the meaning set out in Schedule 41 – Early Works Handover.
- 1.215 “**Early Works Section Handover**” has the meaning given in Schedule 41 – Early Works Handover.
- 1.216 “**Early Works Section Handover Date**” has the meaning set out in Schedule 41 – Early Works Handover.
- 1.217 “**Earned Value Metrics**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.218 “**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.
- 1.219 “**Eighth Milestone Payment**” means \$[REDACTED].
- 1.220 “**Eighth Milestone Payment Completion Date**” has the meaning given in Section 25A.2(e)(i) (*Certification of Milestone Payments*) of the Project Agreement.
- 1.221 “**Embargo Period**” means the dates when Utility Companies do not permit works to be undertaken.
- 1.222 “**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 Province Persons) or any part of or the whole of the Project Co Infrastructure, the New Third Party Infrastructure or the Existing Infrastructure;
    - (ii) causes or may cause damage or harm to property, buildings and/or equipment;
    - (iii) constitutes a hostage situation or state of emergency declared as such by the Contracting Authority Representative or Contracting Authority (acting reasonably);

- (iv) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Project Co Infrastructure or New Third Party Infrastructure, any part of the Lands, the conduct of Works, or the conduct of Governmental Activities; or
- (v) constitutes a period of transition to or from war,
- and which, in the opinion of Contracting Authority, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing; or
- (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) an Emergency Service Provider.
- 1.223 “**Emergency Exit Building**” or “**EEB**” has the meaning given in the Output Specifications.
- 1.224 “**Emergency Rail Situation**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.225 “**Emergency Response Plan**” means the plan to be prepared, submitted and implemented by Project Co in accordance with the Output Specifications.
- 1.226 “**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 Infrastructure or New Third Party Infrastructure from time to time.
- 1.227 “**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 17.2(d) (*No Encumbrances*) of the Project Agreement.
- 1.228 “**Environmental Assessments**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.229 “**Environmental Director**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.230 “**Environmental Management Plans**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.231 “**Environmental Management System**” or “**EMS**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.232 “**Environmental Protection Act (Ontario)**” means the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended from time to time.
- 1.233 “**Environmental Reports**” means, collectively, (a) each report set out in Appendix B to Schedule 17 – Environmental Obligations and (b) the Environmental Assessments.
- 1.234 “**Equity Deserving Groups**” means communities that experience significant collective challenges in participating in society resulting from attitudinal, historic, social and environmental barriers based on age, ethnicity, disability, economic status, gender, nationality, race, sexual orientation,



transgender status, or other analogous grounds within the meaning of the *Canadian Charter of Rights and Freedoms* s 15(1), c.7., Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

- 1.235 “**Estimate**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.236 “**Excise Tax Act (Canada)**” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended from time to time.
- 1.237 “**Executive Council Act (Ontario)**” means the *Executive Council Act*, R.S.O. 1990, c. E. 25, as amended from time to time.
- 1.238 “**Executive Project Meeting**” has the meaning given in Section 11.30(a) (*Executive Project Meetings*) of the Project Agreement.
- 1.239 “**Executive Project Meeting Document**” has the meaning given in Section 11.30(e) (*Executive Project Meetings*) of the Project Agreement.
- 1.240 “**Existing Adjacent Structures**” or “**EAS**” has the meaning given in the Output Specifications.
- 1.241 “**Existing COVID-19 Laws Extension**” means the continuation in force of the COVID-19 Emergency Public Health Physical Distancing Requirements beyond the Anticipated COVID-19 Impact End Date.
- 1.242 “**Existing Infrastructure**” means the Existing Metrolinx Infrastructure and the Existing Third Party Infrastructure.
- 1.243 “**Existing Metrolinx Infrastructure**” means existing infrastructure located on the Metrolinx Lands that is owned by Metrolinx.
- 1.244 “**Existing Third Party Infrastructure**” means existing road, highway, transit, Utility Infrastructure, drainage works, landscaping or any other public realm infrastructure and any other infrastructure situated on the Lands that is owned by the City of Toronto, any Utility Company, or any other third party.
- 1.245 “**Existing TTC Infrastructure**” means any asset, improvement, facility or infrastructure situated on the Lands 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.
- 1.246 “**Expiry Date**” means the first anniversary of the Final Completion Date.
- 1.247 “**External Quality Audit**” has the meaning given in Schedule 11 – Quality Management.
- 1.248 “**Facilities**” has the meaning given in the Output Specifications.
- 1.249 “**Failure to Vacate**” has the meaning given in Schedule 19 – Liquidated Damages and Construction Enforcement Regime.
- 1.250 “**Fifth Milestone Payment**” means \$[REDACTED].

- 1.251 “**Fifth Milestone Payment Completion Date**” has the meaning given in Section 25A.2(e)(i) (*Certification of Milestone Payments*) of the Project Agreement.
- 1.252 “**Final Completion**” means the completion of the Works in accordance with the Project Agreement, including completion and rectification of all Minor Deficiencies.
- 1.253 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 23.10 (*Final Completion Certificate*) of the Project Agreement.
- 1.254 “**Final Completion Countdown Notice**” has the meaning given in Section 23.9(a) (*Final Completion Countdown Notice*) of the Project Agreement.
- 1.255 “**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.
- 1.256 “**Final Completion Notice**” has the meaning given in Section 23.10(b) (*Final Completion Certificate*) of the Project Agreement.
- 1.257 “**Financial Administration Act (Ontario)**” means the *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended from time to time.
- 1.258 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.259 “**Financial Close Target Date**” means November 10, 2022, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.260 “**Financial Model**” means, at any time, the computer spreadsheet model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Works together with, if applicable, 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 as at Financial Close as attached to the Project Agreement as Schedule 32 – Financial Model as amended to such time with approval of Contracting Authority in accordance with Section 2.4 (*Refinancing*) of Schedule 28 – Refinancing with respect to any Refinancing. If “**Financial Model**” is used without any reference to a particular time, it means the Financial Model at or as at the time the applicable calculation is being made.
- 1.261 “**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.
- 1.262 “**Financial Submission Deadline**” means [REDACTED].
- 1.263 “**Financing**” means the financing with the Lenders, that is consistent in all material respects with Schedule 32 – Financial Model and the Project Agreement, to finance the Project.
- 1.264 “**Finishing Holdback**” means the finishing construction lien holdback to be retained pursuant to section 22(2) of the *Construction Act* (Ontario).

- 1.265 “**Finishing Holdback Payment Date**” means the date for payment of the Finishing Holdback pursuant to Schedule 42 – Payment Procedures.
- 1.266 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario), R.S.O. 1990, c. F.31, as amended from time to time.
- 1.267 “**First Milestone Payment**” means \$[REDACTED].
- 1.268 “**First Milestone Payment Completion Date**” has the meaning given in Section 25A.2(e)(i) (*Certification of Milestone Payments*) of the Project Agreement.
- 1.269 “**Fisheries Act (Canada)**” means the *Fisheries Act*, R.S.C. 1985, c. F-14, as amended from time to time.
- 1.270 “**Force Majeure**” has the meaning given in Section 33.1(a) (*Force Majeure – Definition*) of the Project Agreement.
- 1.271 “**Form of Utility Agreement**” has the meaning given in Section 11.36(a) (*Utility Agreements*) of the Project Agreement.
- 1.272 “**Fourth Milestone Payment**” means \$[REDACTED].
- 1.273 “**Fourth Milestone Payment Completion Date**” has the meaning given in Section 25A.2(e)(i) (*Certification of Milestone Payments*) of the Project Agreement.
- 1.274 “**Funded Capital Costs**” is equal to the sum of the Cost of the Works and the Cost of the Financing, less the Legislative Holdback amount.
- 1.275 “**Funeral, Burial and Cremations Services Act (Ontario)**” means the Funeral, Burial and Cremations Services Act, S.O. 2002, c.33, as amended from time to time.
- 1.276 “**Geotechnical Baseline Statement**” has the meaning given in Schedule 44 – Geotechnical Baseline Reports.
- 1.277 “**Geotechnical Instrumentation and Monitoring Plan**” has the meaning given in the Output Specifications.
- 1.278 “**Geotechnical Site Condition**” means any Site Condition under the Lands other than any,
- (a) Contamination;
  - (b) Items of Interest or Value;
  - (c) Major Existing Infrastructure;
  - (d) Utility Infrastructure; or
  - (e) Species-at-Risk.

- 1.279 “**GO Passenger Charter**” means the GO Transit passenger charter set out on GO Transit’s website ([http://www.gotransit.com/passengercharter/en/passenger\\_charter.aspx](http://www.gotransit.com/passengercharter/en/passenger_charter.aspx)), as amended from time to time.
- 1.280 “**GO Transit**” means GO Transit, an operating division of Contracting Authority and its successors.
- 1.281 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial and rail safety 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, including professionals, manufacturers, contractors and trades who are experienced in work on infrastructure that is comparable to that is comparable to the Project Co Infrastructure as part of the Ontario Line Subway and New Third Party Infrastructure.
- 1.282 “**Government Entity**” means any one or more of the Province, IO, MTO and MOI.
- 1.283 “**Government Sensitive Information**” means any information which is designated as such by Contracting Authority from time to time, or which a reasonable person having regard to the circumstances, would regard as sensitive, including (i) all confidential information that is designated as such by Applicable Law, and (ii) any record, the disclosure of which could be injurious to the interests of Contracting Authority.
- 1.284 “**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 Infrastructure and New Third Party Infrastructure by any Governmental Authority or Emergency Service Provider, and includes the Contracting Authority Activities.
- 1.285 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over Contracting Authority (including the Management Board of Cabinet), any aspect of the performance of the Project Agreement or the operation of the Project Co Infrastructure 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 TTC.
- 1.286 “**Guaranteed Price**” is the amount referred to in Section 3.1(a) (*Guaranteed Price and Adjustments*) of the Project Agreement.
- 1.287 “**H&S Certification Default Event**” has the meaning given in Section 11.25(b) (*COR Certification*) of the Project Agreement.
- 1.288 “**H&S Certification Maintenance Plan**” has the meaning given in Section 11.25(b)(vii)(B) (*COR Certification*) of the Project Agreement.
- 1.289 “**H&S Certification Reinstatement Plan**” has the meaning given in Section 11.25(b)(vi)(B) (*COR Certification*) of the Project Agreement.

- 1.290 “**H&S Construction Inspection**” has the meaning given in Section 15.1(b) (*Quality Management*) of the Project Agreement.
- 1.291 “**H&S Construction Inspection Report**” has the meaning given in Section 15.1(d) (*Quality Management*) of the Project Agreement.
- 1.292 “**H&S Construction Re-Inspection**” has the meaning given in Section 15.1(e)(ii) (*Quality Management*) of the Project Agreement.
- 1.293 “**H&S Construction Re-Inspection Report**” has the meaning given in Section 15.1(e)(iii) (*Quality Management*) of the Project Agreement.
- 1.294 “**Handling**” means any collection, use or disclosure of information, including, for greater certainty, any access, modification, retention, safeguarding, permitted de-identification or anonymization, destruction of information (whether or not by automatic means) or any other handling of information. “**Handled**” and “**Handle**” have a corresponding meaning.
- 1.295 “**Handover**” means the successful handover by Project Co of:
- (a) the New City Infrastructure to Contracting Authority or, where Notice of Delegation has been provided by Contracting Authority in respect of New City Infrastructure in accordance with Section 23.12 (*Inspection, Commissioning and Handover of New City Infrastructure*) of the Project Agreement including, for clarity, the receipt of Contracting Authority’s or the City’s (as the case may be) confirmation that Handover has been successfully achieved and the provision of the Notice to Contracting Authority in accordance with Section 23.12(g) (*Inspection, Commissioning and Handover of New City Infrastructure*) of the Project Agreement; or
  - (b) the New TTC Infrastructure, or a component thereof, to Contracting Authority or, where a Notice of Delegation has been provided by Contracting Authority in respect of New TTC Infrastructure, to the TTC, in accordance with Section 23.13 (*Inspection, Commissioning and Handover of New TTC Infrastructure*) of the Project Agreement, including, for clarity, the receipt of Contracting Authority’s or the TTC’s (as the case may be) confirmation that Handover has been successfully achieved and the provision of the Notice to Contracting Authority in accordance with Section 23.13(e) (*Inspection, Commissioning and Handover of New TTC Infrastructure*) of the Project Agreement.
- 1.296 “**Hazardous Substances**” means any contaminant, pollutant, mould, dangerous substance, toxic substance, liquid Waste, industrial Waste, gaseous Waste, hauled liquid Waste, hazardous material, or hazardous substance as defined in or identified pursuant to any Applicable Law.
- 1.297 “**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.
- 1.298 “**Hedging Agreement**” means an agreement relating to the hedging of interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.299 “**Highway Traffic Act (Ontario)**” means the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended from time to time.

- 1.300 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.301 “**IC Section Substantial Completion Deliverables Confirmation**” has the meaning given in Section 23.3(d)(i)(A) (*Section Substantial Completion Certificates and Substantial Completion Certificate*) of the Project Agreement.
- 1.302 “**IC Section Substantial Completion Deliverables Deficiencies List**” has the meaning given in Section 23.3(d)(ii)(A) (*Section Substantial Completion Certificates and Substantial Completion Certificate*) of the Project Agreement.
- 1.303 “**IC Substantial Completion Deliverables Confirmation**” has the meaning given in Section 23.3(d)(i)(B) (*Section Substantial Completion Certificates and Substantial Completion Certificate*) of the Project Agreement.
- 1.304 “**IC Substantial Completion Deliverables Deficiencies List**” has the meaning given in Section 23.3(d)(ii)(B) (*Section Substantial Completion Certificates and Substantial Completion Certificate*) of the Project Agreement.
- 1.305 “**Identified Contaminated Materials**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.306 “**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.
- 1.307 “**Income Tax Act (Canada)**” means the *Income Tax Act*, R.S.C., 1985, c. 1, as amended from time to time.
- 1.308 “**Incident of Train Delay**” has the meaning given in Schedule 19 – Liquidated Damages and Construction Enforcement Regime.
- 1.309 “**Indemnifiable Taxes**” has the meaning given in Section 4.20(b) (*Taxes – Indemnity*) of the Project Agreement.
- 1.310 “**Indemnifier**” has the meaning given in Section 44.3(a) (*Conduct of Claims*) of the Project Agreement.
- 1.311 “**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.
- 1.312 “**Independent Certifier Agreement**” means the contract entered into between Project Co, Contracting Authority and the Independent Certifier in substantially the form attached hereto as Schedule 6 – Independent Certifier Agreement.
- 1.313 “**Independent Quality Audit**” has the meaning given in Schedule 11 – Quality Management.

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- 1.314 “**Independent Safety Assessor**” or “**ISA**” has the meaning given in Schedule 29 – Safety, System Assurance and Security.
- 1.315 “**Indigenous Entities**” means organizations and/or businesses that are Indigenous run and/or represent Indigenous interests as identified by Contracting Authority.
- 1.316 “**Indigenous Nations**” means, collectively, the First Nations, Métis and Inuit communities in Canada.
- 1.317 “**Indirect Losses**” has the meaning given in Section 45.1(a) (*Indirect Losses*) of the Project Agreement.
- 1.318 “**Infringing Material**” has the meaning given in Section 44.1(h) (*Project Co Indemnities to Contracting Authority*) of the Project Agreement.
- 1.319 “**Injurious Affection**” has the meaning given in the *Expropriations Act*, R.S.O. 1990, c. E. 26, as amended from time to time.
- 1.320 “**Innovation Proposal**” has the meaning given in Section 29.2(b) (*Innovation and Value Engineering*) of the Project Agreement.
- 1.321 “**Inspection and Test Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.322 “**Insurance**” means the insurance contemplated in Schedule 25 – Insurance and Performance Security Requirements.
- 1.323 “**Insurance Policies**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.324 “**Insurance Proceeds**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.325 “**Insurance Trust Account**” means Account No. [REDACTED] at [REDACTED].
- 1.326 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between Contracting Authority, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 – Insurance Trust Agreement.
- 1.327 “**Integration Committee**” has the meaning given in Schedule 39 – Form of RSSOM Interface Agreement.
- 1.328 “**Integration Demerit Points Incurred**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.329 “**Integration Demerit Points Relief Threshold**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.330 “**Integration Dispute**” has the meaning given in in Schedule 39 – Form of RSSOM Interface Agreement.
- 1.331 “**Integration Dispute Resolution Procedure**” has the meaning given in in Schedule 39 – Form of RSSOM Interface Agreement.

- 1.332 “**Integration Milestone Delay**” has the meaning given in Schedule 19 – Liquidated Damages and Construction Enforcement Regime.
- 1.333 “**Integration Milestones LD Liability Cap**” has the meaning given in Section 45.5(c) (*Maximum Liability for Liquidated Damages and Total Construction Period Deductions*) of the Project Agreement.
- 1.334 “**Intellectual Property**” means all intellectual and industrial property, including: (i) Trademarks; (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 any patent disclosures, whether or not reduced to practice and whether or not yet made the subject of a pending patent application or applications; (vi) trade secrets and confidential, technical or business information (including ideas, formulas, compositions, designs, inventions, and conceptions of inventions whether patentable or unpatentable and whether or not reduced to practice); (vii) whether or not confidential, technology (including know-how and show-how), manufacturing and production processes and techniques, methodologies, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, marketing and business data, pricing and cost information, business and marketing plans; (viii) copies and tangible embodiments of all the foregoing, in whatever form or medium; (ix) all rights to obtain and rights to apply for any of the foregoing and all rights therein provided by multinational treaties or conventions; (x) all rights under any agreements or instruments with respect to items in (i) to (ix) above; and (xi) all rights to sue and recover and retain damages and costs and attorneys’ fees for present and past infringement or other violation of any of the intellectual property rights hereinabove set out.
- 1.335 “**Intellectual Property Rights**” means all right, title and interest in, to and under the Intellectual Property in or associated with the Project Data, any deliverables 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 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); or
  - (b) the Project Agreement.
- 1.336 “**Interest Reference Rate**” means the reference benchmark rate of interest identified in the Financial Model and used in the calculation of the Project Debt Interest Cost, and for greater clarity, is the base rate of interest exclusive of any stated or imbedded spread, (including credit, swap or other types of spread) or fees.
- 1.337 “**Interim Baseline Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.338 “**Internal Quality Audit**” has the meaning given in Schedule 11 – Quality Management.



- 1.339 “**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 or persons exercising delegated power and the Minister’s authority, as agent for His Majesty the King in right of Ontario, as represented by the Minister of Infrastructure.
- 1.340 “**IRO**” means the Indigenous Relations Office, or the division of Contracting Authority primarily responsible for managing Indigenous relations and/or outreach.
- 1.341 “**Irrecoverable Tax**” has the meaning given in Section 4.16(b) (*Changes in Recoverability of Tax Credits*) of the Project Agreement.
- 1.342 “**ISO 45001**” means the international standard that specifies requirements for an occupational health and safety management systems developed by the International Organization of Standardization.
- 1.343 “**ISO 45001 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 ISO 45001.
- 1.344 “**Issuing Authority**” means the issuing authorities set out in Appendix A and Appendix B, as applicable, to Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.345 “**Items of Interest or Value**” has the meaning given in Section 18.4(a) (*Items of Geological, Historical or Archeological Interest or Value*) of the Project Agreement.
- 1.346 “**Jointly Developed Materials**” has the meaning given in Section 39.4(a) (*Jointly Developed Materials*) of the Project Agreement.
- 1.347 “**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, to the extent applied for the purposes of the Project and excluding the Junior Debt Makewhole, 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 a right to a makewhole amount equal to or less than a market makewhole amount. For clarity, amounts that do not meet such criteria will not be included in Junior Debt Amount.
- 1.348 “**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 “makewhole” 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.
- 1.349 “**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.

- 1.350 “**Junior Lenders**” means, at any time, any lenders to Project Co which are subordinate in interest to the Senior Lenders, and any additional lenders financing any Refinancing. For greater clarity, Junior Lenders excludes:
- (a) the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns; and
  - (b) any Affiliate of Project Co, any Project Co Party or any Affiliate of a Project Co Party.
- 1.351 “**Key Individuals**” means those Project Co Parties listed in Schedule 9 – Key Individuals.
- 1.352 “**Knowledge of the Project Manager**” means 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 but does not include any knowledge obtained as a result of the review of Background Information pursuant to Section 7.1 (*Review of Background Information*) of the Project Agreement, including the Project GBR.
- 1.353 “**Labour and Material Payment Bond**” means, collectively, the Labour and Material Payment Bond and the Multiple Obligee Rider to Labour and Material Payment Bond in the form attached as Appendix C to Schedule 25 – Insurance and Performance Security Requirements.
- 1.354 “**Lands**” has the meaning given in Schedule 35 – Lands.
- 1.355 “**Lane Closure Adjustment**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.356 “**Lane Closure Analysis Report**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.357 “**Lane Closure Measurement and Verification Plan**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.358 “**Lane Closure Target Letter**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.359 “**LEED**” has the meaning given in the Output Specifications.
- 1.360 “**Legislative Holdback**” means the basic holdback to be retained pursuant to section 22(1) of the *Construction Act* (Ontario).
- 1.361 “**Legislative Holdback Payment Date**” means the date for payment of the Legislative Holdback pursuant to Schedule 42 – Payment Procedures.
- 1.362 “**Lenders**” means any or all of the persons acting arm’s length to Project Co and each Project Co Party who provide the Financing, and for greater clarity, excludes the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns and any Affiliate of Project Co or a Project Co Party.
- 1.363 “**Lenders’ Agent**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.364 “**Lenders’ Consultant**” means [REDACTED], or such other technical advisor as may be appointed from time to time by the Lenders in accordance with the Lending Agreements.

- 1.365 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between Contracting Authority, the Lenders’ Agent and Project Co in the form set out in Schedule 4 – Lenders’ Direct Agreement.
- 1.366 “**Lending Agreements**” means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates with Senior Lenders or Junior Lenders relating to the Financing, including, for greater certainty, the Security Documents and the Hedging Agreements. Without limitation, Lending Agreements includes any agreements or instruments described above with any of the Lenders and includes those related to any Refinancing.
- 1.367 “**Letter of Credit Provider**” means the provider of a Standby Letter of Credit, and “**Letter of Credit Provider(s)**” means all providers of the Standby Letter(s) of Credit.
- 1.368 “**Letter of Good Standing**” means the document issued by IHSA to a person confirming that the internal maintenance audit performed by such person regarding its health and safety management systems has been approved by IHSA, and that such person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program.
- 1.369 “**Licensor**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.370 “**Limitations Act, 2002 (Ontario)**” means the *Limitations Act, 2002*, S.O. 2002, c.24, as amended from time to time.
- 1.371 “**Limited Modification Rights**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.372 “**Listed Project Co PLAA**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.373 “**Listed Project Co PLAA Application**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.374 “**Listed Project Co PLAA Deadline**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.375 “**Listed Project Co PLAA Requirements**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.376 “**Load-Path Diagram**” means a graphically illustrated diagram that indicates in all relevant detail (including by use of colour-coded arrows indicating the directions of forces caused by dead loads, live loads, vertical loads and lateral loads) how the structural loads are transferred throughout a building or structure that is to be the subject of a Demolition.
- 1.377 “**Longstop Date**” has the meaning given in Section 34.1(a)(ii) (*Project Co Events of Default*) of the Project Agreement.
- 1.378 “**Major Existing Infrastructure**” means the infrastructure set out in the column titled “Major Existing Infrastructure” in Appendix A to this Schedule 1, each of which are within the Project Zone of Influence.

- 1.379 “**Major Existing Infrastructure Condition**” means the condition of the Major Existing Infrastructure, including its geographic location and physical and structural condition.
- 1.380 “**Major Existing Infrastructure Condition Reports**” means the documents, assessments, surveys and other reports set out in the column titled “Major Existing Infrastructure Condition Reports” in Appendix A to this Schedule 1.
- 1.381 “**Major Non-Conformance**” means any Non-Conformance, or combination of Minor Non-Conformances, that:
- (a) contains significant deficiencies or does not generally conform with the requirements of the Project Agreement; or
  - (b) the continued existence of which is reasonably expected to result in Project Co becoming unable to satisfy the requirements of Substantial Completion.
- 1.382 “**Major Track Closure**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.383 “**Make Good**”, “**Made Good**”, “**Making Good**” and derivatives thereof, means, as applicable, repairing, restoring, refurbishing, rehabilitating, removing and replacing or performing filling operation on: (a) the Works as required under the Project Agreement; or (b) any existing components disturbed (including Existing Infrastructure) 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.
- 1.384 “**Management Board of Cabinet**” has the meaning set out in the *Management Board of Cabinet Act* (Ontario), R.S.O, 1990, c. M.1.
- 1.385 “**Mechanical Systems**” has the meaning given in the Output Specifications.
- 1.386 “**MECP**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.387 “**Member**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.388 “**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 all operating divisions thereof and any successors thereto.
- 1.389 “**Metrolinx Act, 2006 (Ontario)**” means the *Metrolinx Act, 2006*, S.O. 2006, c.16, as amended from time to time.
- 1.390 “**Metrolinx Developer Review Process**” means the process and requirements set out in the:
- (a) Metrolinx Developer’s Guide – Corridor Adjacent Developments;
  - (b) Metrolinx Developer’s Guide – Corridor Utility and Roadway Work; and
  - (c) Metrolinx Developer’s Guide – Railway Corridors.

- 1.391 “**Metrolinx Developer’s Guide – Corridor Adjacent Developments**” means the guideline titled “*Corridor Development Permit Guidelines for Adjacent Development*” and dated May 2021, as may be amended from time to time.
- 1.392 “**Metrolinx Developer’s Guide – Corridor Utility and Roadway Work**” means the guideline titled “*Corridor Development Permit Guideline for Utility and Roadway Work*” and dated June 2021, as may be amended from time to time.
- 1.393 “**Metrolinx Developer’s Guide – Railway Corridors**” means the guideline titled “*Metrolinx - GO Transit Adjacent Development Guidelines*” and dated April 1, 2013, as may be amended from time to time.
- 1.394 “**Metrolinx Lands**” has the meaning given in Schedule 35 – Lands.
- 1.395 “**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), R.S.O. 1990, c. M.56, as amended from time to time.
- 1.396 “**Milestone Payment**” means the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment or the Tenth Milestone Payment, as applicable, and “**Milestone Payments**” means each of the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment and the Tenth Milestone Payment.
- 1.397 “**Milestone Payment Completion**” means,
- (a) for the First Milestone Payment,
    - (i) cumulative Private Capital Invested being no less than [REDACTED]% of the Funded Capital Costs;
  - (b) for the Second Milestone Payment,
    - (i) cumulative Private Capital Invested being no less than [REDACTED]% of the Funded Capital Costs;
  - (c) for the Third Milestone Payment,
    - (i) cumulative Private Capital Invested being no less than [REDACTED]% of the Funded Capital Costs;
  - (d) for the Fourth Milestone Payment,
    - (i) cumulative Private Capital Invested being no less than [REDACTED]% of the Funded Capital Costs;
  - (e) for the Fifth Milestone Payment,

- (i) cumulative Private Capital Invested being no less than [REDACTED]% of the Funded Capital Costs;
  - (f) for the Sixth Milestone Payment,
    - (i) cumulative Private Capital Invested being no less than [REDACTED]% of the Funded Capital Costs;
  - (g) for the Seventh Milestone Payment,
    - (i) cumulative Private Capital Invested being no less than [REDACTED]% of the Funded Capital Costs;
  - (h) for the Eighth Milestone Payment,
    - (i) cumulative Private Capital Invested being no less than [REDACTED]% of the Funded Capital Costs;
  - (i) for the Ninth Milestone Payment,
    - (i) cumulative Private Capital Invested being no less than [REDACTED]% of the Funded Capital Costs; and
  - (j) for the Tenth Milestone Payment,
    - (i) cumulative Private Capital Invested being no less than [REDACTED]% of the Funded Capital Costs.
- 1.398 “**Milestone Payment Completion Countdown Notice**” has the meaning given in Section 25A.1(a) (*Milestone Payment Completion Countdown Notice*) of the Project Agreement.
- 1.399 “**Milestone Payment Completion Date**” means the First Milestone Payment Completion Date, the Second Milestone Payment Completion Date, the Third Milestone Payment Completion Date, the Fourth Milestone Payment Completion Date, the Fifth Milestone Payment Completion Date, the Sixth Milestone Payment Completion Date, the Seventh Milestone Payment Completion Date, the Eighth Milestone Payment Completion Date, the Ninth Milestone Payment Completion Date or the Tenth Milestone Payment Completion Date, as applicable, and the term “**Milestone Payment Completion Dates**” means each of the First Milestone Payment Completion Date, the Second Milestone Payment Completion Date, the Third Milestone Payment Completion Date, the Fourth Milestone Payment Completion Date, the Fifth Milestone Payment Completion Date, the Sixth Milestone Payment Completion Date, the Seventh Milestone Payment Completion Date, the Eighth Milestone Payment Completion Date, the Ninth Milestone Payment Completion Date and the Tenth Milestone Payment Completion Date.
- 1.400 “**Milestone Payment Completion Notice**” has the meaning given in Section 25A.2(b) (*Certification of Milestone Payments*) of the Project Agreement.
- 1.401 “**Milestone Payment Date**” means the date that is two (2) Business Days after the applicable Milestone Payment Completion Date.

- 1.402 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including Seasonal Minor Deficiencies) arising from or related to the work required to achieve Substantial Completion, and that would not materially impair:
- (a) the public’s or Contracting Authority’s use and enjoyment of the Project Co Infrastructure or any third parties use and enjoyment of their respective New Third Party Infrastructure;
  - (b) the performance of the Governmental Activities; or
  - (c) safety, security, or traffic or track flow on the Project Co Infrastructure or New Third Party Infrastructure in any relevant respect.
- 1.403 “**Minor Deficiencies Completion Date**” has the meaning given in Section 23.8(b) (*Failure to Rectify Section Minor Deficiencies and Minor Deficiencies*) of the Project Agreement.
- 1.404 “**Minor Deficiencies List**” has the meaning given in Section 23.6(a)(ii) (*Section Minor Deficiencies and Minor Deficiencies*) of the Project Agreement.
- 1.405 “**Minor Non-Conformance**” means any Non-Conformance that:
- (a) generally conforms to the requirements of the Project Agreement, but in which immaterial deficiencies have been found; or
  - (b) the continued existence of which is not reasonably expected to result in Project Co becoming unable to satisfy the requirements for Substantial Completion but may result in a Minor Deficiency.
- 1.406 “**Minor Track Closure**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.407 “**Mislocated Utility Infrastructure**” means:
- (a) [REDACTED],
- provided, however, that the following shall be excluded from the definition of “Mislocated Utility Infrastructure”:
- (i) any relocations of Utility Infrastructure pursuant to (a) through (f) above, carried out at the Site subsequent to the applicable dates specified in the Subsurface Utility Engineering (SUE) Report, including with respect to,
    - (A) the Works; and
    - (B) Third Party Works and Additional Works, including the preparatory activities.
- 1.408 “**Modification**” has the meaning given in Schedule 37 – Intellectual Property.

- 1.409 “**MOI**” means His Majesty the King in right of Ontario as represented by the Minister of Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.410 “**MOL**” means His Majesty the King in right of Ontario as represented by the Ministry of Labour, Training and Skills Development, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.411 “**Monthly Non-Conformance Report**” has the meaning given in Schedule 11 – Quality Management.
- 1.412 “**MTO**” means His Majesty the King in right of Ontario, as represented by the Minister of Transportation, and includes any successors thereto or persons exercising delegate power and such Minister’s authority.
- 1.413 “**Multi-Year Calendar**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.414 “**Multiple Obligee Rider to Labour and Material Payment Bond**” means the Multiple Obligee Rider amending the Labour and Material Payment Bond to add Contracting Authority and Lenders as additional named Obligees, in the form attached as Rider No. 2 to Appendix C of Schedule 25 – Insurance and Performance Security Requirements.
- 1.415 “**Multiple Obligee Rider to Performance Bond**” means the Multiple Obligee Rider amending the Performance Bond to add Contracting Authority and Lender as additional named Obligees, in the form attached as Rider No. 2 to Appendix B of Schedule 25 – Insurance and Performance Security Requirements.
- 1.416 “**Municipal Lane Closure**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.417 “**Navigation Protection Act (Canada)**” means the *Navigation Protection Act*, R.S.C., 1985, c. N-22, as amended from time to time.
- 1.418 “**New City Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, abandoned, reinstated, restored, designed and/or built by Project Co for the City of Toronto as described in the Output Specifications, including restoration of roads and roadway structures, road realignment, associated landscaping, streetscaping and Utility Infrastructure, all as described in the Output Specifications.
- 1.419 “**New Third Party Infrastructure**” means new public realm, highway, subway, utility, bus and railway infrastructure, as described in the 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;
  - (b) in the case of new infrastructure to be constructed for the City of Toronto, in accordance with the Project Agreement, with reference to the City of Toronto Standards; and



- (c) in the case of new infrastructure to be constructed for a Utility Company, in accordance with the Project Agreement, with reference to the applicable standards of the relevant Utility Company, set forth in the Output Specifications.

For clarity, New Third Party Infrastructure includes New TTC Infrastructure and New City Infrastructure.

- 1.420 “**New TTC Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, abandoned, reinstated, restored, designed and/or built by Project Co for the TTC as described in the Output Specifications.
- 1.421 “**Nineth Milestone Payment**” means \$[REDACTED].
- 1.422 “**Nineth Milestone Payment Completion Date**” has the meaning given in Section 25A.2(e)(i) (*Certification of Milestone Payments*) of the Project Agreement.
- 1.423 “**No Comment**” has the meaning given in Section 4.2(a) (*Comments*) of Schedule 10 – Review Procedure.
- 1.424 “**No Default Payment Compensation Amount**” means, with respect to an amount and a specified period of time, such amount multiplied by (i) such period of time in days divided by the actual number of days in the current year multiplied by (ii) the rate of interest per annum in effect on each such day quoted by [REDACTED] from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.425 “**No Later Than Date**” has the meaning given in Schedule 41 – Early Works Handover, Part A of Schedule 43 – Incentive Events, or Schedule 45 – Integration with RSSOM Project, as applicable.
- 1.426 “**Non-Conformance**” means any failure by Project Co to perform any of its obligations under the Project Agreement in respect of any aspect of the Works and which failure is not rectified by Project Co within the applicable time period, if any, stipulated in the Project Agreement.
- 1.427 “**Non-Conformance Report**” or “**NCR**” has the meaning given in Schedule 11 – Quality Management.
- 1.428 “**Non-Conformance Tracking System**” has the meaning given in Schedule 11 – Quality Management.
- 1.429 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.430 “**Non-Disruptive Access**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.431 “**Non-Hazardous Waste**” means Waste that is not defined as “Hazardous Waste” pursuant to Ontario Regulation 347 under the Ontario *Environmental Protection Act*.
- 1.432 “**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).

- 1.433 “**North Civil Project**” means the design, construction and handover of all tunnels, stations and civil works between Gerrard Station and Science Centre Station and the design, construction and handover of Leslieville Station, and includes tunnel and station ventilation systems with respect thereto.
- 1.434 “**North Civil Project Agreement**” means any contract to be entered into between the Contracting Authority and the applicable North Civil Project Co.
- 1.435 “**North Civil Project Co**” means the party which is responsible for the design, construction and handover of a portion of the North Civil Project pursuant to a North Civil Project Agreement.
- 1.436 “**North Civil Project Co Party**” means any person engaged by North Civil Project Co in connection with the North Civil Project, and/or any of its contractors, and their subcontractors of any tier, agents, employees, officers and directors, and “**North Project Co Parties**” shall be construed accordingly.
- 1.437 “**North Civil Project Infrastructure**” means, in respect of a North Civil Project Agreement, the infrastructure that the applicable North Civil Project Co designs, constructs, installs, tests, supplies, delivers and commissions pursuant to such North Civil Project Agreement, including any early works infrastructure delivered to such North Civil Project Co pursuant to such North Civil Project Agreement.
- 1.438 “**Notice**” has the meaning given in Section 49.1(a) (*Notices to Parties*) of the Project Agreement.
- 1.439 “**Notice of Completed Review**” means a notice issued by the City of Toronto to Project Co, following completion of review of a final site plan review submittal, pursuant to Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.440 “**Notice of Delegation**” has the meaning given in Section 23.12(b) (*Inspection, Commissioning and Handover of New City Infrastructure*) of the Project Agreement.
- 1.441 “**Notice of Project**” means a notice of project filed with the Ministry of Labour in compliance with O. Reg 213/91 under the *Occupational Health and Safety Act* (Ontario).
- 1.442 “**Occupancy Agreement**” means an agreement to be entered into between Project Co and the Delivery Partner, with respect to Project Co’s use and occupancy of the Project Office.
- 1.443 “**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.
- 1.444 “**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.
- 1.445 “**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.
- 1.446 “**Ontario Heritage Act (Ontario)**” means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended from time to time.

- 1.447 “**Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011**” or “*Ontario Infrastructure and Lands Corporation Act, 2011*” means the Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011, c. 9, Sch. 32, as amended from time to time.
- 1.448 “**Ontario Line Subway**” means the Project Co Infrastructure, the Early Works Infrastructure subject to and in accordance with Schedule 41 – Early Works Handover, the North Civil Project Infrastructure, and the RSSOM Project Infrastructure.
- 1.449 “**Ontario Line Subway System**” means the integrated passenger subway or metro system comprised of the (a) Ontario Line Subway and (b) associated RSSOM Project Co operation and maintenance of the passenger subway or metro system.
- 1.450 “**Optional Lands**” means the lands owned or to be acquired by Metrolinx or lands in respect of which Metrolinx has acquired or will acquire certain rights, all as set out in the table in Part B of Schedule 35 – Lands, and as indicated by “Optional Land” in the “Restriction / Requirement” column.
- 1.451 “**Order**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.452 “**Other Contractor**” means an Additional Contractor or a Third Party Contractor.
- 1.453 “**Other Reinstatement Work**” has the meaning given in Section 11.10(b)(vii) (*Protection of Works and Property and Reinstatement Work*) of the Project Agreement.
- 1.454 “**Other Works**” means the Additional Works and the Third Party Works.
- 1.455 “**Output Specifications**” means Schedule 15 – Output Specifications.
- 1.456 “**Overhead**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.457 “**Overhead and Profit**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.458 “**Ownership**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.459 “**Pandemic and Epidemic Change in Law**” means any Change in Law that:
- (a) came into effect after the COVID-19 Change in Law Reference Date, including any changes to the COVID-19 Emergency Public Health Physical Distancing Requirements;
  - (b) is directly the result of and is directly related to the occurrence, increase or decrease in severity, or ending of a pandemic (including COVID-19) or epidemic;
  - (c) directly affects (i) the performance of the Works, or (ii) the cost to Project Co of performing the Works; and
  - (d) is not a Works Change in Law or a Relevant Change in Law.

For the purposes of this Project Agreement, this definition shall:

- (i) include:

- (A) any new, amendment or other modification to or repeal or replacement of any Applicable Law that satisfies the foregoing requirements of Sections (a) to (d) (inclusive); and
  - (B) any Existing COVID-19 Laws Extension from and after the Anticipated COVID-19 Impact End Date;
  - (ii) apply only to a Change in Law in respect of Applicable Laws in the Province of Ontario and the laws of Canada applicable therein that satisfies such requirements.
- 1.460 “**Pandemic and Epidemic Change in Law Compensation**” has the meaning given in Section 28.4(a) (*Pandemic and Epidemic Change in Law*) of the Project Agreement.
- 1.461 “**Pandemic and Epidemic Response and Mitigation Plan**” means the pandemic and epidemic response and mitigation plan included in the Project Co Proposal Extracts.
- 1.462 “**Pandemic and Epidemic Supply Chain Delay**” means a delay in the performance of the Works directly arising from a delay in the delivery of material or supplies in support of the Construction Activities, to the extent such delay in delivery:
- (a) directly results from the occurrence of:
    - (i) a pandemic or epidemic other than the COVID-19 pandemic; or
    - (ii) a material increase in the spread of COVID-19 after the COVID-19 Change in Law Reference Date,which directly and adversely affects the delivery of such materials or supplies by a Supplier or Subcontractor; and
  - (b) prevents, delays or otherwise interferes with the performance of the Construction Activities.
- 1.463 “**Party**” means either Contracting Authority or Project Co, and “**Parties**” means collectively Contracting Authority and Project Co, but, for greater certainty, such definitions do not include IO or MOI.
- 1.464 “**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.
- 1.465 “**Payment Certifier**” means the professional architect of record or the engineer of record for the Project.
- 1.466 “**Payment Compensation Amount**” means, with respect to an amount and a specified period of time, (i) such amount multiplied by (ii) such period of time in days divided by the actual number of days in the current year multiplied by (iii) the rate of interest per annum in effect on each such

- day equal to [REDACTED]% over the rate of interest per annum quoted by [REDACTED] from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.467 “**Performance Bond**” means, collectively, the Performance Bond and the Multiple Obligee Rider to Performance Bond in the form attached as Appendix B to Schedule 25 – Insurance and Performance Security Requirements.
- 1.468 “**Performance Guarantee of Construction Guarantor**” means the performance guarantee given by the Construction Guarantors in the form set out in Schedule 24 – Form of Performance Guarantee of Construction Guarantor.
- 1.469 “**Performance Security**” has the meaning given in Schedule 25 – Insurance and Performance Security Requirements.
- 1.470 “**Performance Standards Regulation**” means Ontario Regulation 260/08 made under the *Professional Engineers Act* (Ontario).
- 1.471 “**Permits, Licences, Approvals and Agreements**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.472 “**Permitted Borrowing**” means:
- (a) any advance to Project Co under the Lending Agreements;
  - (b) any additional financing approved by Contracting Authority in accordance with Section 1.9 (*Increase or Decrease in the Cost of the Financing*) of Schedule 22 – Variation Procedure to the Project Agreement; and
  - (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-in Period that does not increase Contracting Authority’s liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.473 “**Permitted Rail Corridor Access**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.474 “**Personal Information**” means all information about an identified or identifiable individual that is Handled (directly or indirectly) by Project Co or any Project Co Party on behalf of Contracting Authority as part of the Works.
- 1.475 “**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.
- 1.476 “**Phase 1 ESA Reports**” means the Phase 1 Environmental Site Assessment reports set out in Appendix B to Schedule 17 – Environmental Obligations.
- 1.477 “**PLAA Plan**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.

- 1.478 “**Plant**” means all buildings, building services, infrastructure, building fabric, and mechanical and electrical services, which are required to meet the operational needs of Contracting Authority as defined in the Output Specifications.
- 1.479 “**Planned Railway Operations Changes**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.480 “**Platform Closure**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.481 “**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.
- 1.482 “**Portal**” has the meaning given in the Output Specifications.
- 1.483 “**Post-CC Utility Agreement Amendment Notice**” has the meaning given in Section 11.36(d)(i) (*Utility Agreements*) of the Project Agreement.
- 1.484 “**Prequalification Submission**” means Project Co’s response to the request for qualifications issued in respect of the Project on [REDACTED].
- 1.485 “**Prequalified Subcontractor**” means any Subcontractor that was identified in the list of subcontractors submitted as part of Project Co’s Prequalification Submission, as amended pursuant to the process set out in the Request for Proposals.
- 1.486 “**Private Capital Invested**” means as at any date the total amount of Debt Financing advanced to Project Co and/or certified by the Lenders’ Consultant and authorized for release to Project Co by a collateral trustee (or an equivalent entity). Amounts advanced to Project Co or certified by the Lenders’ Consultant to be deposited into a reserve or retention account, construction delay account (including in respect of liquidated damages) or any similar restricted account or an investment instrument shall not be considered Private Capital Invested. Amounts certified by the Lenders’ Consultant and authorized for release to Project Co from a retention account, construction delay account or any similar restricted account, including interest from an investment instrument, shall be considered Private Capital Invested.
- 1.487 “**Proceeding at Risk Matter**” has the meaning given in Section 14.6(a)(ii) (*Proceeding at Risk*) of the Project Agreement.
- 1.488 “**Proceeding at Risk Notice**” has the meaning given in Section 14.6(a) (*Proceeding at Risk*) of the Project Agreement.
- 1.489 “**Procured TBM**” has the meaning given in Section 11.31(a) (*Tunnel Boring Machine*) of the Project Agreement.
- 1.490 “**Product**” means or “**Products**” mean material, machinery, equipment and fixtures forming the Works but does not include equipment or machinery used to prepare, fabricate, convey or erect the Works, which is referred to as construction machinery and equipment.
- 1.491 “**Professional Engineer**” means a professional engineer licensed by Professional Engineers Ontario to practice in the Province of Ontario.

- 1.492 “**Progress Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.493 “**Prohibited Act**” has the meaning given in Section 48.1(a) (*Prohibited Act – Definition*) of the Project Agreement.
- 1.494 “**Project**” has the meaning given in the recitals to the Project Agreement.
- 1.495 “**Project Agreement**” has the meaning given in the recitals to the Project Agreement.
- 1.496 “**Project Co**” has the meaning given in the introductory paragraph of the Project Agreement.
- 1.497 “**Project Co Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.498 “**Project Co Caused Contamination**” has the meaning given in Section 18.3(a)(vi) (*Contamination*) of the Project Agreement.
- 1.499 “**Project Co Caused Differing Major Existing Infrastructure Condition**” has the meaning given in Section 18.5(a)(iii) (*Major Existing Infrastructure Condition*) of the Project Agreement.
- 1.500 “**Project Co Commissioning Plan**” has the meaning given in Schedule 14 – Commissioning.
- 1.501 “**Project Co Communications Plan**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.502 “**Project Co Construction Event of Default**” means a Project Co Event of Default relating to a failure or breach by Project Co to perform, observe or comply with any covenants, agreements, obligations or liabilities with respect to the Works, excluding a default by the Construction Guarantors under the Performance Guarantee of Construction Guarantor.
- 1.503 “**Project Co Contamination**” has the meaning given in Section 18.3(d) (*Contamination*) of the Project Agreement.
- 1.504 “**Project Co Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.505 “**Project Co Event of Default**” has the meaning given in Section 34.1(a) (*Project Co Events of Default*) of the Project Agreement.
- 1.506 “**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.
- 1.507 “**Project Co Infrastructure**” means the new, modified, restored or improved infrastructure at or associated with the Tunnel, Facilities, Civil Structures and Tunnel Ventilation System, and, in each case, as described in the Output Specifications and all associated data, records, drawings, plans, reports and systems, all as described in the Project Agreement. Project Co Infrastructure excludes the New Third Party Infrastructure.
- 1.508 “**Project Co Infrastructure Section**” has the meaning given in Schedule 45 – Integration with RSSOM Project.

- 1.509 “**Project Co Infrastructure Subsection**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.510 “**Project Co Items of Interest or Value**” has the meaning given in Section 18.4(b) (*Items of Geological, Historical or Archeological Interest or Value*) of the Project Agreement.
- 1.511 “**Project Co Known Contamination**” has the meaning given in Section 18.3(a) (*Contamination*) of the Project Agreement.
- 1.512 “**Project Co Land Inspections**” has the meaning given in Section 16.9(a) (*Inspection and Investigation of the Lands*) of the Project Agreement.
- 1.513 “**Project Co Off-Site Migrating Contamination**” has the meaning given in Section 18.3(c) (*Contamination*) of the Project Agreement.
- 1.514 “**Project Co On-Site Contamination**” has the meaning given in Section 18.3(b) (*Contamination*) of the Project Agreement.
- 1.515 “**Project Co Party**” means:
- (a) the Construction Contractor;
  - (b) any person engaged by Project Co and/or the Construction Contractor from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Works (or any of them); and
  - (c) 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.
- 1.516 “**Project Co Permits, Licences, Approvals and Agreements**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.517 “**Project Co Proposal Extracts**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.518 “**Project Co Quality Audit Report**” has the meaning given in Schedule 11 – Quality Management.
- 1.519 “**Project Co Representative**” means the person designated as such by Project Co on or prior to Commercial Close and any permitted replacement.
- 1.520 “**Project Co Species-at-Risk**” has the meaning given in Section 18.7(a) (*Species-at-Risk*) of the Project Agreement.
- 1.521 “**Project Co Utility Infrastructure**” has the meaning given in Section 18.6(a) (*Mislocated or Unknown Utility Infrastructure*) of the Project Agreement.
- 1.522 “**Project Co Variation Notice**” has the meaning given in Schedule 22 – Variation Procedure.



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- 1.523 “**Project Data**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.524 “**Project Debt Interest Cost**” means the budgeted amount of aggregate interest charges in respect of the Senior Debt Amount used to calculate the Cost of the Financing portion of the Guaranteed Price.
- 1.525 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.
- 1.526 “**Project GBR**” has the meaning given in Schedule 44 – Geotechnical Baseline Report.
- 1.527 “**Project Know-How**” means all ideas, concepts, alternatives, methodologies, processes, recommendations and suggestions developed by or through Project Co or any Project Co Party and revealed to or discovered by Contracting Authority, whether before or after Commercial Close, which may be connected in any way to:
- (a) the Works, including the design and construction of the Project Co Infrastructure and the New Third Party Infrastructure; or
  - (b) the Project Agreement.
- 1.528 “**Project Office**” means the office described in Section 3.2.7 (*Project Office*) of the Output Specifications.
- 1.529 “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.
- 1.530 “**Project Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.531 “**Project Zone of Influence**” has the meaning given in the Output Specifications.
- 1.532 “**Proper Invoice**” has the meaning given in Schedule 42 – Payment Procedures.
- 1.533 “**Property Access Area**” has the meaning given in Schedule 36 – Property Access Matters.
- 1.534 “**Property Access Closure**” has the meaning given in Schedule 36 – Property Access Matters.
- 1.535 “**Property Access Closure Adjustment**” or “**PACA**” has the meaning given in Schedule 36 – Property Access Matters.
- 1.536 “**Property Access Closure Target Letter**” has the meaning given in Schedule 36 – Property Access Matters.
- 1.537 “**Proposal Fee**” has the meaning given in the Request for Proposals.
- 1.538 “**Proposal Part**” means a part of Project Co’s proposal submitted in response to the RFP, including any revisions to such part of the submission that were agreed upon by Contracting Authority and Project Co as part of the RFP process.

- 1.539 “**Proposed Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.540 “**Protest Action**” means any civil disobedience, protest action, riot, civil commotion or demonstration, including any action taken or threatened to be taken by any person or persons protesting or demonstrating against the carrying out of any part of the Works, or against the construction or operation of rail transit systems in general, occurring or continuing after Financial Close, but excluding any labour dispute or any other strike, lockout or industrial relations dispute or job action by, of or against workers carrying out any part of the Works.
- 1.541 “**Protesters**” has the meaning given in Section 11.14(a) (*Protest and Trespass*) of the Project Agreement.
- 1.542 “**Province**” means His Majesty the King in right of Ontario.
- 1.543 “**Province Person Third Party Beneficiaries**” has the meaning given in Section 52.17(a)(i) (*Province Persons and Contracting Authority Parties as Third Parties Beneficiaries*) of the Project Agreement.
- 1.544 “**Province Persons**” means Contracting Authority Parties and, while attending in their official capacity at the Lands, Project Co Infrastructure or New Third Party Infrastructure, the following:
- (a) any person to which authority is designated pursuant to Section 51.1 (*Right to Designate*) of the Project Agreement and any agents and employees of any such person; or
  - (b) contractors of Contracting Authority (not including RSSOM Project Co and any RSSOM Project Co Party) or of any person to which authority is delegated pursuant to Section 51.1 (*Right to Designate*) 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.
- 1.545 “**Public Claim**” has the meaning given in Section 26.4(a) (*Claims Management*) of the Project Agreement.
- 1.546 “**Quality Audit**” has the meaning given in Schedule 11 – Quality Management.
- 1.547 “**Quality Audit Program Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.548 “**Quality Management Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.549 “**Quality Management System**” has the meaning given in Schedule 11 – Quality Management.
- 1.550 “**Quality Manual**” has the meaning given in Schedule 11 – Quality Management.
- 1.551 “**Quality Plans**” means (i) the Quality Manual; (ii) the Construction Quality Management Plan; (iii) the Design Quality Management Plan; (iv) the Corrective Actions Plan; (v) the Quality Audit Program Plan and Quality Audit Program Plan updates; and (vi) the list of Inspection and Test Plans and production timelines for submittal required by Appendix C (*Construction Quality Management Plan*) to Schedule 11 – Quality Management.

- 1.552 “**Rail Corridor**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.553 “**Rail Corridor Access**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.554 “**Rail Corridor Access Permit**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.555 “**Rail Corridor Access Plan**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.556 “**Rail Transit Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the design or construction of rail transit systems.
- 1.557 “**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.
- 1.558 “**Railway Company**” means CP Rail, CN Rail, VIA Rail and any other railway company that owns or operates a rail service, any part of which is on any part of the Lands during the Project Term and “**Railway Companies**” means all of them.
- 1.559 “**Railway Flag Person**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.560 “**Railway Operations**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.561 “**Railway Order**” means any order of the Canadian Transportation Agency:
- (a) granted in favour of Contracting Authority allowing or providing for:
    - (i) infrastructure comprising or to comprise Project Co 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.
- 1.562 “**Receiving Party**” has the meaning given in the definition of Confidential Information.
- 1.563 “**Record Drawings**” has the meaning given by the Professional Engineer as those drawings prepared and sealed by the reviewing engineer after verifying in detail the actual conditions of the completed project.

- 1.564 “**Recoverable Tax**” has the meaning given in Section 4.16(c) (*Changes in Recoverability of Tax Credits*) of the Project Agreement.
- 1.565 “**Recovery Amount**” has the meaning given in Section 44.3(g) (*Conduct of Claims*) of the Project Agreement.
- 1.566 “**Recovery Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.567 “**Recovery Works Schedule Report**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.568 “**Reference Plans**” has the meaning given in the Output Specifications.
- 1.569 “**Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.570 “**Reimbursement Event**” has the meaning given in Section 25.5(a) (*Reimbursement Events*) of the Project Agreement.
- 1.571 “**Reinstatement Plan**” has the meaning given in Section 11.10(g) (*Protection of Works and Property and Reinstatement Work*) of the Project Agreement.
- 1.572 “**Reinstatement Works**” has the meaning given in Section 11.10(b)(vii) (*Protection of Works and Property and Reinstatement Work*) of the Project Agreement.
- 1.573 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Rail Transit Specific Change in Law.
- 1.574 “**Relevant Conviction**” means a charge or conviction, at any time within the previous six (6) years, of any offense: (i) of moral turpitude in Canada or elsewhere; (ii) for which records exist under the *Criminal Records Act*; or (iii) otherwise designated as a Relevant Conviction by Contracting Authority from time to time, and that conviction remains in effect at that time and is one for which a pardon has not been granted.
- 1.575 “**Relevant Entity**” has the meaning given in Section 47.4(i) (*Changes in Ownership and Control*) of the Project Agreement.
- 1.576 “**Relief Event**” has the meaning given in Section 32.1(a) (*Relief Events – Definition*) of the Project Agreement.
- 1.577 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on December 14, 2020, as amended from time to time.
- 1.578 “**Request for Payment Approval**” has the meaning given in Section 11.15A(d) (*Adjacent Development Cash Allowance*) of the Project Agreement.
- 1.579 “**Required Amount**” has the meaning given in Section 11.19(b) (*Warranty Security*) of the Project Agreement.

- 1.580 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) (i) is subject to any economic or political sanctions imposed by Canada or Ontario, or (ii) 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) (i) is subject to a final order (including being subject to conditions or undertakings prescribed by the order) issued under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that would prevent such person from undertaking the Project in whole or in part in a manner which Contracting Authority considers unacceptable in its sole discretion or (ii) is currently, or could become, subject to a review of an investment by a non-Canadian under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that could result in an order described in (i) being issued (as determined by Contracting Authority in its sole discretion);
  - (d) in the case of an individual, (i) he or she has been convicted of any indictable offence less than five (5) years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five (5) years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
  - (e) in the case of a person other than an individual, (i) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five (5) years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five (5) years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder;
  - (f) 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;
  - (g) is subject to a material claim of Contracting Authority under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in Contracting Authority’s view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or

- (h) has a material interest in the production of tobacco products.
- 1.581 “**Revenue Services Commencement**” means the point at which rapid transit services has commenced, and provided to passengers, on the Ontario Line Subway.
- 1.582 “**Review Procedure**” means the procedure set out in Schedule 10 – Review Procedure.
- 1.583 “**Reviewed As Noted – Major Issues**” has the meaning given in Section 4.2(c) (*Comments*) of Schedule 10 – Review Procedure.
- 1.584 “**Reviewed As Noted – Minor Issues**” has the meaning given in Section 4.2(b) (*Comments*) of Schedule 10 – Review Procedure.
- 1.585 “**Road Sections**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.586 “**RSSOM Infrastructure Technical Specifications**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.587 “**RSSOM Integration Dispute Resolution Procedure**” has the meaning given to the term “Integration Dispute Resolution Procedure” in Schedule 39 – Form of RSSOM Interface Agreement.
- 1.588 “**RSSOM Interface Agreement**” means the interface agreement entered into among Contracting Authority, Project Co and RSSOM Project Co with respect to the RSSOM Project, in substantially the form of Schedule 39 – Form of RSSOM Interface Agreement.
- 1.589 “**RSSOM Project**” means the (a) design, construction, financing, supply, installation, testing and commissioning of the RSSOM Project Infrastructure, (b) design, construction and financing of the new third party infrastructure under and pursuant to the RSSOM Project Agreement, and (c) RSSOM Project Co operation and maintenance of the Ontario Line Subway System.
- 1.590 “**RSSOM Project Agreement**” means the contract between Contracting Authority and RSSOM Project Co with respect to the RSSOM Project dated on or about November 15, 2022.
- 1.591 “**RSSOM Project Co**” means [REDACTED].
- 1.592 “**RSSOM Project Co Debt Service Amounts**” means, for any period, the principal, interest, commitment fees, makewhole payments, breakage fees, penalties and all other fees, costs and expenses payable by RSSOM Project Co or any RSSOM Project Co Party to any third party arm’s length lenders providing financing to RSSOM Project Co or any RSSOM Project Co Party (or any amounts payable to hedge providers in respect of any such interest).
- 1.593 “**RSSOM Project Co Party**” means any person engaged by RSSOM Project Co in connection with the RSSOM Project, and/or any of its contractors, and their subcontractors of any tier, agents, employees, officers and directors, and “**RSSOM Project Co Parties**” shall be construed accordingly.
- 1.594 “**RSSOM Project Infrastructure**” means the infrastructure that RSSOM Project Co designs, constructs, installs, tests, supplies, delivers and commissions pursuant to the RSSOM Project

Agreement, including any early works infrastructure delivered to RSSOM Project Co pursuant to the RSSOM Project Agreement.

- 1.595 “**Schedule**” means a schedule to the Project Agreement.
- 1.596 “**Scheduled Eighth Milestone Payment Completion Date**” means [REDACTED].
- 1.597 “**Scheduled Fifth Milestone Payment Completion Date**” means [REDACTED].
- 1.598 “**Scheduled Final Completion Date**” means [REDACTED].
- 1.599 “**Scheduled First Milestone Payment Completion Date**” means [REDACTED].
- 1.600 “**Scheduled Fourth Milestone Payment Completion Date**” means [REDACTED].
- 1.601 “**Scheduled Milestone Payment Completion Date**” means the Scheduled First Milestone Payment Completion Date, the Scheduled Second Milestone Payment Completion Date, the Scheduled Third Milestone Payment Completion Date, the Scheduled Fourth Milestone Payment Completion Date, the Scheduled Fifth Milestone Payment Completion Date, the Scheduled Sixth Milestone Payment Completion Date, the Scheduled Seventh Milestone Payment Completion Date, the Scheduled Eighth Milestone Payment Completion Date, the Scheduled Ninth Milestone Payment Completion Date or the Scheduled Tenth Milestone Payment Completion Date, as applicable, and the term “**Scheduled Milestone Payment Completion Dates**” means each of the Scheduled First Milestone Payment Completion Date, the Scheduled Second Milestone Payment Completion Date, the Scheduled Third Milestone Payment Completion Date, the Scheduled Fourth Milestone Payment Completion Date, the Scheduled Fifth Milestone Payment Completion Date, the Scheduled Sixth Milestone Payment Completion Date, the Scheduled Seventh Milestone Payment Completion Date, the Scheduled Eighth Milestone Payment Completion Date, the Scheduled Ninth Milestone Payment Completion Date and the Scheduled Tenth Milestone Payment Completion Date.
- 1.602 “**Scheduled Ninth Milestone Payment Completion Date**” [REDACTED].
- 1.603 “**Scheduled Second Milestone Payment Completion Date**” means [REDACTED].
- 1.604 “**Scheduled Seventh Milestone Payment Completion Date**” means [REDACTED].
- 1.605 “**Scheduled Sixth Milestone Payment Completion Date**” means [REDACTED].
- 1.606 “**Scheduled Substantial Completion Date**” means [REDACTED], as such date may be amended pursuant to Section 30 (*Delay Events*) of the Project Agreement.
- 1.607 “**Scheduled Tenth Milestone Payment Completion Date**” means [REDACTED].
- 1.608 “**Scheduled Third Milestone Payment Completion Date**” means [REDACTED].
- 1.609 “**Scheduler**” means Project Co’s schedule specialist who is responsible to create and maintain the Project Works Schedules.

- 1.610 “**Seasonal Minor Deficiencies**” has the meaning given in Section 23.6(c) (*Section Minor Deficiencies and Minor Deficiencies*) of the Project Agreement.
- 1.611 “**Seasonal Works Holdback**” has the meaning given in Section 23.8(b)(i) (*Failure to Rectify Section Minor Deficiencies and Minor Deficiencies*) of the Project Agreement.
- 1.612 “**Second Milestone Payment**” means \$[REDACTED].
- 1.613 “**Second Milestone Payment Completion Date**” has the meaning given in Section 25A.2(e)(i) (*Certification of Milestone Payments*) of the Project Agreement.
- 1.614 “**Section Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including Seasonal Minor Deficiencies) arising from or related to the work required to achieve each Section Substantial Completion, and that would not materially impair:
- (a) the public’s or Contracting Authority’s use and enjoyment of the applicable Project Co Infrastructure Section or any third parties use and enjoyment of their respective New Third Party Infrastructure applicable to such Project Co Infrastructure Section;
  - (b) the performance of the Governmental Activities; or
  - (c) safety, security, or traffic or track flow on the applicable Project Co Infrastructure Section or the New Third Party Infrastructure applicable to such Project Co Infrastructure Section in any relevant respect.
- 1.615 “**Section Minor Deficiencies List**” has the meaning given in Section 23.6(a)(i) (*Section Minor Deficiencies and Minor Deficiencies*) of the Project Agreement.
- 1.616 “**Section Substantial Completion**” means the point at which (i) a Project Co Infrastructure Section has been completed in accordance with the Project Agreement and (ii) all requirements for Section Substantial Completion for such Project Co Infrastructure Section described in Schedule 14 – Commissioning, other than in respect of Section Minor Deficiencies for such Project Co Infrastructure Section, have been satisfied.
- 1.617 “**Section Substantial Completion 10-Day Notice**” has the meaning given in Section 23.3(a) (*Section Substantial Completion Certificates and Substantial Completion Certificate*) of the Project Agreement.
- 1.618 “**Section Substantial Completion Certificate**” means a certificate to be issued by the Independent Certifier in accordance with Section 23.3(g) (*Section Substantial Completion Certificates and Substantial Completion Certificate*) of the Project Agreement.
- 1.619 “**Section Substantial Completion Date**” means the date on which Section Substantial Completion for a Project Co Infrastructure Section is achieved as evidenced by a Section Substantial Completion Certificate for such Project Co Infrastructure Section, as such date shall be stated therein.
- 1.620 “**Section Substantial Completion Deliverables**” has the meaning given in Section 23.5(d)(i) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of the Project Agreement.



- 1.621 “**Section Substantial Completion Deliverables List**” has the meaning given in Section 23.5(d)(i) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of the Project Agreement.
- 1.622 “**Section Substantial Completion Notice**” has the meaning given in Section 23.3(b)(i) (*Section Substantial Completion Certificates and Substantial Completion Certificate*) of the Project Agreement.
- 1.623 “**Security**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.624 “**Security Documents**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.625 “**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 is only to the extent applied for the purposes of the Project and excludes the Senior Debt Makewhole.
- 1.626 “**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 “makewhole” payments, breakage costs (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to then 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.
- 1.627 “**Senior Debt Service Amount**” means, for any period, the principal, interest, and commitment fees payable by Project Co or any Project Co Party to the Senior Lenders in the normal course under the Lending Agreements, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to a Hedging Agreement between Project Co and a Hedge Provider, interest payable on account of such portion of interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co under such Hedging Agreement without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Provider under the relevant Hedging Agreement and all references to interest payable to the Senior Lenders under the Project Agreement shall be construed accordingly.
- 1.628 “**Senior Lenders**” means, at any time, [REDACTED], and any additional lenders party from time to time to the Lending Agreements and financing any Refinancing. For greater clarity, the Senior Lenders excludes:
- (a) the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns; and
  - (b) any Affiliate of Project Co, any Project Co Party or an Affiliate of a Project Co Party.

- 1.629 “**Sensitive Information**” means proprietary technical, 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.
- 1.630 “**Seventh Milestone Payment**” means \$[REDACTED].
- 1.631 “**Seventh Milestone Payment Completion Date**” has the meaning given in Section 25A.2(e)(i) (*Certification of Milestone Payments*) of the Project Agreement.
- 1.632 “**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 affects access by Project Co to such markets.
- 1.633 “**Shaft**” has the meaning given in the Output Specifications.
- 1.634 “**Shop Drawings**” means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are to be provided by Project Co to illustrate details of a portion of the Works, indicating materials, methods of construction and attachment or anchorage, erection diagrams, connections, explanatory notes and other information necessary for completion of the Works.
- 1.635 “**Side Platform**” has the meaning given in the Output Specifications.
- 1.636 “**Signage and Hoarding Coverage Plan**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.637 “**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.
- 1.638 “**Site Condition Contingency Fund**” has the meaning given in Section 18.8(a) (*Site Condition Contingency Fund and Gainshare Payments*) of the Project Agreement.
- 1.639 “**Site Condition Event**” has the meaning given in Section 18.8(a) (*Site Condition Contingency Fund and Gainshare Payments*) of the Project Agreement.

- 1.640 “**Site Condition Gainshare Amount (Substantial Completion)**” has the meaning given in Section 18.8(d)(i) (*Site Condition Contingency Fund and Gainshare Payments*) of the Project Agreement.
- 1.641 “**Site Condition Gainshare Amount (Termination)**” has the meaning given in Section 18.8(e)(iii) (*Site Condition Contingency Fund and Gainshare Payments*) of the Project Agreement.
- 1.642 “**Site Conditions**” means the condition of the Lands and the Existing Infrastructure, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.643 “**Site Investigation Plan**” has the meaning given in Section 16.6(b)(iii) (*Additional Lands/Adjustments to Metrolinx Lands Available to Project Co*) of the Project Agreement.
- 1.644 “**Site Investigation Reports**” has the meaning given in Section 16.6(b)(iii) (*Additional Lands/Adjustments to Metrolinx Lands Available to Project Co*) of the Project Agreement.
- 1.645 “**Sixth Milestone Payment**” means \$[REDACTED].
- 1.646 “**Sixth Milestone Payment Completion Date**” has the meaning given in Section 25A.2(e)(i) (*Certification of Milestone Payments*) of the Project Agreement.
- 1.647 “**South Civil Alignment**” has the meaning given in the recitals to the Project Agreement.
- 1.648 “**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.
- 1.649 “**Species at Risk Act (Canada)**” means the Species at Risk Act, S.C. 2002, c. 29, as amended from time to time.
- 1.650 “**Specified Costs**” has the meaning given in Schedule 19 – Liquidated Damages and Construction Enforcement Regime.
- 1.651 “**Stakeholders**” means individuals and organizations with an interest in the Project, including those listed in the Output Specifications, but excluding Contracting Authority.
- 1.652 “**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.
- 1.653 “**Standby Letter(s) of Credit**” means the letter(s) of credit delivered in accordance with Section 9.1(2) (*Identification of the Preferred Proponent and the Letter of Credit*) of the Request for Proposals.
- 1.654 “**Start-Up Meeting**” has the meaning given in Section 11.2(a) (*Start-Up Meeting*) of the Project Agreement.

- 1.655 “**Station**” has the meaning given in the Output Specifications.
- 1.656 “**Step-in Period**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.657 “**Stormwater Management Plan**” has the meaning given in the Output Specifications.
- 1.658 “**Subcategory of Access**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.659 “**Subcontract**” or “**Subcontracts**” means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including the Construction Contractor, and any other Subcontractor at any tier in relation to any aspect of the Works.
- 1.660 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Works, including the Construction Contractor, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.661 “**Subcontractor’s Direct Agreement**” means the agreement to be entered into among Contracting Authority, Project Co, the Construction Contractor and certain Subcontractors determined in accordance with the terms of the Project Agreement in the form set out in Schedule 3 – Subcontractor’s Direct Agreement.
- 1.662 “**Subsection RSSOM Access Date**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.663 “**Subsection RSSOM Access Period**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.664 “**Substantial Completion**” means the point at which (i) the Project Co Infrastructure and the New Third Party Infrastructure, have been completed in accordance with the Project Agreement; (ii) the Payment Certifier appointed pursuant to Section 17.3(g) (*Construction Act (Ontario)*) of the Project Agreement has certified the substantial performance of the Design and Construction Contract and the related certificate of substantial performance has been published, each in accordance with the *Construction Act (Ontario)*; and (iii) all requirements for Substantial Completion described in Schedule 14 – Commissioning, other than in respect of Minor Deficiencies, have been satisfied in respect of the Project Co Infrastructure and the New Third Party Infrastructure as a whole.
- 1.665 “**Substantial Completion 10-Day Notice**” has the meaning given in Section 23.3(a) (*Section Substantial Completion Certificates and Substantial Completion Certificate*) of the Project Agreement.
- 1.666 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 23.3(g) (*Section Substantial Completion Certificates and Substantial Completion Certificate*) of the Project Agreement.
- 1.667 “**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.

- 1.668 “**Substantial Completion Deliverables**” has the meaning given in Section 23.5(d)(ii) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of the Project Agreement.
- 1.669 “**Substantial Completion Deliverables List**” has the meaning given in Section 23.5(d)(ii) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of the Project Agreement.
- 1.670 “**Substantial Completion LD Commencement Date**” has the meaning given in Schedule 19 – Liquidated Damages and Construction Enforcement Regime.
- 1.671 “**Substantial Completion Notice**” has the meaning given in Section 23.3(b)(ii) (*Section Substantial Completion Certificates and Substantial Completion Certificate*) of the Project Agreement.
- 1.672 “**Substantial Completion Payment**” means the amount determined by subtracting from the amount of the Guaranteed Price, as adjusted in accordance with the terms of the Project Agreement as at the end of the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date, the following amounts (without duplication):
- (a) the Milestone Payments paid or payable by Contracting Authority up to the end of the last day of the agreed payment period ending immediately prior to the Substantial Completion Payment Date;
  - (b) the Completion Holdback as at the Substantial Completion Payment Date;
  - (c) any Legislative Holdback required to be maintained by Contracting Authority as at the Substantial Completion Payment Date; and
  - (d) the Warranty Cash Amount, if applicable.
- 1.673 “**Substantial Completion Payment Date**” means the date that is two (2) Business Days after the Substantial Completion Date.
- 1.674 “**Substations**” has the meaning given in the Output Specifications.
- 1.675 “**Subsurface Utility Engineering (SUE) Reports**” means the following reports:
- (a) [REDACTED].
- 1.676 “**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 Works.
- 1.677 “**Support of Excavation**” or “**SOE**” has the meaning given in the Output Specifications.
- 1.678 “**Surety**” means the person issuing the Bonds.
- 1.679 “**System Security Plan**” has the meaning given in Schedule 29 – Safety, System Assurance and Security.

- 1.680 “**System User**” has the meaning given in the Output Specifications.
- 1.681 “**Systemic Racism**” means organizational and institutional culture, biases, policies, directives, practices or procedures that may appear neutral on their surface but have the effect of disadvantaging, excluding displacing, or marginalizing Indigenous, Black and other racialized groups or creating unfair barriers for them to access valuable benefits and opportunities.
- 1.682 “**Tax**” or “**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, except for purposes of Section 4.17 (*Information and Assistance Provided by Project Co*) of this Project Agreement, “**Taxes**” shall not include Contracting Authority Taxes.
- 1.683 “**TBM Marine Event**” has the meaning given in Section 11.31(a) (*Tunnel Boring Machine*) of the Project Agreement.
- 1.684 “**Technical Information**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.685 “**Technical Member**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.686 “**Technical Reference Date**” means [REDACTED].
- 1.687 “**Technical Reports**” means the Environmental Reports and the Archaeological Reports.
- 1.688 “**Technical Submission Deadline**” means [REDACTED].
- 1.689 “**Template Third Party Agreement**” has the meaning given in Section 10.3(j) (*General Responsibilities and Standards*) of the Project Agreement.
- 1.690 “**Tenth Milestone Payment**” means \$[REDACTED].
- 1.691 “**Tenth Milestone Payment Completion Date**” has the meaning given in Section 25A.2(e)(i) (*Certification of Milestone Payments*) of the Project Agreement.
- 1.692 “**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.
- 1.693 “**Third Milestone Payment**” means \$[REDACTED].
- 1.694 “**Third Milestone Payment Completion Date**” has the meaning given in Section 25A.2(e)(i) (*Certification of Milestone Payments*) of the Project Agreement.
- 1.695 “**Third Party Agreement**” has the meaning given in Section 10.3(j) (*General Responsibilities and Standards*) of the Project Agreement.
- 1.696 “**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, provided that RSSOM Project Co, North Civil Project Co or any TOC Contractor shall not be deemed to be a Third Party Contractor.

- 1.697 “**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).
- 1.698 “**Third Party Lands**” has the meaning given in Schedule 35 – Lands.
- 1.699 “**Third Party Operators**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.700 “**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.
- 1.701 “**Three Week Look-Ahead Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.702 “**TOC Contractor**” means any party to an agreement with Contracting Authority for or in respect of a TOC Development.
- 1.703 “**TOC Contractor Party**” means any person engaged by a TOC Contractor in connection with a TOC Development, and/or any of its contractors, and their subcontractors of any tier, agents, employees, officers and directors, and “**TOC Contractor Parties**” shall be construed accordingly.
- 1.704 “**TOC Developments**” means a development project of any nature or kind and for any usage in connection with the construction or operation of a Station that is part of a priority transit project, and includes a development project located on transit corridor land within the meaning of the *Building Transit Faster Act, 2020*.
- 1.705 “**Track Protection Forecast**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.706 “**Trademarks**” 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.
- 1.707 “**Traffic and Transit Management Plan**” means the plans prepared by Project Co to manage traffic and transit on and around the Lands in accordance with the Output Specifications.

- 1.708 “**Traffic Control Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.709 “**Train**” means two or more coupled Cars.
- 1.710 “**Train Cancellation**” has the meaning given in Schedule 19 – Liquidated Damages and Construction Enforcement Regime.
- 1.711 “**Train Delay**” has the meaning given in Schedule 19 – Liquidated Damages and Construction Enforcement Regime.
- 1.712 “**Transit System**” means any operating transit system that Project Co may encounter during the performance of its obligations under the Project Agreement.
- 1.713 “**Transport Canada**” means Transport Canada and its successors and assigns.
- 1.714 “**TRCA**” has the meaning given in the Output Specifications.
- 1.715 “**Trespassers**” has the meaning given in Section 11.14(a) (*Protest and Trespass*) of the Project Agreement.
- 1.716 “**TTC**” means the Toronto Transit Commission and its successors.
- 1.717 “**TTC Jointly Developed Materials**” has the meaning given in Section 39.4(a)(iii) (*Jointly Developed Materials*) of the Project Agreement.
- 1.718 “**TTC Lands**” has the meaning given in Schedule 35 – Lands.
- 1.719 “**TTC Station Weekend Closure**” has the meaning given in Schedule 46 – TTC Station Weekend Closures.
- 1.720 “**TTC Zone of Influence**” means all areas within 60 meters of any Existing TTC Infrastructure (other than minor surface infrastructure, including bus stops, streetcar tracks and associated streetcar infrastructure), within which all Works in respect of Existing TTC Infrastructure, New TTC Infrastructure, or Project Co Infrastructure is subject to review by the TTC in accordance with Schedule 10 – Review Procedure and the Output Specifications.
- 1.721 “**Tunnel**” has the meaning given in the Output Specifications.
- 1.722 “**Tunnel Boring Machine**” or “**TBM**” has the meaning set out in the Output Specifications.
- 1.723 “**Tunnel Construction Work**” means the Construction Activities in respect of the Tunnel.
- 1.724 “**Tunnel Ventilation System**” has the meaning given in the Output Specifications.
- 1.725 “**UP Express**” means Union Pearson Express, an operating division of Metrolinx, and its successors.
- 1.726 “**Utilities**” means energy/power supplies, communications, data transmission and Waste recovery, including electricity, natural gas/fuel oil, water, sanitary Waste and storm water.



- 1.727 “**Utilities Preparatory Activities**” means the activities set out in Appendix Q (*Utilities Preparatory Activities*) to the Output Specifications.
- 1.728 “**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.
- 1.729 “**Utility Company**” means the owner or operator of any Utility Infrastructure or any company or companies designated by Project Co to provide Utilities.
- 1.730 “**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.
- 1.731 “**Utility Infrastructure Relocation Plan**” has the meaning given in the Output Specifications.
- 1.732 “**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 Works, 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.
- 1.733 “**Variation**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.734 “**Variation Confirmation**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.735 “**Variation Directive**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.736 “**Variation Enquiry**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.737 “**Variation Procedure**” means the procedure set out in Schedule 22 – Variation Procedure.
- 1.738 “**VIA Rail**” means Via Rail Canada and its successors.
- 1.739 “**Warranty Cash Amount**” has the meaning given in Section 11.19(c) (*Warranty Security*) of the Project Agreement.
- 1.740 “**Warranty Letter of Credit**” means an unconditional and irrevocable letter of credit from any one or more Acceptable Issuers in favour and for the direct and exclusive benefit of Contracting Authority, in the form set out in Schedule 20 – Warranty Letter of Credit.
- 1.741 “**Warranty Period**” means,
- (a) in connection with any Construction Defect, in the case of,

- (i) Project Co Infrastructure (other than the Mechanical Systems), a period beginning on Substantial Completion of the applicable Project Co Infrastructure Section and expiring on the date that is two (2) years following such date;
  - (ii) the Mechanical Systems, a period beginning on the applicable Section Substantial Completion Date and expiring on the date that is two (2) years following the Substantial Completion Date; and
  - (iii) New City Infrastructure and New TTC Infrastructure, or a portion thereof, a period beginning on Handover of New City Infrastructure or New TTC Infrastructure, or a portion thereof, and expiring on the date that is two (2) years following such date of Handover of New City Infrastructure or New TTC Infrastructure, or a portion thereof; and
- (b) in connection with any Construction Latent Defect, in the case of,
- (i) Project Co Infrastructure (other than the Mechanical Systems), a period beginning on Substantial Completion of the applicable Project Co Infrastructure Section and expiring on the date that is five (5) years following such date;
  - (ii) the Mechanical Systems, a period beginning on the applicable Section Substantial Completion Date and expiring on the date that is five (5) years following the Substantial Completion Date; and
  - (iii) New City Infrastructure and New TTC Infrastructure, or a portion thereof, a period beginning on Handover of New City Infrastructure or New TTC Infrastructure, or a portion thereof, and expiring on the date that is five (5) years following such date of Handover of New City Infrastructure or New TTC Infrastructure, or a portion thereof.
- 1.742 “**Warranty Security**” means either the Warranty Letter of Credit or the Warranty Cash Amount, as the case may be.
- 1.743 “**Warranty Security Return Date**” means the date that is five (5) Business Days following the date that is two (2) years following the Substantial Completion Date.
- 1.744 “**Warranty Work**” has the meaning given in Section 11.18(a) (*Warranty Work and Prompt Repair of Warranty Work*) of the Project Agreement.
- 1.745 “**Waste**” means any substances or materials that are defined as “designated wastes” under, or regulated or governed by Ontario Regulation 347 under the Ontario *Environmental Protection Act*.
- 1.746 “**White Period Access**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.747 “**Witness and Hold Point**” has the meaning given in Schedule 11 – Quality Management.
- 1.748 “**Work Plan Methodology Template**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.

- 1.749 “**Workplace Safety and Insurance Act (Ontario)**” means the *Workplace Safety and Insurance Act*, S.O. 1997, c.16, Schedule A, as amended from time to time.
- 1.750 “**Works**” means the design, construction, installation, testing, commissioning and completion of the Project Co Infrastructure and the New Third Party Infrastructure, the integration of the Early Works Infrastructure with the Project Co Infrastructure and the rectification of any Minor Deficiencies, Warranty Work, all other work under the Permits, Licences, Approvals and Agreements, and all work which is implied by the Project Agreement and that is necessary for the stability or safe and proper design, construction, installation, testing, commissioning and completion of the Project Co Infrastructure and the New Third Party Infrastructure, except for all work which is expressly described in Schedule 34 – Permits, Licences, Approvals and Agreements as being the responsibility of Contracting Authority, and including, for clarity, the Early Contractor Activities.
- 1.751 “**Works Change in Law**” means any Change in Law that:
- (a) is not a Relevant Change in Law;
  - (b) occurs after the Technical Reference Date;
  - (c) requires Project Co to perform any work of alteration, addition, Demolition, extension or variation in the quality or function of the Project Co 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 the Technical Reference Date 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.
- 1.752 “**Works Committee**” has the meaning given in Section 14.1(a) (*Works Committee – Establishment*) of the Project Agreement.
- 1.753 “**Works Report**” has the meaning given in Section 13.4(a) (*Works Report*) of the Project Agreement.
- 1.754 “**Works Schedule Report**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.755 “**Works Submittals**” has the meaning given in Section 1.1 (*Works Submittals*) of Schedule 10 – Review Procedure.
- 1.756 “**Worsened Contamination**” means any Worsened Project Co Contamination and any Worsened Contracting Authority Contamination.
- 1.757 “**Worsened Contracting Authority Contamination**” means the Worsening of any Contracting Authority Contamination,
- (a) which was caused:

- (i) directly or indirectly by Project Co or a Project Co Party, other than as a result of the Tunnel Construction Work; or
  - (ii) by a failure of Project Co or any Project Co Party to comply with its obligations under the Project Agreement; and
- (b) in respect of which Project Co did not comply with its obligations pursuant to Sections 18.3(h) and 18.3(i) (*Contamination*) of the Project Agreement,

but only to the extent of the Worsening.

1.758 **“Worsened Project Co Contamination”** means the Worsening of any Project Co Contamination which was caused:

- (a) directly or indirectly by Project Co or a Project Co Party, other than as a result of the Tunnel Construction Work; or
- (b) by a failure of Project Co or any Project Co Party to comply with its obligations under the Project Agreement,

but only to the extent of the Worsening.

1.759 **“Worsens”** means any act or omission of Project Co or any Project Co Party which, other than as required by Applicable Law, Good Industry Practice or the terms of the Project Agreement (including the Output Specifications or Schedule 17 – Environmental Obligations), excavates, disturbs, exposes, spills, releases or otherwise affects (directly or indirectly) any Contamination with the effect of aggravating, exacerbating, migrating, diverting or otherwise increasing the area, volume, impact or costs of dealing with such Contamination, and **“Worsened”** and **“Worsening”** shall have the corresponding meanings wherever used in Section 18.3 (*Contamination*) of the Project Agreement.

1.760 **“WSIB”** means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act* (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, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Articles, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section”, “Article” and “Clause” are used interchangeably and are synonymous.

- 2.3 Except where the context requires otherwise, references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Article, 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, Articles, 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 the 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, 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; or
  - (b) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co's and Contracting Authority's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and
  - (b) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- 2.21 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "such as" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- 2.22 Where the Project Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.23 Where the Project Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.24 Where the Project Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.25 Any reference to time of day or date means the local time or date in Toronto, Ontario. Any reference to a stipulated “day” which is not specifically referred to as a “Business Day” shall be deemed to be a calendar day measured from midnight to midnight.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to Project Co or Contracting Authority they shall be construed and interpreted as synonymous and to read “Project Co shall” or “Contracting Authority shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to Contracting Authority shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood by the transit system and railway system construction industry 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, including the Existing Infrastructure, 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.

- 2.33 In construing the Project Agreement, the rule known as the *contra proferetem* rule shall not apply, and the Parties waive the application of any such rule of law which otherwise would be applicable in connection with the construction of this Project Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose counsel) drafted the Project Agreement.



**APPENDIX A TO SCHEDULE 1**

**MAJOR EXISTING INFRASTRUCTURE**

The names of documents or folders included in the column titled “Major Existing Infrastructure Condition Reports” reference the corresponding documents or folders contained in the Project data room, as of the Technical Reference Date.

**[REDACTED]**

**APPENDIX B TO SCHEDULE 1**

**BACKGROUND INFORMATION EXCLUSIONS**

[REDACTED]

**SCHEDULE 2****COMPLETION DOCUMENTS****1. DOCUMENTS TO BE DELIVERED BY PROJECT CO**

Unless an original document is specifically required, a copy of each of the following documents (in each case, executed by the parties to such agreement other than Contracting Authority, and in form and substance satisfactory to Contracting Authority, acting reasonably) is to be delivered by Project Co to Contracting Authority on or prior to the Financial Close Target Date:

- 1.1 the Project Agreement;
- 1.2 the Lenders' Direct Agreement;
- 1.3 the Independent Certifier Agreement;
- 1.4 the CDB Member Statement for the Technical Member put forward by Project Co, the CDB Member Statement for the CDB Chair, and each of the CDB Member Agreements;
- 1.5 the CIDB Member Statement for the CIDB Technical Member put forward by Project Co and the CIDB Member Agreement;
- 1.6 the Insurance Trust Agreement;
- 1.7 a Notice of appointment of the Project Co Representative;
- 1.8 the Lending Agreements;
- 1.9 the Design and Construction Contract;
- 1.10 the Performance Guarantee of Construction Guarantor for the Construction Guarantor;
- 1.11 the Construction Contractor's Direct Agreement;
- 1.12 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by Project Co or the Construction Contractor in accordance with the Project Agreement;
- 1.13 the Financial Model in electronic form;
- 1.14 the Interim Baseline Works Schedule, in accordance with the requirements set out in Schedule 12 – Works Schedule Requirements;
- 1.15 a digital copy of each of Bonds in sealed form, as required in accordance with the Project Agreement or as Contracting Authority may direct in accordance with the Insurance Trust Agreement;
- 1.16 the undertaking and acknowledgment in the form attached as Appendix A to this Schedule 2;

- 
- 1.17 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
  - 1.18 a certificate of an officer of the Construction Contractor substantially in the form attached as Appendix B to this Schedule 2;
  - 1.19 a certificate of an officer of the Construction Guarantors substantially in the form attached as Appendix B to this Schedule 2;
  - 1.20 the opinion from counsel to Project Co, the Construction Contractor, the Construction Guarantors, and such other Project Co Parties as Contracting Authority may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to Contracting Authority and its counsel;
  - 1.21 a final Lane Closure Target Letter;
  - 1.22 intentionally deleted;
  - 1.23 evidence that the COR-Certified Construction Project Co Party has its COR Certification in good standing (or to the extent that the COR-Qualified Construction Project Co Party does not have its COR Certification by Financial Close, evidence that the COR-Qualified Construction Project Co Party has its current OHSAS 18001 Accreditation or ISO 45001 Accreditation in good standing and has made an application to IHSA for its COR Certification);
  - 1.24 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a WSIB clearance certificate, or if a WSIB clearance certificate is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
  - 1.25 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a listing of any construction accidents incurred that have caused Lost Time Injuries (“LTIs”, as defined by the WSIB) or, if a LTI listing is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
  - 1.26 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a Workplace Injury Summary Report (WISR) or, if a WISR is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
  - 1.27 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;
  - 1.28 the RSSOM Interface Agreement, executed by Project Co;
  - 1.29 a certificate of an officer of Project Co certifying the corporate structure of Project Co as of the date hereof; and
  - 1.30 such other documents as the Parties may agree, each acting reasonably.

**2. DOCUMENTS TO BE DELIVERED BY CONTRACTING AUTHORITY**

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

- 2.1 the Project Agreement;
- 2.2 the Lenders' Direct Agreement;
- 2.3 the Construction Contractor's Direct Agreement;
- 2.4 the Independent Certifier Agreement;
- 2.5 the CDB Member Statement for the Technical Member put forward by Contracting Authority, the CDB Member Statement for the CDB Chair, and each of the CDB Member Agreements;
- 2.6 the CIDB Member Statement for the CIDB Chair put forward by Contracting Authority and the CIDB Member Agreement;
- 2.7 the Insurance Trust Agreement;
- 2.8 a Notice of appointment of the Contracting Authority Representative;
- 2.9 a certificate of an officer of Metrolinx signed by an officer of Metrolinx substantially in the form attached as Appendix D to this Schedule 2;
- 2.10 intentionally deleted;
- 2.11 receipt for repayment of the Proposal Fee by the Preferred Proponent (as defined in the RFP); and
- 2.12 such other documents as the Parties may agree, each acting reasonably.

**3. POST-FINANCIAL CLOSE PROJECT CO DELIVERABLES**

Project Co shall deliver to Contracting Authority each of the following items:

- 3.1 within five (5) Business Days following Financial Close, two electronic copies of the Financial Model, each on a USB key; and
- 3.2 within fifteen (15) Business Days following Financial Close, two (2) USB keys, each containing electronic copies of all of the documents described in Sections 1 and 2 of this Schedule 2 (other than the Financial Model which will be provided pursuant to (a) above).

**4. POST-FINANCIAL CLOSE CONTRACTING AUTHORITY DELIVERABLES**

Contracting Authority shall deliver to Project Co the following item:

- 4.1 on the date of commercial close of the RSSOM Project, the RSSOM Interface Agreement executed by Contracting Authority and RSSOM Project Co.

## APPENDIX A TO SCHEDULE 2

FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

**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  
 (“Contracting Authority”)

**AND TO:** THE MINISTER OF INFRASTRUCTURE (“MOI”)

**RE:** Project agreement (as amended, supplemented or modified from time to time, the “Project Agreement”) dated the 8<sup>th</sup> day of November, 2022 between Contracting Authority and Ontario Transit Group Inc. (“Project Co”)

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1. The undersigned acknowledges that:
  - (a) The Project will proceed as a public-private partnership project under the MOI’s *ReNew Ontario* infrastructure investment plan, and complies with the principles which guide the financing and procurement of public infrastructure projects in Ontario.
  - (b) The five fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
    - (i) The public interest is paramount;
    - (ii) Value for money must be demonstrable;
    - (iii) Appropriate public control/ownership must be preserved;
    - (iv) Accountability must be maintained; and
    - (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.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ONTARIO TRANSIT GROUP INC.

By:

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

Title: [REDACTED]

By:

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

Title: [REDACTED]

We have authority to bind the corporation.



## APPENDIX B TO SCHEDULE 2

**FORM OF PROJECT CO/PROJECT CO PARTY/CONSTRUCTION GUARANTOR  
OFFICER'S CERTIFICATE**

## Certificate of an Officer of

[•]

(the "Corporation")

**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  
("Contracting Authority")

**AND TO:** ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

**AND TO:** THE MINISTER OF INFRASTRUCTURE

**AND TO:** [REDACTED]

**AND TO:** [REDACTED]

**AND TO:** [REDACTED]

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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. Constating 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 Contracting Authority made as of November 8, 2022 (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 and finance the Project Co Infrastructure and the New Third Party Infrastructure;

- (2) a lenders' direct agreement between the Corporation, Contracting Authority and the Lenders' Agent;
- (3) a design and construction contract between the Corporation and Ontario Transit Group Constructor GP (the "**Construction Contractor**");
- (4) an insurance trust agreement between the Corporation, Contracting Authority, the Lenders' Agent and the Account Trustee; and
- (5) *[Note to Completion: 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:

<u>NAME</u>	<u>POSITION</u>	<u>SIGNATURE</u>
		_____
		_____
		_____
		_____

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 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 \_\_\_\_\_, 20\_\_.

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

Title:

## APPENDIX C TO SCHEDULE 2

FORM OF PROJECT CO/PROJECT CO PARTY/CONSTRUCTION GUARANTOR OPINION

[INSERT DATE]

Ontario Infrastructure and Lands Corporation  
1 Dundas Street West, 20<sup>th</sup> Floor  
Toronto, Ontario  
M5G 1Z3

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

[●] LLP

[●]

Dear Sirs/Mesdames:

**Re: Ontario Line – Southern Civil, Stations and Tunnel**

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We have acted as counsel to Ontario Transit Group Inc. (“**Project Co**”), [REDACTED] (the “**Construction Contractor**”) and [REDACTED], [REDACTED] and [REDACTED] (the “**Construction Guarantors**”) in connection with the public-private partnership transaction whereby Project Co has agreed to enter into a design, build and finance agreement for Ontario Line – Southern Civil, Stations and Tunnel.

*[Note to Completion: Additional parties to be added depending on consortium structure and/or the financing package.]*

This opinion is being delivered 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 (the “**Contracting Authority**”), Ontario Infrastructure and Lands Corporation, a Crown agent continued under the *Ontario Infrastructure and Lands Corporation Act, 2011* and its counsel pursuant to Section 1.20 of Schedule 2 to the project agreement made as of November 8, 2022 between Contracting Authority and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”).

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

In our capacity as counsel to Project Co, the Construction Contractor and the Construction Guarantors, 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 November 8, 2022):

1. the Project Agreement; and
2. the following project documents (collectively, the “**Implementation Documents**”):

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**Confidential**

Page 12

- (a) the Design and Construction Contract;
- (b) the Insurance Trust Agreement;
- (c) the Lenders' Direct Agreement;
- (d) the Construction Contractor's Direct Agreement;
- (e) the Independent Certifier Agreement;
- (f) the Lending Agreements;
- (g) the Performance Bond;
- (h) the Multiple Obligee Rider to the Performance Bond;
- (i) the Labour and Material Payment Bond;
- (j) the Multiple Obligee Rider to the Labour and Material Payment Bond; and
- (k) the Performance Guarantee of Construction Guarantor;
- (l) the RSSOM Interface Agreement; and
- (m) *[Note to Completion: List other documents delivered at the date of the Project Agreement.]*

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 to Completion: 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 Construction Guarantors]**, 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 Construction Guarantors 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 and the Construction

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 the Officer’s Certificates.

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

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

### **Assumptions**

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

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than Project Co, the Construction Contractor and the Construction Guarantors) 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 Construction Guarantors) 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 Construction Guarantors) to Project Co and the Construction 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 [REDACTED] under the laws of the Province of Ontario and has not been dissolved.
2. The Construction Contractor is a [REDACTED] formed under the laws of the Province of Ontario and has not been dissolved.
3. Each Construction Guarantor 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. Each Construction Guarantor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

### *Corporate Authorization*

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. Each Construction Guarantor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

### *Execution and Delivery*

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. Each Construction Guarantor 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 each Construction Guarantor is a party constitutes a legal, valid and binding obligation of each Construction Guarantor, 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 each Construction Guarantor of the Documents to which it is a party does not, and the performance by each Construction Guarantor of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which each Construction Guarantor 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 each Construction Guarantor of the Documents to which it is a party and the performance of its obligations thereunder.

### **Qualifications**

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

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of each of the Documents and the rights and remedies set out therein is subject to and may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered, including equitable remedies such as those of specific performance and injunction, or the availability of equitable defences.
3. The enforceability of any Document will be subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.
4. Pursuant to the *Currency Act* (Canada), a judgment in money rendered by a Court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
5. To the extent that a particular contractual provision is characterized by a Court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
6. A Court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
7. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a Court as being solely the agent of 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 Contracting Authority for which it would be contrary to public policy to require Project Co to indemnify Contracting Authority or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
16. We express no opinion as to the enforceability by any person who is not a party to the Documents of any provision therein that purports to bind or affect or confer a benefit on such person.

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

Yours very truly,

**[INSERT NAME OF LAW FIRM]**

## APPENDIX D TO SCHEDULE 2

FORM OF CERTIFICATE OF AN OFFICER OF METROLINX

(the “Corporation”)

**TO:** Ontario Transit Group Inc. (“Project Co”)**AND TO:** [REDACTED]**AND TO:** [REDACTED]**AND TO:** [REDACTED]**RE:** Project Agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the 8<sup>th</sup> day of November, 2022 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 Project Co

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I, Phil Verster, the President and Chief Executive Officer 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 excerpts of a Resolution of the Board of Directors of the Corporation passed on the [REDACTED] (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 President and Chief Executive Officer of Metrolinx and authorizing the signing officers of Metrolinx to execute and deliver the Project Agreement and all necessary legal agreements and related documentation to give effect to the Resolution;
3. the Resolution has been duly and validly passed and is in full force and effect and has not been superseded or amended as of the date hereof; and
4. the following named persons, on or as of the date hereof, are duly elected or appointed officers of the Corporation, as evidenced by the holding of the office or offices set forth opposite their names, are proper signing officers of the Corporation and are authorized to execute and deliver the Project Agreement and all necessary legal agreements and related documentation to give effect to the Resolution. The signatures set forth opposite their respective names are the true signatures of those persons.

**Name**

**Position**

**Signature**

_____	_____
_____	_____
_____	_____
_____	_____

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

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

Title:

**SCHEDULE 3**

**SUBCONTRACTOR’S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the [•] day of [•], 20[•]

**BETWEEN:**

**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

(“Contracting Authority”)

– AND –

**ONTARIO TRANSIT GROUP INC., [REDACTED]**

(“Project Co”)

– AND –

**[REDACTED]**

(the “Construction Contractor”)

– AND –

**[[•], a corporation incorporated under the laws of [Ontario]]**

(the “Subcontractor”)

**WHEREAS:**

- A. Contracting Authority and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Construction Contractor and the Subcontractor to enter into, this Subcontractor’s Direct Agreement with Contracting Authority.
- B. Project Co and the Construction Contractor have entered into the Design and Construction Contract, which requires the Construction Contractor to enter into, and cause the Subcontractor to enter into, this Subcontractor’s Direct Agreement with Contracting Authority.

**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 Schedule 3, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 3) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Default Notice**” has the meaning given in Section 5(a);
- (b) “**Novation Notice**” has the meaning given in Section 6(b);
- (c) “**Party**” means Contracting Authority, Project Co, the Construction Contractor or the Subcontractor, and “**Parties**” means, collectively, Contracting Authority, Project Co, the Construction Contractor and the Subcontractor;
- (d) “**Subcontract**” means the subcontract [●]; and *[Note: Describe applicable subcontract.]*
- (e) “**Substitute**” has the meaning given in Section 6(b).

## 2. INTERPRETATION

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

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

#### 4. AGREEMENTS

- (a) If the Subcontractor gives the Construction Contractor any notice of any default(s) under the Subcontract that may give the Subcontractor a right to terminate the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder, then the Subcontractor shall concurrently provide Project Co and Contracting Authority with a copy of such notice, an executed copy of the Subcontract and set out in reasonable detail the default(s).

#### 5. NO TERMINATION BY SUBCONTRACTOR WITHOUT DEFAULT NOTICE

The Subcontractor shall not exercise any right it may have to terminate the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder unless:

- (a) the Subcontractor first delivers an executed copy of the Subcontract and a written notice (a "**Default Notice**") to Contracting Authority setting out in reasonable detail the default(s) on which the Subcontractor intends to rely in terminating the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder; and
- (b) within a period of five (5) Business Days of Contracting Authority receiving the Default Notice the default(s) on which the Subcontractor intends to rely in terminating the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder have not been remedied; and provided that if, within such period of five (5) Business Days, Contracting Authority agrees to pay the Subcontractor's reasonable costs of continued performance, such period of five (5) Business Days shall be extended to forty-five (45) days.

#### 6. NOVIATION OF THE SUBCONTRACT

- (a) The Subcontractor acknowledges and agrees that where the Design and Construction Contract has been terminated:
- (i) by Project Co;
- (ii) as a result of the termination of the Project Agreement; or
- (iii) due to the insolvency of the Construction Contractor,

the Subcontract shall not terminate solely by reason of the termination of the Design and Construction Contract unless Contracting Authority shall have failed to request a novation of the Subcontract pursuant to Section 6(b) within twenty (20) days following the date of such termination.

- (b) Contracting Authority may at any time if:
- (i) the Project Agreement and the Design and Construction Contract have been terminated; or

- (ii) Contracting Authority’s right to terminate the Project Agreement has arisen and is continuing and as a result of such termination of the Project Agreement, the Design and Construction Contract would be terminated,

deliver a notice (a “**Novation Notice**”) electing to novate the Subcontract either to Contracting Authority or a third party designated by Contracting Authority in the Novation Notice (the “**Substitute**”), provided that Contracting Authority can demonstrate to the Subcontractor, 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 Subcontract.

- (c) Subject to Section 6(d), upon receipt by the Subcontractor of a Novation Notice:
- (i) the Construction Contractor and the Subcontractor will be deemed to be released from their existing and future obligations under the Subcontract to each other (except with respect to any and all indemnities from the Construction Contractor or the Subcontractor to the other in respect of the period prior to the receipt of the Novation Notice), and Contracting Authority or the Substitute, as applicable, and the Subcontractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
  - (ii) the existing and future rights of the Construction Contractor against the Subcontractor under the Subcontract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from the Construction Contractor or the Subcontractor to the other in respect of the period prior to the receipt of the Novation Notice), and Contracting Authority or the Substitute, as applicable, and the Subcontractor 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 Subcontractor to Contracting Authority if Contracting Authority pays for the Subcontractor’s reasonable costs of continued performance pursuant to Section 5;
  - (iii) any guarantee, bond or covenant in favour of the Construction Contractor from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Subcontractor to be performed, observed or carried out by the Subcontractor as contained in, referred to, or inferred from the Subcontract shall be assigned, novated or granted, as required by Contracting Authority or the Substitute, as applicable, each acting reasonably, to Contracting Authority or the Substitute, as applicable, and the Subcontractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond or covenant, provided, however, that where Construction Contractor shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the Subcontractor, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Construction Contractor shall be conditional on the satisfaction of those obligations to Construction Contractor; and

- (iv) at Contracting Authority's request, the Subcontractor shall enter into, and shall cause any guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(c)(iii) to enter into, and Contracting Authority shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including an agreement between Contracting Authority or the Substitute, as applicable, and the Subcontractor, acceptable to Contracting Authority and the Subcontractor, each acting reasonably, on substantially the same terms as the Subcontract.
- (d) The Construction Contractor shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Subcontract to Contracting Authority or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Subcontract, ongoing supervisory activities and scheduling.
- (e) The rights granted by Section 6(b) shall be of no force or effect if, at any time the Subcontractor receives a Novation Notice, the Subcontractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Subcontract that it is or has validly exercised those step-in rights. If the Subcontractor receives any such notice on the same day as a Novation Notice, the Novation Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Novation Notice shall be effective.
- (f) If Contracting Authority gives a Novation Notice within the time provided hereunder at any time after the Subcontractor has terminated the Subcontract or treated it as having been repudiated by Construction Contractor or discontinued the Subcontractor's performance thereunder in accordance with the terms of this Subcontractor's Direct Agreement, the Subcontractor agrees that the Subcontract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Contracting Authority shall pay the Subcontractor's reasonable costs for re-commencing the obligations it has under the Subcontract and the Subcontractor 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 Subcontract or having treated it as being repudiated by Construction Contractor or having discontinued its performance thereunder.
- (g) The Subcontractor acknowledges that if Contracting Authority novates the Subcontract to itself pursuant to Section 6(b), Contracting Authority shall have the right to further novate the Subcontract to a Substitute in accordance with and otherwise on, and subject to, the terms and conditions of this Subcontractor's Direct Agreement.

## 7. SUBCONTRACTOR LIABILITY

- (a) The liability of the Subcontractor hereunder shall not be modified, released, diminished or in any way affected by:
  - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for Contracting Authority, or by any failure or omission to carry out any such inspection, investigation or enquiry; or

- (ii) the appointment by Contracting Authority of any other person to review the progress of or otherwise report to Contracting Authority in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to Contracting Authority,

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

- (b) In the event Contracting Authority delivers a Novation Notice, the Subcontractor shall have no greater liability to Contracting Authority or any Substitute than it would have had to Construction Contractor under the Subcontract, and the Subcontractor shall be entitled in any proceedings by Contracting Authority or any Substitute to rely on any liability limitations in the Subcontract.

## 8. PROJECT CO AND CONSTRUCTION CONTRACTOR AS PARTY

- (a) Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Design and Construction Contract by complying with its obligations hereunder.
- (b) Construction Contractor acknowledges and agrees that the Subcontractor shall not be in breach of the Subcontract by complying with its obligations hereunder.

## 9. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Subcontractor's Direct Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 47.2 (*Contracting Authority Assignment*) of the Project Agreement but only in conjunction therewith, and shall provide written Notice to Project Co, the Construction Contractor and the Subcontractor of such assignment or disposition.
- (c) The Construction Contractor shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except as may be permitted under the Design and Construction Contract.
- (d) The Subcontractor shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except as may be permitted under the Subcontract.

**10. NOTICES**

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Subcontractor’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 Subcontractor’s Direct Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority or Contracting Authority Representative:

Metrolinx  
2 Queen Street East, 11th Floor  
Toronto, ON M5C 3G7

Attn.: [REDACTED]  
Email: [REDACTED]

If to Project Co:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

If to the Construction Contractor:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

If to the Subcontractor:

**[Address]**

Attn.: [●]  
Email: [●]

- (b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 10(b).
- (c) Any Party to this Subcontractor's Direct 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 (3<sup>rd</sup>) 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 electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (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 electronic submission in accordance with this Section 10.
- (f) If any notice delivered by hand or transmitted by electronic submission 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 electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

**11. AMENDMENTS**

This Subcontractor'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 Subcontractor's Direct Agreement.

**12. WAIVER**

- (a) No waiver made or given by a Party under or in connection with this Subcontractor'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.

**13. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Subcontractor'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 Subcontractor's Direct Agreement, of principal and agent.

**14. LIABILITY**

Metrolinx, as Crown agency, shall be liable for all of the obligations of Contracting Authority under this Subcontractor's Direct Agreement.

**15. CONTRACTING AUTHORITY DESIGNATE**

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Subcontractors' Direct Agreement and Project Co, the Construction Contractor and the Subcontractor 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 Subcontractor 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 Subcontractor in writing of any designation hereunder. The rights and obligations of the parties to this Subcontractors' Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Construction Contractor and the Subcontractor acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 15.

**16. ENTIRE AGREEMENT**

Except where provided otherwise in this Subcontractor's Direct Agreement, this Subcontractor'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 Subcontractor's Direct Agreement.

## 17. SEVERABILITY

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

## 18. ENUREMENT

This Subcontractor'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.

## 19. GOVERNING LAW AND JURISDICTION

- (a) This Subcontractor'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 Subcontractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Subcontractor's Direct Agreement affects the rights, protections and immunities of the Crown under the *Crown Liability and Proceedings Act* (Ontario).

## 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 Subcontractor's Direct Agreement.

## 21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Subcontractor'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 Subcontractor'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 of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by

electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

**23. COPYRIGHT NOTICE**

The Parties acknowledge that King's Printer for Ontario is the exclusive owner of copyright in the Project Agreement and this Subcontractors' Direct Agreement.

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*

IN WITNESS WHEREOF the Parties have executed this Subcontractor’s Direct Agreement as of the date first above written.

**METROLINX**

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

I have authority to bind the corporation.

**ONTARIO TRANSIT GROUP INC.**

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

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

We have authority to bind the corporation.

[REDACTED]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the corporation.

[REDACTED]

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

Title:

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

Name:

Title:

I have authority to bind the corporation.

**[SUBCONTRACTOR]**

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

Name:

Title:

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

Name:

Title:

I/We have authority to bind the corporation.

**SCHEDULE 4**

**LENDERS' DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 8<sup>th</sup> day of November, 2022

**BETWEEN:**

**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

(“Contracting Authority”)

- AND -

[REDACTED], acting as agent for and on behalf of the Lenders and the Hedge Providers

(the “Lenders’ Agent”)

- AND -

**ONTARIO TRANSIT GROUP INC., [REDACTED]**

(“Project Co”)

**WHEREAS:**

- A. Contracting Authority and Project Co have entered into the Project Agreement.
- B. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Works, conditional on, among other things, Project Co granting the Security to the Lenders’ Agent.
- C. The Lenders’ Agent has agreed to enter into this Lenders’ Direct Agreement with Contracting Authority in relation to the Security, the exercise of its rights under the Security Documents and the remedying of breaches by Project Co under the Project Agreement.
- D. With a view to ensuring that Contracting Authority is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders’ Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with Contracting Authority throughout the Project Term.

**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, 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 Lenders' Direct Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Affiliate**” has the meaning given in the Project Agreement.
- (b) “**Appointed Representative**” means any of the following to the extent so identified in an Appointed Representative Notice:
  - (i) the Lenders' Agent, any Lender or any of their Affiliates;
  - (ii) a receiver or receiver and manager of Project Co appointed under the Security Documents;
  - (iii) a trustee in bankruptcy or court-appointed receiver of Project Co;
  - (iv) an administrator of Project Co;
  - (v) a person directly or indirectly owned or controlled by the Lenders' Agent and/or any of the Lenders; or
  - (vi) any other person approved by Contracting Authority (such approval not to be unreasonably withheld or delayed).
- (c) “**Appointed Representative Notice**” has the meaning given in Section 8(b).
- (d) “**Business Day**” has the meaning given in the Project Agreement.
- (e) “**Confidential Information**” has the meaning given in the Project Agreement.
- (f) “**Construction Contractor**” has the meaning given in the Project Agreement.
- (g) “**Construction Contractor's Direct Agreement**” has the meaning given in the Project Agreement.
- (h) “**Contracting Authority**” has the meaning given in the preamble.
- (i) “**Contracting Authority Project Documents**” means the Project Agreement and all other documents to which Contracting Authority and Project Co are parties pursuant to or in connection with the Project Agreement.
- (j) “**Crown**” has the meaning given in the Project Agreement.
- (k) “**Cure Period**” means the period starting on the date of delivery of a Default Notice and ending on the later of the expiry of (i) the Notice Period and (ii) the Remedial Plan Period.

- (l) “**Default Notice**” has the meaning given in Section 7(b)(i).
- (m) “**Design and Construction Contract**” has the meaning given in the Project Agreement.
- (n) “**Enforcement Action**” means any acceleration of amounts due and owing to any of 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.
- (o) “**Enforcement Event**” means an event of default as defined in the Lending Agreements which permits an Enforcement Action, or any other event which permits an Enforcement Action.
- (p) “**Exercise Date**” has the meaning given in Section 12(b).
- (q) “**Extension Period**” has the meaning given in Section 7(g)(iii).
- (r) “**Financial Close**” has the meaning given in the Project Agreement.
- (s) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (t) “**Indebtedness Notice**” has the meaning given in Section 7(b)(ii).
- (u) “**Lender Representative**” means a representative (which may be the Lenders’ Agent) acting as agent or trustee for and on behalf of all of the Lenders lending to a Suitable Substitute.
- (v) “**Lenders**” has the meaning given in the Project Agreement.
- (w) “**Lenders’ Agent**” has the meaning given in the preamble.
- (x) “**Lenders’ Construction Contractor Direct Agreement**” means the direct agreement among the Lenders’ Agent, the Construction Contractor and Project Co.
- (y) “**Lenders’ Consultant**” has the meaning given in the Project Agreement.
- (z) “**Lenders’ Direct Agreement**” means this lenders’ direct agreement.
- (aa) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (bb) “**Notice Period**” means the period starting on the date of delivery of a Default Notice and expiring on the latest of:
  - (i) thirty (30) days from the start of the Notice Period;
  - (ii) ninety (90) days from the start of the Notice Period, provided that the Lenders’ Agent provides notice to Contracting Authority within thirty (30) days from the start of the Notice Period (A) confirming that the Lenders’ Agent has delivered the Default Notice to the Lenders and (B) identifying each of the Lenders; or

- (iii) on the applicable expiry date as specified in Section 7(g), provided that the Lenders' Agent:
  - (A) within thirty (30) days from the start of the Notice Period, provides the notice to Contracting Authority in Section 1(bb)(ii) above;
  - (B) within sixty (60) days from the start of the Notice Period, provides notice to Contracting Authority confirming that the Lenders, in consultation with the Lenders' Consultant, intend to develop a Remedial Plan within; and
  - (C) within seventy-five (75) days from the start of the Notice Period, delivers such Remedial Plan to Contracting Authority.
- (cc) "**Novation Date**" has the meaning given in Section 10(a).
- (dd) "**Novation Notice**" has the meaning given in Section 10(a).
- (ee) "**Party**" means any of Contracting Authority, Project Co or the Lenders' Agent, and "**Parties**" means all of Contracting Authority, Project Co and the Lenders' Agent.
- (ff) "**Project**" has the meaning given in the Project Agreement.
- (gg) "**Project Agreement**" means the project agreement made on or about the date hereof between Contracting Authority and Project Co.
- (hh) "**Project Co**" has the meaning given in the preamble.
- (ii) "**Project Co Party**" has the meaning given in the Project Agreement.
- (jj) "**Remedial Plan**" means a plan specifying the remedial action to be taken in respect of the relevant Project Co Event of Default, including a 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.
- (kk) "**Remedial Plan Period**" means the period starting on the date of acceptance by Contracting Authority of a Remedial Plan and ending on the earliest of:
  - (i) the date the Project Co Event of Default(s) to which such Remedial Plan relates is remedied; and
  - (ii) the date set out in such Remedial Plan by which the relevant Project Co Event of Default(s) is proposed to be remedied.
- (ll) "**Restricted Person**" has the meaning given in the Project Agreement.
- (mm) "**Security**" means the Performance Security, the Insurance and any security interests granted to the Lenders' Agent pursuant to the Security Documents.



- (nn) **“Security Documents”** means all security granted by Project Co or others to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
- (i) the general security agreement made on or about the date hereof between Project Co and the Lenders’ Agent;
  - (ii) the limited recourse guarantee and pledge agreement made on or about the date hereof between [REDACTED] and the Lenders’ Agent;
  - (iii) the limited recourse guarantee and pledge agreement made on or about the date hereof between [REDACTED] and the Lenders’ Agent;
  - (iv) the general blocked accounts agreement made on or about the date hereof between among, the Lenders’ Agent and [REDACTED], as account bank;
  - (v) the springing blocked accounts agreement made on or about the date hereof among Project Co, the Lenders’ Agent and [REDACTED], as account bank; and
  - (vi) the Lenders’ Construction Contractor Direct Agreement.
- (oo) **“Step-In Date”** means the date on which Contracting Authority receives a Step-In Notice from the Lenders’ Agent.
- (pp) **“Step-In Notice”** means the notice given by the Lenders’ Agent to Contracting Authority pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (qq) **“Step-In Period”** means the period from the Step-In Date up to and including the earliest of:
- (i) the Step-Out Date;
  - (ii) the Termination Date (provided that Contracting Authority has complied with its obligations in Section 7);
  - (iii) the date that a transfer of Project Co’s rights and obligations under the Contracting Authority Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
  - (iv) the date falling twelve (12) months after the Step-In Date.
- (rr) **“Step-Out Date”** means the date falling thirty (30) days after the date on which Contracting Authority receives a Step-Out Notice.
- (ss) **“Step-Out Notice”** has the meaning given in Section 9(a).
- (tt) **“Subsequent Indebtedness Notice”** has the meaning given in Section 7(c).

- (uu) “**Substantial Completion Date**” has the meaning given in the Project Agreement.
- (vv) “**Suitable Substitute**” means a person, approved in writing by Contracting Authority in accordance with Sections 10(b) and 10(c), which:
  - (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Contracting Authority Project Documents; and
  - (ii) employs individuals having the appropriate qualifications, experience and technical competence and has the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the Contracting Authority Project Documents.
- (ww) “**Termination Date**” has the meaning given in the Project Agreement.
- (xx) “**Works**” 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, 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.
- (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) Unless otherwise specifically provided, 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 the Construction Contractor’s Direct Agreement, the provisions of this Lenders’ Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

### 4. TERM

- (a) This Lenders’ Direct Agreement shall terminate automatically on the earliest of:
- (i) the date on which all amounts which may be or become owing to the Lenders under the Lending Agreements have been irrevocably paid in full;

- (ii) the Termination Date (provided that Contracting Authority has complied with its obligations in Section 7); and
  - (iii) the date that any transfer of Project Co's rights and obligations under the Contracting Authority Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.
- (b) Within thirty (30) days following its occurrence, the Lenders' Agent shall provide notice to Contracting Authority of the date referred to in Section 4(a)(i).

## 5. AGREEMENTS AND SECURITY

- (a) Project Co, the Lenders and the Lenders' Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 8.3 (*Changes to Lending Agreements and Refinancing*) 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 shall not, prior to the Substantial Completion Date, exercise any rights of voluntary prepayment, voluntary redemption, or other voluntary repayment of loan, as applicable, under the Lending Agreements, other than in connection with a Milestone Payment, without the prior written consent of Contracting Authority, acting in its sole discretion. In exercising its sole discretion to grant consent, Contracting Authority shall be entitled to request and consider, and Project Co shall be required to provide within ten (10) Business Days following a request by Contracting Authority, amongst other things and not limited to, the following:
  - (i) written certification by an officer of Project Co of the remaining Project Costs (as defined in the Lending Agreements) accrued and unpaid or expected to be incurred to achieve Substantial Completion and to fund any Project Accounts (as defined in the Lending Agreements) then not funded and required to be funded at or prior to the then anticipated prepayment and/or redemption (as approved by the Lenders' Consultant by the Substantial Completion Date);
  - (ii) written certification by an officer of Project Co that no Funding Shortfall (as defined in the Lending Agreements) would reasonably be expected to arise as a consequence of such prepayment and/or redemption, including any related cancellation of unutilized commitments, if applicable, under the Lending Agreements;
  - (iii) written confirmation from the Lenders' Consultant, addressed to Contracting Authority, that the Project Co's calculation in Section 5(c)(i) and Project Co's certification in Section 5(c)(ii) is, in the opinion of the Lenders' Consultant, correct;
  - (iv) written confirmation from the Lenders' Consultant, addressed to Contracting Authority, that no incremental delay in achieving the Substantial Completion Date

(beyond the Scheduled Substantial Completion Date) would reasonably be expected as a consequence of such prepayment and/or redemption and related cancellation of unutilized commitments, if applicable, under the Lending Agreements; and

- (v) written confirmation from the Lenders' Consultant, addressed to Contracting Authority, that the Substantial Completion Date is likely to occur on or prior to the then Scheduled Substantial Completion Date.
- (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 Lenders' Agent acknowledges having received a copy of the Contracting Authority Project Documents as at the date of Financial Close.
- (f) Contracting Authority acknowledges having received copies of the Lending Agreements as at the date of Financial Close, and confirms that they are in form and substance satisfactory to Contracting Authority as at the date of Financial Close.
- (g) Contracting Authority acknowledges notice of and consents to the Security, and confirms that it has not received notice of any other security interest granted over Project Co's rights under any of the Contracting Authority Project Documents.
- (h) Any agreement provided to Project Co pursuant to Section 16.5(a) (*Non-Disturbance Agreement*) of the Project Agreement shall be in form satisfactory to the Lenders' Agent, acting reasonably.
- (i) Subject to the next sentence, Project Co and the Lenders' Agent hereby authorize and instruct Contracting Authority (and Contracting Authority agrees) to pay,
  - (i) the Milestone Payments and the Substantial Completion Payment to Account No. [REDACTED] at [REDACTED]; and
  - (ii) all other sums payable to Project Co under the Project Agreement to Account No. [REDACTED] at [REDACTED],

and Project Co and Contracting Authority agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, Contracting Authority shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.

- (j) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, Contracting Authority shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.

- (k) The Lenders' Agent shall appoint the Lenders' Consultant, and Project Co shall be responsible for the payment of all fees, costs and expenses of the Lenders' Consultant. The Lenders' Consultant acts as an agent for the Lenders' Agent and the Lenders with respect to the amount of any Legislative Holdback to be maintained in accordance with the Project Agreement. Project Co agrees that it shall, in respect of all payments under the Project Agreement, comply with Part IV of the *Construction Act* (Ontario). The Lenders' Agent shall cause the Lenders' Consultant to provide, without delay, Contracting Authority with a copy of any written assessment or report prepared by the Lenders' Consultant in relation to the status or progress of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent. The Lenders' Agent acknowledges and agrees that this Section 5(k) shall constitute sufficient authority for the Lenders' Consultant to provide, without delay, a copy of any and all of its written assessments and reports to Contracting Authority.
- (l) The Lenders' Agent represents and warrants to Contracting Authority that it is the duly authorized agent of the Lenders to enter into this Lenders' Direct Agreement and act on their behalf in connection with this Lenders' Direct Agreement and that, pursuant to the Lending Agreements, the Lenders' Agent has full power and authority to bind the Lenders under this Lenders' Direct Agreement.

## 6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT

- (a) The Lenders' Agent shall promptly notify Contracting Authority of any Enforcement Event, any Enforcement Action, any notice from the Lenders or Lenders' Agent to Project Co accelerating the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements and any notice from the Lenders or Lenders' Agent to Project Co demanding repayment of any amounts owing by Project Co to the Lenders under the Lending Agreements.
- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where 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 may compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of the public transit system within the City of Toronto or the Province of Ontario so as to affect public confidence in the public transit system within the City of Toronto or the Province of Ontario 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 except where the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person.

## 7. TERMINATION OF PROJECT AGREEMENT BY CONTRACTING AUTHORITY

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions expressly set forth in, this Section 7 relating to termination of the Project

Agreement for a Project Co Event of Default, Contracting Authority may, at any time, serve Notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.

- (b) Subject to Section 7(e), at any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)), Contracting Authority shall not exercise any right it may have to terminate or serve Notice terminating the Project Agreement for a Project Co Event of Default unless:
- (i) Contracting Authority promptly delivers notice (a “**Default Notice**”) to the Lenders’ Agent setting out the Project Co Event of Default(s) in reasonable detail;
  - (ii) as soon as possible and not later than thirty (30) days after the date of a Default Notice, Contracting Authority delivers notice (an “**Indebtedness Notice**”) to the Lenders’ Agent setting out:
    - (A) all amounts owed by Project Co to Contracting Authority and any other existing liabilities and obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, as of the date on which Contracting Authority sent the Default Notice; and
    - (B) all amounts which will become owing by Project Co to Contracting Authority and any other liabilities and obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and
  - (iii) the Notice Period has expired and the Lenders’ Agent has not delivered a Step-In Notice.
- (c) At any time after the expiry of the time to send an Indebtedness Notice but no later than three (3) Business Days after receipt by Contracting Authority of the Appointed Representative Notice, if Contracting Authority discovers:
- (i) amounts owed by Project Co to Contracting Authority and any other existing liabilities and obligations of Project Co to Contracting Authority as of the date on which Contracting Authority sent the Default Notice; or
  - (ii) amounts which will become owing by Project Co to Contracting Authority and any other liabilities and obligations of Project Co to Contracting Authority on or before the end of the Cure Period,
- but which were not included in the Indebtedness Notice, Contracting Authority shall deliver notice (a “**Subsequent Indebtedness Notice**”) to the Lenders’ Agent setting out those amounts, liabilities or obligations.
- (d) Subject to Section 7(e), during the Step-In Period, Contracting Authority shall not terminate the Project Agreement on grounds:

- 
- (i) that the Lenders' Agent has served a Step-In Notice or enforced any Security Document; or
  - (ii) arising prior to the Step-In Date of which Contracting Authority was aware prior to the Step-In Date (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 one-hundred and twenty (120) days after the Longstop Date; or
    - (B) 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) Notwithstanding anything herein, Contracting Authority shall be entitled to terminate the Project Agreement by Notice to Project Co and the Appointed Representative at any time:
- (i) if any amount referred to in Section 7(b)(ii)(A) has not been paid to Contracting Authority on or before the Step-In Date;
  - (ii) if any amount, liability or obligation referred to in Section 7(b)(ii)(B) has not been paid or performed, as applicable, on or before the later of:
    - (A) last day of the Cure Period (provided that in the case of any amount owing, such amount has become due and payable in accordance with the terms of the Project Agreement); or
    - (B) the lapse of any cure period that would otherwise be applicable thereto under the Project Agreement;
  - (iii) if any amount, liability or obligation included in a Subsequent Indebtedness Notice has not been paid or performed, as applicable, on or before the later of:
    - (A) last day of the Cure Period (provided that in the case of any amount owing, such amount has become due and payable in accordance with the terms of the Project Agreement);
    - (B) the lapse of any cure period that would otherwise be applicable thereto under the Project Agreement; or
    - (C) the date falling thirty (30) days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent;
  - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement; or



- (v) during the Remedial Plan Period, Contracting Authority determines, in its sole discretion, that the obligations under a Remedial Plan necessary to achieve all elements of such Remedial Plan have not been performed in accordance with its terms.
- (f) Notwithstanding anything in this Lenders' Direct Agreement, Contracting Authority may at any time (including during a Step-In Period) exercise its right under Section 36.3 (*Termination for Convenience*) of the Project Agreement.
- (g) If the Lenders' Agent has delivered to Contracting Authority a Remedial Plan within seventy-five (75) days from the start of the Notice Period, then Contracting Authority shall, acting in its sole discretion and, within fifteen (15) days of receipt of such Remedial Plan, provide notice to the Lenders' Agent either:
  - (i) rejecting such Remedial Plan, in which case the Notice Period will expire on the date that is the later of: (A) ninety (90) days from the start of the Notice Period or (B) ten (10) Business Days after receipt by Lenders' Agent of such notice of rejection; or
  - (ii) advising that Contracting Authority has accepted such Remedial Plan; or
  - (iii) advising that Contracting Authority is willing to negotiate such Remedial Plan in order to arrive at a final Remedial Plan acceptable to Contracting Authority, in which case, the Notice Period shall be extended for a further period of fifty-five (55) days from the date of such notice or such longer period of time as Contracting Authority may agree in its sole discretion (the "**Extension Period**").

If Contracting Authority does not provide any notice in subsection (i), (ii) or (iii) above, Contracting Authority shall be deemed to have rejected such Remedial Plan on the date that is fifteen (15) days of receipt of such Remedial Plan, in which case the Notice Period will expire on the date that is the later of: (A) ninety (90) days from the start of the Notice Period or (B) ten (10) Business Days after the date of such deemed rejection.

If Contracting Authority does provide the notice set out in subsection (iii) above, and Contracting Authority and the Lenders' Agent have not reached an agreement on a final Remedial Plan acceptable to Contracting Authority, acting in its sole discretion, by the end of the Extension Period, then the Notice Period shall expire ten (10) Business Days thereafter.

## 8. STEP-IN RIGHTS

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give Contracting Authority a Step-In Notice at any time:
  - (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served), other than during a Remedial Plan Period;
  - (ii) during the Notice Period; or

- (iii) during which an Enforcement Event is subsisting.
- (b) At least five (5) Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver notice (an "**Appointed Representative Notice**") to Contracting Authority of:
  - (i) its intention to deliver a Step-In Notice; and
  - (ii) the identity of the Lenders' Agent's proposed Appointed Representative.

There can only be one Appointed Representative at any one time.

- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the Contracting Authority Project Documents.
- (d) During the Step-In Period, Contracting Authority shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the Contracting Authority Project Documents. Project Co agrees to be bound by all such dealings between Contracting Authority and the Appointed Representative to the same extent as if they had been between Contracting Authority and Project Co.
- (e) No later than sixty (60) days before the date of a transfer of Project Co's rights and obligations under the Contracting Authority Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective, or on a date otherwise agreed to, acting reasonably, Contracting Authority and the Appointed Representative shall determine, acting reasonably, if any extension to the Scheduled Substantial Completion Date or the Longstop Date is required.

## 9. STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver notice (a "**Step-Out Notice**") to Contracting Authority to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
  - (i) the rights and obligations of the Appointed Representative in relation to Contracting Authority under the Contracting Authority Project Documents will be assumed by Project Co to the exclusion of the Appointed Representative;
  - (ii) Contracting Authority will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the Contracting Authority Project Documents; and
  - (iii) the Appointed Representative and Contracting Authority shall be and hereby are released from all obligations and liabilities to one another under the Contracting Authority Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

**10. NOVATION TO SUITABLE SUBSTITUTE**

(a) Subject to Section 10(b), at any time:

- (i) after an Enforcement Event has occurred;
- (ii) during the Notice Period; or
- (iii) during the Step-In Period,

the Lenders' Agent may deliver to Contracting Authority and the Appointed Representative (if any) notice (a "**Novation Notice**") that it wishes to transfer Project Co's rights and obligations under the Contracting Authority Project Documents to a proposed transferee, together with all information reasonably necessary for Contracting Authority to decide whether the proposed transferee is a Suitable Substitute. The Novation Notice shall specify a Business Day not less than thirty (30) days from the date on which Contracting Authority receives the Novation Notice ("**Novation Date**") for the transfer of Project Co's rights and obligations under the Contracting Authority Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

(b) Contracting Authority shall promptly notify the Lenders' Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. Contracting Authority shall notify the Lenders' Agent, in writing, as to whether the person to whom the Lenders' Agent proposes to transfer Project Co's rights and obligations under the Contracting Authority Project Documents is approved by Contracting Authority as a Suitable Substitute, on or before the date falling thirty (30) days after the later of the date of receipt by Contracting Authority of the Novation Notice and the date of receipt of any additional information requested by Contracting Authority. For greater certainty, if Contracting Authority fails to respond within such period, Contracting Authority shall be deemed not to have approved the proposed transferee.

(c) Contracting Authority shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for Contracting Authority to withhold its approval if:

- (i) the proposed transferee does not meet the requirements set out in the definition of Suitable Substitute;
- (ii) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to Contracting Authority, acting reasonably, in respect of such breaches;
- (iii) 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
- (iv) the terms of any proposed lending agreements or proposed security interests to be granted by the Suitable Substitute to the Lender Representative could reasonably be expected to materially and adversely affect (A) the ability of the Suitable

Substitute to perform under the Contracting Authority Project Documents, or (B) the interests of Contracting Authority, including having the effect of increasing any liability of Contracting Authority, whether actual or potential.

- (d) If Contracting Authority withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders' Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders' Agent has good cause to believe will be acceptable to Contracting Authority, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) If the proposed transferee is approved by Contracting Authority as a Suitable Substitute, then on the Novation Date:
  - (i) Project Co and Contracting Authority will be released from their obligations under the Contracting Authority Project Documents to each other, and the Suitable Substitute and Contracting Authority will assume those same obligations towards each other;
  - (ii) each of the rights of Project Co against Contracting Authority under the Contracting Authority Project Documents and the rights of Contracting Authority against Project Co under the Contracting Authority Project Documents will be cancelled, and the Suitable Substitute and Contracting Authority will acquire those same rights against each other;
  - (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
    - (A) an agreement between Contracting Authority and the Suitable Substitute, on substantially the same terms as each Contracting Authority Project Document; and
    - (B) an agreement among Contracting Authority, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement; and
  - (iv) any subsisting ground for termination by Contracting Authority of the Project Agreement for a Project Co Event of Default will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

## 11. TRANSFERS

Contracting Authority shall, at Project Co's cost and expense, take whatever action the Lenders' Agent, the Appointed Representative, the Suitable Substitute or the Lender Representative may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of

any registration which, in each case, the Lenders' Agent, the Appointed Representative, the Suitable Substitute or the Lender Representative reasonably requires.

## 12. CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT

- (a) Notwithstanding any provision in the Construction Contractor's Direct Agreement, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Construction Contractor's Direct Agreement, 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 to a Suitable Substitute pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, Contracting Authority shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Construction Contractor's Direct Agreement to step into and/or novate the Design and Construction Contract in accordance with the Construction Contractor's Direct Agreement.
- (c) Following the Exercise Date, Contracting Authority shall not do anything to prejudice the rights under the Design and Construction Contract which are not transferred to it pursuant to the Construction Contractor's Direct Agreement.
- (d) Where all amounts which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of the Design and Construction Contract assumed or novated by Contracting Authority pursuant to the Construction Contractor's Direct Agreement.
- (e) Notwithstanding the terms of the Construction Contractor's Direct Agreement and any other provisions of this Section 12, the Construction Contractor (and any guarantor 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 Design and Construction Contract in respect of the period prior to the Exercise Date.
- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, Contracting Authority shall not, prior to the date on which this Lenders' Direct Agreement terminates:
  - (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Construction Contractor's Direct Agreement (and/or the Design and Construction Contract) from the Construction Contractor;
  - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor; or
  - (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

Contracting Authority agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Lenders.

### 13. SUBCONTRACTOR'S DIRECT AGREEMENT

Notwithstanding any provision in a Subcontractor's Direct Agreement, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of any Subcontractor's Direct Agreement unless:

- (a) the Project Agreement and the Design and Construction Contract have been terminated;
- (b) Contracting Authority is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lenders' Direct Agreement; or
- (c) Contracting Authority is entitled to exercise its rights under the Construction Contractor's Direct Agreement pursuant to Section 12(b).

### 14. PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

Notwithstanding any provision in the Performance Guarantee of Construction Guarantor given by the Construction Guarantor, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of the Performance Guarantee of Construction Guarantor unless:

- (a) the Project Agreement has been terminated; or
- (b) Contracting Authority is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lenders' Direct Agreement.

### 15. PROCEEDING AT RISK AND PROJECT CO DELAY NOTICES

- (a) The Parties acknowledge that Contracting Authority may, in its sole discretion, give notice to the Lenders' Agent of any Proceeding at Risk Matter following the issuance of the Proceeding at Risk Notice issued pursuant to Section 14.6(a) (*Proceeding at Risk*) of the Project Agreement, together with a copy of such notice.
- (b) The Parties acknowledge that, if Contracting Authority delivers notice to Project Co pursuant to Section 14 (*Recovery Works Schedules*) of Schedule 12 – Works Schedule Requirements, Contracting Authority may, acting reasonably, give notice to the Lenders' Agent that Project Co is failing to maintain the schedule, together with the relevant information supporting Contracting Authority's opinion that Project Co is failing to maintain the schedule.

### 16. 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 16.

- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person (in this Section 16(b), the "assignee") to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 47.1 (*Project Co Assignment*) of the Project Agreement and the provisions of the Lending Agreements, and shall provide Notice to Contracting Authority and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, Contracting Authority and the Lenders' Agent, each acting reasonably. Contracting Authority, the Lenders' Agent, Project Co and the assignee shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) Contracting Authority may assign, transfer or otherwise dispose of the benefit of the whole or part of this Lenders' Direct Agreement to any person (in this Section 16(c), the "assignee") to whom Contracting Authority assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 47.2 (*Contracting Authority Assignment*) of the Project Agreement, and shall provide Notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.
- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to any person (in this Section 16(d), the "assignee") as permitted by the Lending Agreements, and shall provide notice to Project Co and Contracting Authority of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lenders' Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and Contracting Authority on substantially the same terms as this Lenders' Direct Agreement and Project Co and Contracting Authority shall enter into such new agreement with the assignee. Project Co, Contracting Authority, the Lenders' Agent and the assignee shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

## 17. 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" or "in writing" is specifically required by the applicable provision of this Lenders' Direct Agreement) and given by sending the same by registered mail, by hand (in each case with a copy by electronic transmission to the Contracting Authority Representative at the email address set out below), or by electronic transmission as follows:

If to Contracting Authority or Contracting Authority Representative:

Metrolinx  
2 Queen Street East, 11th Floor

Toronto, ON M5C 3G7

Attn.: [REDACTED]  
Email: [REDACTED]

If to the Lenders' Agent:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

If to Project Co:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

If to the Construction Guarantors:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

Attn.: [REDACTED]  
Email: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]



- (b) Where any notice is given to a Party via electronic transmission, an original of the notice sent via electronic transmission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic transmission shall not be invalid by reason only of a Party's failure to comply with this Section 17(b) and the time of deemed receipt of such notice shall be based on the time of the electronic transmission.
- (c) Any Party to this Lenders' Direct Agreement may, from time to time, change any of its contact information set forth in Section 17(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 or deemed receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 17(f) and 17(g):
- (i) a notice given by registered mail shall be deemed to have been received on the third (3<sup>rd</sup>) 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 electronic transmission shall be deemed to have been received on the day it is transmitted by electronic transmission.
- (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 given by hand delivery or by electronic transmission in accordance with this Section 17.
- (f) If any notice given by hand delivery or electronic transmission 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 electronic transmission shall be deemed to have been received by the recipient on the day it is transmitted or, if applicable, the later date set out in Section 17(f) only if an electronic transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## 18. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Lenders' Direct Agreement and Project Co and the Lenders' Agent may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co and the Lenders' Agent in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the notice. The Crown shall advise Project Co and the Lenders' Agent in writing of any designation hereunder. The rights and

obligations of the Parties to this Lenders' Direct Agreement shall be in no way affected by reason of any such designation. Project Co and the Lenders' Agent acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 18.

## 19. 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.

## 20. 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 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.

## 21. 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.

## 22. 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.

## 23. 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 provision of this Lenders' Direct Agreement is so declared 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.

**24. 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.

**25. 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 *Crown Liability and Proceedings Act* (Ontario).

**26. 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.

**27. 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.

**28. 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.*

**29. 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 of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

**30. LIABILITY**

Metrolinx, as Crown agency, shall be liable for all of the obligations of Contracting Authority under this Lenders' Direct Agreement.

**31. CONFIDENTIALITY**

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 40 (*Confidentiality*) of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent will be permitted to disclose to any relevant regulatory authority only such Confidential Information as is necessary for the Lenders' Agent to comply with Applicable Law.

**32. COPYRIGHT NOTICE**

The Parties acknowledge that King's Printer for Ontario is the exclusive owner of copyright in the Project Agreement and this Lenders' Direct Agreement.

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*

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

**METROLINX**

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

I have authority to bind the corporation.

[REDACTED]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**ONTARIO TRANSIT GROUP INC.**

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

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

We have authority to bind the corporation.

**SCHEDULE 5**

**CONSTRUCTION CONTRACTOR’S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 8<sup>th</sup> day of November, 2022

**BETWEEN:**

**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

(“Contracting Authority”)

- AND -

**ONTARIO TRANSIT GROUP INC., [REDACTED]**

(“Project Co”)

- AND -

**[REDACTED]**

(the “Construction Contractor”)

- AND -

**[REDACTED]**

- AND -

**[REDACTED]**

- AND -

**[REDACTED]**

(each of **[REDACTED]**, **[REDACTED]** and **[REDACTED]**, a “Construction Guarantor” and collectively, the “Construction Guarantors”)

**WHEREAS:**

- A. Contracting Authority and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Construction Contractor and the Construction Guarantors to enter into, this Construction Contractor’s Direct Agreement with Contracting Authority.
- B. Project Co and the Construction Contractor have entered into the Design and Construction Contract, which requires the Construction Contractor and the Construction Guarantors to enter into this Construction Contractor’s Direct Agreement with Contracting Authority.

**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, 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 Construction Contractor’s Direct Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Contracting Authority**” has the meaning given in the preamble.
- (b) “**Construction Contractor**” has the meaning given in the preamble.
- (c) “**Construction Guarantors**” has the meaning given in the preamble.
- (d) “**Default Notice**” has the meaning given in Section 5(a).
- (e) “**Party**” means Contracting Authority, the Construction Contractor, the Construction Guarantors or Project Co, and “**Parties**” means, collectively, Contracting Authority, the Construction Contractor, the Construction Guarantors and Project Co.
- (f) “**Project Agreement**” means the project agreement made on or about the date hereof between Contracting Authority and Project Co.
- (g) “**Project Co**” has the meaning given in the preamble.
- (h) “**Step-In Notice**” has the meaning given in Section 6(a).
- (i) “**Substitute**” has the meaning given in Section 6(a).

## 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, 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.

- (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 Design and 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 Design and Construction Contract without the prior written consent of Contracting Authority, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Construction Contractor’s Direct Agreement and does not have the effect of increasing any liability of Contracting Authority, whether actual or potential. Project Co and the Construction Contractor shall provide to Contracting Authority a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.
- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Design and Construction Contract.
- (c) If the Construction Contractor gives Project Co any notice of any default(s) under the Design and Construction Contract that may give the Construction Contractor a right to terminate the Design and Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor’s performance thereunder, then the Construction Contractor shall concurrently provide Contracting Authority with a copy of such notice and set out in reasonable detail the default(s).

### 5. NO TERMINATION BY CONSTRUCTION CONTRACTOR WITHOUT DEFAULT NOTICE

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

- (a) the Construction Contractor first delivers a written notice (a “**Default Notice**”) to Contracting Authority setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Design and 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 five (5) Business Days of Contracting Authority receiving the Default Notice:
  - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Design and Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder have not been remedied; and
  - (ii) the Construction Contractor has not received a Step-In Notice from Contracting Authority,

provided that if, within such period of five (5) Business Days, Contracting Authority agrees to pay the Construction Contractor's reasonable costs of continued performance, such period of five (5) Business Days shall be extended to forty-five (45) days.

## 6. STEP-IN RIGHTS

- (a) Contracting Authority may at any time:
  - (i) within five (5) Business Days or, if such period has been extended in accordance with Section 5, forty-five (45) days of Contracting Authority receiving a Default Notice; or
  - (ii) if Contracting Authority has not received a Default Notice and if Contracting Authority's right to terminate the Project Agreement has arisen and is continuing, deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Design and Construction Contract either with Contracting Authority or a third party designated by Contracting Authority in the Step-In Notice (the "**Substitute**"), provided that Contracting Authority can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Design and 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 Design and Construction Contract to each other (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Construction Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);

- 
- (ii) the existing and future rights of Project Co against the Construction Contractor under the Design and Construction Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Construction Contractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Construction Contractor to Contracting Authority if Contracting Authority pays for the Construction Contractor's reasonable costs of continued performance pursuant to Section 5;
- (iii) any guarantee, 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 Design and Construction Contract shall be assigned, novated or granted, as required by Contracting Authority or the Substitute, as applicable, each acting reasonably, to Contracting Authority or the Substitute, as applicable, and the Construction Contractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond, covenant, letter of credit or similar performance security, as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond or covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and
- (iv) at Contracting Authority's request, the Construction Contractor shall enter into, and shall cause 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 Contracting Authority shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including an agreement between Contracting Authority or the Substitute, as applicable, and the Construction Contractor, acceptable to Contracting Authority and the Construction Contractor, each acting reasonably, on substantially the same terms as the Design and Construction Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Design and Construction Contract to Contracting Authority or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Design and 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 Design and Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If Contracting Authority gives a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Design and 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 Design and Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Contracting Authority shall pay the Construction Contractor's reasonable costs for re-commencing the obligations it has under the Design and 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 Design and Construction Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

## 7. CONSTRUCTION CONTRACTOR LIABILITY

- (a) The liability of the Construction Contractor hereunder shall not be modified, released, diminished or in any way affected by:
- (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for Contracting Authority, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
  - (ii) the appointment by Contracting Authority of any other person to review the progress of or otherwise report to Contracting Authority in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to Contracting Authority,

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

- (b) In the event Contracting Authority delivers a Step-In Notice, the Construction Contractor shall have no greater liability to Contracting Authority or any Substitute than it would have had to Project Co under the Design and Construction Contract, and the Construction Contractor shall be entitled in any proceedings by Contracting Authority or any Substitute to rely on any liability limitations in the Design and Construction Contract.

**8. PROJECT CO AS PARTY**

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

**9. CONSTRUCTION GUARANTORS AS PARTY**

Each Construction Guarantor agrees with Contracting Authority that it has entered into a guarantee or covenant referred to in Section 6(b)(iii) and hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Construction Contractor of a Step-In Notice and without the requirement of any further action on the part of Contracting Authority, and agrees that it 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 are entering into this Construction Contractor's Direct Agreement solely for the purposes of this Section 9.

**10. ASSIGNMENT**

- (a) Project Co shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor's Direct Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 47.2 (*Contracting Authority Assignment*) 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 and the Construction Guarantors shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except as may be permitted under the Design and 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, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority or Contracting Authority Representative:

Metrolinx

2 Queen Street East, 11th Floor  
Toronto, ON M5C 3G7

Attn.: [REDACTED]  
Email: [REDACTED]

If to Project Co:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

If to the Construction Contractor:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

If to the Construction Guarantors:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

Attn: [REDACTED]  
Email: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission 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 (3<sup>rd</sup>) 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 electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (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 electronic submission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by electronic submission 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 electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission 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 *Crown Liability and Proceedings Act* (Ontario).

**19. CONTRACTING AUTHORITY DESIGNATE**

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Construction Contractor's Direct Agreement and Project Co, the Construction Contractor and the Construction Guarantors may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Construction Contractor and the Construction Guarantors in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Construction Contractor and the Construction Guarantors in writing of any designation hereunder. The rights and obligations of the Parties to this Construction Contractor's Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Construction Contractor and 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 déclare 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 of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a

copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

**23. LIABILITY**

Metrolinx, as Crown agency, shall be liable for all of the obligations of Contracting Authority under this Construction Contractor’s Direct Agreement.

**24. COPYRIGHT NOTICE**

The Parties acknowledge that King’s Printer for Ontario is the exclusive owner of copyright in the Project Agreement and this Construction Contractor’s Direct Agreement.

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*

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

**METROLINX**

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

I have authority to bind the corporation

**ONTARIO TRANSIT GROUP INC.**

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

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

We have authority to bind the corporation

**[REDACTED]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation

**[REDACTED]**

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

Name:

Title:

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

Name:

Title:

I/We have authority to bind the corporation

**[REDACTED]**

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

Name:

Title:

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

Name:

Title:

I/We have authority to bind the corporation

**[REDACTED]**

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

Name:

Title:

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

Name:

Title:

I/We have authority to bind the corporation

**[REDACTED]**

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

Name:  
Title:

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

Name:  
Title:

I/We have authority to bind the corporation

**SCHEDULE 6**

**INDEPENDENT CERTIFIER AGREEMENT**

**THIS AGREEMENT** is made as of the 8<sup>th</sup> day of November, 2022

**BETWEEN:**

**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**” or “**Contracting Authority**”)

**AND:**

**ONTARIO TRANSIT GROUP INC., [REDACTED]**

(“**Project Co**”)

**AND:**

**[REDACTED]**

(the “**Independent Certifier**”)

**WHEREAS:**

- A. Contracting Authority and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.
- D. Canada will enter into the Funding Agreement with the Province with respect to the Project and pursuant to that agreement will agree to pay to the Province, for remission to Metrolinx, a portion of Eligible Expenditures incurred by Metrolinx with respect to the Project.
- E. Canada has requested that the Independent Certifier provide to Canada certain assurances as to its role and status with respect to the Project and certifications as to Eligible Expenditures incurred by Metrolinx with respect to each Milestone Payment and with respect to Substantial Completion.

**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) **“Adjudication Fee”** means the fee payable by Contracting Authority and Project Co to the Independent Certifier for the Independent Certifier conducting Adjudications, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
- (ii) **“Canada”** means His Majesty the King in right of Canada, as represented by the Minister of Infrastructure and Communities or such other ministry, department or agency of the federal government which may be responsible for administering the Funding Agreement on behalf of the federal government from time to time.
- (iii) **“Certification Services”** means:
  - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
  - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
  - (C) all other functions or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
- (iv) **“Certification Services Variation”** means any change to the Certification Services.
- (v) **“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).
- (vi) **“Contracting Authority”** has the meaning given in the preamble.

- (vii) “**Contracting Authority ISA**” has the meaning given in Schedule 29 – Safety, System Assurance and Security.
- (viii) “**Eligible Expenditures**” has the meaning set out in the Funding Agreement.
- (ix) “**Fee**” means the fees payable by Contracting Authority and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
- (x) “**Funding Agreement**” means a funding agreement to be entered into between Canada and the Province for the Project, as it may be supplemented, amended, restated or replaced from time to time.
- (xi) “**Hourly Rate**” means the rate charged by each Independent Certifier team member per hour as listed in Appendix B to this Independent Certifier Agreement for Certification Services identified in item (y) of Appendix A to this Independent Certifier Agreement, including any certification services required to provide additional work and any Adjudication performed by Independent Certifier personnel pursuant to Schedule 27 – Dispute Resolution Procedure.
- (xii) “**IC Monthly Report**” has the meaning given in Appendix A to this Independent Certifier Agreement.
- (xiii) “**IC Quarterly Report**” has the meaning given in Appendix A to this Independent Certifier Agreement.
- (xiv) “**Independent Certifier**” has the meaning given in the preamble.
- (xv) “**Installed Equipment**” has the meaning given in Appendix A to this Independent Certifier Agreement.
- (xvi) “**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.
- (xvii) “**Other Advice**” has the meaning given in Appendix A to this Independent Certifier Agreement.
- (xviii) “**PA Parties**” means both Contracting Authority and Project Co, and “**PA Party**” means either Contracting Authority or Project Co, as the context requires.
- (xix) “**Project Agreement**” means the project agreement made on or about the date hereof between Contracting Authority and Project Co.
- (xx) “**Project Co**” has the meaning given in the preamble.



- (xxi) “**Province**” means His Majesty the King in right of Ontario, as represented by the Minister of Transportation or such other ministry, department or agency of the Ontario government which may be responsible for administering the Funding Agreement on behalf of the Ontario government from time to time.
- (xxii) “**Total Fixed Fee**” means the Fee for all Certification Services other than those identified in item (y) of Appendix A to this Independent Certifier Agreement, which shall not exceed the amount specified in Appendix B to this Independent Certifier Agreement.

## 2. INTERPRETATION

### 2.1 Interpretation

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

**2.2 Obligations and Exercise of Rights by PA Parties**

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

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

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.
- (d) The Independent Certifier shall make such observations and evaluations of any Works pursuant to a Variation in order to certify any monthly progress payment to Project Co of the value of work performed, provided the Independent Certifier shall be entitled to a “Certification Services Variation Order” pursuant to Sections 9.4 and 9.5.
- (e) The PA Parties acknowledge and agree that the Independent Certifier shall rely on an assessment report prepared by the Contracting Authority ISA with respect to the safety certification of each Project Co Infrastructure Section. The Independent Certifier acknowledges and agrees that, in carrying out the Certification Services, it shall be bound to such assessment report and shall consider the Contracting Authority ISA’s views with respect to the safety of each Project Co Infrastructure Section in making its determination as to whether Project Co has satisfied the conditions of the applicable Section Substantial Completion.

**3.2 Duty of Care to Canada**

- (a) The Independent Certifier acknowledges that it will review the Funding Agreement and the project cash flow set out in the Funding Agreement once the Funding Agreement is executed and delivered.
- (b) Once the Funding Agreement has been executed and delivered, the Independent Certifier shall promptly execute and deliver a letter to Canada in the form of Appendix F to this Independent Certifier Agreement.

- (c) Once the Funding Agreement has been executed and delivered, the Independent Certifier shall provide to Canada a “Declaration of Completion – Milestone” with respect to each Milestone and with respect to Substantial Completion, in the form of Appendix G to this Independent Certifier Agreement, as required by the terms of the Funding Agreement.
- (d) The right of Project Co to receive any payment due to it under the Project Agreement is independent of and shall not be affected in any way by any declaration made, not made or made in any amended form, by the Independent Certifier to Canada as to any matter referred to in Appendix G to this Independent Certifier Agreement, including whether the costs reflected in such payment are, or are not, in whole or in part, Eligible Expenditures.

### **3.3 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.

### **3.4 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.

### **3.5 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 ten (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.

### 3.6 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.

### 3.7 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 3.7(a)(i) or 3.7(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 or on the Project Co 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.

**3.8 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 Contracting Authority ISA;
  - (iv) without limiting its obligations under Sections 3.5 and 3.8(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties;
  - (v) include both PA Parties in all discussions, meetings or any other communications regarding the Project; and
  - (vi) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party.

**3.9 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 a 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.

**3.10 Independent Certifier Personnel**

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) Any replacement of any of the individuals listed in Appendix C is subject to the PA Parties' prior written approval.

- (c) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Works shall:
- (i) possess a current professional designation of not less than membership in Professional Engineers Ontario (PEO), the Ontario Association of Certified Engineering Technicians and Technologists or such similar professional or consulting designation recognized in North America for mechanical, electrical, civil, structural, transportation, geotechnical, mining, tunnels, environmental, utilities, rail systems and industrial leads;
  - (ii) possess a current professional designation of not less than Professional Quantity Surveyors (PQS) for the Cost Estimator and any individuals who will prepare and evaluate construction and development information for the cost control and Works measurements for payment;
  - (iii) have demonstrated competence in the planning, design, construction and commissioning of comparable and complex facilities and in having completed or monitored the planning, design, construction and commissioning of facilities and infrastructure comparable to the those included in the Project;
  - (iv) have an understanding of the appropriate standards, guidelines and policies related to planning, design, construction and commissioning of facilities and infrastructure comparable to the those included in the Project;
  - (v) have an understanding of the commissioning process, the reports and any documentation to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but the pre-commissioning and post-commissioning activities; and
  - (vi) have the relevant qualifications for their specified area of expertise and membership to the relevant professional bodies which licences them to give their opinions and carry out the relevant works as detailed within this Independent Certifier Agreement.
- (d) The Independent Certifier shall furnish Contracting Authority with evidence satisfactory to Contracting Authority of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Works.
- (e) The Independent Certifier shall engage the personnel listed in Appendix C in all day-to-day activities relevant to their area of expertise for the Certification Services.

### **3.11 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 determine whether Milestone Payment Completion, any Section Substantial Completion, Substantial Completion and Final Completion has occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.
- (b) Contracting Authority shall promptly provide all information received from the Contracting Authority ISA, including the assessment report, required in order for the Independent Certifier to determine whether any Section Substantial Completion, Substantial Completion and Final Completion has occurred.

##### **4.4 Additional Information**

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
- (i) the Independent Certifier must give notice in writing to the Project Co Representative or the Contracting Authority Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
  - (ii) Project Co or Contracting Authority, as the case may be, must arrange the provision of the required information, documents or particulars.

##### **4.5 Right to Enter and Inspect**

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Metrolinx Lands, the Project Co Infrastructure, the New Third Party Infrastructure, the Existing 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 Infrastructure, the New Third Party Infrastructure, the Existing 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 Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure or the Works; and
- (iii) not causing any damage to the Metrolinx Lands, the Project Co Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure or the Works.

#### **4.6 PA Parties Not Relieved**

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

#### **4.7 PA Parties not Liable**

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

### **5. CERTIFICATION QUALITY PLAN**

#### **5.1 Certification Quality Plan**

- (a) The Independent Certifier must:
  - (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services, including but not limited to timelines, deliverables and input required from the PA Parties, that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the Contracting Authority Representative and the Project Co Representative;
  - (ii) within thirty (30) days after the date of this Independent Certifier Agreement, provide a draft of such certification quality plan to each of the Contracting Authority Representative and the Project Co Representative;
  - (iii) within sixty (60) days after the date of this Independent Certifier Agreement, provide the final certification quality plan to each of the Contracting Authority Representative and the Project Co Representative;
  - (iv) if satisfactory to each of the Contracting Authority Representative and the Project Co Representative, implement such certification quality plan; and



- (v) if not satisfactory to each of the Contracting Authority Representative and the Project Co Representative, within seven (7) days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the Contracting Authority Representative and the Project Co Representative, and implement it if satisfactory to each of the Contracting Authority Representative and the Project Co Representative.

## **5.2 Certification Quality Plan not to Relieve Independent Certifier**

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

## **6. SUSPENSION**

### **6.1 Notice**

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
  - (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
  - (ii) in any other case, by the PA Parties giving seven (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 Section 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 five (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 and Adjudication 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 invoicing process specified in Section D of Appendix B to this Independent Certifier Agreement.
- (b) In consideration of a representative of the Independent Certifier conducting Adjudications if required pursuant to Schedule 27 – Dispute Resolution Procedure, and subject to an alternative determination regarding payment of costs being made by the Adjudicator, each PA Party shall pay [REDACTED] of the Adjudication Fee for each Adjudication conducted based on the rates set out in Appendix B to this Independent Certifier Agreement.

- (c) The obligation of each PA Party to pay to the Independent Certifier [REDACTED] of the Fee, or one half of the Adjudication Fee (or other portion of the Adjudication Fee as determined by the Adjudicator) 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.
- (d) The Fee and Adjudication Fee include all taxes (except for HST), overhead and profit, all labour and materials, insurance costs, travel, hospitality, and incidental expenses (except for food expenses which are to be excluded), and all other overhead including any fees or other charges required by law to perform the Certification Services and conduct the Adjudications, subject to Appendix B to this Independent Certifier Agreement.
- (e) 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 sixty (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 seven (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 twenty-one (21) days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the Contracting Authority Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

### **9.2 No Adjustment**

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

### **9.3 External Services**

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any

additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

#### **9.4 Certification Services Variation Procedure**

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

#### **9.5 Cost of Certification Services Variation**

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:
  - (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
  - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
  - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the Contracting Authority Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

### **10. TERM AND TERMINATION**

#### **10.1 Term**

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
  - (i) the Final Completion Date; 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 seven (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 thirty (30) days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the thirty (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 Sections 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, 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) However, Project Co shall not 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 or not taken by the Independent Certifier under or in respect of the Funding Agreement.
- (c) 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.
- (d) This indemnity shall survive the termination of this Independent Certifier Agreement.

#### **11.2 Independent Certifier to Save PA Parties Harmless**

- (a) Subject to Section 11.2(b), 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) No action or other proceeding shall be commenced by any PA Party against the Independent Certifier or the Independent Certifier's representative acting as an Adjudicator pursuant to Schedule 27 – Dispute Resolution Procedure, for any act done, or any alleged neglect or default in the execution or intended execution of the Adjudicator's duties or powers in connection with such Adjudication, unless the act or omission is shown to have been in bad faith.
- (c) 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.
- (d) 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, by hand



(in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority or  
Contracting Authority  
Representative: Metrolinx  
2 Queen Street East, 11th Floor  
Toronto, ON M5C 3G7

Attn.: [REDACTED]  
Email: [REDACTED]

If to Project Co: [REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

If to Independent Certifier: [REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

- (b) Where any notice is provided or submitted to a party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission 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 (3<sup>rd</sup>) 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 electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.

- (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 electronic submission in accordance with this Section 12.4.
- (f) If any notice delivered by hand or transmitted by electronic submission 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 electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission 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 and Canada, which each PA Party and Canada 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, provided that in addition, Contracting Authority may not do so without the prior written consent of Canada.
- (d) The consent rights of Canada under this Section 12.5 shall be held in trust by Contracting Authority on behalf of Canada and may be enforced by Contracting Authority on behalf of Canada.

## 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 *Crown Liability and Proceedings Act* (Ontario).

### 12.7 Contracting Authority Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Independent Certifier Agreement and Project Co and the Independent Certifier may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co and the Independent Certifier in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co and the Independent Certifier in writing of any designation hereunder. The rights and obligations of the parties to this Independent Certifier Agreement shall be in no way affected by reason of any such designation. Project Co and the Independent Certifier acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 12.7.

### 12.8 Confidentiality

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

### 12.9 Contract Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA

Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.

- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.9(b).

#### **12.10 Amendment**

- (a) This Independent Certifier Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the PA Parties and the Independent Certifier and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Independent Certifier Agreement. No such amendment, restatement or other modification shall be made without the prior written consent of Canada. The consent right of Canada under this Section 12.10(a) shall be held in trust by Contracting Authority on behalf of Canada and may be enforced by Contracting Authority on behalf of Canada.

#### **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 of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

**12.14 Liability**

- (a) Metrolinx, as Crown agency, shall be liable for all of the obligations of Contracting Authority under this Independent Certifier Agreement.

**12.15 Copyright Notice**

- (a) The parties acknowledge that the King’s Printer for Ontario is the exclusive owner of the copyright in the Project Agreement and this Independent Certifier Agreement.

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*

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

**METROLINX**

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

I have authority to bind the corporation.

**ONTARIO TRANSIT GROUP INC.**

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

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

We have authority to bind the corporation.

[REDACTED]

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

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

We have authority to bind the corporation.

**APPENDIX A****CERTIFICATION SERVICES**

The Independent Certifier shall perform the tasks, provide the services and discharge the obligations which it is required to perform, provide or discharge under this Independent Certifier Agreement and the Project Agreement, which, without limiting the generality of the foregoing, include the following:

- (a) Develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services including timelines, deliverables and a description of the input required from the PA Parties to carry out the Certification Services.
- (b) Receive, monitor and review all relevant Project documentation including drawings, plans, reports, certifications, schedules, letters, notices and test results as necessary for the Independent Certifier to be informed as to the progress of the Works (including, for certainty, the schedules and reports described in Sections 12 (*Reports on Basis of Works Schedule*), 13 (*Works Schedule Report*) and 14 (*Recovery Works Schedules*) of Schedule 12 – Works Schedule Requirements of the Project Agreement). The Independent Certifier personnel listed in Appendix C shall be up to date with all Project documentation relevant to their area of expertise.
- (c) Review information relating to Construction Period Quality Failures, Delay Events and the events described in Section 30.2 (*Consequences of a Delay Event*) of the Project Agreement, and Compensation Events.
- (d) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consultation with the relevant party.
- (e) Issue a certificate for payment of (i) the Legislative Holdback pursuant to Section 4.5 (*Payment of Legislative Holdback*) of the Project Agreement, and (ii) the Finishing Holdback pursuant to Section 4.6 (*Payment of Finishing Holdback*) of the Project Agreement.
- (f) In accordance with Section 14.1(b) (*Works Committee – Establishment*) of the Project Agreement, attend all meetings and deliberations of and participate, as necessary, in the activities of the Works Committee.
- (g) Identify any risks that may impede the issuance of a Milestone Payment Completion notice (pursuant to Section 25A.2(e)(i) (*Certification of Milestone Payments*) of the Project Agreement), any Section Substantial Completion Certificate, the Substantial Completion Certificate or the Final Completion Certificate and inform the PA Parties thereof.
- (h) In accordance with Section 11.16 (*Defective Works*) of the Project Agreement, perform all responsibilities of the Independent Certifier in connection with Construction Defects.
- (i) Review the draft Commissioning Submittals and the detailed test, test methodology and expected test results proposed by Project Co, including any review comments from Contracting Authority, and provide a report on the effectiveness of the Commissioning activities, to identify any errors or omissions and to report any risks.

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- (j) Monitor, and report on, the implementation of the Project Co Commissioning Plan and other tests, including re-tests, to be performed as set out in Schedule 14 – Commissioning or as otherwise required for Project Co to achieve Milestone Payment Completion, any Section Substantial Completion, Substantial Completion and Final Completion.
- (k) Witness the implementation of a sample of the Commissioning Tests and a sample of the other testing and commissioning procedures at random times, locations and frequencies, in each case to the extent required for the Independent Certifier to verify that the requirements of Milestone Payment Completion, any Section Substantial Completion, Substantial Completion and Final Completion have been met.
- (l) In accordance with Section 23.12(j)(ii) (*Inspection, Commissioning and Handover of New City Infrastructure*) of the Project Agreement, make a determination with respect to unresolved Project Co Commissioning or Handover issues.
- (m) Prior to any certification, consider the views and comments of Project Co and Contracting Authority (including its consultants and advisors) and the Contracting Authority ISA, as applicable, in relation to the satisfaction of the conditions for certification.
- (n) Employing the relevant personnel, conduct regular inspections of the Works and attend Site progress meetings at a minimum on a monthly basis or more regularly as deemed necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement. Report on the observations, findings and potential risks to certification as a result of the regular inspections as part of the IC Monthly Report.
- (o) Upon receipt of notice from Project Co requesting the issuance of a Milestone Payment Completion notice pursuant to Section 25A.2(b) (*Certification of Milestone Payments*) of the Project Agreement, perform the activities with respect to such request which are required to be performed by the Independent Certifier which are set out in such Section 25A.2 (*Certification of Milestone Payments*) of the Project Agreement.
- (p) Upon receipt of notice from Project Co requesting the issuance of a Section Substantial Completion Certificate, the Substantial Completion Certificate and the Final Completion Certificate, perform the activities with respect to each such request which are required to be performed by the Independent Certifier which are set out in Section 23.3 (*Section Substantial Completion Certificates and Substantial Completion Certificates*), Section 23.5 (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) and Section 23.10 (*Final Completion Certificate*) respectively of the Project Agreement.
- (q) In accordance with Sections 23.6 (*Section Minor Deficiencies and Minor Deficiencies*), 23.7 (*Completion and Rectification of Section Minor Deficiencies and Minor Deficiencies*), 23.8 (*Failure to Rectify Section Minor Deficiencies and Minor Deficiencies*) and 23.9 (*Final Completion Countdown Notice*) of the Project Agreement, perform all responsibilities of the Independent Certifier in connection with any Section Minor Deficiencies regime and the Minor Deficiencies regime, including, for clarity, ensuring that:
- (i) for each Section Minor Deficiency (other than Seasonal Minor Deficiencies), the Independent Certifier shall specify a time for completion and rectification that is no later than six (6) months following the applicable Section Substantial Completion Date;



- (ii) for each Minor Deficiency (other than Seasonal Minor Deficiencies), the Independent Certifier shall specify a time for completion and rectification that is no later than six (6) months following the Substantial Completion Date; and
  - (iii) for each Seasonal Minor Deficiency, the Independent Certifier shall specify a time for completion and rectification that is no later than six (6) months following the Minor Deficiencies Completion Date.
- (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 Infrastructure or the New Third Party Infrastructure by Contracting Authority or any agent or contractor of Contracting Authority either before or after Substantial Completion and provide a report to Contracting Authority and Project Co identifying any damage to the Project Co 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 Infrastructure or the New Third Party Infrastructure by Contracting Authority, its 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 within fifteen (15) Business Days after each month’s end or as otherwise agreed by the PA Parties (the “**IC Monthly Report**”) which includes the following:
    - (A) summary of activities carried out by the Independent Certifier, making specific reference to each of the Independent Certifier’s obligations;
    - (B) the status of any risks that may impede the issuance of a Milestone Payment Completion notice pursuant to Section 25A.2(e)(i) (*Certification of Milestone Payments*) of the Project Agreement, any Section Substantial Completion Certificate, the Substantial Completion Certificate or the Final Completion Certificate;
    - (C) an opinion on Non-Conformances, if any, and whether or not such Non-Conformances are of the extent and nature that would normally be expected on projects of this kind;
    - (D) progress on all aspects of the Works;
    - (E) commencing no less than one-hundred and eighty (180) days prior to the applicable No Later Than Date for a Project Co Infrastructure Section, the IC Monthly Report

shall contain specific reference to and listing of the work that needs to be done before the applicable Section Substantial Completion Certificate can be issued; and

- (F) commencing no less than one-hundred and eighty (180) days prior to the Scheduled Substantial Completion Date, the IC Monthly Report shall contain specific reference to and listing of the work that needs to be done before the 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 31st, June 30th, September 30th and December 31st respectively, in substantially the form as that in Appendix E and that contains the following information certified in accordance with the standard of care set out in Section 3.4 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) Participate in meetings with the PA Parties as required for the Independent Certifier to perform Certification Services.
- (w) Acknowledge receipt of all Design Certificates and Construction Certificates delivered by Project Co in accordance with Schedule 10 – Review Procedure to the Project Agreement.
- (x) Provide any determinations contemplated in Schedule 19 – Liquidated Damages and Construction Enforcement Regime to the Project Agreement.
- (y) Provide advice on other matters that may arise that both PA Parties may jointly require (“**Other Advice**”).
- (z) Prepare each Section Substantial Completion Deliverables List and the Substantial Completion Deliverables List pursuant to Section 23.5(d) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of the Project Agreement and, if applicable, amend such list pursuant to Section 23.5(e) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of the Project Agreement.
- (aa) Perform the responsibilities assigned to the Independent Certifier as set out in Schedule 43 – Incentive Payments to the Project Agreement, within the timeframes set out therein.

- (bb) Perform Adjudications pursuant to Schedule 27 – Dispute Resolution Procedure to the Project Agreement.
- (cc) Provide the letter to Canada and the Declarations of Completion to Canada, required pursuant to Section 3.2(b) and Section 3.2(c) respectively of this Independent Certifier Agreement.
- (dd) Copy Canada with all reports and certificates delivered to the Province as directed by Contracting Authority.
- (ee) Attend meetings of the Integration Committee as required by Section 3.1(b) (*Establishment*) of Schedule 39 – Form of RSSOM Interface Agreement to the Project Agreement.
- (ff) Perform the activities related to the issuance of payment certificates, Legislative Holdback Payment Certificate and Finishing Holdback Payment Certificate (each as defined in Schedule 42 – Payment Procedures to the Project Agreement) set out in Schedule 42 – Payment Procedures to the Project Agreement.
- (gg) Perform the activities related to Critical Works and as to other matters, required to be performed by it, as required by Schedule 45 – Integration with RSSOM Project to the Project Agreement.

## APPENDIX B

INDEPENDENT CERTIFIER FEE**A. Disbursements and Expenses**

If the Independent Certifier, in its capacity as Adjudicator, obtains the assistance of a person in an Adjudication in accordance with the *Construction Act*, the Independent Certifier as Adjudicator may fix the remuneration of the person in accordance with section 13.12(3) of the *Construction Act* (Ontario) and such remuneration shall be invoiced together with the Adjudicator Fee and shall be payable by the Adjudicator or the Parties in accordance with the *Construction Act* (Ontario). In fixing the remuneration of such person, the Adjudicator shall comply with, and shall ensure that any person assisting the Adjudicator complies with, any applicable disbursement and reimbursement policies of Contracting Authority and Project Co.

**B. Total Fixed Fee for all Certification Services (other than Certification Services identified in item (y) of Appendix A to this Independent Certifier Agreement)**

The Total Fixed Fee for all Certification Services (other than the Certification Services identified in item (y) of Appendix A to this Independent Certifier Agreement) shall not exceed, in aggregate, the total fixed fee of \$[REDACTED] Canadian Dollars, excluding HST.

**C. Hourly Rates for Other Advice and Adjudications**

The Hourly Rates are for (1) Other Advice and for all certification services, labour and materials required to provide additional work; and (2) performing Adjudications pursuant to Schedule 27 – Dispute Resolution Procedure to the Project Agreement as identified in item (bb) of Appendix A to this Independent Certifier Agreement.

The provision of Other Advice and of any additional work must be pre-approved by the PA Parties, in their sole discretion and in writing.

If the PA Parties, in their sole and absolute discretion, decide to proceed with the Certification Services identified in item (y) of Appendix A, any Adjudications performed by Independent Certifier personnel or additional work, the Independent Certifier will be reimbursed at the following hourly rates, excluding HST:

<b>Role</b>	<b>Hourly Rate</b>
IC Team Lead/Director of IC Services	\$[REDACTED]
Backup Team Lead	\$[REDACTED]
Project Manager	\$[REDACTED]
Project Advisor	\$[REDACTED]
Lead Mechanical Quantity Surveyor	\$[REDACTED]
Lead Electrical Quantity Surveyor	\$[REDACTED]
Technical Lead – Architectural/Civil/Structural Quantity Surveyor	\$[REDACTED]
Mechanical Quantity Surveyor	\$[REDACTED]

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Electrical Quantity Surveyor	[\$REDACTED]
Project Coordinator/Document Controller	[\$REDACTED]
Project Coordinator	[\$REDACTED]
Technical Expert – Transportation Engineer	[\$REDACTED]
Technical Expert – Project Manager/Civil Engineer	[\$REDACTED]
Technical Expert – Senior Structural Engineer	[\$REDACTED]
ODACC (Adjudicator)	[\$REDACTED]

**D. Invoicing**

The Fee for the Certification Services and the Adjudication Fee shall be payable monthly in arrears, subject to the PA Parties' receipt of invoices from the Independent Certifier reflecting the performance of the Certification Services and/or the conduct of any Adjudications, as applicable, which is in form and substance satisfactory to the PA Parties, and subject to any applicable requirements of the *Construction Act* (Ontario) with respect to the payment of the Adjudication Fee.

## APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

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

Name	Position
[REDACTED]	IC Team Lead/Director of IC Services/Adjudicator
[REDACTED]	Backup Team Lead
[REDACTED]	Project Manager
[REDACTED]	Project Advisor
[REDACTED]	Lead Mechanical Quantity Surveyor
[REDACTED]	Lead Electrical Quantity Surveyor
[REDACTED]	Technical Lead – Architectural/Civil/Structural Quantity Surveyor
[REDACTED]	Mechanical Quantity Surveyor
[REDACTED]	Electrical Quantity Surveyor
[REDACTED]	Project Coordinator/Document Controller
[REDACTED]	Project Coordinator
[REDACTED]	Technical Expert – Transportation Engineer
[REDACTED]	Technical Expert – Project Manager/Civil Engineer
[REDACTED]	Technical Expert – Senior Structural Engineer

**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 ten (10) Business Days following receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix D, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give such Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both Contracting Authority and Project Co are given notice in respect of the same claim, they shall cooperate in the conduct of the claim and give each other such reasonable access and assistance as may be necessary or desirable for purposes of considering, resisting and defending such claim.
- (3) With respect to any claim conducted by an Indemnifier:
  - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
  - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and

- (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which Section (3) of this Appendix D relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Independent Certifier Agreement if:
- (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section (2) of this Appendix D;
  - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within ten (10) Business Days following the notice from the Beneficiary under Section (1) of this Appendix D or each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
  - (iii) none of the Indemnifiers complies in any material respect with Section (3) of this Appendix D.
- (5) The Beneficiary shall be free at any time to give notice to the applicable Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) of this Appendix D applies. For greater certainty, the Independent Certifier acknowledges and agrees that where Contracting Authority is the Beneficiary, Contracting Authority may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such notice the applicable Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to Section (5) of this Appendix D, then the applicable Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If an Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to that Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
  - (ii) the amount paid to the Beneficiary by such Indemnifier in respect of the claim under the relevant indemnity,

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



- (7) Any person taking any of the steps contemplated by this Appendix D shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Independent Certifier Agreement.

APPENDIX E

FORM OF IC QUARTERLY REPORT

[ON THE INDEPENDENT CERTIFIER’S LETTERHEAD]

[date]

Metrolinx  
2 Queen Street East, 11<sup>th</sup> Floor  
Toronto, ON M5C 3G7  
Attention: [REDACTED]

and to:

Ontario Transit Group Inc.

[REDACTED]

and:

[REDACTED]

Dear [•], [•] and [•]:

This report, for the quarter ending [•], is delivered to you pursuant to Section (u)(ii) of Appendix A – Certification Services to the Independent Certifier Agreement among Metrolinx and Project Co, and is November 8, 2022 (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 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]**

## APPENDIX F

FORM OF LETTER TO CANADA

[INSERT ON INDEPENDENT CERTIFIER LETTERHEAD]

HIS MAJESTY THE KING IN RIGHT OF CANADA,  
as represented by the Minister of Infrastructure and Communities  
1100 - 180 Kent Street  
Ottawa, Ontario K1P 0B6

Attention: [REDACTED]

[DATE]

Re: The Agreement for the Ontario Line Southern Civil, Stations and Tunnel Project (the “**Project**”) dated [●] between HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Minister of Infrastructure and Communities (“**Canada**”) and HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO, as represented by the Minister of Transportation (the “**MTO**”).

Dear Sir or Madam:

This letter is being delivered to Canada by [REDACTED] (the “**IC**”) at the request of the MTO in accordance with Section 10(b) of the Canada-Ontario Building Canada Fund – Major Transit Infrastructure Component Agreement for the Ontario Line Southern Civil, Stations and Tunnel Project (“**the Agreement**”).

The IC hereby confirms that it has been retained as the Independent Certifier in respect of the Project and has entered into an Independent Certifier Agreement dated November 8, 2020 with Metrolinx (“**Contracting Authority**”) and Ontario Transit Group Inc. (“**Project Co**”) further thereto. The IC further confirms that:

- (i) the IC has professionals duly licensed in the Province of Ontario, or qualified and duly licensed professionals otherwise approved by Canada, with expertise in cost estimating and inspecting infrastructure projects of similar size and scope to the Project;
- (ii) the IC is committed to be independent of the Contracting Authority and Project Co, and any of their respective subcontractors;
- (iii) the IC owes a professional duty of skill, care and diligence in favour of Canada equal to that of the Contracting Authority and Project Co when making or issuing determination, findings and certifications;
- (iv) the IC will be responsible for evaluating each payment milestone described in Schedule [●] (P3 Procurement Milestones) and [●] (Cashflow for P3 Procurement Milestones) under the Agreement and will provide to Canada, in respect of each payment milestone, an Independent Certifier Declaration of Completion – Milestone in the prescribed form (a copy of which has been provided to the Independent Certifier);

- (v) the IC represents and warrants that all information provided or submitted to Contracting Authority, Project Co, or both, is true and accurate, and prepared in good faith to the best of the IC's skill, judgment and knowledge;
- (vi) the IC will in all instances prepare reports, declarations, certificates, and any other relevant document relating to the Project, for the specific use of Canada, and that Canada may use these reports, declarations, certificates and any other relevant document for the purpose of flowing funding in accordance with the Agreement, and consents to, authorizes and permits such use by Canada;
- (vii) the IC has provided to Contracting Authority, MTO, and any other applicable person or entity, all necessary permissions, consents and authorizations, including its express written permission, to copy, share and circulate to Canada, for the purpose of flowing funding in accordance with the Agreement, all reports, declarations, certificates, and any other relevant document, prepared, made or issued by the IC for the Project.
- (viii) Canada is entitled to rely on the determinations, findings, reports, declarations and certifications prepared, made or issued by the IC;
- (ix) the IC will maintain accurate and complete records related to all work performed under the Independent Certifier Agreement for at least six years after the project closure date, defined as up to eighteen (18) months after the Project's substantial completion date, and such records will be made available to Canada upon request and reasonable notice;
- (x) the IC hereby represents and warrants that all information provided or submitted, or both, in the letter is true and accurate, and is prepared in good faith to the best of the IC's judgment and knowledge;
- (xi) Canada will be able to inquire or request that certain issues be reviewed by the IC from time to time in order to clarify certain information related to the Project's requirements; and
- (xii) Canada will be entitled to receive any documents prepared by the IC resulting from such information, requests and communications upon request and following reasonable notice.

Yours very truly,

[REDACTED]

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

Name:

Title:

I have authority to bind the corporation.

## APPENDIX G

**INDEPENDENT CERTIFIER DECLARATION OF COMPLETION – MILESTONE**

In the matter of the CANADA – ONTARIO BUILDING CANADA FUND – MAJOR INFRASTRUCTURE COMPONENT AGREEMENT FOR THE ONTARIO LINE SOUTHERN CIVIL, STATIONS AND TUNNEL PROJECT (the “**Agreement**”) entered into between His Majesty the King in right of Canada, as represented by the Minister of Infrastructure and Communities (Canada) and His Majesty the King in right of the Province of Ontario, as represented by the Minister of Transportation (Ontario), concerning the Ontario Line Southern Civil, Stations and Tunnel Project.

I, \_\_\_\_\_, a Registered Professional Engineer in the Province of Ontario or a qualified and duly licensed professional approved by Canada, with expertise in cost estimating and inspecting infrastructure projects of similar size and scope to the Ontario Line Southern Civil, Stations and Tunnel Project declare as follows.

1. That I am the Independent Certifier for the Ontario Line Southern Civil, Stations and Tunnel Project and as such have knowledge of the matters set forth in this declaration.

2. That the work identified as Milestone # \_\_\_\_\_ under Schedule [●] (Cashflow for P3 Procurement Milestones) of the Ontario Line Southern Civil, Stations and Tunnel Project, as described in the Agreement, has been completed as of the \_\_\_\_\_ day of 20\_\_\_\_, (Completion Date - P3 Procurement - Milestone) in accordance with Schedule [●] (The Project) of the Agreement.

3. That the Milestone has not changed in scope, unless such scope change has been approved in advance and in writing by the Parties.

4. That the costs claimed in respect of the Milestone claim are Eligible Expenditures and reasonably reflect the value of the work performed, as evidenced in the attached Independent Certifier quarterly report, which I have prepared and certified in accordance with the terms of the Independent Certifier Agreement between Metrolinx and Ontario Transit Group Inc. (“**Independent Certifier Agreement**”).

5. That I have prepared and certified the attached construction period payment certificates in support of this Milestone.

6. I have received the following documents and based on these documents and representations made to me by the professionals identified below, I declare to the best of my knowledge and belief that the work for this Milestone has been completed in accordance with prevailing industry standards for such design and construction, all applicable building and design codes, and all applicable guidelines. In making this declaration, I have received, reviewed, and relied upon the following documents:

(i) **[LIST NAME OF RELEVANT DOCUMENT(S)]** signed by \_\_\_\_\_ (Name), a \_\_\_\_\_ (Profession, e.g. professional engineer) for the Primary Contractor;

(ii) **[ADD SAME TEXT AS IN (i) FOR EACH DOCUMENT]**

7. That all information provided or submitted, or both, to Ontario or the Ultimate Recipient relating to the certification with respect to the claim is true and accurate, and prepared in good faith to the best of my skill, judgment and knowledge.

*[If work has been substantially completed, include the following]*

8. That the work identified under the P3 Procurement Contract as described in the Agreement has been substantially completed as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in accordance with Schedule [●] (Project Cashflow) of the Agreement.

Declared at \_\_\_\_\_ (City), in \_\_\_\_\_ (Province/Territory) this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

(Signature)



**[INSERT TABLE OF PROJECT CASH FLOW BASED ON MILESTONES]**

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**SCHEDULE 7****MOBILITY MATTERS****1. DEFINITIONS**

In this Schedule 7, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 7) shall have the meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 “**Actual Lane Closure Costs**” or “**ALCC**” means the total cost of all Actual Lane Closures for a Road Section in respect of a given calendar month, which total cost shall be calculated by multiplying the number of Actual Lane Closures for the applicable Road Section by the applicable Unit Rate Prices.
- 1.2 “**Actual Lane Closures**” or “**ALC**” means all actual Municipal Lane Closures that occur in a given calendar month for a Road Section.
- 1.3 “**Aggregate Actual Lane Closure Costs**” or “**AALCC**” means the sum of all Actual Lane Closure Costs for a Road Section from Financial Close to Substantial Completion, as set out in the final Lane Closure Analysis Report.
- 1.4 “**Aggregate Actual Lane Closures**” or “**AALC**” means all Actual Lane Closures for a Road Section from Financial Close to Substantial Completion, as set out in the final Lane Closure Analysis Report.
- 1.5 “**Aggregate Target Lane Closure Costs**” or “**ATLCC**” means the total cost of all target Municipal Lane Closures for a Road Section from Financial Close to Substantial Completion, as set out in the Lane Closure Target Letter.
- 1.6 “**Aggregate Target Lane Closures**” or “**ATLC**” means the total target Municipal Lane Closures for a Road Section from Financial Close to Substantial Completion, which,
  - (a) are set forth in the Lane Closure Target Letter; and
  - (b) satisfy all of the requirements of this Schedule 7 and all of the applicable requirements of the Output Specifications.
- 1.7 “**Arterial**” means Major Arterial or Minor Arterial, as defined in the City of Toronto Road Classification System.
- 1.8 “**Blocks**” are the physical units within a Road Section for which Municipal Lane Closure costs are to be calculated for the purposes of this Schedule 7, including,
  - (a) the physical units delineated as “Blocks” in the table in Appendix C to this Schedule 7 (which include, for clarity, sections of various streets at major ground level construction sites along the South Civil Alignment); and

- (b) for any streets (other than those specified in Section 1.8(a)) proposed to be occupied by Project Co for the performance of the Works, the physical units between two adjacent intersections, irrespective of whether the intersections are signalized or unsignalized. For the purposes of this Section 1.8(b), a laneway opening shall not constitute an intersection.
- 1.9 “**City of Toronto Road Classification System**” means the City of Toronto Road Classification System, dated April 2018, as amended from time to time.
- 1.10 “**Collector**” has the meaning given in the City of Toronto Road Classification System.
- 1.11 “**HOV/Bus Lane**” means existing travelled lanes reserved for buses, taxies, or vehicles with multiple passengers, at the locations defined by the City of Toronto By-Law No 132-93, and any amendments thereto.
- 1.12 “**Lane Closure Adjustment**” or “**LCA**” means the amount calculated pursuant to Section 5 and, for clarity, adjusted pursuant to Section 5.3.
- 1.13 “**Lane Closure Analysis Report**” has the meaning given to it in Section 2.1.
- 1.14 “**Lane Closure Measurement and Verification Plan**” has the meaning given to it in Section 3.5.
- 1.15 “**Lane Closure Target Letter**” means the letter attached to Appendix D to this Schedule 7.
- 1.16 “**Left Turn Lane Closure**” means a Municipal Lane Closure of an exclusive left turn lane.
- 1.17 “**Local**” includes City streets not defined by the City of Toronto Road Classification System.
- 1.18 “**Major Arterial**” has the meaning given in the City of Toronto Road Classification System.
- 1.19 “**Minor Arterial**” has the meaning given in the City of Toronto Road Classification System.
- 1.20 “**Mobility Matters Review Meeting**” has the meaning given in Section 3.6.
- 1.21 “**Municipal Lane Closure**” means any restriction or closure of a lane to bus or vehicular traffic within a Block as a result of or in connection with the Works. For the purposes of this Schedule 7:
- (a) each Municipal Lane Closure will be measured on a per Block, per day basis;
  - (b) any Municipal Lane Closure with duration of less than 24 hours shall be deemed to be a Municipal Lane Closure with duration of one day for purposes of determining Actual Lane Closure Costs under this Schedule 7;
  - (c) any Left Turn Lane Closure, Right Turn Lane Closure, or Through Lane Closure usable for general traffic or transit services will be treated equally as Municipal Lane Closures;
  - (d) any partial Municipal Lane Closure shall be deemed to be a full Municipal Lane Closure;
  - (e) any lane that has a limited opening such as “local traffic only” shall be deemed to be a Municipal Lane Closure;

- (f) any restriction or closure of a lane within an intersection (as delineated by the curb return for each leg of such intersection) shall not constitute a Municipal Lane Closure, except that, for clarity, any restriction or closure of a travel lane into or out of an intersection related to Works within that intersection shall constitute a Municipal Lane Closure;
  - (g) any restriction or closure of a lane that is the result of a Third Party Contractor, RSSOM Project Co, a RSSOM Project Co Party or a TOC Contractor carrying out activities with respect to any Existing Third Party Infrastructure where such activities are required to be carried out by a Third Party Contractor as part of the Works shall constitute a Municipal Lane Closure. For clarity, this would apply in all instances where a Third Party Contractor is required to perform work on a City of Toronto traffic signal, including but not limited to maintenance activities, on behalf of Project Co;
  - (h) any restriction or closure of a lane that is solely the result of a Third Party Contractor carrying out activities with respect to any Existing Third Party Infrastructure unrelated to the Works shall not constitute a Municipal Lane Closure; and
  - (i) any restriction or closure of a lane that is solely the result of a traffic accident shall not constitute a Municipal Lane Closure.
- 1.22 **“Right Turn Lane Closure”** means a Municipal Lane Closure of an exclusive right turn lane.
- 1.23 **“Road Sections”** means each of the three (3) road sections including each Road Sub-Section described in Appendix C to this Schedule 7, each of which has a unique Unit Rate Price structure for Municipal Lane Closure costs per Block as set out in Appendix B to this Schedule 7.
- 1.24 **“Road Sub-Section”** means each of the six (6) road sub sections described in Appendix C to this Schedule 7.
- 1.25 **“Streetcar Lane”** means a lane with existing streetcar tracks in service at the time of Financial Close.
- 1.26 **“Through Lane Closure”** means a Municipal Lane Closure of a through lane, including a lane which allows both a through and right turn movement, and a lane which allows both a through and left turn movement.
- 1.27 **“Unit Rate Price”** means the daily rate that applies to a Municipal Lane Closure for each Block of each Road Section, which shall depend on the road classification (Arterial, Collector or Local) and the time of day of the Municipal Lane Closure, all as set out in Appendix B to this Schedule 7.
- 2. CONTENT AND FORMAT OF THE LANE CLOSURE ANALYSIS REPORT**
- 2.1 Project Co shall, on a monthly basis starting at Financial Close, monitor its Municipal Lane Closures on each Road Section and provide a report of such Municipal Lane Closures to Contracting Authority (each, a **“Lane Closure Analysis Report”**) pursuant to and in accordance with this Section 2. Project Co shall classify and quantify all Municipal Lane Closures in each Lane Closure Analysis Report in accordance with this Schedule 7.

2.2 Each Lane Closure Analysis Report shall, at a minimum, include the following information:

- (a) using the template provided in Appendix A to this Schedule 7, a summary of Actual Lane Closures and Actual Lane Closure Costs for each Road Section, on a Road Section by Road Section basis, for the previous calendar month, indicating for each Municipal Lane Closure:
  - (i) road classification (Arterial, Collector or Local);
  - (ii) location (indicating Road Section, Road Sub-Section and Block); and
  - (iii) date and duration;
- (b) a projection of anticipated Municipal Lane Closures for each Road Section for each month from the then current calendar month until the anticipated Substantial Completion Date, along with trends and potential risks associated with the anticipated Municipal Lane Closures;
- (c) accurate and precise data in support of the items described in Sections 2.2(a) and 2.2(b);
- (d) for each Road Section, a calculation of,
  - (i) the sum of all ALCC from Financial Close up to and including the previous calendar month; and
  - (ii) the variance between the amount described in Section 2.2(d)(i) and the cost of all projected Municipal Lane Closures from Financial Close up to and including the previous calendar month, as set out in the Lane Closure Target Letter;
- (e) for each Road Section, a calculation of,
  - (i) the sum of all anticipated ALCC from the then current calendar month to the anticipated Substantial Completion Date based on the projected Municipal Lane Closures described in Section 2.2(b); and
  - (ii) the variance between the amount described in Section 2.2(e)(i) and the cost of all anticipated Municipal Lane Closures from the then current calendar month to the anticipated Substantial Completion Date, as set out in the Lane Closure Target Letter;
- (f) Project Co's projected estimate of the AALCC for each Road Section and the Lane Closure Adjustment;
- (g) a corrective action plan if there is a forecasted exceedance of Project Co's projected estimate of the AALCC from the ATLCC by greater than **[REDACTED]** percent for any Road Section;

- (h) the progress of, and any planned adjustments to, any corrective action plan that was in place from any previous Lane Closure Analysis Reports;
  - (i) the measurement and verification of Municipal Lane Closures in accordance with the Lane Closure Measurement and Verification Plan; and
  - (j) summary tables from all previous Lane Closure Analysis Reports delivered by Project Co to Contracting Authority.
- 2.3 Subject to Section 2.4, Project Co shall prepare and deliver to Contracting Authority a Lane Closure Analysis Report in respect of each calendar month.
- 2.4 Each Lane Closure Analysis Report shall be delivered by Project Co to Contracting Authority in accordance with Schedule 10 – Review Procedure within five (5) Business Days after the end of the calendar month that is the subject of the Lane Closure Analysis Report. Notwithstanding the foregoing, the final Lane Closure Analysis Report shall be (a) prepared and delivered by Project Co to Contracting Authority twenty (20) Business Days before the anticipated Substantial Completion Date, and (b) updated pursuant to Section 5.3.
- 3. PROCEDURES FOR DETERMINING AND REPORTING MUNICIPAL LANE CLOSURES AND LANE CLOSURE ADJUSTMENTS**
- 3.1 If, as of Financial Close, a lane width is less than the minimum lane width requirements during construction that are specified in Section 3.2.8 (*Traffic and Transit Management*) of the Output Specifications, and Project Co continuously maintains the lane as open for traffic operations at the lane width existing at Financial Close during the Works, then a Municipal Lane Closure in respect of such lane shall not arise for the purposes of this Schedule 7.
- 3.2 Project Co shall use the existing lane configuration at Financial Close as the basis for determining the configuration of lanes for the purpose of determining whether or not a Municipal Lane Closure has arisen pursuant to this Schedule 7. For clarity, any existing detours of streetcars or temporary lane closures at the time of Financial Close shall not be considered in determining whether a Municipal Lane Closure has occurred in respect of such temporary lane closures or detours.
- 3.3 Contracting Authority shall assess Project Co for the Actual Lane Closure Costs based on the total Municipal Lane Closures that occur during each calendar month for each Road Section. All Municipal Lane Closures shall be included in the calculation of the Lane Closure Adjustment as provided in Section 5.
- 3.4 The AALCC and ATLCC for each Road Section shall be used to calculate the Lane Closure Adjustment. The Lane Closure Target Letter shall not be amended, altered or adjusted except by the process described in Section 4.
- 3.5 No later than thirty (30) days prior to the first Municipal Lane Closure, Project Co shall submit to Contracting Authority, in accordance with Schedule 10 – Review Procedure, a plan describing how Project Co will track all of its Municipal Lane Closures on a monthly basis for each Road Section, how Project Co will evaluate its performance on Municipal Lane Closure progress, and

the verification process through which Contracting Authority and the City may audit Project Co's Municipal Lane Closure performance (the "**Lane Closure Measurement and Verification Plan**"). The Lane Closure Measurement and Verification Plan should include the ATLC and ATLCC at Financial Close and any amendments thereafter as per Section 4 of this Schedule 7. Project Co shall ensure that all subsequent Lane Closure Analysis Reports are consistent with the Lane Closure Measurement and Verification Plan.

- 3.6 No later than five (5) Business Days following the submission of each Lane Closure Analysis Report (or as otherwise agreed to between the Parties), Project Co and Contracting Authority shall convene a review meeting (the "**Mobility Matters Review Meeting**") to be attended by the Project Co Representative and other relevant Project Co representatives (including the Communications and Public Engagement Lead described in Schedule 9 – Key Individuals) and the Contracting Authority Representative. At the Mobility Matters Review Meeting, Project Co shall present the Lane Closure Analysis Report to Contracting Authority, and Contracting Authority and Project Co shall discuss the Lane Closure Analysis Report and the AALC for the preceding period.
- 3.7 Project Co shall assist the Contracting Authority Representative by providing information with respect to Municipal Lane Closures and access to the Municipal Lane Closure records, and by other means as may reasonably be required to confirm the information in the Lane Closure Analysis Report.
- 3.8 For clarity, where more than one road classification or category may apply to a lane closure, the higher Daily Municipal Lane Closure Rate provided in Appendix B to this Schedule 7 shall be used for determining Actual Lane Closure Costs.
- 3.9 For existing Streetcar Lanes that are permitted to be closed, the Actual Lane Closure Costs shall be determined based on the Daily Municipal Lane Closure Rate for Streetcar Lanes provided in Appendix B to this Schedule 7, regardless whether the streetcar service will be temporarily detoured or stopped.
- 4. PROCESS FOR AMENDING THE AGGREGATE TARGET LANE CLOSURES AND ASSOCIATED COST**
- 4.1 In all cases, corrections to the ATLC and ATLCC for any Road Section must be consistent with the principles outlined in the Traffic and Transit Management Plan.
- 4.2 Project Co and Contracting Authority shall, acting reasonably, agree to make any adjustments to the ATLC, ATLCC, AALC and AALCC for any Road Section, but only in the event of changes implemented due to an amendment of the Project Agreement or a Variation that would cause Municipal Lane Closure changes.
- 4.3 The Party requesting an amendment to the Traffic and Transit Management Plan for a Road Section in accordance with Section 4.2 shall initiate a Variation in accordance with Schedule 22 – Variation Procedure. The amended Traffic and Transit Management Plan shall include a detailed analysis of the impacts to traffic and transit services, including an analysis of Municipal Lane Closure requirements. The amended Traffic and Transit Management Plan shall include a recommendation regarding amendments to the applicable ATLC. Both Contracting Authority

and Project Co shall agree to the amended ATLC no later than twenty (20) Business Days following receipt of the requested amended Traffic and Transit Management Plan. If there is no agreement within a further ten (10) Business Day period, then either Party may refer the matter for resolution pursuant to Schedule 27 – Dispute Resolution Procedure.

## 5. CALCULATION OF LANE CLOSURE ADJUSTMENT

5.1 Within two (2) Business Days following the final determination of the AALCC for each Road Section as set out in the final Lane Closure Analysis Report, Project Co shall calculate the Lane Closure Adjustment as follows:

- (a) if [REDACTED] for a Road Section, then the portion of the Lane Closure Adjustment in respect of such Road Section shall be calculated as follows:

[REDACTED]

- (b) if [REDACTED] for a Road Section, then the portion of the Lane Closure Adjustment in respect of such Road Section shall be zero; and

- (c) the Lane Closure Adjustment shall be calculated as follows:

[REDACTED]

5.2 Before the expiry of the two (2) Business Day period set out in Section 5.1, Project Co shall provide Notice to Contracting Authority setting out the Lane Closure Adjustment and the details supporting its calculation for Contracting Authority's review, comment and confirmation. Project Co shall promptly provide Contracting Authority with any other supporting information in respect of Project Co's calculation and adjustment of the Lane Closure Adjustment that Contracting Authority may reasonably request.

5.3 On the Substantial Completion Date, Project Co shall provide (a) Notice to Contracting Authority setting out any adjustment to the Lane Closure Adjustment required as a result of any Municipal Lane Closures that occurred between the date of the submission of the final Lane Closure Analysis Report pursuant to Section 2.4 and the Substantial Completion Date and the details supporting the calculation of such adjustment for Contracting Authority's review, comment and confirmation, and (b) an updated final Lane Closure Analysis Report that includes and reflects such Municipal Lane Closures.

5.4 The Lane Closure Adjustment shall be shown as a separate item within the invoice for the Substantial Completion Payment provided by Project Co to Contracting Authority under the Project Agreement.

5.5 For greater certainty,

- (a) Contracting Authority shall deduct the amount of the Lane Closure Adjustment, as reviewed and confirmed by Contracting Authority, from the Substantial Completion Payment pursuant to Section 4.3(k) (*Lump Sum Payments*) of the Project Agreement; and



(b) the Lane Closure Adjustment deduction from the Substantial Completion Payment shall not be subject to the limitations set out in Section 45.4 (*Maximum Liability*) of the Project Agreement.

5.6 For the purposes of calculating the Lane Closure Adjustment in accordance with this Schedule 7, the Parties shall have regard to Sections 30.2(j) (*Consequences of a Delay Event*) and 33.2(d) (*Consequences of Force Majeure*) of the Project Agreement.

## 6. APPLICATION

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

APPENDIX A TO SCHEDULE 7

**MUNICIPAL LANE CLOSURE ANALYSIS REPORT SUBMITTAL REQUIREMENTS**

**ROAD SECTION 1**

Municipal Lane Closure Type	Road Sub-Section 1			Road Sub-Section 2			Road Sub-Section 3			Actual Lane Closures	Aggregate Actual Lane Closures
	Through Lane Closure	Left Turn Lane Closure	Right Turn Lane Closure	Through Lane Closure	Left Turn Lane Closure	Right Turn Lane Closure	Through Lane Closure	Left Turn Lane Closure	Right Turn Lane Closure		
HOV/Bus Lane											
Streetcar Lane											
Arterial											
Collector											
Local / Laneway											
<b>Total Days</b>											

**ROAD SECTION 2**

Municipal Lane Closure Type	Road Sub-Section 4			Actual Lane Closures	Aggregate Actual Lane Closures
	Through Lane Closure	Left Turn Lane Closure	Right Turn Lane Closure		
HOV/Bus Lane					
Streetcar Lane					
Arterial					
Collector					
Local / Laneway					
<b>Total Days</b>					

**ROAD SECTION 3**

Municipal Lane Closure Type	Road Sub-Section 5			Road Sub-Section 6			Actual Lane Closures	Aggregate Actual Lane Closures
	Through Lane Closure	Left Turn Lane Closure	Right Turn Lane Closure	Through Lane Closure	Left Turn Lane Closure	Right Turn Lane Closure		
HOV/Bus Lane								
Streetcar Lane								
Arterial								
Collector								
Local / Laneway								
<b>Total Days</b>								

## APPENDIX B TO SCHEDULE 7

DAILY MUNICIPAL LANE CLOSURE RATES

<b>Road Category</b>	<b>Daily Lane Closure Rates For All Road Sections</b>
<b>HOV/Bus Lane</b>	<b>[\$REDACTED]</b>
<b>Streetcar Lane</b>	<b>[\$REDACTED]</b>
<b>Arterial</b>	<b>[\$REDACTED]</b>
<b>Collector</b>	<b>[\$REDACTED]</b>
<b>Local</b>	<b>[\$REDACTED]</b>

APPENDIX C TO SCHEDULE 7

SECTIONS OF VARIOUS STREETS AT MAJOR GROUND LEVEL CONSTRUCTION SITES ALONG THE ALIGNMENT

ROAD SECTION	ROAD SUB-SECTION	BLOCK	BLOCK DELINEATION
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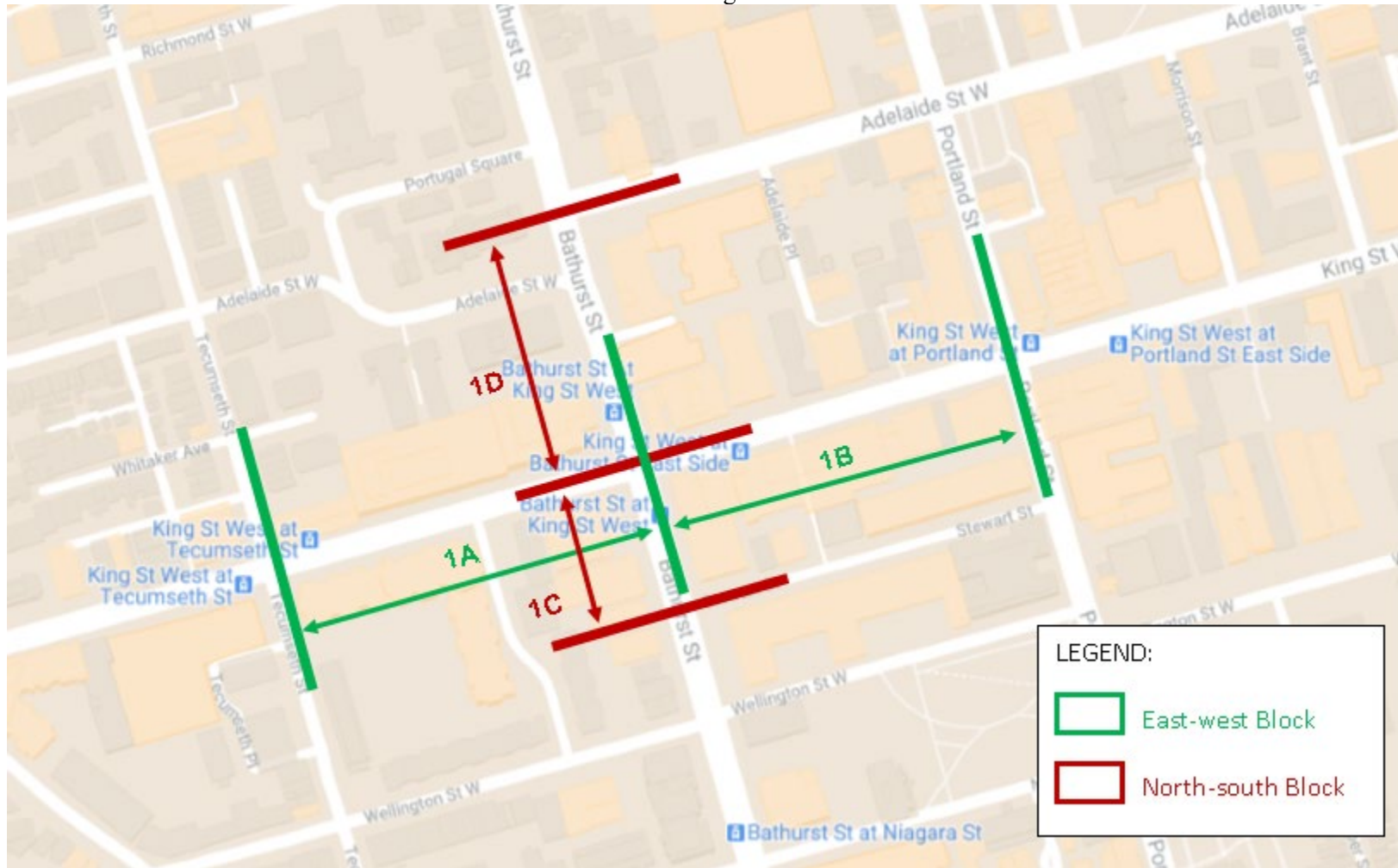
ROAD SECTION	ROAD SUB-SECTION	BLOCK	BLOCK DELINEATION
Road Section 1	Road Sub-Section 1 – King St. West/Bathurst St.	1-A	King St. West from Tecumseth St. to Bathurst St.
		1-B	King St. West from Bathurst St. to Portland St.
		1-C	Bathurst St. from Stewart St. to King St. West
		1-D	Bathurst St. from King St. West to Adelaide St. West
	Road Sub-Section 2 – Queen St. West/Spadina Ave.	2-A	Queen St. West from Cameron St. to Spadina Ave. centre median
		2-B	Queen St. West from Spadina Ave. centre median to Peter St.
		2-C	Spadina Ave. from Queen St. West to Bulwer St.
	Road Sub-Section 3 – Queen St. West/University Ave.	3-A	Queen St. West from St. Patrick St. to Simcoe St.
		3-B	Queen St. West from Simcoe St. to centre median of University Ave.
		3-C	Queen St. West from centre median of University Ave. to York St.
		3-D	Simcoe St. from Richmond St. to Queen St. Ave. West
		3-E	University Ave. from Richmond St. West to Queen St. West
		3-F	University Ave. from Queen St. West to Armoury St.
Road Section 2	Road Sub-Section 4 – Queen St. West/Yonge St.	4-A	Queen St. West from James St. to Yonge St.
		4-B	Queen St. West from Yonge St. to Victoria St.
		4-C	Yonge St. from Richmond St. to Queen St.
		4-D	Yonge St. from Queen St. to Shuter St.
		4-E	James St. from Albert St. to Queen St.
		4-F	Victoria St. from Richmond St. to Queen St.
		4-G	Victoria St. from Queen St. to Shuter St.

ROAD SECTION	ROAD SUB-SECTION	BLOCK	BLOCK DELINEATION
		4-H	Queen Street from Bay St to James St.
Road Section 3	Road Sub-Section 5– Queen St. West from George St. to Sherbourne S.	5-A	Queen St. West from Jarvis St. to George St.
		5-B	Queen St. West from George St. to Sherbourne St.
	Road Sub-Section 6 – King St. East/Parliament St.	6-A	King St. East from Ontario St. to Berkeley St.
		6-B	King St. East from Berkeley St. to Parliament St.
		6-C	King St. East from Parliament St. to Power St.
		6-D	Berkeley St. from Front St. East to King St. East
		6-E	Parliament St. from Mill St. to Front St. East
		6-F	Parliament St. from Front St. East to King St. East
		6-G	Parliament St. from King St. East to Adelaide St. East

Notes:

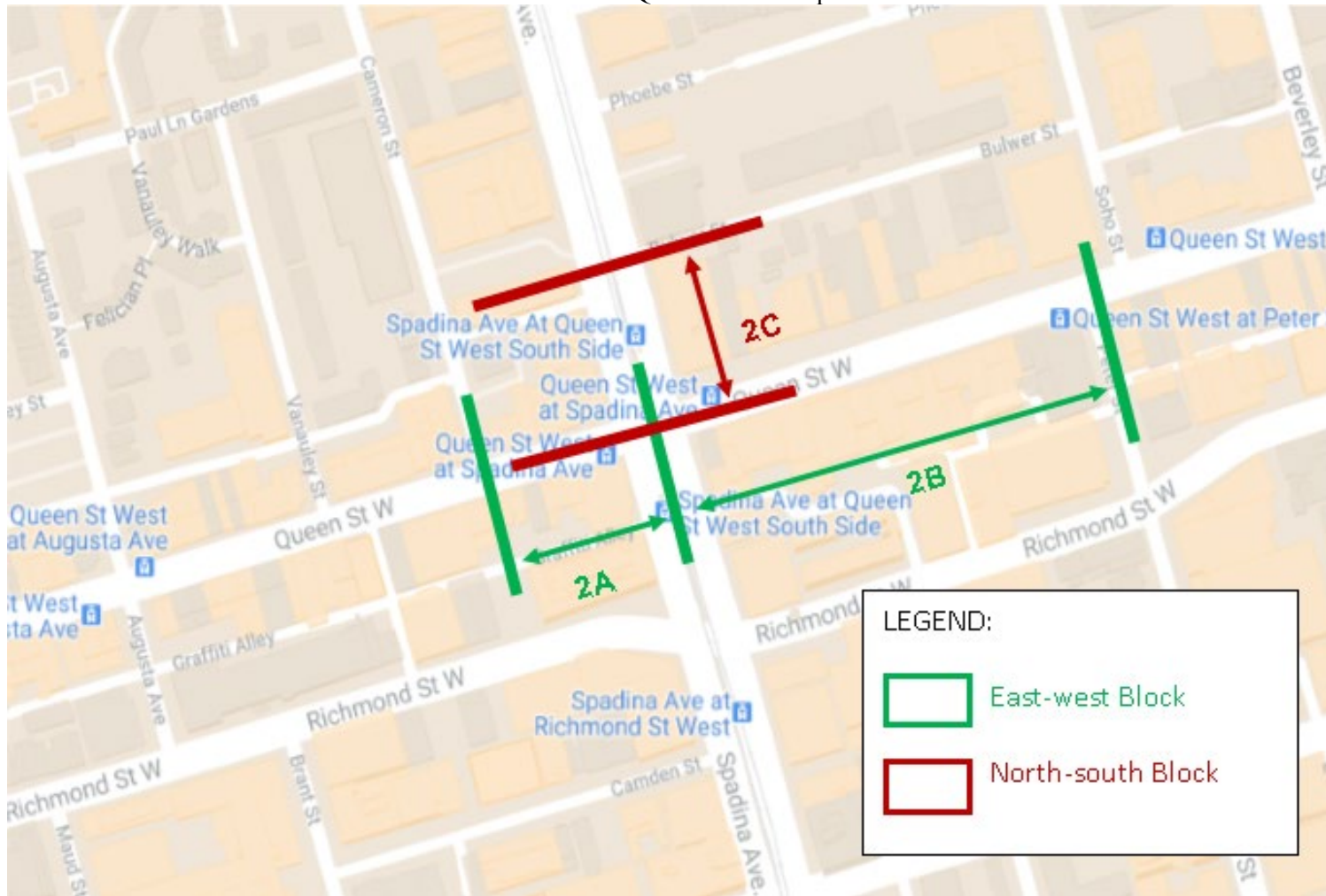
1. For clarity, tapers and/or transition zones for the lane closures permitted in the Output Specifications shall be within the block delineations.
2. The conversion of the northbound shared through and right turning lane at the intersection of University Avenue and Queen Street West to an exclusive right turning lane is not a Municipal Lane Closure.

Road Sub-Section 1 – King St. West/Bathurst St.

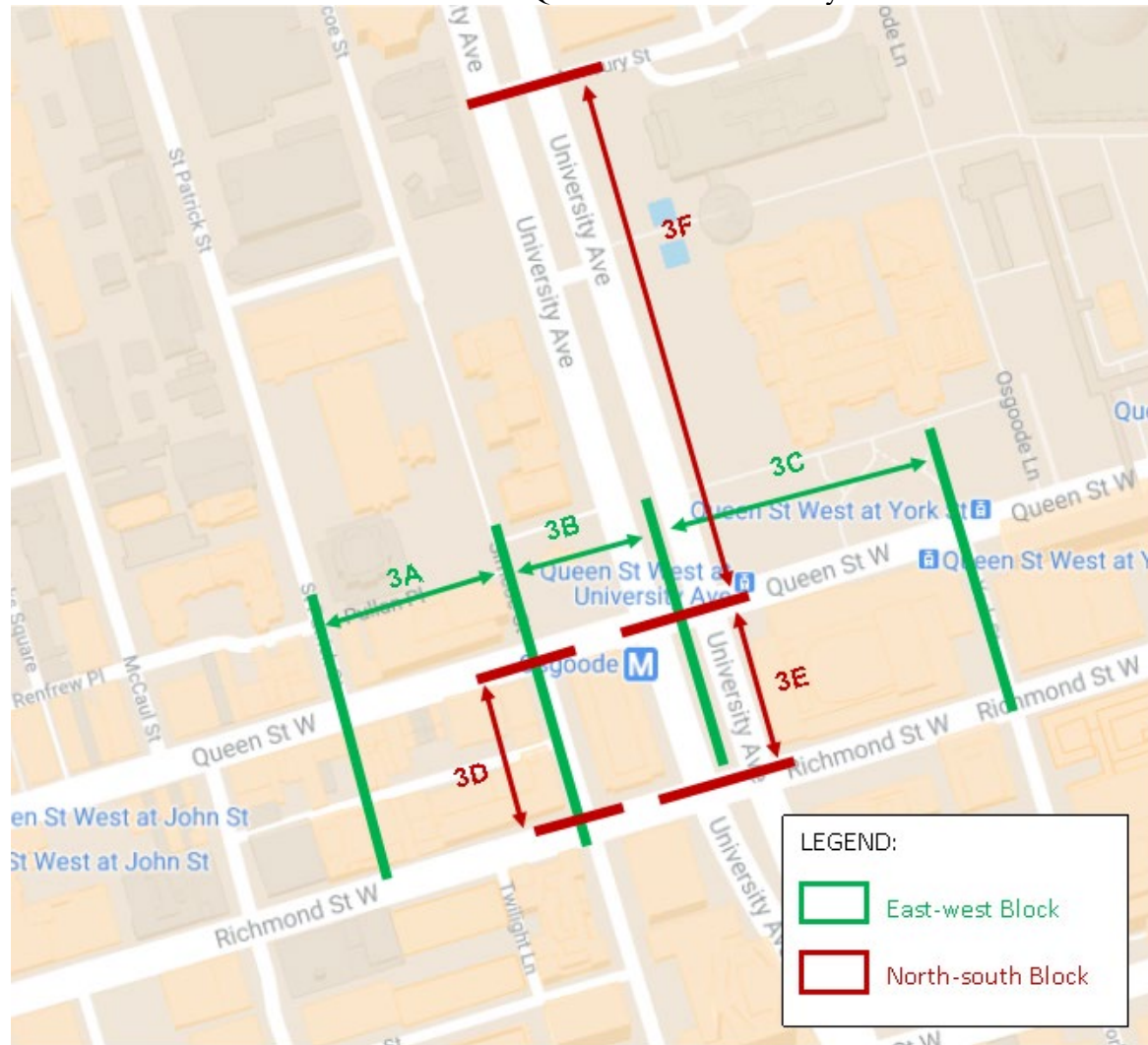




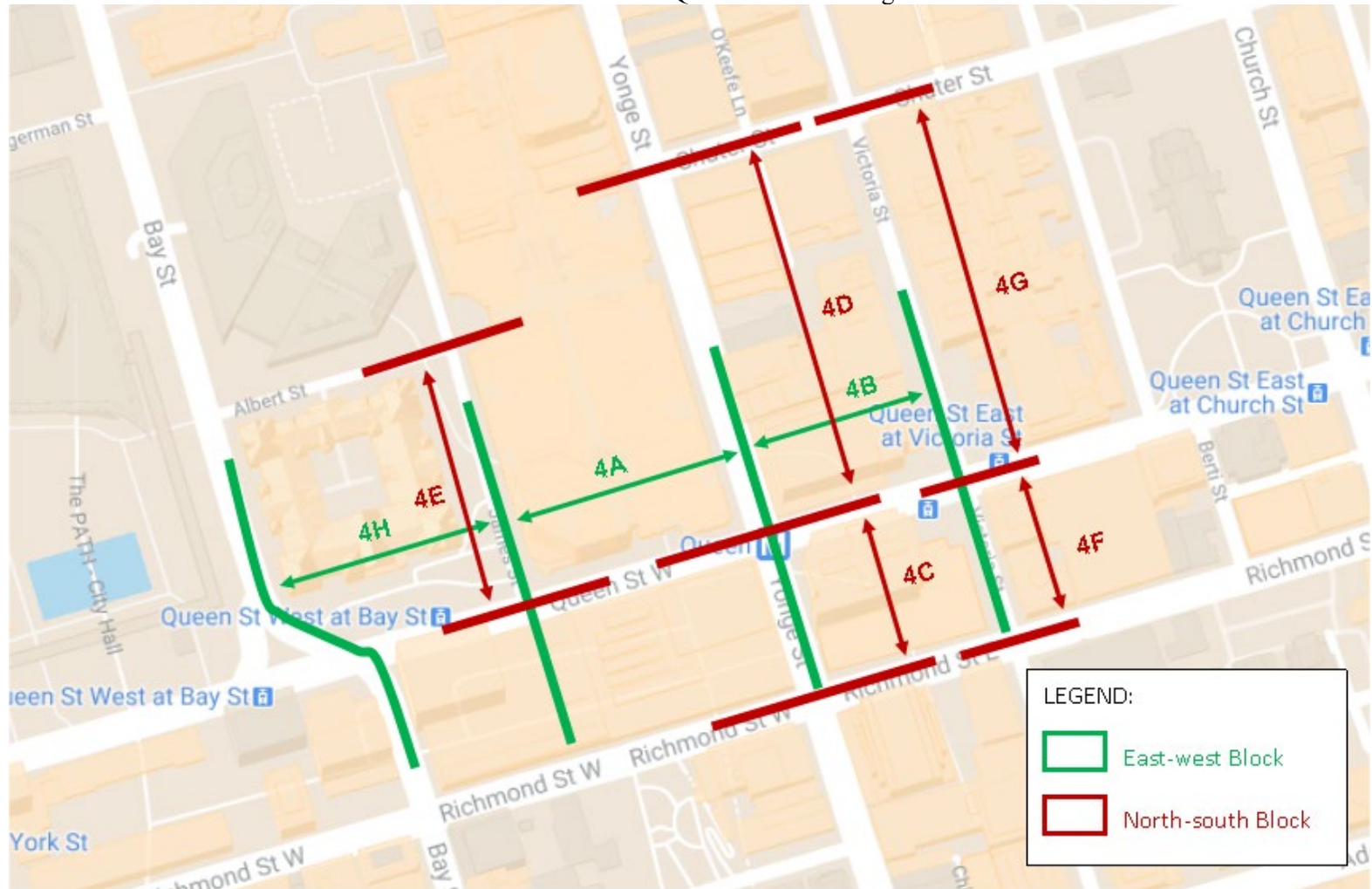
Road Sub-Section 2 – Queen St. West/Spadina Ave.



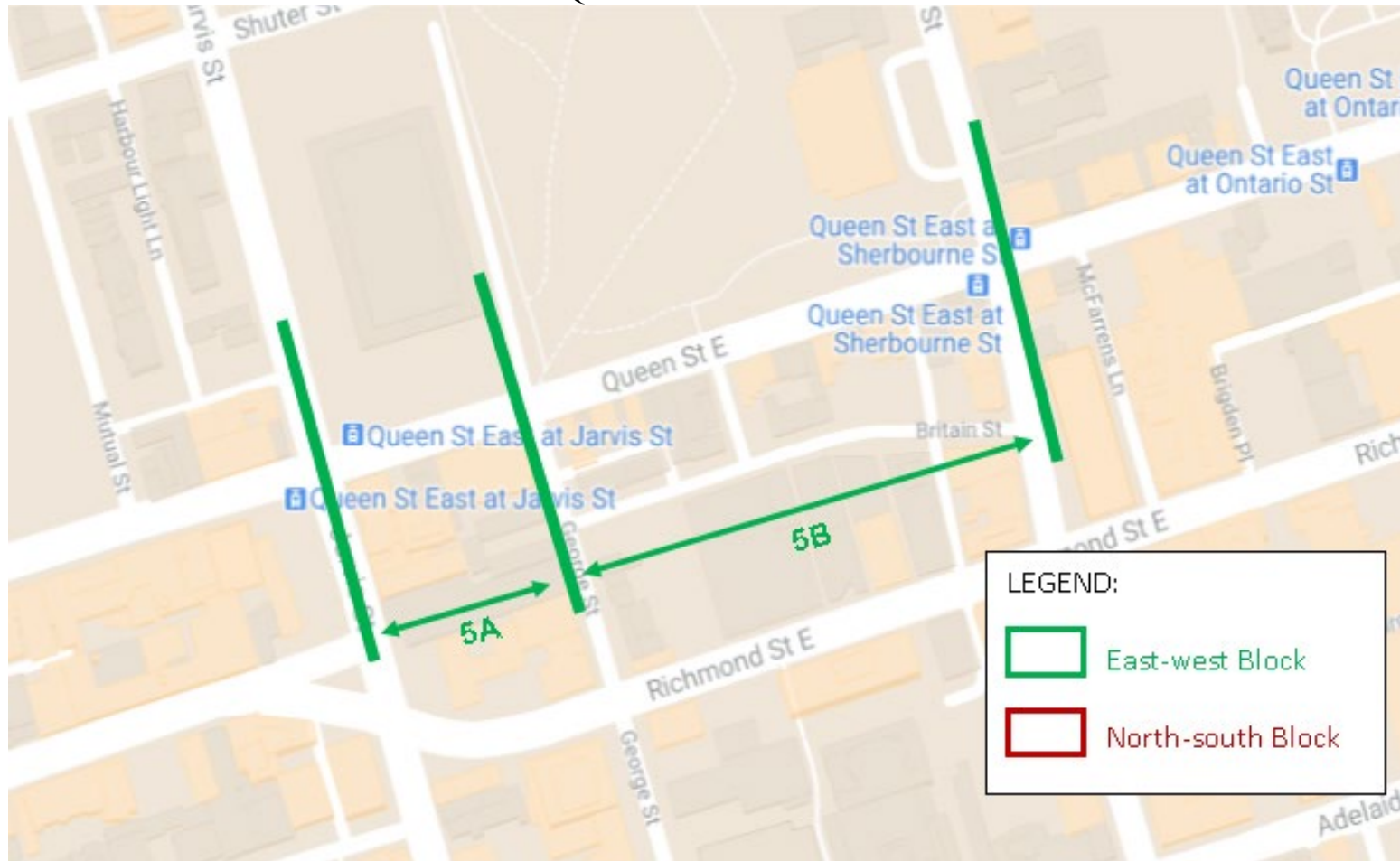
Road Sub-Section 3 – Queen St. West/University Ave.



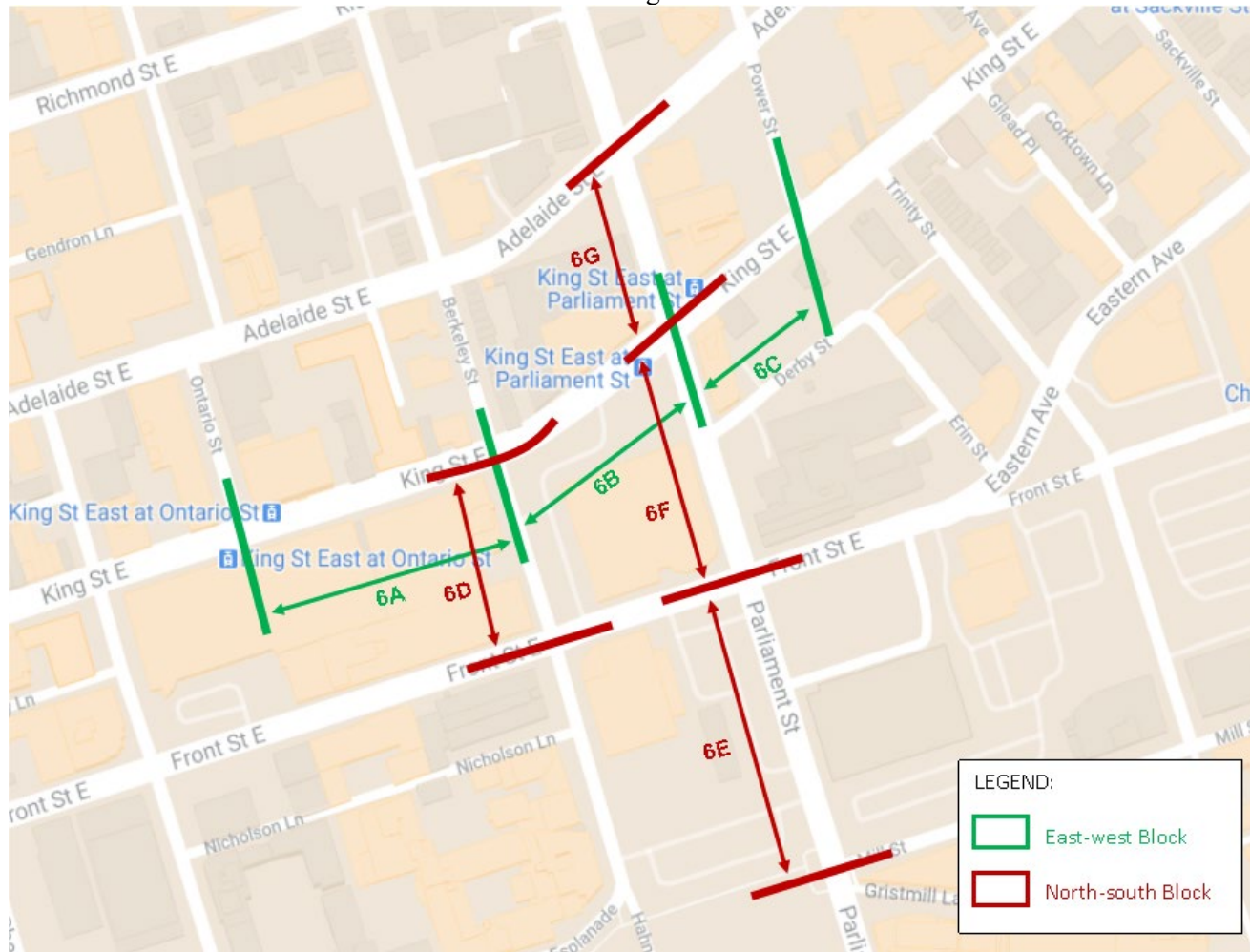
Road Sub-Section 4 – Queen St. West/Yonge St.



Road Sub-Section 5 – Queen St. West from Jarvis St. to Sherbourne St.



Road Sub-Section 6 – King St. East/Parliament St.



**APPENDIX D TO SCHEDULE 7**

**LANE CLOSURE TARGET LETTER**

[REDACTED]

**SCHEDULE 8**

**PROJECT CO PARTIES**

**PART 1: PROJECT AGREEMENT SECTION 11.24(b) (*SUBCONTRACTORS AND SUPPLIERS*)  
– LIST OF PROJECT CO PARTIES**

[REDACTED]

**PART 2: PROJECT AGREEMENT SECTION 11.24(e) (*SUBCONTRACTORS AND SUPPLIERS*)  
– SUBCONTRACTOR'S DIRECT AGREEMENTS**

[REDACTED]

**SCHEDULE 9**

**KEY INDIVIDUALS**

Project Co may propose multiple Key Individuals if multiple Key Individuals are allowed, as set out in this Schedule 9. If multiple Key Individuals are allowed for a position, Project Co shall identify the lead individual for each position. The lead individual for that position shall be responsible for all functions of each Key Individual listed for that position. The functions listed below for each Key Individual position are not intended to be an exhaustive list of the functions expected to be performed by that Key Individual.

<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 applicable responsibilities set out in the Project Agreement and the RSSOM Interface Agreement.	No.	[REDACTED]
Construction Contractor	Design Build Director	The Design Build Director shall be responsible for ensuring that all activities with respect to the Works are fully integrated with each other.	No.	[REDACTED]
Construction Contractor	Tunnel Construction Manager	The Tunnel Construction Manager shall be responsible for all Tunnel Construction Work and for ensuring Project Co’s compliance with respect to all Construction Activities applicable to the Tunnel Construction Work under the Project Agreement.	No.	[REDACTED]
Construction Contractor	Station Construction Manager	The Station Construction Manager shall be responsible for all Construction Activities related to the Stations and for ensuring Project Co’s compliance with respect to all Construction Activities applicable to the Stations under the Project Agreement.	Yes. Lead:	[REDACTED]



Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Project Co Commissioning Manager	The Project Co Commissioning Manager shall be responsible for: <ul style="list-style-type: none"> <li>(i) coordinating all aspects of the Project Co Commissioning Plan of the Project Co Infrastructure, including planning, scheduling, coordinating and executing the commissioning;</li> <li>(ii) coordinating the acceptance of infrastructure from the Early Works Contractor;</li> <li>(iii) supporting the staged delivery and Handover of the Project with RSSOM Project Co, as necessary;</li> <li>(iv) ensuring Project Co’s Commissioning of all New Third Party Infrastructure in accordance with the approval procedures and design requirements of each of the third parties, as applicable;</li> <li>(v) ensuring all obligations of Project Co in Schedule 14 – Commissioning are satisfied, including compliance with the Output Specifications; and</li> <li>(vi) coordinating with the Contracting Authority Representative, Independent Certifier and third parties to prioritize the review of each Commissioning Submittal.</li> </ul>	No.	[REDACTED]
Project Co	Communications and Public Engagement Lead	The Communications and Public Engagement Lead shall be responsible for all activities required to satisfy Project Co’s obligations in Schedule 18 – Communication and Public Engagement Protocol.	No.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Construction Health and Safety Manager	The Construction Health and Safety Manager shall be responsible for all activities required to satisfy Project Co’s obligations in Schedule 29 – Safety, System Assurance and Security.	No.	[REDACTED]
[REDACTED]	Design Manager	The Design Manager shall be responsible for: (i) coordinating all designs produced by the Design Team; (ii) ensuring the schedule for Design Development Submittals is reflected in each update of the Project Works Schedules; (iii) coordinating with the Contracting Authority Representative, or its designate, to prioritize the review of each of the Works Submittals, if necessary; and (iv) ensuring obligations set out in Schedule 10 – Review Procedure are satisfied for each Works Submittal.	No.	[REDACTED]
Construction Contractor	System Integration Manager	The System Integration Manager shall be responsible for: (i) integration of Project Co’s design to ensure all obligations of the Output Specifications are satisfied; (ii) coordinating and supporting the integration of Project Co’s design with the design developed by RSSOM Project Co; and (iii) ensuring all obligations in accordance with the Project Agreement in respect of interfaces with third parties are coordinated and satisfied.	No.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Utility Construction Manager	The Utility Construction Manager shall be responsible for all Construction Activities related to Utility Infrastructure required to satisfy Project Co’s obligations in the Output Specifications and shall coordinate with the Tunnel Construction Manager and Station Construction Manager, Schedule Manager and Traffic Manager to integrate construction phasing of the Works.	No.	[REDACTED]
[REDACTED]	Utility Infrastructure Design Manager(s)	The Utility Infrastructure Design Manager(s) shall be responsible for all Utility Infrastructure design aspects of the Project, including design, coordination, preparation of Works Submittals, and interface with Governmental Authorities and Utility Companies.	Yes. Lead: N/A	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
[REDACTED]	Architecture and Urban Design Lead	<p>The Architecture and Urban Design Lead shall be responsible for all architectural design, landscape and urban design aspects of the Project, including:</p> <ul style="list-style-type: none"> <li>(i) directing those responsible for ensuring design (Design Excellence Manager) and customer experience (Customer Design SME) are delivered as a core value of the Project;</li> <li>(ii) managing the design coordination, and preparation of Works Submittals as it relates to architecture and urban design;</li> <li>(iii) coordinating the interface with Governmental Authorities and key Stakeholders, including the City of Toronto and Metrolinx;</li> <li>(iv) ensuring compliance with the technical and quality requirements set out in the Output Specifications; and</li> <li>(v) coordinating the resolution of architectural and station design interfaces with RSSOM Project Co related to the Project.</li> </ul>	No.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
[REDACTED]	Design Excellence Manager	The Design Excellence Manager shall be responsible for all coordination activities and technical oversight pertaining to Design Excellence Principles and Requirements (as defined in the Output Specifications) across all relevant disciplines on the Project, which includes ensuring the compliance of all architectural, urban realm, landscaping design, and user experience standards and policies that will be implemented.	No.	[REDACTED]
[REDACTED]	Tunnel Engineering Design Lead	The Tunnel Engineering Design Lead shall be responsible for all Tunnel and underground Support of Excavation design aspects of the Project, including: <ul style="list-style-type: none"> <li>(i) design coordination, preparation of Works Submittals, and interface with Governmental Authorities; and</li> <li>(ii) the coordination and resolution of interfaces with RSSOM Project Co within Tunnels.</li> </ul>	No.	[REDACTED]
[REDACTED]	Structural Engineering Design Lead	The Structural Engineering Design Lead shall be responsible for structural design of Stations, including: <ul style="list-style-type: none"> <li>(i) design coordination, preparation of Works Submittals, and interface with Governmental Authorities; and</li> <li>(ii) the coordination and resolution of structural interfaces with RSSOM Project Co within Stations.</li> </ul>	No.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
[REDACTED]	Civil Engineering Design Lead	<p>The Civil Engineering Design Lead shall be responsible for the design of all roadway, grading, conduits, drainage, stormwater and structural assets (outside of Tunnels and Stations) for the Project. The Civil Engineering Design Lead shall be responsible for:</p> <ul style="list-style-type: none"> <li>(i) design coordination, preparation of Works Submittals, and interface with Governmental Authorities; and</li> <li>(ii) the coordination and resolution of civil and structural interfaces with RSSOM Project Co along the guideway.</li> </ul>	No.	[REDACTED]
[REDACTED]	Geotechnical Engineering Design Lead	<p>The Geotechnical Engineering Design Lead shall be responsible for all geotechnical design aspects of the Project, including but not limited to:</p> <ul style="list-style-type: none"> <li>(i) collating and interpreting geotechnical and geo-environmental information in support of the Project; and</li> <li>(ii) the design, coordination, preparation of related Works Submittals, and interface with Governmental Authorities.</li> </ul>	No.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
[REDACTED]	Electrical & Mechanical Engineering Design Lead	<p>The Electrical &amp; Mechanical Engineering Design Lead shall be responsible for the oversight and integration of all electrical and mechanical systems for the stations, tunnels, and guideway, including power, communication, HVAC and plumbing as it relates to the scope of Project Co's Works.</p> <p>The Electrical &amp; Mechanical Engineering Design Lead shall be responsible for:</p> <ul style="list-style-type: none"> <li>(i) design coordination, preparation of Works Submittals, and interface with Governmental Authorities; and</li> <li>(ii) the coordination and resolution of electrical and mechanical interfaces with RSSOM Project Co.</li> </ul>	No.	[REDACTED]
Project Co	Environmental Director	The Environmental Director shall have the responsibilities set out in Schedule 17 – Environmental Obligations.	No.	[REDACTED]
Construction Contractor	Environmental Manager(s)	The Environmental Manager(s) shall have the responsibilities set out in Schedule 17 – Environmental Obligations.	Yes. Lead: Shari Muscat	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Permits, Licences, Approvals and Agreements Manager	<p>The Permits, Licences, and Approvals Manager shall be responsible for all activities required to satisfy Project Co’s obligations set out in Schedule 34 – Permits, Licences, Approvals and Agreements, including:</p> <ul style="list-style-type: none"> <li>(i) ensuring that external Stakeholder agencies (including the City of Toronto, TTC, MECP, TRCA, MTO and GO Transit) are engaged when appropriate to obtain feedback as necessary;</li> <li>(ii) coordinating internal and external regulatory approval processes;</li> <li>(iii) managing relationships with external Stakeholder agencies, including Governmental Authorities; and</li> <li>(iv) leading the coordination and the scheduling of meetings with Stakeholders, as needed.</li> </ul>	No.	[REDACTED]
Construction Contractor	Mobility Matters and Property Access Matters Manager	The Mobility Matters and Property Access Matters Manager shall be responsible for all activities required to satisfy Project Co’s obligations set out in Schedule 7 – Mobility Matters and Schedule 36 – Property Access Matters.	No.	[REDACTED]
Construction Contractor	Quality Director	The Quality Director shall have the responsibilities set out in Section 3.2 ( <i>Quality Director</i> ) of Schedule 11 – Quality Management.	No.	[REDACTED]



Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	Design Quality Manager	The Design Quality Manager shall be responsible for the Design Quality Management Plan.	No.	[REDACTED]
Construction Contractor	Construction Quality Manager	The Construction Quality Manager shall be responsible for the Construction Quality Management Plan.	No.	[REDACTED]
Construction Contractor	Construction Quality Control Manager	The Construction Quality Control Manager shall have the responsibilities set out in Schedule 11 – Quality Management.	No.	[REDACTED]
Construction Contractor	Traffic Manager	The Traffic Manager shall have the responsibilities set out in the Output Specification and coordinate with the Mobility Matters and Property Access Matters Manager to develop strategies that minimize the disruption to the road and transit network during construction.	No.	[REDACTED]
Construction Contractor	Traffic Quality Manager	The Traffic Quality Manager shall have the responsibilities set out in Schedule 11 – Quality Management.	No.	[REDACTED]
Construction Contractor	Schedule Manager	The Scheduler Manager shall be required to satisfy Project Co’s obligations set out in Schedule 12 – Works Schedule Requirements and shall ensure that Project Co’s schedule is fully integrated with the RSSOM Project and Early Works Infrastructure.	No.	[REDACTED]

Project Co Party	Position	Function	Multiple Key Individuals Allowed	Name and Contact Information
Construction Contractor	TOC Representative	The TOC Representative shall be responsible for: <ul style="list-style-type: none"> <li>(i) managing Project Co’s relationships with TOC Contractors and Contracting Authority in respect of TOC Developments;</li> <li>(ii) co-ordinating Project Co’s participation in meetings with TOC Contractors and Contracting Authority in respect of the TOC Developments, as required by the Project Agreement; and</li> <li>(iii) ensuring that all obligations of Project Co in respect of interfaces with TOC Contractors and TOC Developments under the Project Agreement are co-ordinated and satisfied.</li> </ul>	No.	<b>[REDACTED]</b>

**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 Contracting Authority in accordance with the Review Procedure prior to Substantial Completion, or after Substantial Completion in respect of the completion of Section Minor Deficiencies or Minor Deficiencies, and in respect of the rectification of any Works, the Project Co Infrastructure, and the New Third Party Infrastructure, including any and all subsequent revisions, amendments and changes thereto (individually, “**Works Submittal**” or collectively “**Works Submittals**” as applicable in 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, Approval, or Agreement.
- 1.3 Subject to Section 1.2, if the City of Toronto or the TTC fails to meet the timelines set out in this Schedule 10 with respect to its review of any Works Submittals, such failure shall be deemed to be a failure by Contracting Authority to comply with the timelines set out in this Schedule 10.
- 1.4 Project Co may submit an advanced Works Submittal with respect to Items A-201 (*Stations – Support of Excavation*) to A-202 (*Tunnel Launch Sites*) as set out in Appendix A to this Schedule 10 (an “**Advanced Works Submittal**”). An Advanced Works Submittal shall be used for a discrete element of Project Co Infrastructure that must be constructed in advance of the remaining Project Co Infrastructure in order to achieve the Proposed Works Schedule.
- 1.5 Where an Advanced Works Submittal is used, Project Co shall still complete a Design Development Submittal and a Construction Document Submittal for the remaining associated Project Co Infrastructure prior to commencing the remaining Works.
- 1.6 For each Advanced Works Submittal, Project Co shall provide a description of the submittal content to Contracting Authority for review and agreement prior to the submittal.
- 1.7 Each Advanced Works Submittal shall follow the relevant provision for Works Submittals of this Schedule 10 unless stated otherwise, including those set out in Appendix A to this Schedule 10.

**2. SCHEDULE FOR WORKS SUBMITTALS**

- 2.1 The Baseline Works Schedule shall allow:
- (a) for each Works Submittal relating to Project Co Infrastructure, a period of twenty (20) Business Days (or such longer period as may be agreed between Contracting Authority and

Project Co) from the date of receipt, for Contracting Authority's review of and response to such Works Submittal;

- (b) for each Works Submittal relating to New City Infrastructure, a period of twenty (20) Business Days (beginning five (5) Business Days after receipt of such Works Submittal, provided that Contracting Authority has determined, with assistance from the City of Toronto, and notified Project Co that such Works Submittal is complete within such five (5) Business Days), plus an additional five (5) Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority's review of and response (in concert with the City of Toronto) to each Works Submittal for New City Infrastructure;
- (c) for each Works Submittal relating to New TTC Infrastructure, a period of twenty (20) Business Days (beginning five (5) Business Days after receipt of such Works Submittal, provided that Contracting Authority has determined, with assistance from the TTC, and notified Project Co that such Works Submittal is complete within such five (5) Business Days), plus an additional five (5) Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority's review of and response (in concert with the TTC) to each Works Submittal for New TTC Infrastructure;
- (d) for each Works Submittal for New Third Party Infrastructure that is not New City Infrastructure or New TTC Infrastructure, a period of twenty (20) Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) following receipt of the applicable Works Submittal for Contracting Authority's review of and response to the applicable Works Submittal;
- (e) for each Works Submittals related to Works impacting CN Rail infrastructure, a period of thirty (30) Business Days (beginning five (5) Business Days after receipt of such Works Submittal, provided that Contracting Authority has determined, with assistance from CN Rail, and notified Project Co that such Works Submittal is complete within such five (5) Business Days), plus an additional five (5) Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority's review of and response (in concert with CN Rail) to each Works Submittals impacting CN Rail infrastructure.
- (f) for all other Works Submittals that are not captured in Sections 2.1(a), 2.1(b), 2.1(c), 2.1(d) and 2.1(e) (including, for clarity, each Project Works Schedule, Quality Plan, the environmental submittals listed in item S-172 (*Environmental Submittals*) of Appendix A to this Schedule 10, System Security Plan, Emergency Response Plan, Stormwater Management Plan, PLAA Plan and Traffic and Transit Management Plan), twenty (20) Business Days (or such longer period as the Parties may agree) following receipt thereof for each other Works Submittal; and
- (g) for each Advanced Works Submittal, the period of ten (10) Business Days prior to any submission (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority to review the content of the Advanced Works Submittal, to determine that the submittal will contain sufficient information to complete the review. Project Co may engage with Contracting Authority at any time prior to this period to agree on the content of an Advanced Works Submittal.

- 2.2 If, at any time,
- (a) Project Co submits an unusually large number or volume of Works Submittals not contemplated by the Baseline Works Schedule; or
  - (b) a Works Submittal was, or Works Submittals were, received for review later than indicated in the Baseline Works Schedule, such that the Contracting Authority Representative cannot review the Works Submittal or Works Submittals within the time permitted in the Baseline Works Schedule,

then the Contracting Authority Representative shall, within five (5) Business Days following receipt of such Works Submittal or Works Submittals, provide Project Co with a reasonable estimate of the time necessary for processing such Works Submittal or Works Submittals.

- 2.3 If, pursuant to Sections 2.1(b), 2.1(c) or 2.1(e), Contracting Authority fails to notify Project Co that a Works Submittal is complete, or notifies Project Co that a Works Submittal is incomplete, within five (5) Business Days of receipt, such Works Submittal shall be deemed to have been assigned a “REVIEWED AS NOTED – MAJOR ISSUES” comment, and the provisions of this Schedule 10 relating to any Works Submittal that has been assigned a “REVIEWED AS NOTED – MAJOR ISSUES” comment shall apply

### 3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS

- 3.1 Unless otherwise specified by the Contracting Authority Representative, Project Co shall issue three printed copies of all Works Submittals to Contracting Authority together with an electronic copy in the format set out in Appendix A to this Schedule 10, or as prescribed by Contracting Authority acting reasonably, including an electronic copy in native file format if requested by the Contracting Authority Representative and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2 All Works Submittals shall be in English.
- 3.3 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 be so signed and sealed.
- 3.4 All Works Submittals shall:
- (a) include copies of all documents to be reviewed; and
  - (b) clearly identify the purpose of the Works Submittal, Project Co’s proposed course of action relating to the Works Submittal and the Works that are the subject of the Works Submittal.
- 3.5 All Works Submittals shall, where applicable, refer to and be in accordance with:
- (a) the relevant provisions of the Output Specifications, any other applicable Schedule to the Project Agreement and to any Design Data that has previously been subject to review; and

- (b) the relevant provisions of Appendix A to this Schedule 10 for Design Development Submittals and Construction Document Submittals.
- 3.6 Each Works Submittal shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, submitted in both soft copy and hard copy which shall include a list of all attached Works Submittals and, for each Works Submittal:
- (a) identification of whether the Works Submittal contains Project Co Infrastructure or New Third Party Infrastructure;
  - (b) identification of whether the City of Toronto Submittal has been submitted pursuant to Appendix B to this Schedule 10;
  - (c) identification of whether the Works Submittal has been submitted pursuant to Appendix A to this Schedule 10;
  - (d) the document number(s) or drawing number(s);
  - (e) revision numbers;
  - (f) document or drawing title(s);
  - (g) name of entity that prepared the Works Submittal;
  - (h) name and signature of the Key Individual(s) responsible for content of the Works Submittal;
  - (i) the Works Submittal history, including reviewer and checker initials, date and delivery information, log number of all previous submissions of that Works Submittal, Project Agreement provisions, comments from reviewers from the previous Works Submittal, all outstanding comments, and responses to addressing those comments, all submitted in a format determined by Contracting Authority; and
  - (j) identification of any previous Works Submittal superseded by the current Works Submittal.
- 3.7 To facilitate Contracting Authority's distribution of Works Submittals to the City of Toronto, all Works Submittals that are to be reviewed by the City of Toronto, in accordance with Appendix B, shall be separated accordingly and submitted individually, to the extent possible.
- 3.8 Each Works Submittal shall be organized and shall have indexes and sectional dividers. Each Works Submittal shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the final calculations, reports and backup information. All Works Submittals shall include copies of all final approvals by the applicable third party, design reports, correspondence and calculations, in both electronic and hard copy.
- 3.9 All Works Submittals shall include sufficient information to demonstrate that Project Co has met its obligations with respect to the Output Specifications.

- 3.10 If a Proposal Part corresponds to a Works Submittal, then Project Co shall ensure that its initial submission of such Works Submittal in accordance with this Schedule 10 is substantially the same content and level of detail as the corresponding Proposal Part. For clarity, this requirement shall not,
- (a) lessen, reduce or otherwise modify or amend Contracting Authority’s rights under the Project Agreement to review each Works Submittal in accordance with this Schedule 10; or
  - (b) constitute acceptance or comment by Contracting Authority of any Proposal Part or any Works Submittal in accordance with this Schedule 10.

#### 4. COMMENTS

- 4.1 The Contracting Authority Representative shall respond to each Works Submittal within the time periods set out in Section 2.1 by assigning one of the following comments and returning each Works Submittal to Project Co with a copy to the Independent Certifier:

- (a) “NO COMMENT”;
- (b) “REVIEWED AS NOTED – MINOR ISSUES”; or
- (c) “REVIEWED AS NOTED – MAJOR ISSUES”.

- 4.2 The Contracting Authority Representative shall assign a comment to each Works Submittal in accordance with the following rules:

- (a) The Contracting Authority Representative shall assign a “NO COMMENT” to each Works Submittal in which Contracting Authority has not identified any deficiencies or non-conformances during the course of its review of the Works Submittal.
- (b) The Contracting Authority Representative shall assign a “REVIEWED AS NOTED – MINOR ISSUES” to each Works Submittal that, in the opinion of Contracting Authority, considering the totality of the Works Submittal, generally conforms to the requirements of the Project Agreement but contains one or more insignificant deficiencies or insignificant non-conformances. Contracting Authority shall provide reasons for the comment, with reference to the applicable Section(s) of the Project Agreement.
- (c) The Contracting Authority Representative shall assign a “REVIEWED AS NOTED – MAJOR ISSUES” to each Works Submittal that, in the opinion of Contracting Authority, considering the totality of the Works Submittal, either or both does not generally conform to the requirements of the Project Agreement and/or contains one or more significant deficiencies or significant non-conformances. Contracting Authority shall provide reasons for the comment, with reference to the applicable Section(s) of the Project Agreement.

- 4.3 Following receipt of a “REVIEWED AS NOTED – MINOR ISSUES” for a Works Submittal, Project Co shall correct the Works Submittal to ensure that the Works Submittal conforms to the requirements of the Project Agreement prior to implementing the Works Submittal. If the Contracting Authority Representative assigns to a Works Submittal the additional comment “RE-

- SUBMIT”, Project Co shall correct and re-submit such Works Submittal to the Contracting Authority Representative,
- (a) no later than ten (10) Business Days after the comment has been provided to Project Co;
  - (b) within the time period set out in Schedule 12 – Works Schedule Requirements in the case of a resubmission of a Progress Works Schedule; or
  - (c) within such longer time period as determined by the Contracting Authority Representative, acting reasonably and as set out in writing.
- 4.4 If, a Works Submittal that has been assigned a “REVIEWED AS NOTED – MAJOR ISSUES” comment,
- (a) Project Co shall carry out the correction and re-submittal process set out in Section 4.3 until the Works Submittal has been assigned a “NO COMMENT” or a “REVIEWED AS NOTED – MINOR ISSUES”; and
  - (b) Project Co shall not implement any Works Submittal that has been assigned a “REVIEWED AS NOTED – MAJOR ISSUES” comment until Project Co has corrected such Works Submittal in accordance with this Section 4.
- 4.5 If, at any time, it is discovered that Project Co is advancing or has implemented a Works Submittal that has been assigned a “REVIEWED AS NOTED – MAJOR ISSUES” comment and that has not been corrected by Project Co in accordance with Section 4, then,
- (a) this circumstance shall be a Proceeding at Risk Matter in accordance with Section 14.6(a)(ii) (*Proceeding at Risk*) of the Project Agreement; and
  - (b) Project Co shall be solely responsible for modifying and correcting the associated Works, including any Project Co Infrastructure or New Third Party Infrastructure, to ensure that the Works comply with the Project Agreement.
- 4.6 If, at any time after assigning a comment to a Works Submittal, Contracting Authority or Project Co discovers any deficiencies or any failure to conform to the requirements of the Project Agreement, the Contracting Authority Representative may revise the comment assigned to any Works Submittal. If the Parties agree or if 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 Works in accordance with this Section 4.
- 4.7 For the purpose of facilitating and expediting the review and correction of Works Submittals, the Contracting Authority Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.8 If a Works Submittal is voluminous, the Contracting Authority Representative at his or her discretion may elect to issue the appropriate comment only to the cover page or first sheet of the Works Submittal, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status



of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by Contracting Authority.

- 4.9 In lieu of returning a Works Submittal, the Contracting Authority Representative may, by letter, notify Project Co of the comment assigned to the Works Submittal and if such comment is a “REVIEWED AS NOTED – MINOR ISSUES” or a “REVIEWED AS NOTED – MAJOR ISSUES”, the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.
- 4.10 Project Co shall perform the Works in accordance with Works Submittals that have been reviewed by Contracting Authority in accordance with this Schedule 10, provided that Project Co has corrected all deficiencies and non-conformances contained in such Works Submittals prior to implementation.
- 4.11 For clarity, no extension of time will be given or additional compensation paid with respect to any of the processes set out in this Section 4.

## **5. DISPUTES**

- 5.1 If Project Co disputes any act of Contracting Authority or the Contracting Authority Representative in respect of a Works Submittal under Part A of this Schedule 10, Project Co shall promptly notify the Contracting Authority Representative, the CDB and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Contracting Authority Representative shall review the Works Submittal, the reasons and supporting documentation and within five (5) Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the Contracting Authority Representative confirms the original comment, Project Co may refer the matter for determination in accordance with Schedule 27 – Dispute Resolution Procedure.
- 5.2 Notwithstanding the provisions of Section 5.1, the Contracting Authority Representative may direct that Project Co revise the Works Submittals in accordance with the comments of the Contracting Authority Representative and proceed to perform and complete the Works on the basis of such revised Works Submittals. For clarity, Project Co may refer such direction for resolution as a Dispute in accordance with Schedule 27 – Dispute Resolution Procedure.

## **6. EFFECT OF REVIEW**

- 6.1 Any review and comment by Contracting Authority or the Contracting Authority Representative of any Works Submittals are for general conformity to the obligations and requirements of the Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Works and for meeting all of Project Co’s obligations under and requirements of the Project Agreement, and shall not create any new or additional obligations or liabilities for Contracting Authority. Without limiting the generality of the foregoing any and all errors or omissions in Works Submittals or of any review and comment shall not exclude or limit Project Co’s obligations or liabilities in respect of the Works under the Project Agreement or exclude or limit Contracting Authority’s rights in respect of the Works under the Project Agreement.

**7. WORKS SUBMITTAL EXPLANATION**

- 7.1 At any time, the Contracting Authority Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co's consultants and any other relevant personnel, at no additional cost to Contracting Authority, to explain to the Contracting Authority Representative and Contracting Authority's advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications or any other Schedule to the Project Agreement, as applicable. Project Co shall provide the explanation to the Contracting Authority Representative within five (5) Business Days (or such longer period as the Parties may agree) from the date of receipt of the request from the Contracting Authority Representative.

**8. REVISIONS**

- 8.1 Project Co shall ensure that 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. For printed copies, bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. Project Co shall use a consistent format for mark-ups of documents (for example, deletions struck out and additions underscored). Project Co shall clearly mark revised portions of drawings (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and shall include the revision number and description of the revision on the drawing.
- 8.3 Re-submittals shall include all required revised documents, all documents submitted in the previous Works Submittal that do not require revisions and all responses to comments provided by Contracting Authority associated with the Works Submittal.
- 8.4 Project Co shall ensure that all revisions on print media be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and identify the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the Record Drawings.
- 8.5 Project Co shall keep all Design Data current, including a current set of the most recently issued submittal documents available on Site in the construction trailer for use by Contracting Authority and the Contracting Authority Representative. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.
- 8.6 Works Submittals that are replacements in kind shall keep the original submittal number with the next sequential revision number.

**9. AUDIT OF WORKS SUBMITTAL IMPLEMENTATION**

- 9.1 Without limiting any other right under the Project Agreement, the Contracting Authority Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.
- 9.2 If during an audit or at any other time it is discovered by Contracting Authority or Project Co (or resolved pursuant to Section 9.3) that any Works Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the Works to which they relate and shall advise the Contracting Authority Representative of all such corrections and modifications.
- 9.3 Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1, shall be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

**10. VARIATIONS**

- 10.1 No alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design in connection with any Works Submittal shall be construed or regarded as a Variation.
- 10.2 If, having received comments from the Contracting Authority Representative on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within fifteen (15) Business Days following receipt of and before complying with the comments, provide written Notice to Contracting Authority of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, Contracting Authority may, at their election,
- (a) issue a Variation Enquiry (and it shall be dealt with in accordance with Schedule 22 – Variation Procedure); or
  - (b) 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 5.2, including for clarity, the exercise by Contracting Authority of its rights under Section 5.2. Subject to the foregoing sentence, any failure by Project Co to notify Contracting Authority in accordance with this Section 10.2 that Project Co considers that compliance with any comments of the Contracting Authority Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the Contracting Authority Representative's comments shall be without cost to Contracting Authority and without any extension of time.

**11. INTEGRATION WORKS SUBMITTAL REVIEW PROCEDURE**

- 11.1 The following additional provisions shall apply to the Works Submittals of Project Co designated in Appendix A to this Schedule 10, which Contracting Authority intends to provide to RSSOM Project Co to be reviewed for integration purposes (“**Integration Works Submittals**”, and each an “**Integration Works Submittal**”), including any further Works Submittals referred to in or

arising from, all items and documents set out in, and any subsequent revisions, amendments and changes to such Integration Works Submittals.

- 11.2 Each Integration Works Submittal shall:
- (a) reference any provisions set out in Schedule 45 – Integration with RSSOM Project, which Project Co considers relevant to Contracting Authority’s review of such Integration Works Submittal; and
  - (b) set out any amendments to be made to the Output Specifications pursuant to Section 11.8 if such Integration Works Submittal is finalized as submitted and assigned a “NO COMMENT” by Contracting Authority in accordance with Section 11.8, without limiting the amendments that will be deemed to be made pursuant to Section 11.8; and
  - (c) specify the requirements which Project Co will incorporate into RSSOM Project Co’s Requirements Management database, pursuant to Section 11.14 if such Integration Works Submittal is finalized as submitted and assigned a “NO COMMENT” by Contracting Authority.
- 11.3 Each Integration Works Submittal shall be clearly identified as an Integration Works Submittal and shall be delivered with appropriate covering documentation, submitted in both soft copy and hard copy. All Integration Works Submittals shall be separated accordingly and submitted individually, to the extent possible.
- 11.4 Project Co acknowledges and agrees that Contracting Authority may provide Integration Works Submittals in confidence to RSSOM Project Co for review and take any comments made by RSSOM Project Co into account in determining Contracting Authority’s response to such Integration Works Submittals.
- 11.5 Each Integration Works Submittal shall be submitted no later than the date specified for such Integration Works Submittal in the Baseline Works Schedule or deemed to be included in the Baseline Works Schedule, pursuant to the ICDs and other Integration Works Submittals, after a “NO COMMENT” has been assigned by Contracting Authority.
- 11.6 Nothing in this Section 11 limits the obligations of Project Co to participate in Design Review Meetings under Section 11.3 (*Design Workshops*) of the Project Agreement or to participate in the Design Integration Working Group and the Construction Integration Working Group, prior to the commencement and until the completion of the review of each Integration Works Submittal, for the purpose of facilitating and expediting the review of such Integration Works Submittal by Contracting Authority and by RSSOM Project Co.
- 11.7 Project Co shall continue to submit each Integration Works Submittal for review by Contracting Authority until a “NO COMMENT” has been assigned to such Integration Works Submittal by Contracting Authority or it is determined, pursuant to the Dispute Resolution Procedure, that a “NO COMMENT” should have been assigned to the applicable Integration Works Submittal.
- 11.8 The then current requirements of Schedule 12 – Works Schedule Requirements, the Output Specifications, and any other applicable requirements of the Project Agreement (as they may have been previously amended or changed pursuant to the Project Agreement, including the provisions

of this Section 11 or Schedule 22 – Variation Procedure) shall be deemed to be amended consistent with each Integration Works Submittal to which a “NO COMMENT” has been assigned, without cost to Contracting Authority and without any extension of time. Each such Integration Works Submittal shall be deemed to form part of the Output Specifications and, in the event of any ambiguity, conflict or inconsistency between the provisions of any such Integration Works Submittal and the Output Specifications, the provisions of such Integration Works Submittal shall govern to the extent of such ambiguity, conflict or inconsistency.

- 11.9 Section 11.8 shall not apply (and Contracting Authority shall not be bound by its provisions) to the extent that any Integration Works Submittal to which a “NO COMMENT” has been assigned was not in conformity with, or was outside the scope of, the requirements of Schedule 12 – Works Schedule Requirements, the Output Specifications or any other applicable requirements of the Project Agreement as of the date the applicable Integration Works Submittal was submitted.
- 11.10 Project Co may dispute any failure of Contracting Authority to assign a “NO COMMENT” to an Integration Works Submittal pursuant to Section 5.1 of this Part A of this Schedule 10 on the basis that such Integration Works Submittal satisfies the applicable requirements of Schedule 45 – Integration with RSSOM Project.
- 11.11 If Project Co disputes any failure of Contracting Authority to assign a “NO COMMENT” to an Integration Works Submittal pursuant to Section 5.1 of this Part A of this Schedule 10, the Contracting Authority Representative shall have five (5) Business Days in addition to the period set out in Section 5.1 to review the Integration Works Submittal, the reasons and supporting documentation provided by Project Co, and Contracting Authority may, in its sole discretion, request RSSOM Project Co to participate in any such review. Within a total of ten (10) Business Days after receipt of such Project Co dispute, Contracting Authority shall either assign a “NO COMMENT” or continue to withhold the assignment of a “NO COMMENT”. If the Contracting Authority Representative continues to withhold the assignment of a “NO COMMENT”, Project Co may refer the failure of Contracting Authority to assign a “NO COMMENT” to such Integration Works Submittal for determination pursuant to Section 5.1, provided that any such Dispute may be designated as an Integration Dispute and decided in accordance with the Integration Dispute Resolution Procedure pursuant to the RSSOM Interface Agreement, including where such Dispute arises from a comment made by RSSOM Project Co.
- 11.12 Any Dispute pursuant to Section 5.2 of this Part A of this Schedule 10 with respect to an Integration Works Submittal may be designated as an Integration Dispute and decided in accordance with the Integration Dispute Resolution Procedure pursuant to the RSSOM Interface Agreement, including where such Dispute arises from a comment made by RSSOM Project Co.
- 11.13 Without limiting any other rights of Contracting Authority under Schedule 22 – Variation Procedure, Contracting Authority may at any time, in its sole discretion, initiate a Variation and require Project Co to execute a Variation Confirmation, or issue a Variation Directive, confirming the manner in which the requirements of the applicable RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data are deemed to have been amended pursuant to Section 11.8, without cost to Contracting Authority and without any extension of time.
- 11.14 For any Integration Works Submittal to which a “NO COMMENT” has been assigned which has been deemed to amend the then current requirements of Schedule 12 – Works Schedule

Requirements, the Output Specifications or any other applicable requirements of the Project Agreement (as they may have been previously amended or changed pursuant to the Project Agreement) pursuant to Section 11.8, Project Co shall promptly cause to be incorporated into RSSOM Project Co's Requirements Management database any requirements specified in such Integration Works Submittal in accordance with Section 11.2(c), including details with respect to the manner in which the requirements of the Project Agreement have been deemed to be amended.

11.15 In addition to Integration Works Submittals, Contracting Authority may provide other Works Submittals to RSSOM Project Co to be reviewed for integration purposes, including the following Items in Appendix A to this Schedule 10:

(a) S-107, S-114, S-137, S-138, S-139, S-154, S-166, S-176 and S-253.

11.16 Contracting Authority may take into account any comments received from RSSOM Project Co in determining Contracting Authority's response to any Works Submittals.

11.17 Without limitation, Contracting Authority may assign a "REVIEWED AS NOTED – MAJOR ISSUES" to any Works Submittal which will have a material adverse impact on RSSOM Project Infrastructure or the successful integration of the Ontario Line Subway System.

## 12. GENERAL

12.1 Any capitalized terms used in the appendices to this Schedule 10, that are not defined in this Schedule 10 or in Schedule 1 – Definitions and Interpretation, shall have the meanings given to them in the Output Specifications or Schedule 17 – Environmental Obligations.

**PART B – REVIEW OF RSSOM INFRASTRUCTURE DESIGN AND CONSTRUCTION DATA****1. RSSOM INFRASTRUCTURE WORKS SUBMITTALS**

- 1.1 The review procedure set out in this Part B of this Schedule 10 (“**RSSOM Infrastructure Works Submittal Review Procedure**”) shall apply to the review by Project Co of the items and documents set out in Appendix D to this Schedule 10 to be prepared by RSSOM Project Co and provided to Project Co by Contracting Authority and includes any and all subsequent revisions, amendments and changes thereto (“**RSSOM Infrastructure Works Submittals**”) for the purpose of providing comments to Contracting Authority on the conformity between such RSSOM Infrastructure Works Submittals and the requirements for the applicable Critical RSSOM Infrastructure Works to be Built to Specification and Design in accordance with Schedule 45 – Integration with RSSOM Project.

**2. SCHEDULE FOR RSSOM INFRASTRUCTURE WORKS SUBMITTALS**

- 2.1 Contracting Authority shall provide each RSSOM Infrastructure Works Submittal not later than the applicable date set out in Appendix D of this Schedule 10, and Project Co shall include all such dates in the Baseline Works Schedule.
- 2.2 The Baseline Works Schedule shall allow a period of twenty (20) Business Days from the date of receipt by Project Co for Project Co’s review of and response to each RSSOM Infrastructure Works Submittal.
- 2.3 Contracting Authority may, at any time and in its sole discretion, extend the time for Project Co to review any RSSOM Infrastructure Works Submittal, and Project Co shall complete its review within such time. For clarity, Project Co shall not be entitled to any claims for additional costs or delay in respect of an extension of time for review of any RSSOM Infrastructure Works Submittals pursuant to this Section 2.3.

**3. GENERAL REQUIREMENTS FOR RSSOM INFRASTRUCTURE WORKS SUBMITTALS**

- 3.1 Unless otherwise specified by the Contracting Authority Representative, Contracting Authority shall provide the following to Project Co in respect of each RSSOM Infrastructure Works Submittal.
- 3.2 All RSSOM Infrastructure Works Submittals shall be in English.
- 3.3 All RSSOM Infrastructure Works Submittals shall:
- (a) include copies of all documents to be reviewed by Project Co that are received by Contracting Authority from RSSOM Project Co; and
  - (b) clearly identify the RSSOM Infrastructure Works Submittal that is the subject of the review.

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#### 4. COMMENTS

- 4.1 The Project Co Representative shall respond to each RSSOM Infrastructure Works Submittal within the time period set out in Section 2 by assigning one of the following comments and returning such RSSOM Infrastructure Works Submittal to Contracting Authority:
- (a) “NO COMMENT”; or
  - (b) “REVIEWED AS NOTED”.
- 4.2 The Project Co Representative shall assign a comment to each RSSOM Infrastructure Works Submittal in accordance with the following rules:
- (a) The Project Co Representative shall assign a “NO COMMENT” to each RSSOM Infrastructure Works Submittal in which Project Co has not identified any deficiency or non-conformance which, in the opinion of Project Co, would result in the applicable Critical RSSOM Infrastructure Works not being Built to Specification and Design if such Critical RSSOM Infrastructure Works are built in accordance with such RSSOM Infrastructure Works Submittal (“**BSD Non-Conformance**”).
  - (b) The Project Co Representative shall assign a “REVIEWED AS NOTED” to each RSSOM Infrastructure Works Submittal that, in the opinion of Project Co, contains one or more BSD Non-Conformances. Project Co shall:
    - (i) provide reasons for the comment, including the changes that would be required in such RSSOM Infrastructure Works Submittal to remove such BSD Non-Conformances, with specific reference to the applicable requirements of Schedule 45 – Integration with RSSOM Project of the Project Agreement, including the applicable RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data; and
    - (ii) set out any changes which Project Co considers necessary to the applicable RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data, in the event that changes are not made to such RSSOM Infrastructure Works Submittal.
- 4.3 Project Co acknowledges and agrees that Contracting Authority may provide any comments received from Project Co to RSSOM Project Co for review and take any comments made by RSSOM Project Co into account in determining Contracting Authority’s response to Project Co.
- 4.4 Following receipt of a “REVIEWED AS NOTED” for a RSSOM Infrastructure Works Submittal, Contracting Authority may re-submit such RSSOM Infrastructure Works Submittal to the Project Co Representative with revisions, amendments or changes thereto,
- (a) no later than thirty (30) Business Days after the comment was provided to Contracting Authority; or
  - (b) within such longer time period as the Contracting Authority Representative may determine, acting reasonably, and set out by Notice in writing.



- 4.5 Contracting Authority may continue the re-submittal process set out in Section 4.4 for any RSSOM Infrastructure Works Submittal, in Contracting Authority’s sole discretion, and Project Co shall continue to respond to each such re-submittal in accordance with Sections 4.1 and 4.2.
- 4.6 Nothing in this RSSOM Infrastructure Works Submittal Review Procedure limits the obligations of Project Co to participate in the Construction Integration Working Group and the Design Integration Working Group, as required by the RSSOM Interface Agreement, prior to the commencement and until the completion of the RSSOM Infrastructure Works Submittal Review Procedure for each RSSOM Infrastructure Works Submittal, for the purpose of facilitating and expediting the review of RSSOM Infrastructure Works Submittals. The Contracting Authority Representative and the Project Co Representative shall also meet, as may be mutually agreed, to discuss and review any outstanding RSSOM Infrastructure Works Submittals and any comments thereon.
- 4.7 If a RSSOM Infrastructure Works Submittal is voluminous, the Project Co Representative may, with the consent of the Contracting Authority Representative, issue the appropriate comment only to the cover page or first sheet of the RSSOM Infrastructure Works Submittal, if any, and return to Contracting Authority the cover page or first page together with individual pages or sheets on which comments are made. Any pages returned without comments shall be deemed to be a “NO COMMENT” by Project Co.
- 4.8 In lieu of returning a RSSOM Infrastructure Works Submittal, the Project Co Representative may, by letter, notify Contracting Authority of the comment assigned to the RSSOM Infrastructure Works Submittal and if such comment is a “REVIEWED AS NOTED, the letter shall contain comments in sufficient detail for Contracting Authority to identify the information required pursuant to Section 4.2.
- 4.9 For clarity, no extension of time will be given or additional compensation paid with respect to any of the processes set out in this Section 4.
- 4.10 If the Project Co Representative fails to respond to a RSSOM Infrastructure Works Submittal in accordance with this RSSOM Infrastructure Works Submittal Review Procedure within the time period set out in Section 2, such RSSOM Infrastructure Works Submittal shall be deemed to be assigned a “NO COMMENT”. Such deemed assignment of a “NO COMMENT” to a RSSOM Infrastructure Works Submittal shall be final and not subject to the Dispute Resolution Procedure.

## **5. DISPUTES**

- 5.1 Contracting Authority, in its sole discretion, may refuse to accept any “REVIEWED AS NOTED” comment assigned by the Project Co Representative in respect of any RSSOM Infrastructure Works Submittal and give written Notice to Project Co that such RSSOM Infrastructure Works Submittal is deemed to be assigned a “NO COMMENT”.
- 5.2 Within ten (10) Business Days after receipt of such Notice from Contracting Authority, Project Co may refer the matter for determination in accordance with Schedule 27 – Dispute Resolution Procedure, provided that any such Dispute may be designated as an Integration Dispute and decided in accordance with the Integration Dispute Resolution Procedure pursuant to the RSSOM Interface Agreement.

5.3 Any failure by Project Co to Dispute deemed assignment of a “NO COMMENT” to a RSSOM Infrastructure Works Submittal shall constitute an irrevocable acceptance by Project Co that such RSSOM Infrastructure Works Submittal contains no BSD Non-Conformances and that compliance with such RSSOM Infrastructure Works Submittal shall be without cost to Contracting Authority and without any extension of time.

## 6. EFFECT OF REVIEW OF RSSOM INFRASTRUCTURE WORKS SUBMITTALS

6.1 For RSSOM Infrastructure Works Submittal Items set out in Table D-1 of Appendix D to this Schedule 10, upon completion of this RSSOM Infrastructure Works Submittal Review Procedure for a RSSOM Infrastructure Works Submittal, the assignment or deemed assignment of a “NO COMMENT” for such RSSOM Infrastructure Works Submittal by the Project Co Representative or pursuant to a Dispute under Section 5 shall constitute an irrevocable acceptance by Project Co that:

- (a) the applicable RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data shall be deemed to be amended consistent with such RSSOM Infrastructure Works Submittal, without cost to Contracting Authority and without any extension of time;
- (b) such RSSOM Infrastructure Works Submittal shall be deemed to form part of the RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data and, in the event of any ambiguity, conflict or inconsistency between the provisions of any such RSSOM Infrastructure Works Submittal and the RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data, the provisions of such RSSOM Infrastructure Works Submittal shall govern to the extent of such ambiguity, conflict or inconsistency;
- (c) such amended RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data shall apply for the purposes of any Dispute by Project Co under Schedule 45 – Integration with RSSOM Project, including any Dispute as to whether the applicable Critical RSSOM Infrastructure Works is Built to Specification and Design, and Project Co shall not be entitled to claim in any such Dispute that such RSSOM Infrastructure Works Submittal contained BSD Non-Conformances; and
- (d) Project Co shall be required to perform the Works on the basis that the definition of Built to Specification and Design has been amended, and the RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data have been modified, in accordance with such RSSOM Infrastructure Works Submittal.

6.2 Section 6.1 shall not apply (and the Parties shall not be bound by its provisions) to the extent that any RSSOM Infrastructure Works Submittal was not in conformity with or was outside the scope of the requirements of the RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data, as of date the applicable RSSOM Infrastructure Works Submittal was submitted.

6.3 For RSSOM Infrastructure Works Submittal Items set out in Table D-2 of Appendix D to this Schedule 10 only:

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- (a) Sections 4.2, 5.3, 6.1 and 8.2 of this RSSOM Infrastructure Works Submittal Review Procedure shall not apply.
- (b) Without limiting any other rights or obligations of Project Co under the Project Agreement, including Schedule 45 – Integration with RSSOM Project, Project Co shall review such RSSOM Infrastructure Works Submittals for the purposes of identifying the following for Contracting Authority’s consideration:
- (i) any conflicts or inconsistencies between such RSSOM Infrastructure Works Submittal and,
    - (A) any RSSOM Infrastructure Works Submittal Item set out in Table D-1 of Appendix D to this Schedule 10; or
    - (B) any other RSSOM Infrastructure Works Submittal Item set out in Table D-2 of Appendix D to this Schedule 10,to which a “NO COMMENT” has been assigned or deemed to be assigned; and
  - (ii) any material adverse impacts which the implementation of such RSSOM Infrastructure Works Submittal could have on:
    - (A) Project Co Infrastructure or New Third Party Infrastructure;
    - (B) the successful integration of the Ontario Line Subway System; or
    - (C) the ability of Project Co to perform the Works.
- (c) The Project Co Representative shall assign a comment to such RSSOM Infrastructure Works Submittals in accordance with the following rules:
- (i) the Project Co Representative shall assign a “NO COMMENT” to each RSSOM Infrastructure Works Submittal in which Project Co has not identified any concerns pursuant to Section 6.3(b) of this RSSOM Infrastructure Works Submittal Review Procedure; and
  - (ii) the Project Co Representative shall assign a “REVIEWED AS NOTED” to each RSSOM Infrastructure Works Submittal in which Project Co has identified any concerns pursuant to Section 6.3(b) of this RSSOM Infrastructure Works Submittal Review Procedure and shall:
    - (A) provide reasons for the comment;
    - (B) include any changes that would be required in such RSSOM Infrastructure Works Submittal to address the concerns that Project Co has identified pursuant to Section 6.3(b) of this RSSOM Infrastructure Works Submittal Review Procedure, with specific reference to any applicable requirements of Schedule 45 – Integration with RSSOM Project, including the

applicable RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data; an

- (C) set out any changes which Project Co considers necessary to the applicable RSSOM Infrastructure Technical Specifications or Critical RSSOM Infrastructure Data in the event that changes are not made to such RSSOM Infrastructure Works Submittal.

## 7. ADDITIONAL INFORMATION

- 7.1 At any time, the Project Co Representative may request Contracting Authority to provide further information as to the intent of a RSSOM Infrastructure Works Submittal, including in relation to any requirements of Schedule 45 – Integration with RSSOM Project, as applicable. Contracting Authority may provide such explanation to the Project Co’s Representative (directly or in concert with RSSOM Project Co) in Contracting Authority’s sole discretion.
- 7.2 At any time, the Contracting Authority Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co’s consultants and any other relevant personnel, at no additional cost to Contracting Authority, to explain to the Contracting Authority Representative and Contracting Authority’s advisors the intent of Project Co’s comments on RSSOM Infrastructure Works Submittals, including in relation to any requirements of Schedule 45 – Integration with RSSOM Project, as applicable. Within five (5) Business Days (or such longer period as the Parties may agree) from the date of receipt of such request from the Contracting Authority Representative, Project Co shall provide such explanation to the Contracting Authority Representative (which may be shared with RSSOM Project Co, in Contracting Authority’s sole discretion).

## 8. VARIATIONS

- 8.1 Project Co shall not be entitled to any Variation in connection with RSSOM Infrastructure Works Submittals to which Project Co or the Project Co Representative has assigned or is deemed to have assigned a “NO COMMENT” and no alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design in connection with any such RSSOM Infrastructure Works Submittal shall be construed or regarded as a Variation.
- 8.2 To the extent that it is determined pursuant to a Dispute under Section 5 that any RSSOM Infrastructure Works Submittal contains a BSD Non-Conformance, Project Co shall be entitled to a Variation subject to and in accordance with Schedule 22 – Variation Procedure unless Contracting Authority withdraws such RSSOM Infrastructure Works Submittal, in its sole discretion.

## 9. GENERAL

- 9.1 Except as expressly set out herein, nothing in this Part B of this Schedule 10 shall modify any of the obligations or rights of the Parties under the Project Agreement.

**APPENDIX A TO SCHEDULE 10**

**MINIMUM WORKS SUBMITTALS**

**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. Project Co shall submit each Works Submittal in accordance with the following:

- (a) three sets of all Works Submittals shall be submitted in hard copy, and included in 3-hole ring binders;
- (b) large format drawings (ANSI D size) shall be provided separately (bound) in reduced format (11” x 17”), and included in a 3-hole ring binders. Unless otherwise noted below under the heading “Format”, all drawings shall be provided in half size format. All other Works Submittals that are not drawings shall be submitted in 8.5” x 11” black and white format, unless otherwise specifically noted below;
- (c) all Works Submittals shall be uploaded to Contracting Authority’s Common Data Environment (CDE);
- (d) all Works Submittals shall be forwarded to Contracting Authority at the same time that the Submittals are uploaded to Contracting Authority’s Common Data Environment (CDE); and
- (e) All Works Submittals shall be provided in accordance with Appendix W – Exchange Information Requirements (EIR) to the Output Specifications.

1.2 All Works Submittals shall also be provided in the format and Works Submittals breakdown set out in Section 2 of this Appendix A.

**2. SUBMITTALS**

2.1 The following is a detailed list of the minimum Works Submittals that Project Co is required to provide to Contracting Authority for review and comment in accordance with this Schedule 10. Each Works Submittals shall be delivered with appropriate covering documentation in the format set out in Section 3.6 of this Schedule 10.

**Prefix:**

A – Advance Works Submittal

I/S – Works Submittal

- 2.2 Additional Works Submittals may be requested by the Contracting Authority Representative at any time in order to understand the Works, and Project Co shall be required to provide same to Contracting Authority for review in accordance with this Schedule 10. A description of the minimum content of each Works Submittal provided is set out in this Section 2 of this Appendix A.
- 2.3 Works Submittal deliverables that are applicable to satisfying the requirements of multiple Works Submittal items are permitted to be re-used in other Works Submittals, provided that such re-used deliverables meet all the requirements of each Works Submittal item they are applied to.

### 3. DESIGN CHARETTE FOR COLOUR AND FINISH

- 3.1 Project Co shall prepare for and present a three stage design charette with Contracting Authority for the development of design excellence approach and strategies as input to this Schedule 10. The purpose is to resolve the obligations in Appendix E-4 (*Ontario Line Design Guide – Colour and Finish Schedule*) to the Output Specifications.
- (a) *Workshop 1:* The Workshop purpose is to confirm an initial schedule of colours and finishes for all Project Co Infrastructure. Project Co shall present three options for each material that requires the selection of a colour or finish, with supporting concept sketches and illustrations to support the selection process. Project Co shall submit presentation material a minimum of five (5) Business Days prior to the proposed design charette.
- (b) *Workshop 2:* The Workshop purpose is to confirm selection of a final schedule of colours and finishes. Project Co shall present development of design components, provide physical material samples, such as colour and material swatches, and a minimum of three photorealistic renderings in context of each of the proposed materials, with a minimum of one rendering showing the night lighting condition. Project Co shall submit presentation material a minimum of five (5) Business Days prior to the proposed design charette.
- (c) Workshop 3: A final Workshop to close out comments and actions from Workshop 2.
- (d) Project Co may request further meetings to close out selection of colours and finishes.
- 3.2 The design charette process is intended to be completed as an input to the Works Submittal item S-140 *Design Excellence* of Appendix A to this Schedule 10.

**[REDACTED]**

**ATTACHMENT 1 TO APPENDIX A**  
**SAMPLE DESIGN CERTIFICATES**



Certificate Ref No. [ ]

**DESIGN CERTIFICATE (GENERAL)**

**In respect of:** ..... **[Provide submittal details]**

*Project Agreement between Contracting Authority and Project Co dated 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 in accordance with [the Output Specifications].*

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. No Comment\*
- ii. Reviewed as Noted – Minor Issues\*
- iii. Reviewed as Noted – Major Issues\*

\* delete as appropriate

Signed: .....

Contracting Authority Representative

Name: .....

Date: .....

Certificate Ref No. [ ]

## DESIGN CERTIFICATE (ENVIRONMENTAL)

*Project Agreement between Contracting Authority and Project Co dated XX XX, XXXX (“the Project Agreement”) relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.*

*Form of certificate to be used by the Design Team and the Environmental Director for certifying the design of environmental works incorporated in the Works in accordance with the Project Agreement.*

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Output Specifications.
2. We certify that we have prepared the Design Data for [.....] **[Name and list of all elements of the environmental works]** in the Schedule hereto in accordance with all applicable requirements contained in the **[Design Quality Management Plan]** and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion:
  - (a) the said Design Data 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) 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; andthe 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 Director

Name: .....

Title: .....

Date: .....

Professional Registration Number: .....

Affix Professional Seal

This Certificate is:

- i. No Comment\*
- ii. Reviewed as Noted – Minor Issues\*
- iii. Reviewed as Noted – Major Issues\*

\* delete as appropriate

Signed: .....

Contracting Authority Representative

Name: .....

Date: .....

ATTACHMENT 2 TO APPENDIX A  
SAMPLE CONSTRUCTION CERTIFICATE

Certificate Ref No. [ ]

**CONSTRUCTION CERTIFICATE**

*Project Agreement between Contracting Authority and Project Co dated XX XX, XXXX (“the Project Agreement”) relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.*

Form of Certificate to be used by the Design Team for certifying, as applicable:

- (a) **[Intentionally deleted];**
- (b) the Substantial Completion of Construction Activities in respect of those components of the Works set out in paragraph 1 of this Construction Certificate;
- (c) the total completion of Construction Activities in respect of the Works, including Minor Deficiencies, or
- (d) the total completion of Construction Activities in respect of any Reinstatement Work carried out by the Construction Contractor pursuant to Section 11.10 (*Protection of Works and Property*) of the Project Agreement, in accordance with a Reinstatement Plan.

in accordance with **[the Output Specifications]**.

**Construction Contractor’s Statement**

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)];**

Signed.....

Construction Contractor representative

Name.....

Date.....



**Design Team’s Statement**

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

- (a) [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.]*
  - (i) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure; and
  - (ii) 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

- (b) [the said element of the Works][the Works] is safe to carry the design loads.

Signed.....

Design Team (Principal)

Name.....

Title.....

Date.....

Professional Registration Number: .....

Affix Professional Seal

Receipt of this Certificate is acknowledged.

Signed.....

Independent Certifier

Name.....

Date.....

Professional Registration Number: .....

Affix Professional Seal

This Certificate is:

- i. No Comment\*
- ii. Reviewed as Noted – Minor Issues\*
- iii. Reviewed as Noted – Major Issues\*

\* delete as appropriate

Signed: .....

Contracting Authority Representative

Name: .....

Date: .....

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**APPENDIX B TO SCHEDULE 10****CITY OF TORONTO WORKS SUBMITTALS****1. DEFINITIONS**

1.1 Unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 10 shall have the meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**City of Toronto Design Management Plan**” has the meaning given in Section 3.2 of this Appendix B.

**2. OVERVIEW**

2.1 The purpose of Appendix B is to facilitate the City of Toronto review of technical submittals related to the Works listed in Section 3.1, or as defined by this Appendix B. Appendix B captures design review submittal requirements for the Works in regards to Site Plan Review, Works that impact City of Toronto infrastructure, or New City Infrastructure. The focus of this technical review is to ensure submittal compliance.

2.2 Where there is a conflict between this Appendix B and Appendix A with respect to City of Toronto review of Project Co submittals related to items listed in Section 3.1, this Appendix B shall take precedence.

**3. COT DESIGN MANAGEMENT PLAN**

3.1 The requirements of this Appendix B shall apply to all Design Development Submittals and Construction Document Submittals related to Works that:

- (a) are subject to Site Plan Review as set out in Attachment 1; or
- (b) impact City of Toronto infrastructure or that are New City Infrastructure, which includes but are not limited to, Works identified in Attachment 2.

3.2 Project Co shall prepare and submit an appendix to the Design Management Plan for all areas listed in Section 3.1 (the “**City of Toronto Design Management Plan**”) to Contracting Authority and the COT for review (concurrent with the review of the Design Management Plan), in accordance with the Review Procedure.

3.3 The COT Design Management Plan shall supplement the information provided in the Design Management Plan with the following:

- (a) identification of all components of the Works to which the requirements of the City of Toronto Design Management Plan will extend, in accordance with Section 3.1 of this Appendix B;
- (b) identification of the Design Development Submittals and Construction Document Submittals to which City of Toronto Design Management Plan will extend, specific to

Works in accordance with Section 3.1 and the City of Toronto design submittal requirements presented in this Appendix B;

- (c) a design review and audit schedule, consistent with the Design Quality Management Plan and the Works Schedule, indicating dates that Project Co plans to undertake Technical Review Meetings with City of Toronto and Contracting Authority, in accordance with Sections 7 and 8 of this Appendix B; and
  - (d) a drawing tree indicating the organization and hierarchy of all drawings to which City of Toronto Design Management Plan applies.
- 3.4 Project Co shall submit any subsequent amendments or updates to the City of Toronto Design Management Plan to Contracting Authority and City of Toronto in accordance with the Review Procedure and this Appendix B.
- 3.5 Project Co shall implement and comply with the City of Toronto Design Management Plan and any subsequent amendments or updates to the initial City of Toronto Design Management Plan made following review by Contracting Authority and City of Toronto in accordance with the Review Procedure, including but not limited to requirements per the Output Specifications, and any other requirements within the items listed in Section 3.1.

#### **4. DESIGN DEVELOPMENT SUBMITTALS**

- 4.1 Project Co shall ensure that Design Development Submittals for items listed in Section 3.1 are submitted in accordance with the City of Toronto Design Management Plan and the requirements of the Review Procedure, and are:
- (a) corrected as required in response to the comments provided by Contracting Authority and City of Toronto for any previous submittals, as required in order to comply with the time periods for such corrections described in Schedule 10 – Review Procedure.
- 4.2 Project Co shall ensure that all Design Development Submittals for the items listed in Section 3.1 are submitted in accordance with the City of Toronto design submittal requirements presented in this Appendix B, as appropriate.

#### **5. CONSTRUCTION DOCUMENT SUBMITTALS**

- 5.1 Project Co shall ensure that Construction Document Submittals for items listed in Section 3.1 are submitted in accordance with the City of Toronto Design Management Plan and the requirements of the Review Procedure, and are:
- (a) corrected as required in response to the comments provided by Contracting Authority and City of Toronto for any previous submittals, as required in order to comply with the time periods for such corrections described in Schedule 10 – Review Procedure.
- 5.2 Project Co shall ensure that all Construction Document Submittals for the items listed in Section 3.1 are submitted in accordance with the City of Toronto design submittal requirements presented in this Appendix B, as appropriate.

**6. FORMAT FOR CITY OF TORONTO WORKS SUBMITTALS**

- 6.1 The following is a breakdown of the contents of each City of Toronto submittal (individually, “COT Submittal” or collectively “COT Submittals”) as well as the format for each.
- 6.2 All COT Submittals are to be submitted to Contracting Authority in hard copy and electronic format in accordance with the following requirements:
- (a) all hard copy COT Submittals in reduced format drawings (11” x 17”, foldouts folded to 8.5” x 11”) and included in a 3-hole ring binder;
  - (b) all hard copy COT Submittals in large format drawings (A0 or A1 size) shall be bound for Record Drawings and shall be provided separately;
  - (c) all hard copy COT Submittals which are not drawings shall be submitted in 8.5” x 11” black and white format, unless otherwise specifically noted in this Appendix B (or as requested by Contracting Authority, acting reasonably);
  - (d) submit COT Submittals in electronic format as text searchable portable document format (pdf) and in their native format;
  - (e) all COT Submittals provided in CAD format shall be in accordance with Metrolinx CADD/BIM Standards Manual; and
  - (f) all COT Submittals shall be uploaded to Contracting Authority’s Web Based Project Management System in portable document format (pdf) and in their native format at the same time the Submittals are forwarded to Contracting Authority.

**7. CITY OF TORONTO REVIEW PROCESS**

- 7.1 Project Co shall include all engineering disciplines in one package, as applicable, for submissions of documents listed in Section 3.1 for City of Toronto technical review. Submission requirements are indicated at their earliest submittal and may also be required at subsequent submittals.
- 7.2 For COT Submittals in accordance with Attachment 1, Site Plan Review, such submittals would be made following Project Co submitting a ‘place holder’ site plan review application to begin the site plan review process for Project Co Infrastructure in accordance with Appendix B to Schedule 34 – Permits, Licences, Approvals and Agreements.
- 7.3 For COT Submittals in accordance with Attachment 2, COT Submittals would be made such that the COT technical review can be completed in advance of the scheduled timing of any associated applications for Permits, Licences, Approvals and Agreements.
- 7.4 Upon completion of the City of Toronto technical review, comments will be provided to Contracting Authority for response by Project Co. Project Co shall carry out the correction and re-submit process set out in Section 4.3 of Part A of this Schedule 10 until the Works Submittal has been assigned a “NO COMMENT” or a “REVIEWED AS NOTED – MINOR ISSUES”.

- 7.5 Following assignment of a “NO COMMENT” or a “REVIEWED AS NOTED – MINOR ISSUES” by Contracting Authority on items related to Attachment 1, Site Plan Review, Project Co shall proceed through the subsequent steps of the Site Plan Review process as identified in Item No. 1 in Appendix B to Schedule 34 – Permits, Licences, Approvals and Agreements.
- 7.6 Following assignment of a “NO COMMENT” or a “REVIEWED AS NOTED – MINOR ISSUES” by Contracting Authority on items related to Works that impact City of Toronto infrastructure, for items identified in Attachment 2, Project Co shall proceed with the relevant Permits, Licences, Approvals and Agreements requirements as identified in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 7.7 Assignment of “NO COMMENT” for a submittal by the City of Toronto does not exempt Project Co from compliance with applicable codes and standards, local by-laws, and other governing regulations. City of Toronto will not accept any responsibility for the accuracy and adequacy of the design, which will remain the sole responsibility of Project Co.
- 7.8 The content or result of any City of Toronto technical review does not absolve Project Co of its responsibility to obtain all related Permits, Licences, Approvals and Agreements required to implement the Works.
- 8. CITY OF TORONTO TECHNICAL MEETINGS**
- 8.1 Project Co shall prepare for and present at City of Toronto Technical Meetings with Contracting Authority and City of Toronto during the development of the Design Development Submittals and Construction Document Submittals, for the purposes of observing compliance with applicable requirements.
- 8.2 The City of Toronto Technical Meetings shall, at a minimum, occur at the following:
- (a) one City of Toronto Technical Meeting prior to submission of the Design Development Submittals applicable to the Works listed in Section 3.1;
  - (b) one City of Toronto Technical Meeting, prior to submission of all Construction Document Submittals, and after submission of all Design Developmental Submittals, applicable to the Works listed in Section 3.1.
- 8.3 Contracting Authority, City of Toronto, or Project Co may request additional City of Toronto Technical Meetings, as required. For any additional City of Toronto technical reviews requested by Contracting Authority or City of Toronto, Contracting Authority will notify Project Co of any such request.
- 8.4 Contracting Authority and City of Toronto may, at their sole discretion, waive the requirement for some or all City of Toronto Technical Meetings.
- 8.5 For each City of Toronto Technical Meeting, Project Co shall:
- (a) advise Contracting Authority and City of Toronto of the intention to hold each COT Technical Meeting, or respond to a request from Contracting Authority for an additional

COT Technical Meeting, a minimum of fifteen (15) Business Days prior to the proposed COT Technical Meeting date;

- (b) submit an agenda for each City of Toronto Technical Meeting to Contracting Authority a minimum of five (5) Business Days prior to the proposed City of Toronto Technical Meeting date; and
  - (c) submit interim Design Development Submittals or interim Construction Document Submittals, as applicable and as required to facilitate the discussion at each City of Toronto Technical Meeting, to Contracting Authority a minimum of ten (10) Business Days prior to the proposed City of Toronto Technical Meeting date.
- 8.6 Project Co shall ensure that the content of the Design Development Submittals and the Construction Document Submittals, presented at any City of Toronto Technical Meetings, are appropriate to the subject and discipline, that the information provided is adequate to show that the design is proceeding in compliance with the Project Agreement for all disciplines, and that the content has been developed in consideration of the relevant Construction Activities.

## 9. DESIGN CHARETTE FOR QUEEN STATION VENTS

- 9.1 Project Co shall prepare for and present a three stage design charette with Contracting Authority and City of Toronto for the development of the concept option for the venting above grade at Queen Station as an input to this Schedule 10.
- (a) *Workshop 1:* Initial concept options, with presentation of three options for each of the feature elements with presentation materials prepared in advance including precedents and concept sketches and illustrations for the three alternative designs. Project Co shall submit presentation material a minimum of five (5) Business Days prior to the proposed design charette.
  - (b) *Workshop 2:* Development of two selected options from the initial meeting with a minimum of two photorealistic renderings superimposed it into context photos of each of the proposed options at least location. Project Co shall submit presentation material a minimum of five (5) Business Days prior to the proposed design charette.
  - (c) *Workshop 3:* Development of selected option with further development of design, confirmation of technical venting requirements compliance and a minimum of three updated photorealistic renderings superimposed into context photos of each of the proposed feature elements with a minimum of one rendering showing the night lighting condition. Project Co shall submit presentation material a minimum of five (5) Business Days prior to the proposed design charette.
- 9.2 The design charette process is intended to be completed as an input to the Works Submittal item S-110 (*Architectural and Urban Design Quality*) of Appendix A to this Schedule 10.

**ATTACHMENT 1 TO APPENDIX B****SITE PLAN REVIEW CHECKLIST**

- 1.1 As identified in Item No. 1 in Appendix B to Schedule 34 – Permits, Licences, Approvals and Agreements, Project Co shall prepare and submit all documentation and materials that the City of Toronto will require to complete site plan review of Project Co Infrastructure for which site plan review is applicable.
- 1.2 The following is a detailed, non-exhaustive list of Site Plan Review Submittals (individually, “**SPR Submittal**” or collectively “**SPR Submittals**”) as well as the format for each, that Project Co is required to provide to Contracting Authority for review and comment in accordance with this Schedule 10. A description of the minimum content of each COT Submittal provided is set forth in this Attachment 1.
- 1.3 The Works Submittals delivered pursuant to Appendix A to this Schedule 10 which have equivalent content to satisfy the requirements of SPR Submittals are permitted to be reused in accordance with the table below, provided that they meet all the requirements of each SPR Submittal section they are applied to.
- 1.4 Project Co shall modify as appropriate the Works Submittals delivered pursuant to Appendix A to address the relevant sections of the Application Support Material: Terms of Reference (Application Support Material: Terms of Reference – City of Toronto).
- 1.5 For each of the SPR Submittals that Project Co is required to provide to Contracting Authority for review and comment in accordance with this Schedule 10 for a specific location (e.g. Station), the site plan areas indicated in those submittals shall be consistent across all SPR Submittals for that location. This would include those Works Submittal deliverables pursuant to Appendix A to this Schedule 10 which have equivalent content to satisfy the requirements of SPR Submittals that are permitted to be re-used.

[REDACTED]



**ATTACHMENT 2 TO APPENDIX B****CITY OF TORONTO WORKS CHECKLIST**

- 1.1 The following is a detailed, non-exhaustive list of City of Toronto Works Submittals (individually, “**COT Works Submittal**” or collectively “**COT Works Submittals**”) as well as the format for each, that Project Co is required to provide to Contracting Authority for review and comment in accordance with this Schedule 10. A description of the minimum content of each COT Works Submittal provided is set forth in this Attachment 2.
- 1.2 The Works Submittals delivered pursuant to Appendix A to this Schedule 10 which have equivalent content to satisfy the requirements of COT Works Submittals are permitted to be reused in accordance with the table below, provided that they meet all the requirements of each COT Works Submittal section they are applied to.
- 1.3 For each of the COT Works Submittals that Project Co is required to provide to Contracting Authority for review and comment in accordance with this Schedule 10 for a specific location, the areas indicated in those submittals shall be consistent across all COT Works Submittals for that location. This would include those Works Submittal deliverables pursuant to Appendix A to this Schedule 10 which have equivalent content to satisfy the requirements of COT Works Submittals that are permitted to be re-used.

**[REDACTED]**

**APPENDIX C TO SCHEDULE 10****TTC SUBMITTALS REQUIREMENTS****1. DEFINITIONS**

1.1 Unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 10 shall have the meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**TTC Design Management Plan**” has the meaning given in Section 3.3 of this Appendix C.

**2. OVERVIEW**

2.1 The purpose of Appendix C is to facilitate the TTC review of technical submittals related to the Works listed in Section 3.1 of this Appendix C, or as defined by this Appendix C. Whereas Appendix A includes submittals of interest to multiple parties (including TTC), this Appendix C captures additional submittal requirements for the Works in regards to New TTC Infrastructure. The focus of this technical review is to ensure conformance to the Output Specifications and this Schedule 10.

2.2 Where there is a conflict between this Appendix C and Appendix A with respect to TTC review of Project Co submittals related to items listed in Section 3.1, this Appendix C shall take precedence.

**3. TTC DESIGN MANAGEMENT PLAN**

3.1 The requirements of this Appendix C shall apply to all Design Development Submittals and Construction Document Submittals related to Works impacting Queen Station and Osgoode Station.

3.2 Project Co shall prepare and submit an appendix to the Design Management Plan for all areas listed in Section 3.1 of this Appendix C (the “**TTC Design Management Plan**”) to Contracting Authority and TTC for review (concurrent with the review of the Design Management Plan), in accordance with the Review Procedure.

3.3 The TTC Design Management Plan shall supplement the information provided in the Design Management Plan with the following:

- (a) identification of all components of the Works to which the requirements of the TTC Design Management Plan will extend, in accordance with Section 3.1 of this Appendix C;
- (b) identification of all Design Development Submittals and Construction Document Submittals to which TTC Design Management Plan will extend;
- (c) a design review and audit schedule, consistent with the Design Quality Management Plan and the Works Schedule, indicating dates that Project Co plans to undertake Technical Review Meetings with TTC and Contracting Authority, in accordance with Sections 6 and 7 of this Appendix C; and

- (d) a drawing tree indicating the organization and hierarchy of all drawings to which TTC Design Management Plan applies.
- 3.4 Project Co shall submit any subsequent amendments or updates to the TTC Design Management Plan to Contracting Authority and TTC in accordance with the Review Procedure and this Appendix C.
- 3.5 Project Co shall implement and comply with the TTC Design Management Plan and any subsequent amendments or updates to the initial TTC Design Management Plan made following review by Contracting Authority and TTC in accordance with the Review Procedure, including but not limited to requirements per the Output Specifications, and any other requirements within the items listed in Section 3.1 of this Appendix C.
- 3.6 In addition to the applicable items listed in Section 3.6 of Part A of this Schedule 10, Project Co shall submit to TTC, for each New TTC Infrastructure:
- (a) log of all previous submissions with dates, reference numbers, TTC review submission numbers and list of documents in each submission;
  - (b) spreadsheet summarizing responses to and status of comments of all previous submissions.
  - (c) all relevant references, meeting minutes, record of discussions, calculations, drawings and documents (including extracts of related documents in previous submissions) quoted or referred to in the current submission for reviewer's reference.

#### **4. DESIGN DEVELOPMENT SUBMITTALS**

- 4.1 Project Co shall ensure that Design Development Submittals for items listed in Section 3.1 of this Appendix C are submitted in accordance with the TTC Design Management Plan and the requirements of the Review Procedure, and are:
- (a) submitted commensurate with the design submission for such submittals described in Appendix A to Schedule 10 – Review Procedure; and
  - (b) corrected as required in response to the comments provided by Contracting Authority and TTC for any previous submittals, as required in order to comply with the time periods for such corrections described in Schedule 10 – Review Procedure.
- 4.2 Project Co shall ensure that all Design Development Submittals for the items listed in Section 3.1 of this Appendix C are submitted in accordance with the TTC design checklist presented in this Appendix C.

#### **5. CONSTRUCTION DOCUMENT SUBMITTALS**

- 5.1 Project Co shall ensure that Construction Document Submittals for items listed in Section 3.1 of this Appendix C are submitted in accordance with the TTC Design Management Plan and the requirements of the Review Procedure, and are:

- (a) submitted commensurate with the design submission for such submittals described in Appendix A to Schedule 10 – Review Procedure; and
  - (b) corrected as required in response to the comments provided by Contracting Authority and TTC for any previous submittals, as required in order to comply with the time periods for such corrections described in Schedule 10 – Review Procedure.
- 5.2 Project Co shall submit quality control/quality assurance plan for Construction Activities within the vicinity of the Queen Station and Osgoode Station, detailing the inspection and test program to be implemented.
- 5.3 Project Co shall ensure that all Construction Document Submittals for the items listed in Section 3.1 of this Appendix C are submitted in accordance with the TTC design checklist presented in this Appendix C.
- 6. TTC REVIEW PROCESS**
- 6.1 Project Co shall include all engineering disciplines in one package, as applicable, for submissions of documents listed in Section 3.1 of this Appendix C for TTC technical review. Submission requirements are indicated at their earliest submittal and may also be required at subsequent submittals, including construction and post-construction stages of work. For clarity, submission requirements and submittal are captured in the table below, in this Appendix C.
- 6.2 Upon completion of the TTC technical review, comments will be provided to Contracting Authority for response by Project Co and the provisions of Section 4 of Part A of this Schedule shall apply.
- 6.3 Upon review of conformance that TTC’s requirements as set out within the Project Agreement and the Works Submittal has been assigned a “NO COMMENT” or a “REVIEWED AS NOTED – MINOR ISSUES” as it pertains to the TTC requirements as set out within the Project Agreement, a Consent to Proceed letter shall be issued by TTC.
- 6.4 Assignment of “NO COMMENT” for a submittal by the TTC does not exempt Project Co from compliance with applicable codes and standards, local by-laws, and other governing regulations. TTC will not accept any responsibility for the accuracy and adequacy of the design, which will remain the sole responsibility of Project Co.
- 6.5 The content or result of any TTC technical review does not absolve Project Co of its responsibility to obtain all related Permits, Licences, Approvals and Agreements required to implement the Works.
- 6.6 The technical submissions shall include:
- (a) calculations,
  - (b) a complete set of drawings,
  - (c) specifications and technical documentation with an emphasis on the review of:
    - (i) construction staging;

- (ii) geotechnical and structural components of the Works associated with Queen Station and Osgoode Station;
- (iii) shoring/excavation, as required.

6.7 Project Co shall submit the following number of documents at each submission:

- (a) Plans & Surveys (Control / Topographic / Utility / Property):
  - (i) two (2) complete sets of full size plans and surveys; and
  - (ii) seven (7) complete sets of half size plans and surveys.
- (b) Drawings (geotechnical/structural):
  - (i) seven (7) complete sets of half size drawings.
- (c) Specifications:
  - (i) seven (7) complete sets (hard copies).
- (d) Reports:
  - (i) nine (9) copies of all required reports.
- (e) Electronic Format:
  - (i) one (1) CD or USB containing all plans, property surveys, drawings, specifications and reports in PDF format; and
  - (ii) one (1) CD or USB containing digital files of the property surveys in Microstation (.dgn) format.

## 7. TTC TECHNICAL MEETINGS

7.1 Project Co shall prepare for and present at TTC Technical Meetings with Contracting Authority and TTC during the development of the Design Development Submittals and Construction Document Submittals, for the purposes of observing compliance with applicable requirements in the Output Specifications and this Schedule 10.

7.2 The TTC Technical Meetings shall occur at the following:

- (a) one TTC Technical Meeting prior to submission of the Design Development Submittals applicable to the Works listed in Section 3.1 of this Appendix C;
- (b) one TTC Technical Meeting, prior to submission of all Construction Document Submittals, and after submission of all Design Developmental Submittals, applicable to the Works listed in Section 3.1 of this Appendix C.

- 
- 7.3 Contracting Authority, TTC, or Project Co may request additional TTC Technical Meetings, as required. For any additional TTC technical reviews requested by Contracting Authority or TTC, Contracting Authority will notify Project Co of any such request.
- 7.4 Contracting Authority and TTC may, at their sole discretion, waive the requirement for some or all TTC Technical Meetings.
- 7.5 For each TTC Technical Meeting, Project Co shall:
- (a) advise Contracting Authority of the intention to hold each TTC Technical Meeting, or respond to a request from Contracting Authority for an additional TTC Technical Meeting, a minimum of fifteen (15) Business Days prior to the proposed TTC Technical Meeting date;
  - (b) submit an agenda for each TTC Technical Meeting to Contracting Authority a minimum of five (5) Business Days prior to the proposed TTC Technical Meeting date; and
  - (c) submit interim Design Development Submittals or interim Construction Document Submittals, as applicable and as required to facilitate the discussion at each TTC Technical Meeting, to Contracting Authority a minimum of ten (10) Business Days prior to the proposed TTC Technical Meeting date.
- 7.6 Project Co shall ensure that the content of the Design Development Submittals and the Construction Document Submittals, presented at any TTC Technical Meetings, are appropriate to the subject and discipline, that the information provided is adequate to show that the design is proceeding in compliance with the Project Agreement for all disciplines, and that the content has been developed in consideration of the relevant Construction Activities.

[REDACTED]

**APPENDIX D TO SCHEDULE 10**

**RSSOM INFRASTRUCTURE WORKS SUBMITTALS**

**2. RSSOM INFRASTRUCTURE WORKS SUBMITTALS**

2.1 The following is a list of RSSOM Infrastructure Works Submittals.

2.2 For each RSSOM Infrastructure Works Submittal, Project Co is responsible for commenting on the conformity to Project Co Infrastructure in accordance with Part C – Review of RSSOM Infrastructure Design and Construction Data of this Schedule 10.

**[REDACTED]**

**SCHEDULE 11**

**QUALITY MANAGEMENT**

**PART 1 DEFINITIONS ..... 2**  
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## PART 1 DEFINITIONS

### 1.1 Definitions

In this Schedule 11, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 11) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Appropriate Persons**” has the meaning given in Section 2.3(c).
- (b) “**CAIT Manual Requirements**” or “**Construction Administration and Inspection Task Manual Requirements**” means, at the applicable time, the Construction Administration and Inspection Task Manual Requirements developed by the MTO.
- (c) “**Closing Meeting**” has the meaning given in Section 5.8(a).
- (d) “**Construction Quality Control Manager**” means an individual construction quality control manager responsible for each of the quality control requirements as set out in the CQMP as described in Section 3.4.
- (e) “**Construction Quality Management Plan**” or “**CQMP**” means the plan for the quality management of the Works prepared by Project Co in accordance with Appendix C.
- (f) “**Construction Quality Manager**” has the meaning given in Section 3.3(e).
- (g) “**Corrective Action**” means an action to eliminate the cause of an existing Non-Conformance, defect or other undesirable situation and to prevent its recurrence.
- (h) “**Corrective Action Date**” means the date by which Project Co shall complete the implementation of a Corrective Action in accordance with this Schedule 11.
- (i) “**Corrective Actions Plan**” has the meaning given in Section 5.3(a)(iv).
- (j) “**Design Quality Management Plan**” or “**DQMP**” means the plan for the quality management of the design of the project prepared by Project Co in accordance with Appendix B.
- (k) “**Design Quality Manager**” has the meaning given in Section 3.3(d).
- (l) “**Disposition**” means the applicable decision made from the outcome of a review process in response to a Non-Conformance Report described in Table 7.1 of Section 7.1 provided by the Quality Director pursuant to Section 7.1(a)(iv).
- (m) “**External Quality Audit**” means either or both:
  - (i) a second party Quality Audit conducted by parties having an interest in Project Co or the relevant Project Co Party, such as parties with commercial contracts with Project Co or a relevant Project Co Party or customers/clients of Project Co or a relevant Project Co Party; and

- (ii) a third party Quality Audit conducted by an external independent organization such as a certification or registration body.
- (n) **“Independent Quality Audit”** means a third party audit of the Quality Management System conducted by an independent quality auditor certified by an accredited auditors’ registration body such as International Register for Certified Auditors, Registrar Accreditation Board, National Quality Institute, or other equivalent body.
- (o) **“Inspection and Test Plan”** or **“ITP”** means the plan prepared in accordance with Section C.1(f)(i) of Appendix C.
- (p) **“Internal Quality Audit”** means a first party Quality Audit of Project Co’s or a Project Co Party’s own processes conducted by or on behalf of the relevant organization.
- (q) **“ISO 9001:2015 Lead Auditor”** means a quality auditor who has successfully completed an ISO 19011 accredited course for lead auditors.
- (r) **“ISO 9001:2015 Lead Auditor Training Course”** means an accredited ISO 19001:2015 training course for lead auditors who meet the training portion of the requirements for current certification of individual quality system auditors with the International Register of Certified Auditors or similar certifying bodies such as Chartered Quality Institute, Exemplar Global or other equivalent body.
- (s) **“ISO 9001:2015 Standard”** means the ISO 9001:2015 standard, as amended, updated or replaced from time to time.
- (t) **“ISO/IEC”** International Organization for Standardization / International Electrotechnical Commission.
- (u) **“ISO/IEC 17025 Standard”** means the ISO/IEC 17025 standard, as amended, updated or replaced from time to time.
- (v) **“ITP Two-Week Look-Ahead”** has the meaning given in Section C.1(e)(vi) of Appendix C.
- (w) **“NC Remedy Date”** has the meaning given in Table 7.1 of Section 7.1.
- (x) **“Non-Conformance Report”** means a document issued by either Contracting Authority or Project Co pursuant to Section 7.1 detailing the description of an identified Non-Conformance, the remedial action taken or proposed to be taken to eliminate the Non-Conformance, and the date by which the remedial action was completed or proposed to be completed.
- (y) **“Non-Conformance Tracking System”** means a system to track Non-Conformance Reports issued by Contracting Authority or Project Co as set out in Section 7.2.
- (z) **“Ontario Provincial Standards Specifications”** or **“OPSS”** means the Ontario Provincial Standards for roads and public works, as amended from time to time.
- (aa) **“Project Co Quality Audit Report”** has the meaning given in Section 5.2(a)(vii).

- (bb) “**Project Schedules Management Plan**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- (cc) “**Project Schedules Quality Manager**” has the meaning given in Section 3.3(g).
- (dd) “**Quality Audit**” means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.
- (ee) “**Quality Audit Program Plan**” means Project Co’s audit program plan defining the Internal Quality Audits, External Quality Audits and Independent Quality Audits that Project Co shall perform or cause to be performed on its own processes and the processes of Project Co Parties.
- (ff) “**Quality Director**” has the meaning given in Section 3.2.
- (gg) “**Quality Documentation**” has the meaning given in Section 6.3.
- (hh) “**Quality Key Performance Indicators**” has the meaning given in Section 8.1(b)(ii).
- (ii) “**Quality Management Plans**” or “**QMPs**” includes the DQMP and CQMP and any other quality management plan required for the purposes of undertaking any material and substantial aspect of the Works. All such plans are subject to the Quality Management System.
- (jj) “**Quality Management System**” has the meaning given in Section 2.1(a).
- (kk) “**Quality Managers**” means individual quality managers responsible for each of the Quality Management Plans.
- (ll) “**Quality Manual**” means Project Co’s quality manual meeting the requirements set out in Appendix A.
- (mm) “**Quality Objectives**” means the objectives related to quality that are measurable and consistent with the Quality Policy and which are to be formally expressed and recorded in the Quality Manual in accordance with this Schedule 11, provided that, alternatively, each Quality Management Plan may have its own Quality Objectives which are directly related to the applicable Quality Policy expressed or recorded in the Quality Manual.
- (nn) “**Quality Policy**” means the overall intentions and direction of Project Co related to quality applicable to Project Co and all Project Co Parties involved in performing the Works which are to be formally expressed and recorded in the Quality Manual in accordance with this Schedule 11, provided that, alternatively, each Quality Manual may have its own Quality Policy which is directly related to applicable Quality Objectives expressed or recorded in the Quality Manual.
- (oo) “**Quality Records**” has the meaning given in Section 6.8(a).
- (pp) “**Surveillance Quality Audits**” means Quality Audits conducted by or on behalf of Contracting Authority as contemplated in Section 5.3(c)(i)(A).
- (qq) “**Traffic Quality Manager**” has the meaning given in Section 3.3(f).

- (rr) **“Witness and Hold Point”** means (A) a point of time in the construction process when it would be unreasonably onerous or impossible, to confirm conformance to or compliance with the Output Specifications with respect to either materials or workmanship once work proceeds past this point and (B) any other witness and hold point that is required by Project Co.

## PART 2 QUALITY MANAGEMENT SYSTEM

### 2.1 Quality Management System

- (a) Project Co shall develop and implement a quality management system in accordance with the requirements of this Schedule 11 (the “**Quality Management System**”) for the Works. The Quality Management System shall include, at a minimum, processes for quality assurance and quality control, testing, auditing, equipment commissioning and performance measurement for all Works, including design, construction, materials, warranties on systems, workmanship and services. Project Co acknowledges and agrees that Project Co is solely responsible for the quality of the Works and that a comprehensive Quality Management System is critical for the proper and timely completion of the Works.

### 2.2 Project Co Responsibilities

- (a) Project Co is responsible for all quality assurance and quality control activities set out in this Schedule 11 that are required to manage its own processes as well as those of the Project Co Parties throughout the Project Term. Project Co shall ensure that all aspects of the Project are the subject of a Quality Management System that complies with the provisions of this Schedule 11, and shall comply with and cause all Project Co Parties to comply with the requirements of such Quality Management System. For greater certainty and without limiting Project Co’s ability to contractually assign responsibilities and obligations to Project Co Parties in accordance with the Project Agreement, Project Co shall not be relieved of any of Project Co’s responsibilities or obligations set out in this Schedule 11 by the assignment of such responsibilities or obligations to Project Co Parties.

### 2.3 Design and Construction Certification

- (a) Project Co shall implement and enforce the procedures set out in this Section 2.3 throughout the Project Term.
- (b) The procedures set out in this Section 2.3 shall apply to all Design Data prepared or adopted in connection with the Works.
- (c) Project Co shall ensure that all certification procedures referred to in this Section 2.3 are complied with by the appropriate persons referred to therein, including the Design Team, and any independent team or engineer within the Design Team, as the case may be (together, the “**Appropriate Persons**”), and that all Appropriate Persons are at all relevant times duly authorized and qualified to carry out such procedures and to sign the relevant certificates. Any failure by any Appropriate Person to fulfil the obligations required of them under this Section 2.3 shall be a breach of the Project Co’s obligations under the Project Agreement.
- (d) Project Co shall submit all Design Certificates and Construction Certificates, Permits, Licences, Approvals and Agreements and other regulatory process documents from Governmental Authorities, together with the supporting documentation, to the Contracting Authority Representative for review, acting reasonably, in accordance with Schedule 10 – Review Procedure. The submitted Design Certificates and Construction Certificates shall have original signatures, seals and registration numbers, and shall be in such form as to allow the Contracting

Authority Representative to perform its review function in respect of such Design Certificate or Construction Certificate without delay.

- (e) Project Co shall submit Construction Certificates to the Contracting Authority Representative for review, acting reasonably, in accordance with Schedule 10 – Review Procedure, for each:
  - (i) substantially completed components; and
  - (ii) entirely completed components.

## 2.4 Quality Management System Requirements

- (a) The Quality Management System shall be applicable to all Project Co Parties, including each Subcontractor.
- (b) The Quality Management System shall, at a minimum, include the Quality Documentation described in Part 6, including:
  - (i) Inspection and Test Plans for all components of the Works;
  - (ii) processes for:
    - (A) assessing and tracking training requirements;
    - (B) providing all staff with Quality Management System requirements of the Project Agreement;
    - (C) updating training; and
    - (D) maintaining all training records,applicable to all Project Co Parties, including each Subcontractor;
  - (iii) methods to ensure compliance with the Quality Management System by each Project Co Party;
  - (iv) techniques for integration between all of the Works;
  - (v) documentation and verification procedures;
  - (vi) defined roles and responsibilities for all members of the Quality Management System team;
  - (vii) testing and commissioning; and
  - (viii) determining and applying the criteria and methods (including monitoring, measurements and related performance indicators) needed to ensure the effective operation and control of these processes.
- (c) The Quality Management System shall comply with:

- (i) the requirements and principles of the ISO 9001:2015 Standard and any other applicable standards specified in this Schedule 11;
- (ii) Good Industry Practice; and
- (iii) all other requirements set out in this Schedule 11 and the Project Agreement.

**2.5 Compliance of Quality Management System**

(a) Specific Requirements

- (i) The Quality Management System must be fully compliant with ISO 9001:2015 Standard no later than one-hundred and eighty (180) days following Financial Close. For clarity, the submission deadlines for the Quality Manual and all Quality Management Plans are set out in Table 2.6.
- (ii) Compliance shall be subject to review and must be accepted by Contracting Authority, which compliance shall be maintained by Project Co throughout the Project Term.
- (iii) The scope of compliance for the Quality Management System should be clearly defined to address the Works, including traffic management and environmental considerations in respect of the Project.
- (iv) Project Co shall update its Quality Management System and all Quality Documentation as required to ensure that the Quality Management System and all Quality Documentation are and at all times remain in full compliance with the ISO 9001:2015 Standard and the requirements of this Schedule 11. All Quality Documentation shall be made available to Contracting Authority upon request.

(b) Compliance with Quality Management System

- (i) Project Co shall ensure that any Project Co Party who performs any portion of the Works shall comply with the Quality Management System as it relates to that portion of the Works in connection with the activities covered by that party’s contract with Project Co.

**2.6 Documentation Deliverables**

(a) Deliverables

- (i) Without limiting the generality of Section 2.4, Project Co shall provide to Contracting Authority, by the dates shown in Table 2.6, each of the following:

**Table 2.6 – Schedule of Plans and Reports**

Deliverable Name	Schedule 11 Specification Reference	Submission Deadline	Submitted under the Review Procedure

<b>Deliverable Name</b>	<b>Schedule 11 Specification Reference</b>	<b>Submission Deadline</b>	<b>Submitted under the Review Procedure</b>
Quality Manual	Appendix A	Submitted within thirty (30) days following Financial Close	Yes
Design Quality Management Plan	Appendix B	Submitted within forty-five (45) days following Financial Close	Yes
Construction Quality Management Plan	Appendix C	Submitted within ninety (90) days following Financial Close	Yes
List of ITPs and production timelines for submittal	Appendix C	Submitted within ninety (90) days following Financial Close	Yes
Quality Audit Program Plan	Section 5.1	Submitted within thirty (30) days following Financial Close	Yes
Quality Audit Program Plan updates	Section 5.1	At quarterly intervals following Quality Audit Program Plan submittal	Yes
Monthly Quality Management System reports	Section 8.1	Within ten (10) Business Days of each month (in respect of previous month)	Yes
Project Co Quality Audit Reports	Section 5.2	Each submitted within ten (10) Business Days following the applicable Closing Meeting	Yes
Corrective Actions Plans	Section 5.3	Each submitted as per Table 7.1	Yes

(ii) Where specified in Table 2.6, Project Co shall submit all deliverables of the Quality Management System to Contracting Authority for review in accordance with Schedule 10 – Review Procedure.

(b) Specific Requirements

(i) Project Co shall prepare and submit a Quality Management Plan for the Construction Contractor in respect of the activities covered by that party's contract with Project Co and meeting the requirements of the Quality Manual, and Project Co shall cause all other



contractors engaged by Project Co for the purposes of undertaking any material or substantial aspect of the Works to comply with the Quality Manual.

(c) Timing of Implementation

- (i) The Quality Management System must be fully compliant with ISO 9001:2015 Standard no later than one-hundred and eighty (180) days following Financial Close. Project Co shall not commence or permit the commencement of any aspect of the Works before those parts of the Quality Documentation that concern such aspect of the Works have been submitted to and reviewed by Contracting Authority in accordance with this Schedule 11, unless otherwise agreed in advance between Project Co and Contracting Authority.

**2.7 Continuous Improvement in Quality Management System**

- (a) Project Co shall implement a program and shall have mechanisms in place, such as management reviews and Quality Audit Program Plans, to allow all identified opportunities for improvement of the effectiveness of the Quality Management System to be recorded, tracked and implemented or closed out.
- (b) Project Co shall ensure that all Project Co Parties are aware of the importance of continuous improvement and are actively engaged in the implementation of the Quality Management System in connection with the performance of the Works.

**PART 3**  
**QUALITY PERSONNEL**

**3.1 General**

- (a) Project Co shall provide separate personnel with the required qualifications in a full time role in support of the Quality Management System as set out in this Part 3.

**3.2 Quality Director**

(a) Appointment and General Responsibilities

- (i) At all times during the Project Term, Project Co shall employ, or otherwise engage by sub-contract, a Quality Director who shall,
- (A) irrespective of such person's other responsibilities, have defined authority for ensuring the establishment and maintenance of the Quality Management System and auditing and reporting on the status of, and compliance with the Quality Management System, including the requirements set forth in this Section 3.2(a);
  - (B) have experience in a similar quality management representative role on a project of similar size, complexity and contractual value, and be a certified ISO 9001:2015 Lead Auditor or have successfully completed a certified ISO 9001:2015 Lead Auditor Training Course from a recognized certification body;
  - (C) have an independent organizational structure, demonstrated through reporting and communication lines, to that of the Design Team, the Construction Contractor's production and supervision staff; and
  - (D) have full access to all Quality Documentation described in the Quality Management System held with Project Co Parties.
- (ii) The identity of the Quality Director (and any replacement thereof) and his/her job specification and responsibilities shall be subject to the approval of Contracting Authority (such approval not to be unreasonably withheld or delayed), and the Quality Director shall be a Key Individual.

(b) Specific Responsibilities

- (i) Without limiting the generality of the foregoing, the job specification and responsibilities of the Quality Director shall include the following:
- (A) developing, implementing and maintaining, and ensuring the effective operation of, the Quality Management System;
  - (B) initiating management reviews, not less frequently than annually, and taking other actions necessary to ensure the effective operation and continuous improvement of the Quality Management System across all Project Co Parties;

- (C) preparing the annual Quality Audit Program Plan and quarterly updating, scheduling and coordinating Internal Quality Audits and External Quality Audits of key processes with the relevant Project Co Parties;
  - (D) scheduling and coordinating Independent Quality Audits with the independent quality auditor;
  - (E) ensuring that all Quality Audits required under Section 5.2 and under the Quality Documentation are conducted, and reporting the findings of such audits to Contracting Authority;
  - (F) having the authority to immediately stop any work or activity which is not being performed or carried out in accordance with the Quality Documentation applicable thereto;
  - (G) liaising with Contracting Authority and acting as the primary representative for Project Co on all matters relating to quality management;
  - (H) coordinating all activities that demonstrate to Project Co and Contracting Authority that the Quality Management System meets the requirements of this Schedule 11;
  - (I) preparing and submitting to Contracting Authority monthly Quality Management System reports;
  - (J) ensuring that relevant Quality Records are retained in accordance with the Quality Management System and the requirements of Schedule 26 – Record Provisions;
  - (K) developing and implementing a program for Corrective Actions for Non-Conformances irrespective of the cause of the Non-Conformance;
  - (L) approve and sign off on the action taken in close out of Non-Conformance Reports; and
  - (M) carrying out any other matters which, in accordance with the Project Agreement, are the responsibility of the Quality Director.
- (c) Project Co shall not assign the responsibilities and obligations of the Quality Director to any other Project Co Party.

### 3.3 Quality Managers

- (a) Project Co shall appoint Quality Managers, who shall report directly to the Quality Director and shall not be directed by the Design Team's production and supervision staff who perform the design and engineering services in respect of the Works and the Construction Contractor's production and supervision staff, who perform the Works.

- (b) The Quality Managers shall be responsible for following the Quality Management Plans developed by Project Co including the DQMP and CQMP, and shall be responsible for supporting quality control and quality assurance awareness and implementation within the management plans identified in Schedule 10 – Review Procedure as well as the close-out of Non-Conformance Reports for their respective areas of responsibility.
- (c) The Quality Managers shall be certified as quality professionals from certifying bodies, as a minimum successful completion of an ISO 9001:2015 Lead Auditor Training Course.
- (d) The Quality Manager for the DQMP shall be responsible to ensure that reviews, checking and verification are undertaken for all designs, and be a Professional Engineer with experience overseeing the quality of the design of a project within the field of rail and transit, transportation and infrastructure projects of similar size, complexity and contractual value to this Project (the “**Design Quality Manager**”).
- (e) The Quality Manager for the CQMP shall have experience overseeing the construction quality of a project within the field of rail and transit, transportation and infrastructure projects of similar size, complexity and contractual value to this Project (the “**Construction Quality Manager**”).
- (f) The Quality Manager for the TTMP shall be a traffic management professional with experience in traffic management for roads and transit of a Project of similar size, complexity and contractual value (the “**Traffic Quality Manager**”).
- (g) The Quality Manager for the Project Schedules Management Plan shall be a scheduling professional with experience in scheduling and project planning on a project within the field of rail and transit, transportation and infrastructure projects of similar size, complexity and contractual value to this Project (the “**Project Schedules Quality Manager**”).
- (h) Project Co shall ensure that distinct, qualified individual(s) are appointed to each of the following roles:
  - (i) Design Quality Manager;
  - (ii) Construction Quality Manager;
  - (iii) Traffic Quality Manager; and
  - (iv) Project Schedules Quality Manager.

Project Co shall ensure that no single individual occupies more than one of these roles, unless Project Co has obtained the prior written consent of Contracting Authority, acting reasonably.

### 3.4 Construction Quality Control Manager

- (a) Project Co shall appoint a Construction Quality Control Manager who shall be responsible for quality control requirements as set out in the CQMP for the Works.

- (b) The Construction Quality Control Manager shall be certified as a quality professional from a certifying body, as a minimum successful completion of an ISO 9001:2015 Lead Auditor Training Course.
- (c) The Construction Quality Control Manager shall be responsible for the preparation, review and implementation of the Inspection and Test Plans.
- (d) The responsibilities of the Construction Quality Control Manager shall include supervision of quality inspection staff and ensuring that individuals have the required qualifications and experience to undertake the quality control requirements as set out in the CQMP.
- (e) The Construction Quality Control Manager, as identified in Schedule 9 – Key Individuals, shall have experience as a quality manager or quality control manager for the construction within the field of rail and transit, transportation and infrastructure projects of similar size, complexity and contractual value to this Project in addition to CAIT Manual Requirements and Ontario Provincial Standards Specifications.
- (f) The Construction Quality Control Manager shall be independent of the Construction Contractor's production and supervision staff and shall report directly to the Construction Quality Manager.

### **3.5 Construction Quality Control Staff**

- (a) Project Co's construction quality control staff shall be responsible for the inspection and testing requirements as set out in the CQMP, and shall be trained to fully understand the CQMP, have access to quality documents, Quality Records, and issued for construction drawings. Failure of construction quality control staff to show knowledge of the requirements and work shall be considered a Non-Conformance.
- (b) Project Co's construction quality control staff responsible for quality control inspection and testing for the Works shall have the qualifications demonstrated by certificates of training and experience on transit construction projects.
- (c) The construction quality control staff shall be independent of the Construction Contractor's production and supervision staff and shall report directly to the Construction Quality Control Manager.

## PART 4 TESTING

### 4.1 Testing Requirements

- (a) Where Project Co is required by the Project Agreement or any Quality Documentation to carry out any calibration, sample, test or trial, such calibration, sample, test or trial shall be carried out in accordance with the provisions of this Part 4 and the provisions of the relevant Quality Documentation, which shall reference applicable standards and Good Industry Practice.
- (b) Project Co shall ensure that all materials meet and comply with the Province of Ontario's occupational health and safety regulations.
- (c) Prior to the commencement of Works and during the Project Term, Project Co shall maintain a list of Safety Data Sheets (SDS) of all hazardous materials proposed for use and shall update Project Co's Construction Quality Management Plan accordingly.

### 4.2 Accreditation Standards

- (a) All on and off Site calibrations, samples, tests and trials shall be carried out by laboratories that are duly accredited for the carrying out of such calibrations, samples, tests and trials.
- (b) Laboratory accreditation for the Works shall be in accordance with the ISO/IEC 17025 Standard, as amended, updated or replaced from time to time, provided that, for specific activities, Contracting Authority may accept other industry-recognized accreditation in lieu of the ISO/IEC 17025 Standard.
- (c) Project Co may request the approval of Contracting Authority to use other industry-recognized accreditations, which approval shall not be unreasonably withheld or delayed if such other accreditation is applicable to the Works for which it is proposed and meets the intent of the ISO/IEC 17025 Standard.
- (d) Project Co shall ensure that valid calibration certificates for measuring and testing equipment are available and present during all relevant inspections and tests.
- (e) Project Co shall establish and maintain a log of all measuring and testing equipment, which shall include, at a minimum, equipment identification numbers, equipment descriptions, dates of last calibration, and dates of next scheduled calibration.
- (f) Project Co shall ensure that clear and unambiguous traceability exists between each inspection and test record and the measuring and test equipment log for traceability and audit purposes.
- (g) Where a material, component or assembly is required to be fire rated, the fire rating shall be in accordance with Good Industry Practice and acceptable to governing authorities.

### 4.3 Remedial Work

- (a) Project Co shall be responsible at its own cost for any remedial work required as a result of any failure to pass any calibration, sample, test or trial required in accordance with the Project

Agreement or any Quality Documentation or as a result of any laboratory not being duly accredited as required by Section 4.2.

#### 4.4 Inspection and Testing by Third Parties

- (a) Within the Quality Management Plan, Project Co Parties shall include as a minimum, testing and inspection of the following elements of the Works by qualified third party inspection and testing companies:
- (i) structural inspection and testing, including,
    - (A) strip and spread footing;
    - (B) cast in place concrete reinforcement;
    - (C) prestressed/post tensioned concrete;
    - (D) structural steel; and
    - (E) steel deck;
  - (ii) civil testing, including testing of,
    - (A) earth work and subgrade;
    - (B) manholes, pipes, conduits;
    - (C) waterproofing for underground structures;
    - (D) re-bar, concrete and precast manufacture; and
    - (E) utilities-trenching, installation and sub base; and
  - (iii) electrical testing, including,
    - (A) testing and commissioning of lighting systems.

**PART 5**  
**QUALITY AUDITS AND MONITORING**

**5.1 Quality Audit Program Plans**

- (a) Specific Requirements
- (i) Project Co shall provide a Quality Audit Program Plan to Contracting Authority in accordance with the timing set out in Table 2.6.
  - (ii) The Quality Audit Program Plan shall detail the Internal Quality Audits and the External Quality Audits that will be conducted by Project Co on its own processes and those of Project Co Parties, and the planned dates of such Quality Audits.
  - (iii) The Quality Audit Program Plan shall describe the audit procedure and process that will be followed from start to finish to conduct effective Internal Quality Audits and External Quality Audits.
  - (iv) The Quality Audit Program Plan shall detail the Independent Quality Audits that will be conducted by the independent quality auditor on Project Co and Project Co Parties, and the planned dates of such Independent Quality Audits.
- (b) Project Co shall provide an updated Quality Audit Program Plan in accordance with the timing set out in Table 2.6 following submission of the initial Quality Audit Program Plan.
- (c) The Quality Director shall update the schedule of the Internal Quality Audits and External Quality Audits at least quarterly or as agreed upon with Contracting Authority.
- (d) The Quality Director shall schedule external Independent Quality Audits at least annually or as agreed upon with Contracting Authority.

**5.2 Project Co's Quality Audits**

- (a) General
- (i) Project Co shall conduct Internal Quality Audits and External Quality Audits of its own processes and those of Project Co Parties in accordance with the requirements of this Schedule 11, and the Quality Documentation, including the Quality Audit Program Plan.
  - (ii) The audit cycle shall be planned annually with audits being executed at least quarterly or as agreed upon with Contracting Authority. The quarterly audit scope shall cover the processes applicable to the Works of the preceding quarter as well as processes identified in the Non-Conformance Reports.
  - (iii) The audits shall be conducted by individuals independent from the planning, execution, warranty, or rehabilitation of all elements of the Works.
  - (iv) The purpose of Project Co's quality auditing process shall be to confirm that all activities comprising the Works are in compliance with the Quality Manual and Quality



Management Plans, to identify all Non-Conformances and necessary Corrective Actions and to facilitate continuous improvement.

- (v) Project Co shall notify Contracting Authority of all audits described in Section 5.2(a)(i) and the Independent Quality Audits and Contracting Authority may choose to be present during such audits as a witness.
  - (vi) The Quality Director shall schedule a Closing Meeting in respect of each Internal Quality Audit, External Quality Audit and Independent Quality Audit in accordance with Section 5.8(a).
  - (vii) Within ten (10) Business Days of the Closing Meeting in respect of each Internal Quality Audit, External Quality Audit and Independent Quality Audit (or such longer period of time agreed to by the Parties), Project Co shall document, or cause to be documented, the results of such Quality Audit in an audit report (each, a “**Project Co Quality Audit Report**”), and deliver a copy of such Project Co Quality Audit Report to Contracting Authority. With respect to each Independent Quality Audit, Project Co shall cause the independent quality auditor to deliver the Project Co Quality Audit Report to Contracting Authority at the same time such Project Co Quality Audit Report is submitted to Project Co.
  - (viii) Each Project Co Quality Audit Report shall, without limitation, set out (A) all of the Non-Conformances identified during the underlying Quality Audit, (B) all of the Corrective Actions to be implemented as a result of such Quality Audit, (C) subject to Section 5.2(a)(ix), all of the associated Corrective Action Dates, and (D) Project Co’s plan for implementing and completing all of the Corrective Actions by such Corrective Action Dates.
  - (ix) Each Corrective Action Date set out in a Project Co Quality Audit Report shall be a date that is set out in Table 7.1 following the date the Project Co Quality Audit Report is delivered to Contracting Authority in accordance with Section 5.2(a)(vii).
  - (x) Project Co shall implement and complete the implementation of each Corrective Action set out in a Project Co Quality Audit Report by the associated Corrective Action Date set out in such Project Co Quality Audit Report.
- (b) Specific Requirements
- (i) The Quality Director shall schedule Internal Quality Audits, External Quality Audits and Independent Quality Audits to ensure that all key processes are reviewed at least annually or as agreed upon with Contracting Authority.
  - (ii) Where necessary, follow-up audits shall be scheduled to ensure that identified Corrective Actions have been carried out by the applicable Corrective Action Dates.
  - (iii) Internal Quality Audits, External Quality Audits and Independent Quality Audits shall be scheduled taking into account the status and importance of the processes being audited as well as the results of previous audits.

- (iv) Contracting Authority reserves the right to conduct follow up reviews, acting reasonably, but with Notice of not less than three (3) Business Days to Project Co to determine if the Corrective Actions set out in Project Co's Project Co Quality Audit Report have been implemented and completed.
- (v) For the purpose of facilitating the conduct of Internal Quality Audits and External Quality Audits relating to the Works, Project Co shall develop and implement checklists acceptable to Contracting Authority, for use by each of Project Co and Contracting Authority that itemizes requirements as specified in the respective Quality Management Plans.

### 5.3 Contracting Authority's Quality Audits

#### (a) General

- (i) Contracting Authority shall, following the submission of the Quality Documentation in accordance with this Schedule 11, review the Quality Documentation to identify the critical activities and processes described in the Quality Manual and Quality Management Plans on which Contracting Authority's auditing efforts and resources should be directed. Contracting Authority shall determine the frequency of auditing through regular and ongoing review of Project Co's performance and management systems. Procedures and activities relating to the Works that show good audit performance may have the frequency of auditing decreased, while those that show poor performance or increased risk of Non-Conformances may have the frequency of auditing increased. Without limiting Project Co's obligations under the Project Agreement, Project Co shall provide and shall ensure Project Co Parties provide Contracting Authority's auditors with all documentation, records, access, facilities and assistance requested in connection with Contracting Authority's Quality Audit activities.
- (ii) Project Co shall provide Contracting Authority electronic access to all Inspection and Test Plans, including supporting quality documentation, on a real time basis in order for Contracting Authority to undertake Quality Audits.
- (iii) Contracting Authority shall schedule a Closing Meeting in respect of each Quality Audit carried out by Contracting Authority pursuant to this Part 5 in accordance with Section 5.8.
- (iv) Following the Closing Meeting in respect of any Quality Audit carried out by Contracting Authority pursuant to this Part 5, Project Co shall (A) document, or cause to be documented, all of the Corrective Actions to be implemented as a result of such Quality Audit, all of the associated Corrective Action Dates, and Project Co's plan for implementing and completing all of the Corrective Actions by such Corrective Action Dates (each, a "**Corrective Actions Plan**"), and (B) deliver a copy of such Corrective Actions Plan to Contracting Authority in accordance with the requirements provided in Part 7 and in addition, responding accordingly to findings related to opportunities for improvement.

- (b) Specific Requirements
- (i) Where necessary, follow-up audits shall be scheduled to ensure that identified Corrective Actions are implemented and completed by the applicable Corrective Action Dates.
  - (ii) Contracting Authority reserves the right to conduct follow up reviews, acting reasonably, but with notice of not less than three (3) Business Days to Project Co to determine if Project Co's Corrective Actions Plan has been implemented and completed in accordance with the Corrective Actions Plan.
- (c) Types of Quality Audits
- (i) The following two types of Quality Audits may be conducted by, or on behalf of, Contracting Authority in its discretion:
    - (A) Surveillance Quality Audits – scheduled or unscheduled field audits conducted on a random basis or on specific areas of interest throughout the Project Term. The objective of these surveillance audits is to monitor Project Co's activities involving the Works, including but not limited to workmanship, performance measures and general quality of materials. Contracting Authority shall, during the performance of Surveillance Quality Audits, record any observations and inform Project Co of any deficiencies that require further evaluation. Any noted deficiencies shall be resolved to the satisfaction of Contracting Authority through evidence of Project Co's deficiency evaluation findings, the Corrective Actions process set forth in this Section 5.3, or the Non-Conformance process set forth in Part 7; and
    - (B) Quality Management System Audits – scheduled audits conducted at specific times to assess the performance of and compliance with the Quality Management System. Contracting Authority's lead auditor shall contact the Quality Director and confirm the scope and schedule of the audit, and schedule for associated audit meetings. At the audit opening meeting with Project Co, Contracting Authority's lead auditor shall review the audit scope and objectives. Contracting Authority's auditors shall conduct audit interviews and document any observations on prepared checklists. At the end of the audit interviews, Contracting Authority's lead auditor shall evaluate the observations and observed procedural or performance Non-Conformances that require Corrective Action.
  - (ii) Contracting Authority's Quality Audits may include scheduled and unscheduled External Quality Audits.
  - (iii) Additional information relating to Contracting Authority's Quality Audits with respect to particular Quality Management Plans is identified in the appendices to this Schedule 11.

#### 5.4 Contracting Authority's Monitoring

- (a) In addition to carrying out any scheduled and unscheduled External Quality Audits of the Quality Management System (including audits relating to compliance with all Quality Documentation) as provided in Section 5.3, Contracting Authority may, at its discretion, carry out Quality Audits to

monitor and verify the operation of the Quality Management System by, inter alia, carrying out spot checks and making independent inspections and tests of any Works, or material including any Works, or material which fails any test or is suspected by Contracting Authority of not complying with the requirements of the Project Agreement.

### **5.5 Deficient Quality Audits**

(a) If either:

- (i) Contracting Authority reasonably believes that Project Co is failing to conduct Quality Audits of its Quality Management System as required by the Project Agreement in any material respect or if such Quality Audits are not conducted in compliance with the ISO 9001:2015 Standard by personnel competent to conduct such Quality Audits; or
- (ii) any auditing, monitoring or spot-checks of the Quality Management Systems reveals material deficiencies in the Quality Management System or the implementation thereof,

Contracting Authority may carry out increased levels of External Quality Audits (whether in number, duration or detail) of all or any aspect of the Quality Management System until such time as Contracting Authority is reasonably satisfied that none of the circumstances described in this Section 5.5(a) continue to exist.

### **5.6 Costs of Audits**

(a) If Contracting Authority carries out any audit pursuant to Section 5.3, Section 5.4 or Section 5.5, and the results of such audit shows any Non-Conformance that materially interferes with the delivery of the Works in accordance with the Output Specifications, Quality Manual and Quality Management Plans, then without limiting any other rights and remedies of Contracting Authority, Project Co shall compensate Contracting Authority for all costs incurred in carrying out such audit (including the relevant administrative expenses of Contracting Authority, including an appropriate sum in respect of general staff costs and overheads). All other audits carried out by Contracting Authority pursuant to Section 5.3, Section 5.4 or Section 5.5 shall be at Contracting Authority's cost.

### **5.7 Independent Quality Audits**

- (a) In addition to the Internal Audits and External Audits, Project Co shall cause the Independent Quality Audits to be undertaken during the Works. These independent audits shall be conducted by a certified auditor who is qualified to audit the full scope of the Quality Management System, as acceptable to Contracting Authority and Project Co. The independent audit shall, at a minimum, ensure that all input requirements, as required by the Project Agreement, are included in the Quality Management System and adhered to in the performance of the Works.
- (b) A full quality audit on each of the individual Quality Plans within the Quality Management System shall be completed within one (1) year after Financial Close and thereafter at least once per year during the Project Term.
- (c) Project Co shall cause the Independent Quality Audit report to be submitted to Contracting Authority concurrent to when such report is submitted to Project Co.

**5.8 Quality Audit Closing Meetings**

- (a) Within five (5) Business Days of the completion of any Quality Audit (or such longer period of time agreed to by the Parties), Project Co and Contracting Authority shall carry out a closing meeting in respect of such Quality Audit (each, a “**Closing Meeting**”) in accordance with Good Industry Practice.
- (b) The purpose of each Closing Meeting shall, without limitation, be for the auditor to present and for the Parties to discuss the Quality Audit and the findings and conclusions of the Quality Audit, including any Non-Conformances identified during the Quality Audit, proposed Corrective Actions, and their respective Corrective Action Dates. Without prejudicing any Party’s ability to initiate a Non-Conformance discovery at an earlier time, for the purposes of addressing Non-Conformances, the Closing Meeting shall be determined to be the date of discovery of a Non-Conformance arising from the Quality Audit.
- (c) Following the conclusion of the Closing Meeting, any Non-Conformances discovered shall be initiated and addressed pursuant to Part 7.

## PART 6 QUALITY DOCUMENTATION

### 6.1 Principles

- (a) The minimum requirements and principles which apply to the Quality Documentation are set out in appendices A to C inclusive to this Schedule 11. Project Co's Quality Management System shall also comply with the requirements and principles of the ISO 9001:2015 Standard and this Schedule 11.

### 6.2 ISO Reference Documents

- (a) Without limiting the requirement of the Quality Management System to comply with the ISO 9001:2015 Standard, Project Co's Quality Management System shall also incorporate the requirements of the following reference documents:
- (i) ISO 9001:2015 Quality Management Systems – Requirements;
  - (ii) ISO 9000:2015 Quality Management Systems – Fundamentals and Vocabulary; and
  - (iii) ISO 19011:2018 Guidelines for Auditing Management Systems.

### 6.3 Quality Documentation Requirements

- (a) The minimum documentation requirements for the Quality Management System are:
- (i) the Quality Manual as required pursuant to Section 2.6;
  - (ii) the Quality Management Plans for all aspects of the Works as required pursuant to Section 2.6;
  - (iii) that each Quality Management Plan includes quality system procedures and process flow diagrams documenting who performs the Works, what they do, and what evidence shall be generated that they have performed quality related aspects of the Works correctly;
  - (iv) the Quality Audit Program Plan required pursuant to Section 5.1, including:
    - (A) the planned Quality Audits; and
    - (B) the Quality Audit checklists required pursuant to Section 5.2; and
  - (v) the Quality Records required pursuant to Section 6.8,
- (together, the “Quality Documentation”).

### 6.4 Submission of Quality Documentation

- (a) If any Quality Documentation relies on or incorporates any supporting Quality Documentation then such supporting Quality Documentation or the relevant parts thereof shall (unless Contracting Authority otherwise agrees) be submitted to Contracting Authority at the time that

the relevant Quality Documentation or part thereof or change, addition or revision to the Quality Documentation is submitted in accordance with the Schedule 10 – Review Procedure and the contents of such supporting Quality Documentation shall be taken into account in the consideration of the relevant Quality Documentation or part thereof or change, addition or revision to the Quality Documentation in accordance with Schedule 10 – Review Procedure. Contracting Authority may require the amendment of any such supporting Quality Documentation to the extent necessary to enable the relevant Quality Documentation to satisfy the requirements of this Schedule 11.

### **6.5 Project Co Obligation to Update**

- (a) Project Co shall be responsible for proactively updating its Quality Management System and all Quality Documentation from time to time, in accordance with the procedures set forth in the Project Agreement, to ensure that the Quality Management System and all Quality Documentation are, and at all times remain, in full compliance with the ISO 9001:2015 Standard and the requirements of the Project Agreement. All testing, inspections, pass and fail conditions must be highlighted, and maintained for records.

### **6.6 Changes to Quality Documentation**

- (a) Project Co shall submit to Contracting Authority in accordance with Schedule 10 – Review Procedure any proposed changes or additions to or revisions of any of the Quality Documentation.
- (b) If Project Co does not propose any change, pursuant to Section 6.6(a), which Contracting Authority determines to be required then Contracting Authority may propose such change and it shall be dealt with as though it had been proposed by Project Co pursuant to Section 6.6(a) and shall not be treated as a Variation. Any dispute between the Parties in respect of any such change shall be resolved in accordance with the Dispute Resolution Procedure.

### **6.7 Amendment of Quality Documentation**

- (a) If there is no unresolved objection by Contracting Authority under Schedule 10 – Review Procedure to a part of the Quality Documentation pursuant to Section 6.4 or to a change, addition or revision proposed pursuant to Section 6.6(a), then the Quality Documentation shall be amended to incorporate such part, change, addition or revision.

### **6.8 Quality Records**

- (a) Project Co shall establish and maintain complete and accurate quality management records (the “Quality Records”).
- (b) The Quality Records shall provide objective evidence of conformance with all requirements of the Project Agreement, compliance with the ISO 9001:2015 Standard and the effective operation of the Quality Management System.

**6.9 Additional Information**

- (a) Notwithstanding any other provision of this Schedule 11, Project Co shall provide Contracting Authority with such information as Contracting Authority may request from time to time to demonstrate compliance with this Schedule 11.



**PART 7**  
**NON-CONFORMANCES**

**7.1 Non-Conformance Reporting Process**

- (a) The Non-Conformance reporting process, from initial discovery through to closeout of a Non-Conformance, shall follow the process outlined below:
- (i) Project Co shall develop a comprehensive procedure for the management of Non-Conformance, from initial discovery through to closeout of a Non-Conformance. This procedure shall address Non-Conformance Reports initiated by both Project Co and Contracting Authority and shall follow the process outlined below. If Project Co or Contracting Authority discover a Non-Conformance, they shall initiate a Non-Conformance Report in compliance with the ISO 9001:2015 Standard as follows:
- (A) Project Co initiated Non-Conformance Reports – Project Co shall provide a Non-Conformance Report identifying the Non-Conformance to Contracting Authority within three (3) Business Days of discovery of the Non-Conformance; or
- (B) Contracting Authority initiated Non-Conformance Reports – If at any time Contracting Authority is notified, or otherwise become aware, that there is any Non-Conformance relating to the Works, Contracting Authority may issue a Non-Conformance Report, without prejudice to any other right or remedy available to Contracting Authority.
- (ii) A Non-Conformance Report initiated by either Party is issued to the Quality Director, thereby activating the Non-Conformance Report. The date of issue shall be recorded denoting the commencement of the time period for which the Non-Conformance Report has an ‘open’ status.
- (iii) The Non-Conformance Report shall indicate a classification for each Non-Conformance, which classification shall be Minor Non-Conformance, Major Non-Conformance or Critical Non-Conformance.
- (iv) For any Non-Conformance Report initiated, the Quality Director shall, in response to the Non-Conformance Report, provide a Disposition in respect of the Non-Conformance and a Corrective Action in compliance with the ISO 9001:2015 Standard, and Table 7.1 of this Section 7.1, for:
- (A) the discovery of a Non-Conformance in the case of a Non-Conformance discovered by Project Co; or
- (B) the notification (whether via written notification or a Non-Conformance Report) of a Non-Conformance discovered by Contracting Authority.
- (v) Project Co shall respond to a Non-Conformance described in a Non-Conformance Report:

- (A) using one of the two responses listed under the heading “Status of Non-Conformance” as set out in Table 7.1; and
- (B) satisfying all of the requirements listed under the headings “Disposition” and “Corrective Action” as set out in Table 7.1 for the applicable status of Non-Conformance.

**Table 7.1 – Non-Conformance Disposition and Corrective Action Requirements**

<b>Status of Non-Conformance</b>	<b>Disposition</b>	<b>Corrective Action</b>
Remedial action proposed	<p>Project Co shall provide a plan to remedy the Non-Conformance, no later than fifteen (15) Business days following NCR notification (or other such time as agreed by the parties) which shall include, at a minimum:</p> <ul style="list-style-type: none"> <li>(a) a description of the remedy to be completed;</li> <li>(b) the actions that will need to be implemented to complete the remedy;</li> <li>(c) the applicable qualified individual that is responsible for verifying and confirming the completion of the remedy; and</li> <li>(d) the date by which the Non-Conformance shall be remedied, which, unless otherwise agreed by the Parties or a different remedy date in respect of the Non-Conformance is expressly to be determined by any other provision of the Project Agreement, shall not be a date that is later than ten (10) Business Days following the date of the Disposition (the</li> </ul>	<p>Project Co shall describe the root cause of and the planned improvements to the delivery process to prevent the recurrence of the Non-Conformance, which shall include a Corrective Action Date, which, unless otherwise agreed by the Parties, shall not be a date that is later than fifteen (15) Business Days following the date of the Disposition.</p>

Status of Non-Conformance	Disposition	Corrective Action
	“NC Remedy Date”).	
Remedial action completed	Project Co shall provide: <ul style="list-style-type: none"> <li>(a) evidence that the Non-Conformance has been remedied;</li> <li>(b) the date by which it was remedied; and</li> <li>(c) the acceptance by the responsible professional who confirmed the Non-Conformance has been remedied.</li> </ul>	Project Co shall <ul style="list-style-type: none"> <li>(a) describe the root cause of the Non-Conformance;</li> <li>(b) describe the planned improvements to the delivery process to prevent the recurrence of the Non-Conformance; and</li> <li>(c) provide a Corrective Action Date, by which the improvements shall be implemented which, unless otherwise agreed by the Parties, shall not be a date that is later than fifteen (15) Business Days following the date of approval of the applicable Disposition.</li> </ul>

- (vi) Project Co shall investigate and respond to all Non-Conformance Reports.
- (vii) Project Co may object to the issuance or severity category of any Non-Conformance Report by Contracting Authority. If such objection has not been resolved by mutual agreement between Contracting Authority and Project Co within five (5) Business Days of delivery by Project Co to Contracting Authority of a Notice of the objection, then either Party may refer the matter to the Dispute Resolution Procedure for determination.
- (viii) If Project Co fails to object to the severity category by Contracting Authority of a Non-Conformance Report within five (5) Business Days, Project Co is deemed to have accepted that Non-Conformance Report.

- (ix) Contracting Authority may object to the severity category of any Non-Conformance Report initiated by Project Co. If such objection has not been resolved by mutual agreement between Contracting Authority and Project Co within five (5) Business Days of delivery by Contracting Authority to Project Co of a Notice of the objection, then either Party may refer the matter to the Dispute Resolution Procedure for determination.
- (x) If Contracting Authority fails to object to the severity category of any Non-Conformance Report initiated by Project Co within five (5) Business Days of receipt of such Non-Conformance Report, Contracting Authority is deemed to have not objected to that Non-Conformance Report severity category.
- (xi) The Quality Director shall change the status of the Non-Conformance Report to ‘in progress’ once a Disposition has been submitted.
- (xii) The Quality Director shall change the status of Non-Conformance Report to ‘closed’ once:
  - (A) the Non-Conformance has been remedied and verified by both Project Co and Contracting Authority; and
  - (B) the Corrective Action has been implemented, completed and verified by both Project Co and Contracting Authority.
- (xiii) The Quality Director shall confirm in writing to Contracting Authority the date that a Non-Conformance Report has entered the status of ‘closed’, within three (3) Business Days of it entering that status.

## 7.2 Non-Conformance Report Tracking System

- (a) Project Co shall implement and maintain a Non-Conformance Tracking System to monitor the status of all Non-Conformance Reports initiated by Contracting Authority and Project Co.
- (b) The Non-Conformance Tracking System shall be fully operational within ninety (90) days from Financial Close, with the following minimum requirements, so as to:
  - (i) comprise a single, secure, searchable and auditable database repository containing both Project Co and Contracting Authority initiated Non-Conformance Reports;
  - (i) maintain a full history of all opened Non-Conformance Reports, irrespective of status (open/closed, accepted/in dispute, etc.) ensuring no record is lost,
  - (ii) have the ability to attach supporting material such as photos and documents; and
  - (iii) provide live access to the current Non-Conformance Report status to both Project Co and Contracting Authority.

**7.3 Non-Conformance Measures (Action)**

- (a) Project Co shall remedy each Non-Conformance set out in a Non-Conformance Report before the NC Remedy Date for that Non-Conformance.
- (b) Project Co shall implement and complete the implementation of each Corrective Action identified in accordance with Table 7.1 of Section 7.1 before the expiry of the associated Corrective Action Date identified in accordance with such Table.

**7.4 Non-Conformance Records**

- (a) In addition to the maintenance of the Non-Conformance Tracking System under Section 7.2, Project Co shall maintain and make available to Contracting Authority upon request, records of:
  - (i) each Non-Conformance;
  - (ii) the reference numbers of all Non-Conformance Reports;
  - (iii) a severity classification for each Non-Conformance, which shall be “Minor Non-Conformance”, “Major Non-Conformance” or “Critical Non-Conformance”;
  - (iv) a description of all Non-Conformance Reports;
  - (v) the proposed actions by Project Co to rectify each Non-Conformance;
  - (vi) the date at which each Non-Conformance was identified;
  - (vii) the date and time at which a Non-Conformance specified in a Non-Conformance Report was remedied;
  - (viii) the date at which Contracting Authority was notified of Non-Conformance identification;
  - (ix) the date at which the Disposition of the Non-Conformance was issued to the Contracting Authority;
  - (x) the date at which the Disposition of the Non-Conformance was agreed by the parties;
  - (xi) the mutually agreed Corrective Action Date for the Non-Conformance;
  - (xii) the date of Non-Conformance achieving ‘closed’ status; and
  - (xiii) the date of Non-Conformance ‘closed’ status notifications to Contracting Authority.

**PART 8  
REPORTING****8.1 Obligation to Report**

- (a) For each month of the Project Term, Project Co shall prepare, and submit to Contracting Authority a comprehensive Quality Management System report as indicated in Table 2.6.
- (b) Specific Requirements
- (i) Each monthly Quality Management System report shall address all quality management activities under each of the Quality Management Plans for that month and any outstanding quality issues from prior months.
  - (ii) Each monthly Quality Management System report shall, at a minimum, include the following information separately identified for the Quality Manual and for each Quality Management Plan:
    - (A) a Non-Conformance Report log summarizing all Non-Conformance Reports opened, closed, or still open from the previous report, in the relevant month and providing the following: “date open”, “date closed”, “status” (open, pending, closed), “classification” (Minor Non-Conformance, Major Non-Conformance, Critical Non-Conformance), “disposition” (repair, rework, reject) and “description of status” which describes the current status of the Non-Conformance Report and if closed, when and how it was closed;
    - (B) Corrective Action logs providing details of the Corrective Actions performed during the month and their close-out status;
    - (C) a summary of any inspection and testing activities conducted during the month;
    - (D) Internal Quality Audits and External Quality Audits performed during the month and a four (4) month look-ahead schedule for planned future Quality Audits;
    - (E) any continual improvement initiatives taken during the month;
    - (F) summary of statistics and historic trends since Financial Close for the number of Non-Conformance Reports with the following status each month since Financial Close: ‘open’, ‘in progress’ and ‘closed’;
    - (G) any other information required to be included in the monthly Quality Management System reports pursuant to any of the appendices to this Schedule 11 or the terms of the relevant Quality Management Plan;
    - (H) any changes made to the Quality Management System or the Quality Documentation in compliance with the provisions of the Project Agreement;
    - (I) status of Quality Management System documentation; and

- (J) graphical presentation of performance data analysis (current and forecasted), including:
- (I) percentage and number of Non-Conformance Reports closed on or before Corrective Action Date and Non-Conformance Reports due for closure to the end of reporting month;
  - (II) percentage and cumulative number of Non-Conformance Reports in “open” status and cumulative total of all Non-Conformance Reports issued to the end of reporting month;
  - (III) percentage and number of audits performed versus planned;
  - (IV) percentage and number of audit reports issued within ten (10) Business Days and completed audits in total and for that period;
  - (V) percentage and number of documents submitted for review requiring more than five (5) revision cycles prior to approval versus total number of documents accepted; and
  - (VI) percentage and number of documents submitted and accepted within target date versus total number of documents submitted,

(together, the “**Quality Key Performance Indicators**”).

**PART 9**  
**INTENTIONALLY DELETED**



**APPENDIX A TO SCHEDULE 11****QUALITY MANUAL****A.1 Quality Manual**

- (a) Project Co shall provide a comprehensive Quality Manual that describes the Quality Management System for all aspects of the Works. The Quality Manual shall establish the Quality Policy and Quality Objectives for all aspects of the Works and, in compliance with the requirements of the ISO 9001:2015 Standard, shall describe the processes that shall be established, implemented, controlled, and continually improved to achieve the established Quality Objectives.
- (b) The Quality Objectives shall be measurable, consistent with the Quality Policy and linked to meeting the needs and performance expectations of Contracting Authority in respect of the Project. The Quality Management System described in the Quality Manual shall include all the activities required to achieve these Quality Objectives, including project controls such as scope, cost, schedule and general document control management activities. All of these activities shall be subject to Internal Quality Audits and External Quality Audits.
- (c) The Quality Manual shall describe the Project Co Parties involved in performing the Works and how key management activities (such as project controls, traffic management, design management, Construction Activities and environmental matters) shall interface with each other. The Quality Manual shall also provide the organization chart identifying the authority and responsibilities of all Key Individuals and other key personnel involved with the aforementioned aspects of the Project. The Quality Manual shall also show how the various levels of Quality Management System documentation are linked together.
- (d) The Quality Manual shall clearly define the reporting function and authority of Project Co's Quality Director who shall liaise with Contracting Authority and act as the single point representative of Project Co for all matters relating to quality management.
- (e) The Quality Manual shall be supported by Quality Management Plans that describes a specific Quality Management System for the respective scope of work. Refer to Appendices B to C to this Schedule 11 for requirements of the Quality Management Plans.
- (f) The Quality Manual shall include a matrix showing traceability (with references to respective sections of the Quality Manual or other documents) of compliance to each section of the ISO 9001:2015 Standard and this Schedule 11.

**APPENDIX B TO SCHEDULE 11****DESIGN QUALITY MANAGEMENT PLAN****B.1 Design Quality Management Plan**

- (a) Project Co shall implement and comply with a comprehensive Design Quality Management Plan that describes how it intends to manage the design processes for the Project in compliance with the ISO 9001:2015 Standard, its Quality Manual and the provisions of the Project Agreement. The DQMP is to apply throughout the Works throughout the Project Term.
- (b) The DQMP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for design management and their relationship with the Quality Director for Project Co's overall Quality Management System as documented in Project Co's Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for design management and other engineering and construction management disciplines.
- (c) The DQMP shall, at a minimum, include or reference detailed Quality Management System procedures and process flow diagrams for the following processes:
- (i) design development and planning;
  - (ii) design input and output review;
  - (iii) design verification to ensure that design input requirements have been met;
  - (iv) design validation to ensure that the completed project is capable of meeting its intended use;
  - (v) design changes, including the review, acceptance, and documented confirmation by the professional responsible for the applicable Project element or component;
  - (vi) design risk identifications and mitigation processes;
  - (vii) design coordination;
  - (viii) design interface management;
  - (ix) design communications and protocol during design phase;
  - (x) control of outsource processes and products;
  - (xi) quality assessment and procurement of Project Co Parties responsible for design; including competence, awareness and training needs, identification, assessment and provision;

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- (xii) scheduling and preparation of construction stage quality control activities inspection, testing, third party testing, and scheduling of inspection and testing of long lead equipment, systems and components;
  - (xiii) certification of Design in accordance with the requirements of Section 2.3;
  - (xiv) certification of Works in accordance with the requirements of Section 2.3;
  - (xv) External Quality Audits of Project Co Parties responsible for design;
  - (xvi) Internal Quality Audits;
  - (xvii) Corrective Actions, and opportunities for improvement;
  - (xviii) document management;
  - (xix) Works Submittal scheduling and Project Works Schedule audits;
  - (xx) control of revisions to issued for construction documentation during construction; and
  - (xxi) control of Quality Records.
- (d) The above procedures and flow diagrams shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.
- (e) The above processes are already covered as part of the Quality Manual or in other Quality Documentation. The process heading is still required to be identified as part of the DQMP. However, the details can be minimized by providing a reference to the other applicable Quality Documentation. Notwithstanding the above, processes that fall within the specific requirements of the DQMP must have detailed quality system procedures and process flow diagrams covered in the DQMP.

**APPENDIX C TO SCHEDULE 11****CONSTRUCTION QUALITY MANAGEMENT PLAN****C.1 Construction Quality Management Plan**

- (a) Project Co shall provide a comprehensive Construction Quality Management Plan that describes how it intends to manage the Construction Activities in compliance with the ISO 9001:2015 Standard, its Quality Manual and the provisions of the Project Agreement. The CQMP is to apply throughout the Project Term.
- (b) The CQMP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for construction management and their relationship with the Quality Director for Project Co's overall Quality Management System as documented in Project Co's Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for construction management and other disciplines such as design management, environmental management and traffic management.
- (c) The CQMP shall address the manner in which the construction, instrumentation and monitoring requirements described in the Output Specifications relate to design and construction of the Works, including pre-construction activities, construction staging, existing road service disruption avoidance measures, and post-construction activities.
- (d) The CQMP shall, at a minimum, include or reference detailed procedures and process flow diagrams for the following processes:
  - (i) Project Works Schedule management and audits;
  - (ii) inspection, testing and monitoring;
  - (iii) design support and involvement during construction, assessment of constructed works, and acceptance by the design professionals responsible for all Project elements and components;
  - (iv) materials identification and traceability;
  - (v) quality assessment and procurement of Project Co Parties responsible for construction;
  - (vi) External Quality Audits of Project Co Parties responsible for construction;
  - (vii) Internal Quality Audits;
  - (viii) control of nonconforming product and how they will be tracked in relation to Non-Conformances;
  - (ix) Corrective Actions, and opportunities for improvement;

- (x) document management;
- (xi) control of “issued for construction” drawing mark ups to reflect the as-built condition including capture of the reasons for any changes from the issued for construction documents and any necessary authorizations and the preparation of As-Built Drawings and Record Drawings;
- (xii) construction interface management;
- (xiii) change management during construction;
- (xiv) certification of Works in accordance with the requirements of Section 2.3;
- (xv) control of records; and,

if the above processes are already covered as part of another Quality Management Plan or procedure, the process heading is still required to be identified as part of the CQMP. However, reference may be made to the other applicable plan to satisfy this requirement. Notwithstanding the above, processes that fall within the specific requirements of the construction must have detailed procedures and process flow diagrams covered in the CQMP.

- (e) The above procedures and flow diagrams shall document which role is responsible for performing the work, what requirements they must follow, and what evidence is generated that they have performed the work correctly.
- (f) Inspection and Test Plan
  - (i) Project Co shall provide the Inspection and Test Plan for all on-Site and off-Site inspection and test activities for Works performed by Project Co and the Project Co Parties.
  - (ii) The CQMP shall include a listing of the Inspection and Test Plan.
  - (iii) Project Co shall submit specific Inspection and Test Plan, each addressing the discrete element of the Works as described in the Output Specifications, and which may require reference to completed design requirements and drawings, separately from the CQMP,
    - (A) at least six (6) weeks prior to the scheduled start of each applicable element of the Works, as described in the Output Specifications, is to be undertaken; and
    - (B) Project Co shall not commence or permit the commencement of any aspect of the Works before the corresponding Inspection and Test Plan has been submitted to and reviewed by Contracting Authority in accordance to this Appendix C.
  - (iv) The scope of the Inspection and Test Plan shall be at the level of the particular element of the Works, as described in the Output Specifications, that is:
    - (A) discrete;

- (B) in its final position, or can be placed in its final position without modification; and
  - (C) ready for its intended use.
- (v) The Inspection and Test Plan shall include a progressive and step-wise series of inspection and testing activities for each discrete element of the Works, including a progressive and step-wise series of Witness and Hold Points leading to scheduled close out of Project Co's inspection and testing activity. For clarity, Contracting Authority may attend these Witness and Hold Points in its oversight function, but the Witness and Hold Points are for the sole purpose of Project Co meeting its obligations under the Project Agreement.
- (vi) At the commencement of each week, Project Co shall issue a two-week look-ahead schedule (the "**ITP Two-Week Look-Ahead**") of all planned Witness and Hold Points for the following:
- (A) scheduled timing of Witness and Hold Points for fabrication or manufacture of elements of the Works at a location that is not on the Lands;
  - (B) scheduled timing of Witness and Hold Points for Works activities that will occur at, and between, the hours of 8:00 a.m. and 5:00 p.m., Monday to Friday; and
  - (C) scheduled timing of Witness and Hold Points for Works activities that will occur outside of hours 8:00 a.m. and 5:00 p.m. Monday to Friday and any activities occurring on Saturday, Sundays or statutory holidays.
- (vii) Project Co shall alert Contracting Authority to any alterations to the scheduled timings in the ITP Two-Week Look-Ahead in a timely manner.
- (viii) No later than close of business five (5) Business Days prior to the scheduled timing of any Witness and Hold Point, Project Co shall provide the Contracting Authority Representative with advance written Notice stating the time and date of the Witness and Hold Point. For changes to scheduled timings that occur with less than two (2) Business Days of Notice Project Co shall ensure the local Site monitoring staff of Contracting Authority is made aware of the change as soon as possible and are provided an opportunity to be present for the Witness and Hold Points.
- (ix) For clarity, Project Co may proceed with the activity past any Witness and Hold Point if Contracting Authority is not in attendance within two hours of the scheduled time.
- (x) The Inspection and Test Plan shall, at a minimum, include:
- (A) a description of the inspection, testing and monitoring activity;
  - (B) frequency of inspections, tests and monitoring;
  - (C) reference to standards, codes, specifications, and acceptance criteria;

- (D) reports and checklists required;
  - (E) personnel responsible for inspection, testing and monitoring activity;
  - (F) Witness and Hold Points for inspection activities where the responsible Design Team member is to be present to assess the conformance of the work with the applicable design, and to identify any Non-Conformances or potential Non-Conformances that must be remedied;
  - (G) description and frequency of geotechnical instrumentation monitoring and adherence to acceptance criteria;
  - (H) a description of the process of how Project Co will conduct and document its quality control and sign off for each Witness and Hold Point and close out of each Inspection and Test Plan; and
  - (I) a description of the process by which Project Co will notify Contracting Authority in advance of any inspection, testing, monitoring, quality assurance review, Witness and Hold Points, and reports that allows Contracting Authority to carry out the auditing or monitoring contemplated in Sections 5.3 and 5.4 of this Schedule 11.
- (g) The personnel identified in the Inspection and Test Plan for implementing the inspection, testing and monitoring activities, as well as the quality assurance review, Witness and Hold Points against any inspection or test activities, shall be demonstrated to be qualified in such inspection or review.
- (h) In addition to the Witness and Hold Points specified in the Inspection and Test Plan, Contracting Authority retains the right to specify additional Witness and Hold Points against any inspection or test activity that Contracting Authority requires the opportunity to observe.
- (i) Project Co shall report on the status of the ITPs on a monthly basis and include the following:
- (i) list of the ITPs completed and signed off;
  - (ii) list of measuring devices with their serial numbers utilized during the reporting month and their associated calibration status with applicable dates;
  - (iii) lab test results completed during reporting month; and
  - (iv) mill test certificates of base materials received during reporting month.

## SCHEDULE 12

## WORKS SCHEDULE REQUIREMENTS

## 1. DEFINITIONS AND INTERPRETATION

## 1.1 Definitions

In this Schedule 12, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 12) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Baseline Works Schedule**” has the meaning given in Section 9.1(a).
- (b) “**Basis of Works Schedule Report**” has the meaning given in Section 12.1(a).
- (c) “**Change Log**” has the meaning given in Section 13.1(b)(ix)A.
- (d) “**Close-out Activity**” means any activity of the Works and any associated Milestone Event that immediately precedes Substantial Completion or Final Completion of the Works including:
  - (i) all inspections of the Works by Contracting Authority, third parties, and the Independent Certifier required by the Project Agreement;
  - (ii) identification and rectification of Minor Deficiencies;
  - (iii) finalization and issuance of Record Drawings;
  - (iv) Commissioning Activities; and
  - (v) Handover Activities (New Third Party Infrastructure),and “**Close-Out Activities**” means all such activities and associated Milestone Events.
- (e) “**Commissioning Activity**” means any commissioning activity and associated Milestone Event contemplated in the Project Agreement, including each commissioning activity and associated Milestone Event contemplated in Schedule 14 – Commissioning and the Output Specifications and “**Commissioning Activities**” means all such activities and associated Milestone Events.
- (f) “**Corrected Works Schedule**” has the meaning given in Section 4(d).
- (g) “**Cost Performance Index**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- (h) “**Critical Path**” has the meaning given in Section 1.9(a) of Appendix A to this Schedule 12.



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- (i) “**Data Date**” means the date of the activity and schedule data on which a Project Works Schedule is based. For the Proposed Works Schedule, Interim Baseline Works Schedule and the Baseline Works Schedule, the Data Date shall equal the Financial Close date. For the Progress Works Schedule, the Data Date is the cut-off date for the reporting period. For the Revised Baseline Works Schedule, Recovery Works Schedule(s) and Works Micro-Schedule(s), Contracting Authority shall determine the Data Date.
- (j) “**Design Activity**” means any activity and associated Milestone Event required to complete the design of the Project and “**Design Activities**” means all such activities and associated Milestone Events.
- (k) “**Earned Value**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- (l) “**Earned Value Metrics**” has the meaning given in Section 13.1(b)(vi)A.
- (m) “**Handover Activity (New Third Party Infrastructure)**” means any activity and associated Milestone Events required to achieve Handover of any New Third Party Infrastructure to the applicable owner of the New Third Party Infrastructure, including:
- (i) all inspections of the New Third Party Infrastructure required by the Project Agreement including inspections by Contracting Authority and the relevant third party;
  - (ii) identification and resolution of Construction Defects;
  - (iii) finalization and issuance of the applicable Record Drawings; and
  - (iv) provision of training to the applicable third party staff,
- and “**Handover Activities (New Third Party Infrastructure)**” means all such activities and associated Milestone Events.
- (n) “**Interim Baseline Works Schedule**” has the meaning given in Section 8(a).
- (o) “**Labour Resources**” means planned person-hours employed to achieve each of the Works Activities.
- (p) “**Late Schedule Submission Deduction**” has the meaning given in Section 7(a).
- (q) “**Milestone Event**” means, for each of the Works Activities,
- (i) the start and completion of each deliverable and the identification of any external constraints which are associated with the applicable activity;
  - (ii) interfaces with Stakeholders associated with the applicable activity;
  - (iii) closures on the Rail Corridor associated with the applicable activity; and

- (iv) Witness and Hold Points.
- (r) **“No Comment or Reviewed As Noted – Minor Issues Designation”** means a designation, determined by Contracting Authority after review of a Project Works Schedule in accordance with Schedule 10 – Review Procedure, of either,
  - (i) **“NO COMMENT”** on the applicable Project Works Schedule; or
  - (ii) **“REVIEWED AS NOTED – MINOR ISSUES”** on the applicable Project Works Schedule, with no **“RE-SUBMIT”** requirement, and provided that all non-conformances noted in the review have been corrected.
- (s) **“PLAA Activity”** means for each Permit, Licence, Approval or Agreement, any of the activities or Milestone Events associated with that Permit, Licence, Approval or Agreement, including:
  - (i) consultation and/or coordination activities with the applicable Governmental Authority and, if applicable, property owners;
  - (ii) preparation of documentation for the Permit, Licence, Approval or Agreement request, including pre-submission co-ordination and consultation; and
  - (iii) review and approval of the Permit, Licence, Approval or Agreement, including all activities and Milestone Events commencing on the date the initial submission for the Permit, Licence, Approval or Agreement and ending on the anticipated date of decision of the third party with respect to that Permit, Licence, Approval or Agreement, which anticipated date of decision shall, with respect to a Listed Project Co PLAA, be consistent with the applicable Listed Project Co PLAA Deadline,and **“PLAA Activities”** means all such activities and Milestone Events.
- (t) **“Planned Value”** has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- (u) **“Planned Value Curve”** means a graphical and tabular representation of the cost loaded schedule showing the cost per month and the cumulative curve.
- (v) **“Procurement Activity”** means any activity or Milestone Event required for the timely purchase, set-up, manufacture, installation and use of long-lead items (for example, prefabricated or preassembled structures or structural elements, elevator and fibre-optic cabling, and other similar long-lead items) as required by the Project Agreement including:
  - (i) issuance of purchase order or contract finalization including,
    - A. coordination of the procurement with the Works;
    - B. establishment of procurement processes and bundling strategies; and

- C. validation of technical requirements of the long-lead item;
- (ii) setup and certification of Plant associated with the long-lead item;
- (iii) manufacturing or assembly of the long-lead item;
- (iv) approval of shop drawings;
- (v) factory acceptance testing;
- (vi) receipt of first and last deliveries;
- (vii) installation the long-lead item(s); and
- (viii) commencement and completion of inspection, integration, testing, commissioning, certification, and training;

and “**Procurement Activities**” means all such activities and Milestone Events.

- (w) “**Progress Works Schedule**” means Project Co’s working schedule that is:
  - (i) Traceable to and progressed from the Baseline Works Schedule, or the Revised Baseline Works Schedule, as applicable;
  - (ii) Traceable to and progressed from the Progress Works Schedule of the immediately previous month; and
  - (iii) prepared, maintained, updated, and submitted by Project Co, on a monthly basis, in accordance with this Schedule 12.
- (x) “**Project Control Schedule**” has the meaning given in the AACE International Recommended Practice entitled, “*Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction*”.
- (y) “**Project Schedules Management Plan**” means the plan to audit the Project Works Schedules prepared by Project Co in accordance with Section 15(a).
- (z) “**Project Works Schedule**” means any schedule required pursuant to this Schedule 12, including the Proposed Works Schedule, Corrected Works Schedule, Interim Baseline Works Schedule, Baseline Works Schedule, Revised Baseline Works Schedule, Progress Works Schedule, Works Micro-Schedule or Recovery Works Schedule, and “**Project Works Schedules**” means all such Works schedules.
- (aa) “**Project Works Schedule Submission Register**” has the meaning given in Section 1.1(e) of Appendix A to this Schedule 12.
- (bb) “**Proposed Works Schedule**” means the proposed works schedule submitted by Project Co, as the preferred proponent, in the RFP process that preceded this Project Agreement, as amended and updated prior to Commercial Close.

- (cc) “**Quantity**” means material resources with an assigned unit of measure in accordance with Good Industry Practice, which is substantiated by Project Co.
- (dd) “**Recovery Works Schedule**” has the meaning given in Section 14.1(a).
- (ee) “**Recovery Works Schedule Report**” has the meaning given in Section 14.1(a).
- (ff) “**Review Procedure Activities**” means all activities associated with the implementation of Schedule 10 – Review Procedure to the Project Agreement.
- (gg) “**Review Procedure Activities Register**” means a register that contains all information about a review of a Works Submittal including submission date, Contracting Authority response due date, Contracting Authority response date, resubmission date, revision number, status of review, and conformance comment from Contracting Authority.
- (hh) “**Revised Baseline Works Schedule**” has the meaning given in Section 9.2(a).
- (ii) “**S-Curve**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- (jj) “**Schedule Performance Index**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- (kk) “**Stakeholder Consultation Activity**” means any of the following activities or Milestone Events:
- (i) Stakeholder partnering sessions;
  - (ii) Design Development Submittals and Construction Document Submittals development and finalization;
  - (iii) consultation, submission, review and approval process of any municipal, provincial, federal, or any other Governmental Authority;
  - (iv) milestones noting decisions that support final design integration between Contracting Authority’s systems and Project Co’s systems;
  - (v) design review meetings;
  - (vi) presentations or workshops on design topics expected to involve multiple Stakeholders, or any other activities required to satisfy and demonstrate design conformance; and
  - (vii) any additional activities as required by Project Co to fulfill the requirements of the Project Agreement with respect to Stakeholder consultation,

and “**Stakeholder Consultation Activities**” means, collectively, all such activities and Milestone Events.

- (ll) **“Traceable”** means prepared in accordance with Good Industry Practice such that Contracting Authority has the ability to maintain, track and trace all activities and milestones including activity identification numbers, descriptions, activity codes, logical sequences, interdependencies and data consistency between and/or within all Project Works Schedules.
- (mm) **“Tracking Milestone”** is a schedule milestone that is linked to the applicable Works Activities, Works Milestones, and Milestone Events; and **“Tracking Milestones”** means all such scheduled milestones.
- (nn) **“Utility Relocation or Protection Activity”** means, for each system per phase or section of the Works, any of the following activities:
- (i) approvals by Utility Companies;
  - (ii) relocation for each specific occurrence of a Utility Infrastructure; and
  - (iii) inspection, acceptance and hand-back of the Utility Infrastructure to the owner of that applicable Utility Infrastructure,
- and **“Utility Relocation or Protection Activities”** means, collectively, all such activities and associated Milestone Events.
- (oo) **“Variance Analysis Report”** means a narrative submitted in the Works Schedule Report that details the cumulative and monthly Earned Value Metrics and provides an explanation for all trends and variances in the Earned Value Metrics.
- (pp) **“Witness and Hold Points”** has the meaning given in Schedule 11 – Quality Management.
- (qq) **“Working Day”** means, for the purposes of this Schedule 12, a day on which Project Co has scheduled specific Works Activities to be carried out, as set out in the “Planned Working Calendar” required by Section 12.1(c)(iv).
- (rr) **“Working Hours”** means, for the purposes of this Schedule 12, an hour on which Project Co has scheduled specific Works Activities to be carried out in a Working Day.
- (ss) **“Works Activity”** means any of the following:
- (i) Close-out Activities;
  - (ii) Commissioning Activities;
  - (iii) Construction Activities;
  - (iv) Design Activities;
  - (v) PLAA Activities;
  - (vi) Procurement Activities;

- (vii) Stakeholder Consultation Activities;
- (viii) Utility Relocation or Protection Activities;
- (ix) Review Procedure Activities;
- (x) activities required pursuant to Schedule 41 – Early Works Handover;
- (xi) activities required pursuant to Schedule 45 – Integration with RSSOM Project; or
- (xii) activities to be performed:
  - A. that cannot be started or finished without the involvement of Contracting Authority or one or more Stakeholders; or
  - B. that must be started or finished before a Contracting Authority activity or Stakeholder activity can be started or finished,

and “**Works Activities**” means all such activities.

(tt) “**Works Micro-Schedule**” has the meaning given in Section 11(a).

(uu) “**Works Micro-Schedule Activity**” means any of the following activities:

- (i) any Project Co activity in respect of the Works that Contracting Authority determines, acting reasonably, is required to be included within a Works Micro-Schedule;
- (ii) any activity required pursuant to Schedule 11 – Quality Management;
- (iii) any activity required pursuant to Schedule 14 – Commissioning;
- (iv) activities required pursuant to Schedule 41 – Early Works Handover; or
- (v) any activity required pursuant to Schedule 45 – Integration with RSSOM Project,

and “**Works Micro-Schedule Activities**” means all such activities.

(vv) “**Works Micro-Schedule Milestone**” means any of the following Milestone Events in respect of the Works:

- (i) any milestone signifying a critical handover of work between:
  - A. Project Co and Contracting Authority; or
  - B. Project Co and any owner of New Third Party Infrastructure; and
- (ii) any additional milestone as requested by Contracting Authority, acting reasonably,

and “**Works Micro-Schedule Milestones**” means all such Milestone Events.

- (ww) **“Works Milestone”** means any of the following Milestone Events:
- (i) Commercial Close;
  - (ii) Financial Close;
  - (iii) submission by Project Co of all Design Development Submittals;
  - (iv) submission by Project Co of all Construction Document Submittals;
  - (v) completion of the Utility Work;
  - (vi) completion of the Project Co Infrastructure;
  - (vii) completion by Project Co of any applicable obligations pursuant to Schedule 41 – Early Works Handover;
  - (viii) completion by Project Co of any applicable obligations pursuant to Schedule 45 – Integration with RSSOM Project;
  - (ix) completion of the New Third Party Infrastructure;
  - (x) submission by Project Co of all Commissioning Submittals, pursuant to Schedule 14 – Commissioning;
  - (xi) Scheduled Substantial Completion Date;
  - (xii) Scheduled Final Completion Date; and
  - (xiii) the Longstop Date,
- and **“Works Milestones”** means all such Milestone Events.
- (xx) **“Works Schedule Report”** has the meaning given in Section 13.1(a).

## 1.2 Interpretation

- (a) The Parties acknowledge and agree that, where the term “Baseline Works Schedule” is used in the Project Agreement, other than in this Schedule 12, such term means,
- (i) the Interim Baseline Works Schedule before the establishment of a Baseline Works Schedule in accordance with Section 4(b); and
  - (ii) the Baseline Works Schedule following the establishment of a Baseline Works Schedule in accordance with Section 4(b).

## 2. DOCUMENTS COMPRISING THIS SCHEDULE 12 – WORKS SCHEDULE REQUIREMENTS

- (a) This Schedule 12 is comprised of the following documents:

- (i) these general provisions of this Schedule 12;
- (ii) Appendix A – Project Works Schedule Technical Requirements;
- (iii) Appendix B – EVM Reporting Requirements; and
- (iv) Appendix C – Works Micro-Schedule.

### **3. DEVELOPMENT OF PROJECT WORKS SCHEDULES**

#### **3.1 Types and Purposes of Project Works Schedules**

- (a) Project Co acknowledges and agrees that it will develop and maintain three types of Project Works Schedules as follows:
  - (i) baseline schedules consisting of the Proposed Works Schedule, Interim Baseline Works Schedule, the Baseline Works Schedule and, if required, a Revised Baseline Works Schedule(s), each of which is required to demonstrate Project Co's intended schedule to complete the Works and from which progress will be measured;
  - (ii) monthly Progress Works Schedules and, if applicable, Works Micro-Schedules, each of which are required to demonstrate Project Co's actual progress of the Works up to and including the applicable Data Date; and
  - (iii) if requested by Contracting Authority, a Recovery Works Schedule(s) which meets the requirements set out in Section 14 and is required to demonstrate Project Co's schedule to mitigate delay and accelerate the Works.

#### **3.2 Sequence of Project Works Schedules**

- (a) Subject to the terms and conditions of this Schedule 12, Project Co acknowledges and agrees that the progression and development of the Project Works Schedules shall be as follows:
  - (i) Project Co shall develop the Interim Baseline Works Schedule that is Traceable to the Proposed Works Schedule and in accordance with this Schedule 12 and shall submit it to Contracting Authority prior to Financial Close for review, which review shall take place after Financial Close and in accordance Schedule 10 – Review Procedure;
  - (ii) Once the Interim Baseline Works Schedule has been finalized in accordance with Section 4(b) it shall become the Interim Baseline Works Schedule applicable to the Works until replaced by the finalized Baseline Works Schedule;
  - (iii) Project Co shall submit the Baseline Works Schedule in accordance with this Schedule 12 for review in accordance with Schedule 10 – Review Procedure;
  - (iv) Once the Baseline Works Schedule has been finalized in accordance with Section 4(b) it shall become the Baseline Works Schedule that is applicable to the Works



until Final Completion, unless it is replaced by a Revised Baseline Works Schedule in accordance with Section 9.2;

- (v) For every month, from the month after Financial Close until Final Completion, Project Co shall submit an updated Progress Works Schedule in accordance with Section 10 and Schedule 10 – Review Procedure. Project Co shall progress each updated Progress Works Schedule from the previous month’s Progress Works Schedule and shall,
  - A. for the period prior to the finalization of the Baseline Works Schedule, ensure that the Progress Works Schedule is Traceable to and progressed from the Interim Baseline Works Schedule and the immediately previous Progress Works Schedule;
  - B. for the period after the finalization of the Baseline Works Schedule, ensure that the Progress Works Schedule is Traceable to and progressed from the Baseline Works Schedule and the immediately previous Progress Works Schedule; and
  - C. label the Progress Works Schedule(s) in sequence as Project Works Schedule Revision 1, Progress Works Schedule Revision 2, and so on; and
- (vi) Once each Progress Works Schedule (Progress Works Schedule Revision 1, 2, etc.) has been finalized and considered acceptable in accordance with Section 4(b), the applicable revision of the Progress Works Schedule shall become the active Progress Works Schedule for the Project and shall replace the immediately previous Progress Works Schedule.

#### 4. SUBMISSION AND REVIEW OF PROJECT WORKS SCHEDULES

- (a) Each Project Works Schedule shall be submitted to Contracting Authority, in draft, and shall be reviewed by Contracting Authority and, if applicable, the Independent Certifier and other third parties, in accordance with Schedule 10 – Review Procedure.
- (b) No Project Works Schedule shall be finalized or considered an acceptable Project Works Schedule to Contracting Authority until it has received a No Comment or Reviewed As Noted – Minor Issues Designation. For clarity, Project Co is still obliged to correct all non-conformances in any Project Works Schedule.
- (c) Contracting Authority may, in its sole discretion and at any time, convene a meeting or meetings with Project Co to review a Project Works Schedule and identify those Project Co Parties that are required to attend the meeting.
- (d) If a Project Works Schedule submitted by Project Co receives a “RE-SUBMIT”, “REVIEWED AS NOTED – MINOR ISSUES” or a “REVIEWED AS NOTED – MAJOR ISSUES” comment from Contracting Authority the following shall apply:
  - (i) Contracting Authority may, acting reasonably, and at any time, require Project Co to submit,

- A. additional information (including draft versions of an updated Project Works Schedule) to supplement the information originally provided in the Project Works Schedule or the Works Schedule Report and such information shall be provided within a reasonable time by Project Co; and
  - B. one or more corrected versions of the applicable Project Works Schedule (each a “**Corrected Works Schedule**”) and such Corrected Works Schedule shall be provided by Project Co promptly;
- (ii) For clarity,
- A. any information provided pursuant to Section 4(d)(i)A is not a Works Submittal;
  - B. a Corrected Works Schedule is a Works Submittal, and the requirements of Schedule 10 – Review Procedure apply to each Corrected Works Schedule; and
  - C. all liquidated damages and Non-Conformance Reports associated with the submission and review of Project Works Schedules do not apply to the submission and review of Corrected Works Schedules;
- (iii) In addition to complying with the Corrected Works Schedule requirements set out in Section 4(d)(iv), and notwithstanding the time period for resubmission of Works Submittals set out in Schedule 10 – Review Procedure, Project Co shall correct all non-conformances and deficiencies in a Progress Works Schedule in the next monthly submission of the Progress Works Schedule and shall provide detail in the Works Schedule Report setting out how the non-conformances and deficiencies have been corrected; and
- (iv) For the purpose of ensuring that a Progress Works Schedule is finalized for each month of the Project from Financial Close to Final Completion, Contracting Authority may, in its sole discretion, require Project Co to continue to submit one or more Corrected Works Schedules for a particular month (even after the deadline for the next monthly submission of the Progress Works Schedule) until the Corrected Works Schedule for that particular month receives a No Comment or Reviewed As Noted – Minor Issues Designation.

## 5. PROJECT WORKS SCHEDULE REQUIREMENTS

### 5.1 General Requirements for Project Works Schedules and Works Schedule Reports

- (a) Project Co shall ensure that all Project Works Schedules and Works Schedule Reports,
  - (i) are developed in accordance with Good Industry Practice, are compliant with the requirements of the Project Agreement, include appropriate schedule activities, logic, and sequencing with achievable production rates and realistic assumptions;

- (ii) demonstrate, in a clear and detailed way, Project Co's planned execution of the Works and, in the case of Works Schedule Reports, the actual progress of the Works from Financial Close until Final Completion;
  - (iii) include all Works Activities as they are defined in this Schedule 12;
  - (iv) include all Tracking Milestones;
  - (v) include cost values, Quantities and Labour Resources for all Works Activities to enable the calculation of the required Earned Value Metrics;
  - (vi) contain sufficient detail to enable Contracting Authority to,
    - A. monitor the planned schedule for the Works and the progress to complete the Works, and determine whether Project Co is likely to achieve the requirements of Schedule 41 – Early Works Handover, and Section Substantial Completion for each Project Co Infrastructure Section pursuant to Schedule 45 – Integration with RSSOM Project;
    - B. monitor the planned schedule for the Works and the progress to complete the Works, and determine whether Project Co is likely to achieve Substantial Completion by the Scheduled Substantial Completion Date; and
    - C. manage Contracting Authority interfaces and analyze the schedule impacts of any potential delay, Delay Event or Variation;
  - (vii) take into account, and, subject to Section 30 (*Delay Events*) of the Project Agreement, are consistent with, all dates and timelines that are pre-established in the Project Agreement;
  - (viii) in the case of Progress Works Schedules, are progressed from and are Traceable to the Interim Baseline Works Schedule or the Baseline Works Schedule, as applicable, and that each successive monthly Progress Works Schedule is updated from and Traceable to the immediately previous Progress Works Schedule; and
  - (ix) activities within the Progress Works Schedules and Earned Value Metrics shall be organized according to a work breakdown structure (WBS) which will also relate to the updates of budget, financial status and risks as described in Schedule 33 – Works Report Requirements.
- (b) Project Co shall immediately give Notice to the Contracting Authority Representative of a change to a Works Activity promptly becoming aware of any impact on the activities of Contracting Authority or Additional Contractors. Project Co shall include in its report an update on the status of all Works Activities or milestones for a handover event (including Section Substantial Completion for each Project Co Infrastructure Section) or interface activity, indicating the baseline date, remaining float, forecast date and changes to float or changes to forecast date from the last report.

- (c) Project Co shall in its report to Contracting Authority Representative highlight if the amount of total float on a Works Activity that is within sixty (60) Business Days of the Critical Path changes by five (5) Business Days from the amount of total float shown in the previous submission of a Proposed Works Schedule, Interim Baseline Works Schedule, Baseline Works Schedule or Revised Baseline Works Schedule, as appropriate. Thereafter, Project Co shall also include in its report an update of each time the remaining total float on the applicable Works Activity is reduced by five (5) Business Days from the amount of total float previously reported to Contracting Authority.
- (d) If Project Co is obliged to provide any kind of notification (or Notice) to Contracting Authority or the Contracting Authority Representative pursuant to the Project Agreement, the submission of that notification (or Notice) by way of information included in a Project Works Schedule, Works Report and Works Schedule Report shall not constitute the provision of such Notice or notification by Project Co.
- (e) Project Co shall identify and give Notice to Contracting Authority of any opportunities for schedule acceleration or improvements.

## 6. RESTRICTIONS ON PROJECT WORKS SCHEDULES

- (a) Project Co shall only be permitted to show in a Project Works Schedule the commencement of a Construction Activity if Project Co has submitted all Works Submittals (including all Design Development Submittals and all Construction Document Submittals) related to such Construction Activity pursuant to Schedule 10 – Review Procedure, except for Works Activities that occurred prior to the Data Date.
- (b) Notwithstanding Section 6(a), enabling Construction Activities that are subcomponents of larger Construction Activities (e.g. footings of a structure) may be shown to commence in a Project Works Schedule, provided that Project Co obtains the prior agreement of Contracting Authority, acting reasonably, and Project Co has submitted all Design Development Submittals and all Construction Document Submittals pursuant to Schedule 10 – Review Procedure for that enabling subcomponent and Design Development Submittals and Construction Document Submittals pursuant to Schedule 10 – Review Procedure for the larger Construction Activity.
- (c) Notwithstanding Section 6(a), Project Co shall not be permitted to show the commencement of any Construction Activity in a Progress Works Schedule, other than,
  - (i) Construction Activities related to topographical surveys, subsurface investigations or vegetation removal required to complete the Works, provided that Project Co has completed its Contractor Site Specific Safety Manual; and
  - (ii) Construction Activities other than those identified in Sections 6(b) and 6(c)(i), provided that Project Co has,
    - A. submitted all Works Submittals (including, for clarity, all Design Development Submittals and Construction Document Submittals) related to such Construction Activities pursuant to Schedule 10 – Review Procedure;

- B. submitted each Quality Management Plan in accordance with Schedule 11 – Quality Management and Schedule 10 – Review Procedure;
- C. developed and implemented its Quality Management System in accordance with Schedule 11 – Quality Management; and
- D. completed its Contractor Site Specific Safety Manual.

**7. FAILURE TO SUBMIT A BASELINE WORKS SCHEDULE BY THE SUBMISSION DEADLINE AND DELAY EVENTS**

- (a) If Project Co successfully claims, in accordance with the Project Agreement, that it has experienced one or more Delay Events and,
  - (i) Project Co was late submitting its Baseline Works Schedule measured by the deadline for submission established by Section 9.1(a); and/or
  - (ii) Project Co failed to achieve a No Comment or Reviewed As Noted – Minor Issues Designation before the expiration of seventy-five (75) days after the deadline for submission established by Section 9.1(a) for Project Co’s submission of the Baseline Works Schedule,

then, subject to Section 7(b), both:

- (iii) the number of days that Project Co was late submitting its Baseline Works Schedule; and
- (iv) the number of days in excess of seventy-five (75) that it took Project Co to achieve a No Comment or Reviewed As Noted – Minor Issues Designation,

shall be deducted from the number of days of delay that the Parties determine (or is determined through the Dispute Resolution Procedure) that Project Co has experienced due to a Delay Event or Delay Events (the “**Late Schedule Submission Deduction**”) provided that no Late Schedule Submission Deduction will be made in respect of any Delay Event which occurred after Project Co achieved a No Comment or Reviewed As Noted – Minor Issues Designation on the Baseline Works Schedule. For clarity, in respect of a Compensation Event, Relief Event or Force Majeure event that is also a Delay Event, any Late Schedule Submission Deduction shall be taken into account in determining the amount of compensation that Project Co is entitled to pursuant to Section 31.2 (*Consequences of a Compensation Event*), Section 32.2 (*Consequences of a Relief Event*), or Section 33.2 (*Consequences of Force Majeure*), respectively.

- (b) The Late Schedule Submission Deduction shall be reduced by an amount equal to the number of days for which Contracting Authority failed to meet its obligations with respect to reviewing Project Co’s Baseline Works Schedule as set out in Section 4(a) of this Schedule or Section 4.1 (*Comments*) of Schedule 10 – Review Procedure.
- (c) If Project Co disputes Contracting Authority’s assignment of a “RE-SUBMIT” or “REVIEWED AS NOTED – MAJOR ISSUES” comment to the Baseline Works Schedule

submitted pursuant to Schedule 10 – Review Procedure in accordance with Section 5 (*Disputes*) of Part A (*Works*) to Schedule 10 – Review Procedure, then the number of days equal to the period between: (i) the date Contracting Authority notified Project Co of the assignment of such comment; and (ii) the date the matter was resolved by (A) agreement of the Parties, (B) a determination made pursuant to Section 5 (*Disputes*) of Part A (*Works*) to Schedule 10 – Review Procedure that Project Co does not dispute, or (C) a determination made pursuant to the Dispute Resolution Procedure under Schedule 27 – Dispute Resolution Procedure, as applicable, will be:

- (i) added to the number of days included in the calculation of the Late Schedule Submission Deduction under Section 7(a) if such Dispute is resolved in favour of Contracting Authority; or
  - (ii) omitted from the number of days included in the calculation of the Late Schedule Submission Deduction under Section 7(a) if such Dispute is resolved in favour of Project Co.
- (d) If Project Co includes a claim, assertion or inference that Project Co has experienced a Delay Event or Delay Events in any Project Works Schedule,
- (i) such claim, assertion or inference shall not constitute the provision of Notice by Project Co of a Delay Event pursuant to Section 30.2(a) or Section 30.2(e) (*Consequences of a Delay Event*) of the Project Agreement; and
  - (ii) no comment, question or other response (or lack of a comment, question or other response) by Contracting Authority with respect to the Project Works Schedule shall constitute any acknowledgment or acceptance by Contracting Authority of the Delay Event or Delay Events.
- (e) Contracting Authority may refuse to evaluate any notice of a Delay Event received from Project Co pursuant to Section 30.2(b) (*Consequences of a Delay Event*) of the Project Agreement until Project Co has achieved a No Comment or Reviewed As Noted – Minor Issues Designation in respect of the Baseline Works Schedule.

## 8. INTERIM BASELINE WORKS SCHEDULE

- (a) Prior to Financial Close, Project Co shall submit an interim baseline works schedule (the “**Interim Baseline Works Schedule**”) to Contracting Authority for its review, which review shall take place after Financial Close and in accordance with Schedule 10 – Review Procedure.
- (b) The Interim Baseline Works Schedule shall:
  - (i) have activities, including all Works Activities, that are Traceable to the activities in the Proposed Works Schedule;
  - (ii) supplement the Proposed Works Schedule by adding cost values to all Works Activities to comply with this Schedule 12;

- (iii) include cost values that are assigned to Works Activities within the Interim Baseline Works Schedule and shall add up to and incorporate all costs included in the Financial Model;
  - (iv) conform to this Schedule 12, including, for clarity, Appendix A to this Schedule 12;
  - (v) commence from the earlier of (A) the day upon which the Early Contractor Activities commenced and (B) date of Financial Close, and in each case shall show no progress;
  - (vi) include a Data Date that is equal to the date set out in Section 8(b)(v);
  - (vii) address any comments provided by Contracting Authority to Project Co prior to Financial Close;
  - (viii) conform to Schedule 41 – Early Works Handover; and
  - (ix) conform to Schedule 45 – Integration with RSSOM Project, including, for clarity, Appendix A to Schedule 45 – Integration with RSSOM Project.
- (c) The Parties acknowledge and agree that notwithstanding that the Interim Baseline Works Schedule is based upon the Proposed Works Schedule and provided to Contracting Authority prior to Financial Close, the Interim Baseline Works Schedule shall remain subject to review by Contracting Authority in accordance with Schedule 10 – Review Procedure, and the treatment of the Interim Baseline Works Schedule as set out in this Section 8 shall not, in any way,
- (i) diminish, reduce or otherwise modify or amend Contracting Authority’s rights under the Project Agreement to review the Interim Baseline Works Schedule in accordance with Schedule 10 – Review Procedure; or
  - (ii) constitute acceptance or comment by Contracting Authority of the Interim Baseline Works Schedule in accordance with Schedule 10 – Review Procedure.
- (d) For the purpose of Contracting Authority deadlines for review of the Interim Baseline Works Schedule provided by Project Co prior to Financial Close, Project Co will be deemed to have submitted the Interim Baseline Works Schedule on the first (1<sup>st</sup>) Business Day after Financial Close.

## 9. BASELINE WORKS SCHEDULE

### 9.1 Baseline Works Schedule

- (a) No later than one-hundred and twenty (120) Business Days following Financial Close, Project Co shall submit a baseline works schedule to Contracting Authority for its review in accordance with Schedule 10 – Review Procedure (the “**Baseline Works Schedule**”).
- (b) The Baseline Works Schedule submitted by Project Co shall:

- (i) have activities, including all Works Activities, which are Traceable to those that appeared in the Interim Baseline Works Schedule;
  - (ii) have cost values for all Works Activities comply with this Schedule 12;
  - (iii) include cost values that are assigned to Works Activities within the Baseline Works Schedule and shall add up to and incorporate all costs included in the Financial Model;
  - (iv) conform to the requirements of this Schedule 12, for clarity, including Appendix A to this Schedule 12;
  - (v) commence from the earlier of (A) the day upon which the Early Contractor Activities commenced and (B) date of Financial Close, and in each case shall demonstrate any progress that occurred from the day upon which the Early Contractor Activities commenced or the date of Financial Close, as applicable, until the date that such Baseline Works Schedule is submitted;
  - (vi) include a Data Date that is equal to the date set out in Section 9.1(b)(v);
  - (vii) address any comments on the Interim Baseline Works Schedule provided by Contracting Authority;
  - (viii) identify all differences between the Interim Baseline Works Schedule and the Baseline Works Schedule;
  - (ix) not change any activity reference numbers from activity reference numbers set out in the Interim Baseline Works Schedule;
  - (x) conform to Schedule 41 – Early Works Handover; and
  - (xi) conform to Schedule 45 – Integration with RSSOM Project, including, for clarity, Appendix A to Schedule 45 – Integration with RSSOM Project.
- (c) In its review of the Baseline Works Schedule pursuant to Schedule 10 – Review Procedure, Contracting Authority may, acting reasonably (having regard, without limitation, to the expiry of the seventy-five (75) day period applicable under Section 7(a)), request that additional milestones or activities be incorporated into the Progress Works Schedule included in the Baseline Works Schedule. Upon such request, Project Co shall provide a revised Baseline Works Schedule to include the additional milestones and activities within a reasonable time.

## 9.2 Revised Baseline Works Schedule

- (a) If Contracting Authority is of the opinion, acting reasonably, that, as a result of an amendment to the Project Agreement, a Delay Event, a Variation Confirmation, or a Variation Directive, the scope, means, methods and/or schedule of the Works has changed significantly since the finalization of the Baseline Works Schedule, Contracting Authority may require Project Co to replace the Baseline Works Schedule with a revised and updated



Baseline Works Schedule (a “**Revised Baseline Works Schedule**”). If Contracting Authority gives Notice to Project Co that it requires a Revised Baseline Works Schedule, Project Co shall prepare and submit a Revised Baseline Works Schedule (as a Works Submittal), no later than fifteen (15) Business Days after Project Co receives such Notice, or such longer period as the Parties agree acting reasonably, for review pursuant to Schedule 10 – Review Procedure.

- (b) If Project Co is of the opinion, acting reasonably, that, as a result of an amendment to the Project Agreement, a Delay Event, a Variation Confirmation, or a Variation Directive, the scope, means, methods or schedule of the Works has changed significantly since the finalization of the Baseline Works Schedule, Project Co may prepare a Revised Baseline Works Schedule for review in accordance with Schedule 10 – Review Procedure. As part of its review of Project Co’s Revised Baseline Works Schedule, Contracting Authority may, acting reasonably, determine whether a Revised Baseline Works Schedule is necessary or appropriate.
- (c) The Revised Baseline Works Schedule submitted by Project Co shall:
  - (i) have all requirements as those listed for the Baseline Works Schedule;
  - (ii) have activities which are Traceable to those that appeared in the Baseline Works Schedule;
  - (iii) identify all differences between the Baseline Works Schedule and the Revised Baseline Works Schedule;
  - (iv) have cost values for all Works Activities comply with this Schedule 12;
  - (v) conform to the requirements of this Schedule 12, for clarity, including Appendix A to this Schedule 12;
  - (vi) have a Data Date which corresponds to the date the Revised Baseline Works Schedule was requested by Contracting Authority or a date that is otherwise required by Contracting Authority;
  - (vii) document the progress of the Works for all Works Activities, Works Milestones and Tracking Milestones that have occurred, progressed up to the Data Date described in Section 9.2(c)(vi); and
  - (viii) not change any activity reference numbers from activity reference numbers set out in the Interim Baseline Works Schedule.
- (d) If the Revised Baseline Works Schedule is finalized pursuant to this Section 9.2, the Revised Baseline Works Schedule shall become the Baseline Works Schedule.

## 10. PROGRESS WORKS SCHEDULE

- (a) Starting on the first (1<sup>st</sup>) month after Financial Close until Final Completion, no later than five (5) Business Days after the last day of each month, Project Co shall submit to

Contracting Authority an updated Progress Works Schedule for review by Contracting Authority in accordance with Schedule 10 – Review Procedure. For clarity, the submission of any Progress Works Schedule shall not amend either the Interim Baseline Works Schedule or the Baseline Works Schedule.

- (b) Where a Progress Works Schedule update includes:
- (i) a change to the Critical Path;
  - (ii) a change to the dates of Works Milestones; or
  - (iii) a change to the Planned Value Curve by more than \$[REDACTED] for any given month,

then Project Co shall provide an update to such Progress Works Schedule which shall be carried out in accordance with the method implementation protocol 3.4 as defined within AACE Forensic Schedule Analysis in production of a bi-furcation update that has a separate schedule submission (.xer and .pdf) for progress achieved. Prior to inclusion of mitigations associated with a delay, such changes shall then be incorporated into subsequent Progress Works Schedule submissions in accordance with Section 10(a).

- (c) All Progress Works Schedules submitted by Project Co shall,
- (i) have activities that are progressed from and Traceable to those that appeared in the Interim Baseline Works Schedule or the Baseline Works Schedule, as applicable, and the immediately previous Progress Works Schedule;
  - (ii) conform to this Schedule 12, including Appendix A to this Schedule 12;
  - (iii) include cost values for all Works Activities to comply with this Schedule 12;
  - (iv) have a Data Date which is the first (1<sup>st</sup>) Business Day of the successive month to which the Progress Works Schedule applies;
  - (v) document the progress of the Works for all Works Activities and Works Milestones (via three distinct sets of activity bars) and progressed up to the end of the relevant month, measured relative to the Baseline Works Schedule and the Progress Works Schedule of the previously reported month; to clarify, activity bars are as follows;
    - A. current Progress Works Schedule (updated to month end);
    - B. Progress Works Schedule of the previously reported month; and
    - C. Baseline Works Schedule.
  - (vi) include any applicable obligations pursuant to Schedule 41 – Early Works Handover;

- (vii) include any applicable obligations pursuant to Schedule 45 – Integration with RSSOM Project;
- (viii) include all Tracking Milestones clearly indicating the variance between baseline date and current dates of the corresponding Tracking Milestone;
- (ix) include updated forecasted dates required to complete the Works for all previously noted Works Activities and Works Milestones;
- (x) include additional milestones or activities that are requested by Contracting Authority, acting reasonably;
- (xi) include any additional Works Activities and Works Milestones, and/or updates to sequencing, activity durations, and logic, permitted under Appendix A to this Schedule 12, which are required to complete the Works (such additional Works Activities and/or Works Milestones, and/or updates to sequencing, activity durations, and logic shall be reported within the corresponding monthly Works Schedule Report, in accordance with this Schedule 12); and
- (xii) Project Co shall ensure that all Project Works Schedules and Works Schedule Reports align and integrate with all other Project Co reporting deliverables and documents including the work breakdown structure (WBS), Estimates, Variations, cost reports, Earned Value analysis, and CPI and SPI calculations.

## 11. WORKS MICRO-SCHEDULE

- (a) If, in the opinion of Contracting Authority acting reasonably, a Project Co activity is a Works Micro-Schedule Activity, Contracting Authority may request that Project Co provide a sub-schedule of a Progress Works Schedule that focuses on that Works Micro-Schedule Activity (each, a “**Works Micro-Schedule**”). Each Works Micro-Schedule shall include the elements set out in Sections 11(c)(i) to 11(c)(v). For an indicative listing of micro-schedules, refer to Appendix C to Schedule 12.
- (b) For any activity in the Progress Works Schedule that Project Co determines must be completed without disruption, Contracting Authority will require that Project Co provide a Works Micro-Schedule.
- (c) No later than ten (10) Business Days following a request by Contracting Authority (or longer as determined by the Contracting Authority Representative, acting reasonably), Project Co shall submit to Contracting Authority, for review in accordance with Schedule 10 – Review Procedure, a Works Micro-Schedule that includes:
  - (i) a title which includes the name “Works Micro-Schedule”, a descriptor of the portion of the Works for which the Works Micro-Schedule is applicable, and the date range for the Works Micro-Schedule;
  - (ii) all elements required to be included in the Progress Works Schedule;
  - (iii) all Works Micro-Schedule Milestones;

- (iv) all Works Micro-Schedule Activities; and
  - (v) any other activities to support day-by-day or hour-by-hour coordination with certain Contracting Authority Activities that have been identified by Contracting Authority or any other required high level of involvement by Contracting Authority or any other third party or authority as contemplated in the Project Agreement.
- (d) Every two weeks following the initial Works Micro-Schedule, Project Co shall submit an updated Works Micro-Schedule until the Works contemplated in the Works Micro-Schedule are complete. Project Co shall clearly illustrate in each updated Works Micro-Schedule, the actual progress of each Works Micro-Schedule Activity in comparison to the planned progress of such Works Micro-Schedule Activity.
  - (e) Project Co shall ensure that Works Micro-Schedule Milestones dates and the Works Micro-Schedule Activities dates and durations indicated on the Works Micro-Schedule correspond to the Works Milestone dates and Works Activity dates and durations of the then current Progress Works Schedule.
  - (f) Upon Contracting Authority's request, Project Co shall provide a drawing of the affected Works, which shall clearly illustrate the sequence and timing of the Construction Activities depicted in any Works Micro-Schedule.
  - (g) Project Co may request, for consideration by Contracting Authority, acting reasonably, that Project Co be permitted to provide a Works Micro-Schedule in Excel or MS Project.
  - (h) Works Micro-Schedule Activities shall be an amplification of and be compatible with the Progress Works Schedule. That is, each activity in the Works Micro-Schedule shall include the activity identification number of its corresponding activity in the Progress Works Schedule. One activity in the Progress Works Schedule may be represented in detail by more than one (1) activity in the Works Micro-Schedule.

## 12. REPORT ON BASIS OF WORKS SCHEDULE

### 12.1 Contents of the Report

- (a) With each of the Interim Baseline Works Schedule, the Baseline Works Schedule, the Revised Baseline Works Schedule (if applicable) and each Recovery Works Schedule (if applicable), Project Co shall submit a report on the basic principles underlying the applicable Interim Baseline Works Schedule, the Baseline Works Schedule, the Revised Baseline Works Schedule or the Recovery Works Schedule (each a "**Basis of Works Schedule Report**").
- (b) Project Co shall ensure that each Basis of Works Schedule Report submitted by Project Co includes a black-lined document comparing the then current version to the immediately previous version of the Basis of Works Schedule Report clearly indicating the changes made by Project Co to the Basis of Works Schedule Report from the immediately previous version.

- (c) Project Co shall ensure that each Basis of Works Schedule Report includes at least the following content and sections:
- (i) a cover page including the title “Report on the Basis of Works Schedule”, the Project title, date of the report, issuance date, version date, and the version number of the associated Project Works Schedule, and the signature of the Project Co Representative who has approved the report;
  - (ii) “Section 1 – Implementation Strategy”, including a written narrative with sufficient details to describe the overall approach, proposed sequencing and work plan to complete the Works to achieve Substantial Completion and Final Completion. For clarity, the first Basis of Works Schedule Report shall explain the basis of development of the schedule and the means and methods that Project Co plans to deploy in order to meet the Project milestones and completion date requirements. This section shall include diagrams to clarify intent and shall be written to identify the strategy or approach to:
    - A. complete any additional site investigations and other due diligence;
    - B. complete the design developments and review process;
    - C. obtain any required major Project Co Permits, Licences, Approvals, and Agreements;
    - D. procurement strategy for suppliers and critical components of the Works;
    - E. testing and commissioning of the Works and Final Completion and Close-out Activities, including asset handover and development of final As-Built Drawings and manuals;
    - F. key assumptions and exclusions;
    - G. access requirements, restrictions or Works limits as described in permits or otherwise and any corresponding calendars which have been applied in the schedule submitted by Project Co;
    - H. any activities required pursuant to Schedule 41 – Early Works Handover; and
    - I. any activities required pursuant to Schedule 45 – Integration with RSSOM Project;
  - (iii) “Section 2 – Critical Path Risk”, including a narrative in tabular form describing the risks to completing the Critical Path activities to achieve Substantial Completion, and Project Co’s strategy to mitigate or avoid these risks;
  - (iv) “Section 3 – Planned Working Calendar” including a table defining each of the schedule calendars. For each calendar, include the Working Days (days of the week), normal Working Hours, number and hours of any shifts, and a list of all

assumed non-Working Days for any part of the Works (such as holidays, environment restricted work windows, and other similar concepts);

- (v) “Section 4 – Means and Methods”, including an executive summary of the intended means and methods for all Works Activities and include for each a short narrative on the type of work, any constructability issues and if the work will be self-performed by the Construction Contractor or sub-contracted, and if sub-contracted, how the schedules of Subcontractors will be integrated into applicable Project Works Schedule submitted to Contracting Authority;
- (vi) “Section 5 – Resource Plan”, including for all Works Activities:
  - A. number of teams and team composition (that is, staffing requirements) including subcontractor work;
  - B. number and type of heavy machinery or equipment, to be summarized by main area;
  - C. anticipated resource constraints (such as union related constraints and limits to the number of any specific heavy machinery available in the region);
  - D. anticipated resource constraints (such as pandemic related constraints, union related constraints, material supply constraints and limits to the number of any specific heavy machinery available in the region); and
  - E. a written narrative with sufficient details to describe how Project Co intends to meet the resource requirements;
- (vii) “Section 6 – Planned Production Rates”, including a table listing each Works Activity and indicating for each:
  - A. the assumed production rate for each activity expressed as a quantity per Working Day (units/day, ton/day, m/day, m<sup>2</sup>/day, or m<sup>3</sup>/day); and
  - B. the intended schedule calendar or any variance to the normal Working Hours, such as “restricted to night work” or “Monday to Saturday, 3 x 8 hour shifts”.

For clarity, each Works Activity shall only be listed once in the table, even though more than one instance of the activity type is indicated in the applicable Project Works Schedule unless more than one team or calendar configuration is intended;

- (viii) “Section 7 – General Assumptions”, including any other assumptions used by Project Co to generate the schedule including any known or foreseeable constraints or restrictions such as weather, traffic, environmental, utilities, and other similar concepts;

- (ix) “Section 8 – Planned Value Curve”, including a graphical and tabular representation of the cost loaded schedule showing the cost per month and the cumulative curve;
- (x) “Section 9 – Planned Labour Resource Curve”, including a graphical and tabular representation of the resource loaded schedule showing the hours per month per trade and the cumulative curve; and
- (xi) “Section 10 – Pandemic and Epidemic response”, including a written narrative of no less than 1000 words:
  - A. describing Project Co’s plans and processes for addressing and implementing the COVID-19 Emergency Public Health Physical Distancing Requirements;
  - B. describing the detailed steps Project Co intends to take to prepare for and respond to the effects of the COVID-19 Emergency Public Health Physical Distancing Requirements;
  - C. demonstrating the effects of the COVID-19 Emergency Public Health Physical Distancing Requirements on the Project Works Schedule generally, and specifically with reference to the following areas of the Basis of Works Schedule Report:
    - (I) Section 3 – Planned Working Calendar;
    - (II) Section 5 – Resource Plan; and
    - (III) Section 6 – Planned Production Rates;
  - D. outlining Project Co’s strategy to mitigate the effects described in Section 12.1(c)(xi)C; and
  - E. how the processes described in Section 12.1(c)(xi)A will affect the Project Works Schedules.

### 13. WORKS SCHEDULE REPORT

#### 13.1 Content of the Works Schedule Reports

- (a) Project Co shall submit a report with each Progress Works Schedule (except for the Works Micro-Schedule) for review by Contracting Authority in accordance with Schedule 10 – Review Procedure (each a “**Works Schedule Report**”).
- (b) Project Co shall ensure that each Works Schedule Report includes at least the following content and sections:
  - (i) a cover page including the title “Works Schedule Report”, the Project title, date of the report, issuance date, version date, the version number of the relevant Progress

Works Schedule, and the signature of the Project Co Representative approving the report;

- (ii) “Section 1 – Executive Summary”, including an executive summary of progress of the Works, noteworthy milestones achieved, schedule variances, and issues and risks that have or that may impact the schedule;
- (iii) “Section 2 – Schedule Analysis” including a schedule analysis, as it exists for the Progress Works Schedule that the Works Schedule Report is applicable to, that includes:
  - A. the forecasted Handover dates;
  - B. each applicable date pursuant to Schedule 41 – Early Works Handover;
  - C. each projected Section Substantial Completion Date pursuant to Schedule 45 – Integration with RSSOM Project;
  - D. the forecasted Substantial Completion Date compared to the then current Scheduled Substantial Completion Date;
  - E. total float, calculated as the difference between the then current Scheduled Substantial Completion Date and the date of Substantial Completion of the last Works Activity on the Critical Path of the Progress Works Schedule to achieve Substantial Completion, expressed in days;
  - F. total float graph showing the historically calculated total float value for each month from Financial Close up to the applicable reporting period, including the total float for the applicable Progress Works Schedule;
  - G. a table showing the total float for each Works Milestone available in the current month, the preceding month and identifying any variances in float;
  - H. list of all Works Activities that are within twenty (20) Business Days of the Critical Path;
  - I. a summary schedule indicating the then current Critical Path calculated using the applicable Progress Works Schedule; and
  - J. a description of the calendars and their applicability in the Progress Works Schedule. Project Co shall include a narrative on shifts and shift hours in each Basis of Works Schedule Report;
- (iv) “Section 3 – Variances” that includes the following information, as it exists for the Progress Works Schedule that the Works Schedule Report is applicable to:
  - A. a narrative explaining the basis for any required changes to the sequencing of the Works, interdependencies, original activity durations as set out in the Progress Works Schedule;



- B. a table entitled “Milestone and Critical Path Variances” listing all Works Milestones and all Critical Path activities and, for each Works Milestone and Critical Path activity where the variance exceeds five (5) Business Days from the immediately previous Progress Works Schedule, the following information:
- (I) the activity or milestone identification number and name;
  - (II) the baseline start and end date in accordance with the Interim Baseline Works Schedule, the Baseline Works Schedule, the Revised Baseline Works Schedule or each Recovery Works Schedule, as applicable;
  - (III) the planned start and end date set out in the immediately previous Progress Works Schedule;
  - (IV) the forecast start and end date, or, if applicable, the actual start and end date, as set out in the associated Progress Works Schedule and a clear identification of any Works Milestones to be achieved by Project Co in the next 12 week period;
  - (V) the physical percentage completion, or status;
  - (VI) the total variance calculated as the forecast end date minus the end date shown in the immediately previous Progress Works Schedule, expressed in Working Days;
  - (VII) the reporting period variance calculated as the forecast end date minus the end date shown in the immediately previous Progress Works Schedule, expressed in Working Days; and
  - (VIII) a brief narrative on any actual or forecasted delays or problems that might have an impact on the scheduled completion dates of the Works in the Progress Works Schedule and a discussion of the measures being (or to be) adopted by Project Co to overcome them;
- C. the total number of near-critical activities, together with a table entitled “New Near-Critical Activities”, listing all Works Activities that have become near critical with a float of less than ten (10) Working Days during the last reporting period; and
- D. a table entitled “Schedule Logic Changes” listing any:
- (I) addition, deletion or changes to activity relationships;
  - (II) addition or deletion of activities;
  - (III) changes to activity durations;

- (IV) changes to milestones, and any other changes; and
- (V) changes to activity descriptions;
- (v) “Section 4 – Labour Resource”, including,
  - A. a graphical and tabular presentation by Labour Resource of the utilization of Labour Resources in the Works clearly showing the baseline planned resources hours and earned hours based on baseline planned work completed and estimate to complete hours; and
  - B. a report on the availability of Labour Resources for the Works noting the percentage of resources secured versus the peak requirement from the baseline and current forecast to complete of each resource;
- (vi) “Section 5 – Progress Performance Management”, including,
  - A. a report, in the form set out in Appendix B to this Schedule 12, of each of the following in tabular and graphical form:
    - (I) S-Curve showing Planned Value vs. Earned Value;
    - (II) Schedule Performance Index “SPI” trend over time;
    - (III) Cost Performance Index “CPI” trend over time; and
    - (IV) a Variance Analysis Report,(collectively, the “**Earned Value Metrics**”) in accordance with the Project Management Institute’s *Practice Standard for Earned Value Measurement – Second Edition*; and
  - B. a report of each of the Earned Value Metrics,
    - (I) for the entire Project;
    - (II) for each Works location, as described in Appendix B to this Schedule 12 or as requested by Contracting Authority, acting reasonably; and
    - (III) for each major type of Works Activity, as described in Appendix B to this Schedule 12;
- (vii) “Section 6 – Potential Delay Events”, including a register of all potential Delay Events pursuant to Section 30.2(a) (*Consequences of a Delay Event*) of the Project Agreement and including for each potential Delay Event a description of the circumstance and nature of the claim, the date on which the Notice required pursuant to Section 30.2(a) (*Consequences of a Delay Event*) of the Project Agreement was given by Project Co, and the date on which the details required by

Sections 30.2(b) and 30.2(c) (*Consequences of a Delay Event*) of the Project Agreement, the mitigation strategy implemented by Project Co, and the current status of mitigation measures;

- (viii) “Section 7 – Contracting Authority Submittal Review”, including an updated Review Procedure Activities Register pursuant to Schedule 10 – Review Procedure; and
- (ix) “Section 8 – Change Log”, including the following information, as it exists for the Progress Works Schedule that the Works Schedule Report is applicable to:
  - A. Project Co shall create and maintain a change log register (the “**Change Log**”) detailing all changes made between an immediately previous Progress Works Schedule and the Baseline Works Schedule or revised Baseline Works Schedule, including any of the following changes:
    - (I) addition, deletion or changes to activity relationships;
    - (II) Labour Resources addition, deletion or changes to the project calendars;
    - (III) addition or retiring of Works Activities or Works Milestones or changing the description of activities;
    - (IV) changes to Works Activity durations;
    - (V) changes to Works Activity assigned cost value;
    - (VI) changes to Works Activity assigned Labour Resource (person-hour);
    - (VII) changes to Works Activity assigned Quantity;
    - (VIII) changes to the assigned calendar determining the Working Days for the Works Activity; and
    - (IX) any other change that impacts the logic of the schedule.
  - B. For each change, Project Co shall provide:
    - (I) the unique document identifier number, as shown in the Project Works Schedule Submission Register, for both the updated Project Works Schedule in which the change has been made, and the previous version of the Progress Works Schedule that has changed;
    - (II) the activity identification number or milestone identification number and name;

- (III) any changes to Primavera P6 scheduling options and settings;
- (IV) the type of change;
- (V) a discrete explanation for circumstances and reasons leading to the change. Project Co shall not provide a general blanket explanation, for example similar to “change in strategy” or “according to recent market conditions”, but shall diligently explain in detail the strategy change or the specific conditions that led to that change, including a description of the change including the previous configuration or value, and the updated configuration or value, and
- (VI) the updated Change Log for the Project Works Schedule shall be included with each Project Works Schedule submission.

## 14. RECOVERY WORKS SCHEDULES

### 14.1 Failure to Maintain Schedule for the Works

- (a) Without limiting any other provision of this Project Agreement but subject to Section 30 (*Delay Events*) of the Project Agreement, if, at any time, Contracting Authority is of the opinion that:
  - (i) the actual progress of the Works has fallen significantly behind progress of the Works set out in the Baseline Works Schedule;
  - (ii) Project Co will not achieve Substantial Completion by the Scheduled Substantial Completion Date; or
  - (iii) Project Co will not achieve Substantial Completion by the Longstop Date;then Contracting Authority may give Notice to Project Co that Contracting Authority requires Project Co to submit a schedule to recover the delay (each a “**Recovery Works Schedule**”) and a report supporting the Recovery Works Schedule (a “**Recovery Works Schedule Report**”) in accordance with this Section 14.
- (b) No later than five (5) Business Days after the last day of the month (or such longer period as the Parties agree, acting reasonably) in which Project Co receives a Notice from Contracting Authority pursuant to Section 14.1(a), Project Co shall, in lieu of submitting a Progress Works Schedule for the applicable month or a Works Schedule Report for that month, prepare and submit to each of the Contracting Authority Representative and the Independent Certifier:
  - (i) a Recovery Works Schedule in accordance with the requirements of Section 14.1(d); and
  - (ii) a Recovery Works Schedule Report, in accordance with the requirements of Section 14.1(e).

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- (c) Project Co shall ensure that the Recovery Works Schedule and the Recovery Works Schedule Report, taken together, explain the causes of the delay in the progress of the Works (irrespective of whether such delays are Delay Events) and set out a strategy that is compliant with the Project Agreement and will be implemented by Project Co to eliminate or reduce the delay and,
- (i) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
  - (ii) if Substantial Completion cannot be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion before or by the Longstop Date.
- (d) Project Co's Recovery Works Schedule shall,
- (i) be based on the terms and conditions of the Project Agreement;
  - (ii) comply with the Progress Works Schedule requirements set out in Section 10(c);
  - (iii) be entitled "Recovery Works Schedule";
  - (iv) have activities which are Traceable to those that appeared in the Baseline Works Schedule and in the immediately previous Progress Works Schedule; and
  - (v) indicate the variance between the Recovery Works Schedule and,
    - A. the immediately previous Progress Works Schedule; and
    - B. the Baseline Works Schedule.
- (e) Project Co's Recovery Works Schedule Report shall,
- (i) comply with the requirements of a Works Schedule Report as set out in Section 13.1;
  - (ii) be entitled "Recovery Works Schedule Report";
  - (iii) set out, in detail and in narrative form, the delays experienced by Project Co in carrying out the Works, including both delays which are and are not Delay Events;
  - (iv) set out, in detail and in narrative form, the commercially reasonable mitigation measures being taken by Project Co to mitigate the delay and Project Co's plan to continue the mitigation measures until Substantial Completion;
  - (v) provide, in narrative form, an explanation of the variances between the Recovery Works Schedule and,
    - A. the immediately previous Progress Works Schedule; and
    - B. the Baseline Works Schedule; and

- (vi) provide a revised Basis of Works Schedule Report detailing the assumptions used to generate the Recovery Works Schedule being submitted.
- (f) For clarity, Contracting Authority may require Project Co to meet the requirements of Sections 14.1(b), 14.1(c), 14.1(d) and 14.1(e), each time Contracting Authority reaches the opinion set out in Section 14.1(a).
- (g) Project Co shall notify the Contracting Authority Representative if, at any time Project Co is aware of any development relating to the Project that may reasonably be expected to affect,
  - (i) Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date; or
  - (ii) the functionality or the cost of the Project.
- (h) Contracting Authority may, acting reasonably, give notice to the Lenders' Agent pursuant to Section 15 (*Proceeding At Risk and Project Co Delay Notices*) of the Lenders' Direct Agreement that Project Co is failing to maintain the schedule, together with the relevant information supporting Contracting Authority's opinion that Project Co is failing to maintain the schedule.
- (i) For greater certainty, provided that Project Co has complied with this Section 14 and is not in default under Section 34.1(a)(iii) (*Project Co Events of Default*) of the Project Agreement, the failure to achieve Substantial Completion by the Scheduled Substantial Completion Date, or to achieve Final Completion by the Scheduled Final Completion Date on its own, shall not be a Project Co Event of Default for the purposes of Section 34.1(a)(ii) (*Project Co Events of Default*) of the Project Agreement.
- (j) Once the Recovery Works Schedule has been accepted by Contracting Authority in accordance with this Schedule 12, it shall be considered the Progress Works Schedule for the month for which it replaced the Progress Works Schedule.

## 15. PROJECT SCHEDULES MANAGEMENT PLAN

- (a) Project Co shall, within thirty (30) days of Financial Close, provide a comprehensive project schedules management plan that describes how it manages Project Works Schedules in connection with the Project in compliance with the provisions of the Project Agreement (the "**Project Schedules Management Plan**"). The Project Schedules Management Plan shall apply throughout the Project Term.
- (b) The Project Schedules Management Plan shall contain an organizational chart identifying Key Individuals and other key personnel responsible for Project Works Schedule management. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for project schedule management and other engineering and construction management disciplines.

- (c) The Project Schedules Management Plan shall include quality control and quality assurance completeness and correctness criteria for both scheduling deliverables and the scheduling processes, proposed standards, schedule health and reliability checklists and reporting structures.
- (d) The Project Schedules Management Plan shall, at a minimum, include or reference detailed procedures and process flow diagrams for the following processes:
  - (i) Project Co's Works planning procedure;
  - (ii) integration of Project Co Parties' Works planning;
  - (iii) description of how the requirements of this Schedule will be implemented and monitored;
  - (iv) scheduling software and tools to be used; and
  - (v) version control, access and security of Project Works Schedules.
- (e) The above procedures and flow diagrams collectively shall document who is responsible for performing the work, what requirements they must follow, and what evidence is generated that they have performed the work correctly.

## APPENDIX A TO SCHEDULE 12

PROJECT WORKS SCHEDULE TECHNICAL REQUIREMENTS

## 1.0 PROJECT WORKS SCHEDULE TECHNICAL REQUIREMENTS

## 1.1 Software Requirements

- (a) Project Co shall identify all Works Activities in,
  - (i) a graphical, time-scaled, horizontal bar chart format; and
  - (ii) a geographic, time-location schedule.
- (b) Project Co shall generate the Project Works Schedules using Primavera P6 Professional Release: 8.3.0 or newer and Trimble TILOS, to the satisfaction of Contracting Authority to support the completion of the Works in accordance with Section 13.1 (*Completion of the Works*) of the Project Agreement. If Project Co recommends, and Contracting Authority approves, the use of scheduling software other than Primavera or Trimble TILOS, Project Co shall provide four licences and all software updates for the duration of the Project Term for use by Contracting Authority. If software-specific terminology is used in this Schedule 12 to define specific requirements, Project Co shall implement measures to achieve a similar or higher level of scheduling control, quality, content and output regardless of the software used to generate the schedules.
- (c) Project Co shall ensure that each Project Works Schedule submitted to Contracting Authority shall be submitted in the following file formats:
  - (i) the native file format of the software used to generate and manage the Project Works Schedules, which shall be the exported .XER file for Primavera and .HSP files for Trimble TILOS, fully compliant with all requirements of this Project Agreement. The native file shall be fully calculated and in a stable state; and
  - (ii) two, word searchable high-resolution colour Portable Document Format (.PDF) version of each Project Works Schedule with one showing all content to demonstrate conformance with the Project Agreement, showing each start date, finish date, and duration, and the other only showing the critical and near Critical Path activities.
- (d) Project Co shall submit all graphs and tabular information, as required as part of the Basis of Works Schedule Report and Works Schedule Report pursuant to this Schedule 12, including any registers, logs, curves, numerical data or calculations, in two electronic soft copy file formats. The first format shall be in the native form such as the Microsoft Excel file format that would allow Contracting Authority to review the data and formulas for the purpose of evaluation and the second format shall be a high resolution PDF version.
- (e) Project Co shall create and maintain a register detailing the submission of each of the Project Works Schedule document sets (the “**Project Works Schedule Submission Register**”). The register shall include the Project Works Schedule document title,



submission date, publish date, Data Date, revision and version number. The updated register shall be included with each Project Works Schedule submission.

- (f) Upon Contracting Authority’s request, Project Co shall provide the details of the software and any additional software plug-ins used by Project Co, a copy of any templates, and the details for any software settings it has used in its scheduling software, such as calendar settings, user and administrative preferences, schedule settings, and any other information required to enable Contracting Authority to replicate the Project Works Schedules submitted by Project Co using the native file formats provided by Project Co.

## 1.2 Title Block Requirements

- (a) Project Co shall include in the title-block of each of the Project Works Schedules:
  - (i) Project title;
  - (ii) unique project identifier number;
  - (iii) unique document identifier number;
  - (iv) title of the document (i.e. “the type of Project Works Schedule being submitted”);
  - (v) Project Works Schedule (baseline) version number, and the date on which the Project Works Schedule was agreed; If the Project Works Schedule has not been agreed, state “not-agreed”;
  - (vi) Data Date (with the format YYYYMMDD);
  - (vii) version and revision number;
  - (viii) author name;
  - (ix) date on which the document was published for distribution (PDF date); and
  - (x) any other information as required pursuant to the Project Agreement.

## 1.3 Guides and Standards

- (a) In addition to complying with the provisions of the Project Agreement and this Schedule 12, Project Co shall provide all Project Works Schedules in accordance with the following:
  - (i) A Guide to the Project Management Body of Knowledge) – Sixth Edition; for use in the definition of “Critical Path”
  - (ii) AACE International Recommended Practice No. 29R-03 “Forensic Schedule Analysis”;
  - (iii) AACE International Recommended Practice, “Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction”;

- (iv) Metrolinx Capital Projects Group Cost Guidelines on Cost Breakdown Structure - CKH-CM-GDE-001 (and successor documents) as supplemented by ‘Ontario Line Code of Accounts 3-Mar-21’ (and successor documents);
- (v) Metrolinx Ontario Line Work Breakdown Structure Guideline (and successor documents);
- (vi) Metrolinx Capital Projects Group P6 Data Dictionary for Contractors – Subways’, CKH-SCHD-RFD-003 Rev.01 (and successor documents);
- (vii) PMI “The Practice Standard for Scheduling” – Second Edition; and
- (viii) PMI “The Practice Standard for Earned Value Management” – Second Edition.

#### 1.4 Dates

- (a) Project Co shall include the following dates in each of the Project Works Schedules:
  - (i) if access to any part of the Lands is projected to be needed for longer/later than provided in Schedule 35 – Lands, the date that Project Co will cease to need access to such part of the Lands (for clarity, this will not entitle Project Co to such access);
  - (ii) the dates any acceptances are required by Contracting Authority;
  - (iii) the dates Project Co will provide equipment or assets to Contracting Authority; and
  - (iv) the dates that Project Co requires specific information is needed from third parties.

#### 1.5 General Requirements for Project Works Schedules

- (a) For each Works Activity, Works Milestones or any other activity or Milestone Event included in the Project Works Schedules, the Project Works Schedules shall, at a minimum, provide:
  - (i) a unique activity identification number (ID) and name or description using consistent and intuitive terminology that would be understandable to Contracting Authority and only using activity descriptions that begin with a verb or work function followed by an object, where the description shall not include percentages and shall, where applicable, contain a location and physical dimension;
  - (ii) early and late start dates, each with a starting time set as the intended work start time for each Working Day;
  - (iii) early and late finish dates, each with a finish time set as the intended work finish time for each Working Day;
  - (iv) original planned duration as defined by the Baseline Works Schedule, indicated as Working Days and not days, which duration shall be the most-likely duration and

used for the Critical Path calculation and shall be at least one Working Day long. Zero duration activities shall be coded as milestones and not activities;

- (v) for every Works Activity on the Critical Path or any Works Activity with a total float less than sixty (60) Working Days, shortest expected activity duration;
- (vi) for every Works Activity on the Critical Path or any Works Activity with a total float less than sixty (60) Working Days, longest expected duration;
- (vii) physical per cent completion with all activities using the same percentage completion type representing the physical completion of the activity (activities shall not use any other completion type such as duration completion or payment percentage);
- (viii) remaining duration, manually entered or calculated when entering the physical per cent completion and the expected finish date;
- (ix) forecasted finish date, manually entered or calculated when entering the physical per cent completion and the remaining duration;
- (x) actual duration for all completed activities;
- (xi) calendar assigned;
- (xii) total float or slack (i.e. the amount of time that the activity can be delayed without delaying the Substantial Completion Date);
- (xiii) free float (that is, the amount of time that the activity can be delayed without delaying the early start of its successor activity);
- (xiv) relationship with other activities and milestones;
- (xv) activity or milestone lag;
- (xvi) Quantity representing the primary physical dimension of the Works element resulting from the activity as agreed with Contracting Authority (for example, linear meter of wall, square meter of tiles or concrete paving, number of doors) in accordance with the following:
  - (A) each activity with a cost value shall have an associated Quantity, where no definable dimension exists, the unit type shall be “sum” and the Quantity shall be set to “1”; and
  - (B) the Quantity shall be used as an indicator of level of efforts and production rate estimated and is not to be used for Earned Value calculations;
- (xvii) Quantity unit, which shall include: “units”, “m”, “m<sup>2</sup>”, “m<sup>3</sup>”, “ton” or “sum”;
- (xviii) Labour Resources employed to achieve the activity;

- (xix) user-defined field “Responsible” to indicate the related activity code defining the entity responsible to complete the Works Activity or Works Milestone, including Contracting Authority, any third party, Project Co self-performance, or Subcontractor;
  - (xx) user-defined fields, in a format and referencing system agreed to with Contracting Authority, including the required geographic location data for each Construction Activity to allow Project Co and/or Contracting Authority to link the Construction Activity information to a geographic information system or building information system as may be applicable, to enable geographic based analysis and/or to present the schedule information in a time-location format;
  - (xxi) any other user-defined fields, as needed to comply with the requirements of the Project Agreement; and
  - (xxii) Earned Value data of the Works Activities to satisfy the Earned Value Metrics by location and work type as per Schedule 12.
- (b) Project Co shall use the activity codes set out in the ‘Capital Projects Group Cost Management – Cost Breakdown Structure, CKH-CM-GDE-001 (and successor documents), as supplemented by ‘Ontario Line Code of Accounts 3-Mar-21’ (and successor documents) and ‘P6 Data Dictionary for Contractors – Subways’, CKH-SCHD-RFD-003 Rev.01 (and successor documents).

## 1.6 Sequencing Logic

- (a) Project Co shall use unconstrained sequencing logic and shall not use imposed date constraints to replace or limit sequencing logic for any Works Activity or Works Milestone, except for the first starting milestone defining the Financial Close date unless it is not feasible to sequence the Works otherwise, Project Co shall sequence the Works in accordance with the following:
- (i) When a constraint is used it shall only be of the “start-no-earlier than” or “finish-no-later than” constraint types;
  - (ii) For every imposed date constraint used Project Co shall provide a narrative in the Basis of Works Schedule Report detailing the reason for using the imposed date constraint and the scheduling methodology used to prevent inaccuracy when calculating the Critical Path and available total float; and
  - (iii) Project Co shall refrain from the “Expected Finish”, “Start On”, “Finish On”, “Mandatory Start”, “Mandatory Finish”, or any other similar constraint type, nor any other constraint type that would impact on the total float calculations to determine the Critical Path;
- (b) include inter-relationships and logic dependencies between all Works Activities, Works Milestones or any other activities or milestones included in the Project Works Schedules, and Project Co shall:

- (i) use closed-sequence logic, each Works Activity shall have at least one predecessor and at least one successor, and each Works Activity shall have a start and a finish relationship;
  - (ii) use closed-sequence logic for each Works Milestone shall have at least one predecessor except for the first Works Milestone denoting Financial Close, and have at least one successor except for the last Works Milestone denoting the Final Completion Date, and each Works Milestone except for the first and last shall have a start and a finish relationship;
  - (iii) not use the start-to-finish (SF) activity relationship type between activities unless otherwise agreed to by Contracting Authority;
  - (iv) not use a negative lag between any Works Activities and/or Works Milestones;
  - (v) only use positive lag between Works Activities and/or Works Milestones to model a specific waiting duration for a process directly related to the preceding Works Activity (e.g. concrete curing time);
  - (vi) for any two Works Activities or Works Milestones with a start-to-start (SS) relations define a lag no longer than the duration of the predecessor duration;
  - (vii) not use reverse logic, a Works Activity shall not have a finish-to-finish relationship with a predecessor, and a Works Activity shall not have a start-to-start (SS) relationship with a successor; and
  - (viii) only define one relationship per activity or milestone pair, except for the finish-to-finish (FF) and start-to-start (SS) relationship pair that may be used together for an activity or milestone pair; and
- (c) Project Co shall ensure that Project Works Schedule shall reflect the constraints related to allowable hours of work on the Site, inclement weather, environmental work windows, or any other schedule related restrictions in establishing the calendars, logical relationships and durations for the activities.

## 1.7 Calendars

- (a) Project Co shall define and use appropriate non-global project level activity based calendars, and for each calendar define:
  - (i) a descriptive calendar name using intuitive terminology that would be understandable to Contracting Authority;
  - (ii) the intended Working Days and Working Hours conforming to the requirements of the Project Agreement and any other governing approvals and permits that are used as the basis for Critical Path calculations, and all non-Working Days;
  - (iii) all non-Working Days including all public holidays, winter shut-down, any environmental restricted time periods for the full project timeframe; and

- (iv) the first (1<sup>st</sup>) day of each work week as a Monday.
- (b) Project Co shall not use global calendars.
- (c) For each calendar, Project Co shall include all statutory holidays in the Province of Ontario and shall use days as the planning unit for each activity.
- (d) Project Co shall specify activity durations using only full Working Days and shall not use fractional durations (for example, Project Co shall not use 5.5 days).
- (e) Project Co shall assign a calendar to each activity, based on when such activity is planned to occur, and in accordance with the requirements of the Project Agreement.
- (f) Project Co may define and use additional calendars that are necessary for the completion of the Works, in accordance with the requirements of the Project Agreement.
- (g) Project Co shall include a narrative on shifts and shift hours in each Basis of Works Schedule Report.

#### 1.8 Works Activity Level of Detail

- (a) Project Co shall ensure that the Project Works Schedules define the Works Activities to a level of detail that would limit any Works Activity value to a value no greater than the lesser of \$[REDACTED] or [REDACTED]% of the total Design and Construction Contract value.
- (b) Subject to the Parties otherwise agreeing Project Co shall ensure that durations for any Works Activity, except for single process-step activities (such as manufacturing time, and design and delivery periods, TBM excavation tasks and other linear repetitive tasks that have no interface with other activities), and “hammock” activities are as follows:
  - (i) any Works Activity within one-hundred and eighty (180) days of the Data Date shall be no less than one day and no more than thirty (30) calendar days;
  - (ii) any Works Activity that is not within one-hundred and eighty (180) days of the Data Date, shall be no less than one day and no more than ninety (90) calendar days; and
  - (iii) any Works Micro-Schedule Activities duration shall be no more than five (5) Working Days.
- (c) Project Co shall ensure that the Project Works Schedules provide the crewing or equipment resource levels for the activities and the dependency logic that is governed by or represents crewing or equipment availability.

#### 1.9 Critical Path

- (a) The sequence of activities that represents the longest path through a project, which determines the shortest possible project duration as set out in the *PMBOK – 6.6.2.2 – CPM*

(the “**Critical Path**”), Project Co shall determine and indicate the Critical Path applicable to achieve Substantial Completion in each Project Works Schedule.

- (b) The Critical Path shall:
- (i) be calculated using the “retained-logic” scheduling methodology and shall not use a progress override option;
  - (ii) not include any “level of effort” type activities, all activities on the Critical Path shall be either task-dependent activities or milestones;
  - (iii) be the result of an unmodified software calculation of the Critical Path using the Critical Path method. Project Co shall not employ any additional filters or any other manual manipulation whatsoever to calculate the Critical Path;
  - (iv) be continuous and logic driven;
  - (v) not contain negative float (due to Primavera® calendars it is anticipated that on the Critical Path there may be activities with small positive total float); and
  - (vi) in situations where the same Critical Path is not identified as calculated using the software’s various standard Critical Path filters (default filter for the “Longest Path”), and multiple Critical Paths exist due to various project constraints, provide all Critical Path alternatives together with Project Co’s narrative on which Critical Path is most representative of the Works and also include a narrative for each of the other Critical Path.
- (c) If required to do so by Contracting Authority, Project Co shall indicate all activities with a total float of up to ten (10) Business Days.

**APPENDIX B TO SCHEDULE 12****EVM REPORTING REQUIREMENTS**

- (a) For each month following submittal of the Baseline Works Schedule, Project Co shall submit as part of the Works Schedule Report, in a tabular format and diagram illustration (S curve), a time-phased distribution of Earned Value Metrics for the Project.
- (b) The report shall include the Earned Value Metrics for the each of the following:
  - (i) the overall Project;
  - (ii) for each major geographical subdivision of the Project, or as agreed with Contracting Authority:
    - (A) Ontario Line Alignment – Area Wide;
    - (B) Science Centre Station;
    - (C) Flemingdon Park Station;
    - (D) Thorncliffe Park Station;
    - (E) Cosburn Station;
    - (F) Cosburn Portal Extraction Site;
    - (G) Pape Station;
    - (H) Gerrard Station;
    - (I) Leslieville Station;
    - (J) East Harbour Station;
    - (K) Corktown Station;
    - (L) Techumseh Launch Site;
    - (M) Moss Park Station;
    - (N) Queen Station;
    - (O) Osgoode Station;
    - (P) OL-Queen / Spadina Station;
    - (Q) OL-King / Bathurst Station;



- (R) OL-Exhibition Station;
  - (S) Exhibition Station to King Bathurst Station;
  - (T) King Bathurst Station to Queen Spadina Station;
  - (U) Queen Station to Osgoode Station;
  - (V) Osgoode Station to Queen Station;
  - (W) Queen Station to Moss Park Station;
  - (X) Moss Park Station to Corktown Station;
  - (Y) Corktown Station to Don Yard Portal;
  - (Z) Don Yard Portal to East Harbour Station;
  - (AA) East Harbour Station to Leslieville Station;
  - (BB) Leslieville Station to Gerrard Station;
  - (CC) Gerrard Station to Pape Station;
  - (DD) Pape Station to Cosburn Station;
  - (EE) Cosburn Station to Thorncliffe Park; and
  - (FF) Thorncliffe Park to Science Center; and
- (ii) for each major type of Works activity within the scope of Project Co, or as agreed with Contracting Authority:
- (A) design (each design/engineering discipline to be reported separately);
  - (B) Site investigation;
  - (C) Utility Work;
  - (D) drainage;
  - (E) pavement work and streetscaping;
  - (F) concrete work;
  - (G) mechanical and electrical work;
  - (H) steel work;
  - (I) track work;

- (J) train controls and signalling;
  - (K) traction power supply;
  - (L) traction power distribution;
  - (M) communications;
  - (N) rolling stock procurement, delivery, testing and commissioning;
  - (O) Operational readiness
  - (P) testing and commissioning; and
  - (Q) architectural work;
- (c) The report shall include:
- (i) area weighting, defining the assigned value of the work for the Project, or geographical subdivision or work type within the Project;
  - (ii) progress chart, a graphical representation of time phased distribution of Planned Value (%), Earned Value (%) and forecast (%) by period and cumulatively;
  - (iii) Planned Value to date; the value of the work planned to be completed by the data date;
  - (iv) Planned Value this period; the value of the work planned to be completed in the preceding month up to the data date;
  - (v) Planned Value to date (%); the value of the work planned to be completed by the data date, as a proportion of the total value of the work, to be shown in tabular and graphical format;
  - (vi) Planned Value this period (%); the value of the work planned to be completed in the preceding month up to the data date, as a proportion of the total value of the work, to be shown in tabular and graphical format;
  - (vii) Earned Value to date; sum of the value of work completed by the data date;
  - (viii) Earned Value this period; the value of the work completed in the preceding month up to the data date;
  - (ix) Earned Value to date (%); sum of the value of work completed by the data date, as a proportion of the total value of the work, to be shown in tabular and graphical format;

- (x) Earned Value this period (%); the value of the work completed in the preceding month up to the data date, as a proportion of the total value of the work, to be shown in tabular and graphical format;
  - (xi) forecast (%); the distribution of the value of work completed to date and the time-phased distribution of the value of the work not completed, to be shown in tabular and graphical format;
  - (xii) Schedule Performance Index (SPI); the ratio of work completed by the data date to work planned to be completed by the data date, calculated as  $SPI = EV / PV$ , to be shown in tabular format;
  - (xiii) Schedule Performance Index (SPI) this period; the ratio of work completed in the preceding month to work planned to be completed in the preceding month, calculated as  $SPI \text{ this period} = EV \text{ this period} / PV \text{ this period}$ , to be shown in tabular format;
  - (xiv) schedule variance (SV); the difference between the work completed by the data date and the work planned to be completed by the data date, calculated as  $SV = EV - PV$ , to be shown in tabular format;
  - (xv) activities started this period vs forecast (%); the proportion of activities which were actually commenced in the reporting period, as a proportion of the activities which were forecasted to commence in the period, as reported in the immediately preceding period;
  - (xvi) activities started this period vs baseline (%); the proportion of activities which were actually commenced in the reporting period, as a proportion of the activities which were forecasted to commence in the period, as reported in the baseline;
  - (xvii) activities completed this period vs forecast (%); the proportion of activities which were actually completed in the reporting period, as a proportion of the activities which were forecasted to be completed in the period, as reported in the immediately preceding period;
  - (xviii) activities completed this period vs baseline (%); the proportion of activities which were actually completed in the reporting period, as a proportion of the activities which were forecasted to be completed in the period, as reported in the baseline; and
  - (xix) a narrative analysis describing the results of the EV metrics, identifying variances from plan, and outlining corrective actions as necessary.
- (d) The Earned Value Metrics will reconcile to the progress shown in the Project Works Schedules.

The EVM reporting requirements are outlined in the table below:

Work Area/Type	Eg. Station A				
Area Weighting:	Eg. \$[REDACTED]				
	Progress Chart: S-curve of Cumulative Plan %, Earned Value % and Forecast % Histogram of Period Plan %, Earned Value % and Forecast %				
Data Table	Month 1`	Month 2	Month 3	...	Every month through to Completion
Plan Cumulative (%)					
Plan Period (%)					
EV Cumulative (%)					
EV Period (%)					
Forecast Period (%)					
Forecast Cumulative(%)					
CPI to Date					
CPI Period					
SPI to Date					
SPI Cum					
Activities Started vs Forecast (%)					

Activities Completed vs Forecast (%)					
Activities Started vs Baseline (%)					
Activities Completed vs Baseline (%)					

**APPENDIX C TO SCHEDULE 12****WORKS MICRO-SCHEDULE**

- (a) Without limiting Contracting Authority's rights under Section 11 of this Schedule 12, Contracting Authority may request that Project Co provide Works Micro-Schedules in the following instances:
- (i) work requiring a shutdown, closure or significant disruption of Third Party Work, including, but not limited to:
    - (A) any public or private utilities or services including power, water, communications, gas or other;
    - (B) disruption or closure of public buildings or infrastructure;
    - (C) disruption of normal TTC light rail transit, streetcar or subway infrastructure or operations; or
    - (D) disruption of Metrolinx GO light rail transit or rail infrastructure or operations;
  - (ii) activities which will be undertaken in the zone of work under the control of a Third Party Contractor under Metrolinx;
  - (iii) activities immediately preceding a Handover event;
  - (iv) heavy lift or heavy haul operations, including movement of tunnel boring machinery;
  - (v) works activities which must be completed without interruption, including significant concrete placement; or
  - (vi) any instance in which Contracting Authority, acting reasonably, requests a Works Micro-Schedule.

## SCHEDULE 13

## PROJECT CO PROPOSAL EXTRACTS

1. For the purposes of the Project Agreement, the “**Project Co Proposal Extracts**” means, collectively, the following documents:
  - a) those portions of Project Co’s proposal for the Project delivered in response to the Request for Proposals (“**Project Co’s RFP Proposal**”) identified and annotated in and, for greater certainty, not excluded by Part A of Table 1 – Applicable Portions of Project Co’s Proposal of this Schedule 13 (collectively, the “**Project Co Proposal Documents**”); and
  - b) the ancillary documents identified in Part B of Table 1 – Applicable Portions of Project Co’s Proposal of this Schedule 13 (collectively, the “**Ancillary Extract Documents**”).

For greater certainty, the term “Project Co Proposal Extracts” shall also be interpreted by taking into account the provisions of Section 2.

2. The Parties acknowledge and agree that:
  - a) the Project Co Proposal Extracts are in the nature of clarifications, interpretations and/or enhancements to the Project Agreement (including, for clarity, the Output Specifications) and, as such, are not intended to and do not conflict with, reduce, amend or otherwise modify the Project Agreement;
  - b) in the event of any ambiguity, conflict or inconsistency between or among any of the documents comprising the Project Co Proposal Documents and the Ancillary Extract Documents, the Ancillary Extract Documents shall prevail to the extent of such ambiguity, conflict or inconsistency;
  - c) intentionally deleted;
  - d) in the event of any ambiguity, conflict or inconsistency between or among any of the documents comprising the Project Co Proposal Extracts, the provisions contained in any subsequently finalized or dated document shall prevail to the extent of such ambiguity, conflict or inconsistency. For greater certainty, where any element, sketch, feature or other document or item contained in any part of the Project Co Proposal Extracts is modified, superseded, qualified, conflicts with or is otherwise amended by a subsequently finalized or dated part of the Project Co Proposal Extracts, the subsequently finalized or dated part of the Project Co Proposal Extracts shall prevail; and
  - e) the inclusion of a document or other item within the Project Co Proposal Extracts is not intended to and does not affect, diminish or otherwise alter Project Co’s obligation to submit the subject matter of such document or other item to Contracting Authority, or Contracting Authority’s right to review such document or other item, in accordance with Schedule 10 – Review Procedure. For greater certainty, the inclusion of a document or other item within the Project Co Proposal Extracts does not constitute the review of or acceptance by Contracting Authority of the subject matter of such document or other item pursuant to the Project Agreement, including in accordance with Schedule 10 – Review Procedure.

**Part A of Table 1**

None.

**Part B of Table 1**

None.



**APPENDIX A TO SCHEDULE 13**  
**PROJECT CO PROPOSAL EXTRACTS**

None.

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**SCHEDULE 14****COMMISSIONING****1. DEFINITIONS**

**1.1** In this Schedule 14, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 14) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Backup Operations Control Centre (BOCC)”** has the meaning given in the Output Specifications.
- (b) **“Commissioning”** means all activities and requirements of Project Co to prove compliance to the requirements in the Project Agreement, including commissioning obligations as set out in this Schedule 14 – Commissioning and in the Output Specifications, which, according to the Verification and Validation process of Project Co, must be proven through the act of testing.
- (c) **“Commissioning Brief”** has the meaning given in Section 7.2(a).
- (d) **“Commissioning Flow Chart”** has the meaning given in Section 4.4(a).
- (e) **“Commissioning Requirement Traceability Matrix”** is defined as the matrix containing the requirements that are part of the Commissioning activities. In the Verification and Validation process the requirements that need to prove compliance through the act of testing and commissioning are identified from the requirements of the Output Specifications and all derived requirements.
- (f) **“Commissioning Steering Group”** has the meaning given in Section 8.2.
- (g) **“Commissioning Submittals”** has the meaning given in Section 7.1(a).
- (h) **“Factory Acceptance Test (FAT)”** has the meaning given in Section 5.2.
- (i) **“Factory Integration Test (FIT)”** has the meaning given in Section 5.3.
- (j) **“Factory Performance Test (FPT)”** has the meaning given in Section 5.4.
- (k) **“Guideway”** has the meaning given in the Output Specifications.
- (l) **“integrated Process Acceptance Test (iPAT)”** is defined as the tests to prove that the Standard Operating Procedure comply with operation and maintenance requirements of the Output Specifications.
- (m) **“Operational Readiness”** has the meaning given in Section 2.2(b)(i).
- (n) **“Operations Control Centre (OCC)”** means the RSSOM Project location where the Ontario Line Subway System is controlled from.

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- (o) “**Operations, Maintenance and Storage Facility (OMSF)**” means the RSSOM Project facility that houses the OCC, stores and maintains trains and all maintenance equipment.
- (p) “**Organizational Readiness**” has the meaning given in Section 2.2(b)(ii).
- (q) “**Performance Readiness**” has the meaning given in Section 2.2(a)(i).
- (r) “**Post-Installation Check-Out Test (PICO)**” has the meaning given in Section 5.5.
- (s) “**Pre-Site Acceptance Testing (Pre-SAT)**” is defined as the tests performed for systems and subsystems before testing the complete system in the Site Acceptance Test.
- (t) “**Professional Engineer**” means a professional engineer licensed by Professional Engineers Ontario to practice in the Province of Ontario.
- (u) “**Project Co Commissioning Manager**” has the meaning given in Section 9.1.
- (v) “**Project Co Commissioning Plan**” has the meaning given in Section 7.3.
- (w) “**Project Co Commissioning Report**” has the meaning given in Section 7.4.
- (x) “**Project Co Commissioning Team**” has the meaning given in Section 8.3.
- (y) “**Release**” is defined as a group of one or more commissioning tests which are grouped together because of a shared location, functionality and timeframe, and managed like a project within the larger Project Co framework, having one or more phases to group the testing activities within the Release.
- (z) “**Release Management Plan**” has the meaning given in Section 7.5.
- (aa) “**Release Manager**” has the meaning given in Section 10.1.
- (bb) “**Release Report**” has the meaning given in Section 7.6.
- (cc) “**Release Strategy**” has the meaning given in Section 3.1.
- (dd) “**Revenue Service**” has the meaning given in the Output Specifications.
- (ee) “**Revenue Service Demonstration**” has the meaning given in Section 5.12.
- (ff) “**System Safety Case**” has the meaning given in Schedule 29 – Safety, System Assurance and Security.
- (gg) “**Site Acceptance Test**” has the meaning given in Section 5.7(a).
- (hh) “**Site Integration Test – dynamic (SIT2)**” is the integration testing of Ontario Line Subway on site with moving Trains.
- (ii) “**Site Integration Test – static (SIT1)**” is the integration testing of the Project Co Infrastructure and Ontario Line Subway on site in the static and dynamic state without moving Trains.

- (jj) “**Site or System Acceptance Testing (SAT)**” has the meaning given in Section 5.7.
- (kk) “**Support Team**” has the meaning given in Section 5.9(b).
- (ll) “**System of Interest**” is defined as that part of the system or subsystem that is the focus of a specific test or series of tests, including not only the technical aspects of the system or subsystem, but also the people (and their knowledge, skills and training) involved in its operation and maintenance, as well as the organization necessary to enable such people to operate and maintain it.
- (mm) “**Test Plan**” has the meaning given in Section 7.7.
- (nn) “**Test Report**” has the meaning given in Section 7.8.
- (oo) “**Test Tier**” is defined as a specific phase in the testing sequence as part of the Commissioning hierarchy.
- (pp) “**Tree of Tests**” has the meaning given in Section 4.3(a).
- (qq) “**Trial Running**” means Test Tier 9 and 10, as described in Section 5.10 and Section 5.11.
- (rr) “**Trial Running, Resilience Tests (Trial-RT)**” has the meaning given in Section 5.11.
- (ss) “**Trial Running, Scenario Tests (Trial-ST)**” has the meaning given in Section 5.10.
- (tt) “**Tunnel Ventilation System**” has the meaning given in the Output Specifications.
- (uu) “**Verification and Validation**” has the meaning given in the Output Specifications.

## PART 1: PRINCIPLES OF COMMISSIONING

### 2. GOAL OF COMMISSIONING ACTIVITIES

#### 2.1 Goal of commissioning activities

- (a) Project Co shall use the commissioning process to prove compliance to all requirements in the Output Specifications which need to be provided through the act of testing and commissioning, and shall identify such requirements from other requirements in its Verification and Validation process using the Commissioning Requirements Traceability Matrix.
- (b) Project Co shall set up its commissioning process using the release management approach to clearly distinguish amongst evidence of readiness as defined in Section 2.2(a).

#### 2.2 Readiness and compliance

- (a) Project Co shall provide evidence of readiness and verification and/or validation with the Commissioning Requirements Traceability Matrix set up through Project Co's Verification and Validation process, by successfully carrying out commissioning tests and reporting on these using the following definitions:
  - (i) performance readiness by providing evidence as per the Commissioning Requirements Traceability Matrix, meaning that there is sufficient evidence that the system or subsystem undergoing the test is ready to fully function and perform according to all its allocated requirements, in its intended operating environment, and will be able to do so throughout its intended life cycle and the intended operating environment shall include all expected normal, degraded, maintenance and emergency modes of operation ("**Performance Readiness**"); and
  - (ii) readiness to support the required principles of safety and security by providing evidence of compliance with the safety and security requirements as per the Commissioning Requirements Traceability Matrix.
- (b) Project Co shall support RSSOM Project Co to provide evidence of readiness and Verification and Validation until Final Completion Date for the following definitions:
  - (i) operational readiness, meaning that sufficient evidence exists that the intended processes which support the operation and maintenance of the system or subsystem, are implemented and compliant with its operational and maintenance requirements, complete and ready to accompany the system or subsystem in operational and maintenance states ("**Operational Readiness**"); and
  - (ii) organizational readiness, meaning that sufficient evidence exists that the organization that should support the operation and maintenance of the system or subsystem under test, is ready to do so, under all expected normal, degraded, maintenance and emergency modes of operation, according to relevant requirements as per the Commissioning Requirements Traceability Matrix ("**Organizational Readiness**").

**2.3 Sufficient evidence**

- (a) Project Co shall be responsible for determining whether the evidence gathered by successful commissioning tests is sufficient or not, making appropriate use of Engineers of Record. Project Co's Verification and Validation activities shall contribute to the decision of sufficiency of evidence.
- (b) Project Co shall gather sufficient evidence of commissioning success throughout the Project, through the process of successfully scoping, planning, executing and reporting on the commissioning tests as described in this Schedule.
- (c) Decisions about sufficiency of evidence which were generated by Commissioning Managers of RSSOM Project Co and North Civil Project Co, shall be included in this traceability where the Commissioning activities cuts across the boundaries of Project Co and RSSOM Project Co and North Civil Project Co. For clarity, this includes, among others, decisions about interfaces, safety certification and handovers.

### 3. RELEASE MANAGEMENT

#### 3.1 The Release Strategy

- (a) Project Co shall use Release management to structure, organize and execute its Commissioning.
- (b) Project Co shall identify all Releases required to deliver the commissioning tests.
- (c) Project Co shall develop a release strategy which shall contain the intended sequence of Releases, the grouping of commissioning tests, the rationale for this grouping and its sequence (the “**Release Strategy**”).
- (d) The Release Strategy shall act as a framework for the Release Management Plan.
- (e) Project Co shall integrate the Release Strategy with RSSOM Project Co release strategy, using the Commissioning Steering Group as a forum
- (f) Releases may run concurrently.
- (g) Project Co shall distinguish between Releases for learning and Releases for proving readiness:
  - (i) Releases for learning focus on proving concepts, process, subsystems or other stated learning goals. Project Co shall treat these Releases with a stage-gate method focussed on the learning goals and not on the elements of functional performance or other results of the commissioning tests which might not yet be ready.
  - (ii) Releases for proving applied learning, or successful integration, which are generally located later in the project life cycle.

#### 3.2 General release management requirements

- (a) Project Co shall include in the Release planning, execution and reporting for the specific System of Interest.
- (b) Project Co shall include the RSSOM Project Co operational manager and RSSOM Project Co maintenance manager in the planning and execution of the Releases.
- (c) Project Co shall structure its Release planning, execution and reporting so that relevant evidence of:
  - (i) Performance Readiness can be achieved; and
  - (ii) Schedule 29 – Safety, System Assurance and Security on safety and security management is gathered.
- (d) Project Co shall include at least two readiness gate reviews in advance of all Releases to ensure that Releases will start on time with a stable set of entry criteria and show these readiness reviews in the Project Works Schedule.

### 3.3 Entry and exit criteria

- (a) Every Release shall contain a list of entry criteria, using all four definitions of readiness as described in Section 2.2.
- (b) Every Release shall contain a list of exit criteria, using the four definitions of readiness, as applicable for the Release, as described in Section 2.2.
- (c) Entry and exit criteria shall contain project management aspects of the tests and technical details within the Release scope.
- (d) Exit criteria shall include, at a minimum:
  - (i) a link between the test results within the Release or Release phase with Project Co's Verification and Validation process to unambiguously measure compliance with requirements,
  - (ii) a narrative on the approach to and execution of the Release to capture lessons learned, and
  - (iii) a reference to the updated Release planning.
- (e) Project Co shall obtain agreement within the Commissioning Steering Group of the entry and exit criteria of the Release if RSSOM Project Co and/or North Civil Project Co are involved in the Release or is reliant upon the results of the Release. For all other Releases, Project Co shall inform the Commissioning Steering Group.
- (f) Project Co shall not start the Release until the Commissioning Steering Group has agreed on the entry and exit criteria of the Release.
- (g) Project Co shall insert and manage the entry and exit criteria for all Releases owned by Project Co in the entry and exit criteria database managed by RSSOM Project Co.
- (h) Project Co shall be responsible for purchasing software licenses as required for their activities in the database.

### 3.4 Release phases and numbering

- (a) Project Co shall use a nomenclature for Releases which is common for Project Co and RSSOM Project Co and North Civil Project Co. The Commissioning Steering Group shall agree this nomenclature.
- (b) Project Co shall develop Releases in accordance with the following requirements:
  - (i) Releases which follow each other in time, shall have a number and a descriptive title, such as *Release 7 Pape station control systems*;
  - (ii) within each Release, the different types of readiness tests as per Section 2.2(a) shall be split up into Release phase; and



- (iii) within the Release, the order of sequence of proving readiness shall be performance (including functional), operational and then organizational readiness.

### **3.5 General rules for the ownership of Releases**

- (a) The Commissioning Steering Group shall appoint an owner of a Release to Project Co or to RSSOM Project Co or North Civil Project Co.
- (b) If Project Co is an owner of a Release, Project Co shall provide the Release Manager for that specific Release.
- (c) If Project Co is not the owner of a Release, Project Co shall actively participate in the Release insofar as this is required from the definition of the System of Interest.

#### 4. SYSTEMATIC BUILD-UP OF TESTING

##### 4.1 Tiers of commissioning tests

- (a) Project Co shall systematically build up the complexity, and prove the readiness of, the system or subsystem under review from simple to complex, by following the generic sequence of proving readiness and integration defined in Section 5.

##### 4.2 Stage gates

- (a) Project Co shall define and utilize a strict stage-gate approach to ensure that the proof of readiness obtained by testing on any specific Test Tier includes that non-conformances and deficiencies are closed before commencing with testing within a higher Test Tier. Minor deficiencies that have no impact on the function of the system shall be an exception to this.

##### 4.3 The Tree of Tests

- (a) Project Co shall structure all testing into a logical build-up of tests, using the Test Tiers defined in this document, (a “**Tree of Tests**”). For an example see Appendix A.
- (b) Project Co shall contribute to the integrated Tree of Tests developed by RSSOM Project Co, using the Commissioning Steering Group.
- (c) The Tree of Tests shall include the use of Releases and a breakdown of subsystems for early testing, where applicable.
- (d) The Tree of Tests shall be defined from a functional breakdown perspective, so that interfacing amongst systems and subsystems is also explicitly shown in the Tree of Tests.
- (e) Project Co shall include the location for FAT, FIT and FPT testing in the Tree of Tests.

##### 4.4 Commissioning Flow chart

- (a) Project Co shall develop a diagram (the “**Commissioning Flow Chart**”) that shows groups of tests and integration test dependencies over time.
- (b) Project Co shall ensure that the overall Commissioning Flow Chart aligns with the Project Works Schedule.

##### 4.5 Keep parallel developments in step with each other

- (a) Project Co shall use Releases and commissioning tests to provide evidence that the operation and maintenance systems are developed in step with the Project Co Infrastructure.
- (b) Project Co shall specifically include timely readiness and decommissioning of temporary systems to enable the realization of the core systems.
- (c) Project Co shall use Releases as evidence that the activities of the Additional Contractors are developing in step with each other.

**4.6 Software integration testing**

- (a) Project Co shall cooperate with RSSOM Project Co to test and integrate software in data integration environment, taking into account the need for data protection throughout the Project Term.
- (b) Project Co shall define the required software test hierarchy and include this in the Project Co Commissioning Plan.
- (c) Project Co shall use formal software configuration and acceptance procedures to submit, through Releases, the software to RSSOM Project Co to integrate.
- (d) Project Co handover the final software systems architecture to RSSOM Project Co.
- (e) Project Co shall prove software integration before commencing physical integration testing with components or systems which use this firmware or software.

**4.7 Handovers**

- (a) Project Co shall regard each Section Substantial Completion and Early Works Section Handover as Releases.
- (b) Without limiting any other obligation set out in this Schedule 14, Project Co shall conduct and complete all applicable SATs preceding each Section Substantial Completion.

**4.8 Commissioning and Handover of New Third Party Infrastructure**

- (a) Project Co shall use the Commissioning process to prove compliance to all requirements in the Output Specifications for all New Third Party Infrastructure which need to be provided through the act of testing and commissioning, and shall identify such requirements from other requirements in its Verification and Validation process using the Commissioning Requirements Traceability Matrix.
- (b) Project Co shall execute the Commissioning of all New Third Party Infrastructure in accordance with the Project Agreement, this Schedule 14 and in accordance with the specifications of the relevant third parties.
- (c) Prior to achievement of Handover of New City Infrastructure, and as a pre-condition of Handover, Project Co shall submit to Contracting Authority or the City of Toronto (if a Notice of Delegation has been issued in respect of the New City Infrastructure) written certification of the New City Infrastructure in the form attached as Attachment 1 of Appendix B to this Schedule 14. Each certificate shall be stamped, signed and dated by professionals licensed in the Province of Ontario qualified to certify the specific type of work and equipment being certified.
- (d) Prior to achievement of Handover of each component of New TTC Infrastructure, if applicable, and as a pre-condition of Handover, Project Co shall submit to Contracting Authority a Project Co Commissioning Plan for Handover of each component New TTC Infrastructure for review.

- (e) Project Co shall execute the Commissioning of New TTC Infrastructure in accordance with section 00 91 00 of the TTC master specification as part of the TTC Design Standards (as defined in the Output Specifications).

## 5. GENERAL COMMISSIONING HIERARCHY

### 5.1 General requirements

- (a) Project Co shall follow the Commissioning hierarchy structure from the below Figure 1 up to Test Tier 8.

For clarification, RSSOM Project Co is responsible for Test Tiers 8, 9, 10 and 11.

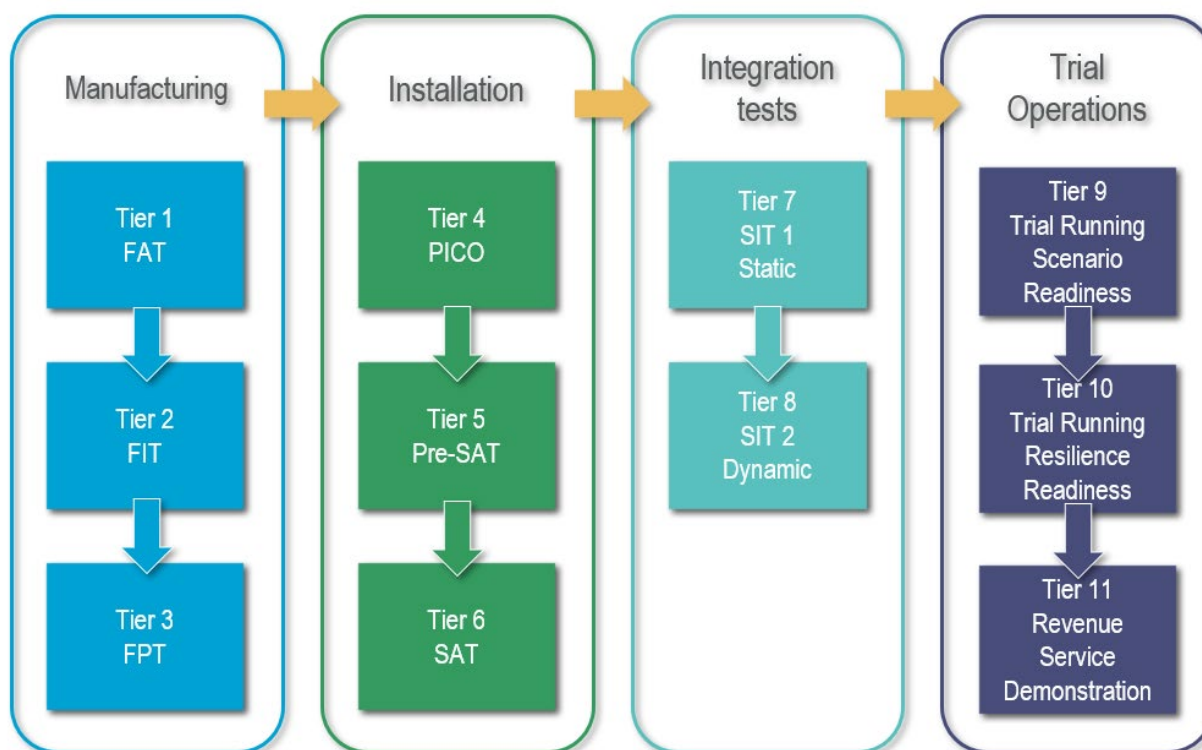


Figure 1: Commissioning hierarchy

- (b) Project Co shall provide all necessary labour, materials, equipment, testing apparatus and incidentals necessary to complete all commissioning tests for the Project Co Infrastructure and the New Third Party Infrastructure.
- (c) Project Co shall perform tests on all systems or subsystems for which the relevant Engineer(s) of Record requires such tests for the Project Co Infrastructure up to Test Tier 7.
- (d) Project Co shall carry out FAT, FIT and FPT testing at the facilities of system assembly, prior to shipping/relocation for final installation or configuration on site. Tests in a data integration environment or configuration on site are part of FAT, FIT and FPT testing.

**5.2 Tier 1 – FAT (Factory Acceptance Test)**

- (a) The goal of factory acceptance tests is to evaluate discrete systems or subsystems, to prove during and after assembly that the System of Interest complies with the relevant performance specifications (the “**Factory Acceptance Test**”).

**5.3 Tier 2 – FIT (Factory Integration Test)**

- (a) The goal of factory integration tests is to evaluate the interfacing amongst discrete systems or subsystems and any emergent functionality arising from the combination of these discrete systems or subsystems, to prove during and after assembly that the System of Interest complies with the relevant performance specifications (a “**Factory Integration Test**”).
- (b) Project Co shall conduct FITs after successful completion of the FAT of the System of Interest.
- (c) FITs shall be static in nature but may be energised for the duration of the test.

**5.4 Tier 3 – FPT (Factory Performance Test)**

- (a) The goal of factory performance tests is to evaluate partial Performance Readiness and Operational Readiness of the System of Interest, to prove during and after assembly that the System of Interest complies with the relevant performance specifications (a “**Factory Performance Test**”).
- (b) Project Co shall conduct FPTs after successful completion of the FAT and FIT (if applicable) of the System of Interest.
- (c) FPTs shall be static and dynamic in nature, insofar the facilities at the place of assembly allows for such tests to also be dynamic.

**5.5 Tier 4 – PICO (Post Installation Check-Out)**

- (a) The goal of post installation check-out tests is to prove successful installation of a system on site to start Pre-SAT en SAT tests and are tests on a system in a non-energized state, (each a “**Post-Installation Check-Out Test**”).
- (b) Project Co shall conduct PICO tests after installation on site.

**5.6 Tier 5 – Pre-SAT (Pre-Site Acceptance Testing)**

- (a) Project Co shall use Pre-SAT tests, or pre-commissioning tests all systems or subsystems for which the relevant Engineer(s) of Record requires such tests.
- (b) The completion of Pre-SAT tests on subsystems of a system, does not constitute a valid SAT on the entire system.

**5.7 Tier 6 – SAT (Site Acceptance Test)**

- (a) Project Co shall perform site acceptance tests to prove the performance and functionality of the system in compliance with its allocated requirements, after the System of Interest is installed on site, and working as a standalone system (a “**Site Acceptance Test**”).

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- (b) Project Co shall conduct SATs after:
    - (i) successfully completing the PICO for the system;
    - (ii) successfully completing the Pre-SAT for the system, if Pre-SATs were used; and
    - (iii) all non-conformances and deficiencies of the previous Test Tiers have been addressed. Minor deficiencies that have no impact on the function of the system shall be an exception to this.
  - (c) After completing the SAT of a system, Project Co shall conduct Process Acceptance Tests (PATs) to prove that applicable maintenance and operations processes associated with the System of Interest are also ready.
  - (d) Project Co shall successfully complete all PATs before the start of Tier 7 – SIT1.
  - (e) Project Co shall include relevant components of its operations and maintenance systems in the SAT testing, including the recording and/or analysis of asset performance and asset health.

### **5.8 Tier 7 – SIT1 (Site Integration Test 1) Static**

- (a) Project Co shall conduct Site Integration Tests – static (SIT1s) after:
  - (i) successful SATs of all the discrete systems within the System of Interest of the SIT1 test;
  - (ii) successful SATs of relevant operation and maintenance systems, including but not limited to a system for the recording and/or analysis of asset performance and asset health; and
  - (iii) all non-conformances and deficiencies arising from previous testing phases have been closed out. Minor deficiencies that have no impact on the function of the system shall be an exception to this.
- (b) The objectives of the SIT1 tests are:
  - (i) prove Performance Readiness of all New Third Party Infrastructure and interfaces with Existing Third Party Infrastructure, insofar these were not already covered in SATs;
  - (ii) prove Performance Readiness of the Project Co Infrastructure up to Substantial Completion, including but not limited to:
    - (A) prove Performance Readiness of all Stations as integrated systems, including Tunnel Ventilation Systems, and obtaining the authority to occupy permit for each Station; and
    - (B) prove that the software systems architecture and integrated software systems function as a whole with full compliance to its performance specifications, up to such a level of detail that it is fully ready to handle SIT2 testing.
  - (iii) support RSSOM Project Co to prove Performance Readiness of Ontario Line Subway, including possible SIT2 testing by RSSOM Project Co; and

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- (c) Project Co shall support RSSOM Project Co to do the integrated Process Acceptance Test (iPAT) within the SIT1 and SIT2 testing tiers to provide proof that the standard operating procedures comply with the relevant requirements.
  - (d) iPAT testing shall be conducted after completion of the functional and performance testing.
  - (e) Project Co shall perform SIT1 tests with energized systems but not with Trains moving on the Guideway under signaling and train control system control.
  - (f) Project Co shall order, structure and sequence the test contents of the SIT1 tests as a Release with various phases.
  - (g) Project Co shall, based on the completed SIT1 tests, submit evidence of compliance with the safety and security requirements relevant to the System of Interest in the Commissioning Requirements Traceability Matrix to RSSOM Project Co as input to the System Safety Case in terms of technical safety.

### 5.9 Tier 8 – SIT2 (Site Integration Test 2) Dynamic

- (a) The objective of the Site Integration Test – dynamic (SIT2) (“**Site Integration Test – dynamic (SIT2)**”) is to prove functionality and Performance Readiness of the Ontario Line Subway with moving Trains.
- (b) Project Co shall provide support staff consisting of, at a minimum, mechanical, electrical and Tunnel Ventilation System experts (the “**Support Team**”) to support RSSOM Project Co to conduct the Site Integration Test – dynamic (SIT2) and Trial Running. The Support Team will provide their services during the SIT2 and Trial Running periods for a maximum period of fifteen (15) months after Substantial Completion.
- (c) The Support Team shall be available on site between 6:00 a.m. and 6:00 p.m. on days that RSSOM Project Co is conducting SIT2 tests.
- (d) At times the Support Team is not required to be on site, the Support Team shall be available on-call for 24 hours per day and 7 days per week during the SIT2 testing period.
- (e) The Support Team shall support RSSOM Project Co in case of:
  - (i) knowledge gaps or unclarity in standard operating procedures and OEM manuals; and
  - (ii) issues in relation to Project Co Infrastructure.
- (f) For clarity, the Support Team shall not be responsible for maintenance of the Project Co Infrastructure.
- (g) RSSOM Project Co may seek to commence SIT2 testing on a portion of the Project Co Infrastructure, after agreement with the Contracting Authority, if the entire Project Co Infrastructure is not yet ready to commence SIT2 testing.

**5.10 Tier 9 – Trial-ST (Trial running, Scenario Tests)**

- (a) For clarification, the goal of the trial running (scenario tests) is to prove the Operational Readiness of the operating and maintenance staff with the operation of the standard operating procedures (“**Trial Running Scenario Tests**”). RSSOM Project Co will be fully responsible for the Trial Running Scenario Tests.
- (b) The Support Team shall be available on-call 24 hours per day and 7 days per week during the Trial – ST period.

**5.11 Tier 10 – Trial-RT (Trial Running, Resilience Tests)**

- (a) For clarification, the goal of the trial running (resilience tests) is to prove resilience of the Ontario Line Subway, operational and maintenance processes and organization to meet the reliability targets (“**Trial Running Resilience Tests**”). RSSOM Project Co will be fully responsible for the Trial Running Resilience Tests.
- (b) The Support Team shall be available on-call 24 hours per day and 7 days per week during the Trial – RT period.

**5.12 Tier 11 – Revenue Service Demonstration**

- (a) For clarification, the goal of the revenue service demonstration is to prove readiness to commence revenue service (“**Revenue Service Demonstration**”). RSSOM Project Co will be fully responsible for the Revenue Service Demonstration.



**6. THE MINIMUM SET OF RELEASES****6.1 General**

- (a) Project Co shall use Table 1 and each Project Co Infrastructure Section and Early Works Section Handover as a minimum set of Releases for the Release Strategy where relevant for the Project Co Infrastructure.
- (b) Project Co shall comply with the contents of the minimum set of Releases, where relevant for Project Co as indicated in Table 1 below.
- (c) Project Co may adjust the sequence of the minimum set of Releases.

**6.2 The minimum Set of Releases**

*Table 1: Minimum Set of Releases*

**[REDACTED]**

## 7. SUBMITTALS

### 7.1 Document Hierarchy

- (a) Project Co shall prepare and submit the following submittals (the “**Commissioning Submittals**”) to Contracting Authority for review by Contracting Authority in accordance with Schedule 10 – Review Procedure:
- (i) Commissioning Brief;
  - (ii) Project Co Commissioning Plan;
  - (iii) Project Co Commissioning Report;
  - (iv) Release Management Plan;
  - (v) Release Management Report;
  - (vi) Test Plan; and
  - (vii) Test Report.

### 7.2 Commissioning Brief

- (a) Project Co shall submit a Commissioning Brief to Contracting Authority, which shall describe the Commissioning approach to all design items of the Project Co Infrastructure and the New Third Party Infrastructure (the “**Commissioning Brief**”), and which contains at least the:
- (i) Commissioning Strategy;
  - (ii) Release Strategy (3.1);
  - (iii) a preliminary Tree of Tests; and
  - (iv) a preliminary Commissioning Flow chart (4.4).

### 7.3 Project Co Commissioning Plan

- (a) Project Co shall prepare and execute a verification, test, acceptance and Project Co Commissioning Plan to demonstrate the successful Commissioning of the Project Co Infrastructure and the New Third Party Infrastructure in accordance with the Project Agreement (the “**Project Co Commissioning Plan**”).
- (b) Project Co shall send the Project Co Commissioning Plan validated by the Independent Certifier and the Independent Safety Assessor to RSSOM Project Co, using the Commissioning Steering Group.

For clarification, RSSOM Project Co will integrate the Project Co Commissioning Plan into the integrated commissioning plan prepared by RSSOM Project Co in accordance with the RSSOM Project Agreement.

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- (c) Project Co shall submit the Project Co Commissioning Plan to Contracting Authority, the Independent Certifier and the Independent Safety Assessor, in accordance with Schedule 10 – Review Procedure.
- (d) The Project Co Commissioning Plan shall demonstrate how Project Co intends to validate and verify all functional, technical, quality and safety requirements, and performance criteria set out in the Project Agreement and demonstrate that such standards have been met or exceeded for the Project Co Infrastructure and the New Third Party Infrastructure.
- (e) The Project Co Commissioning Plan shall describe, at a minimum, all Commissioning activities to be carried out during each stage of the Project.
- (f) The Project Co Commissioning Plan shall contain the following:
- (i) Release Strategy (3.1);
  - (ii) Tree of Tests (4.3);
  - (iii) Commissioning Flow chart (4.4);
  - (iv) Commissioning Requirements Traceability Matrix;
  - (v) requirements, and the timing and sequence of such requirements, necessary in order that Commissioning shall be completed to achieve:
    - (A) Substantial Completion on or before the Scheduled Substantial Completion Date; and
    - (B) Final Completion on or before the Scheduled Final Completion Date;
  - (vi) the names of the individuals or companies proposed to perform all Commissioning;
  - (vii) a schedule of meetings to be held between the Parties to coordinate the performance of Commissioning;
  - (viii) reference to the latest version of the scope configuration, including software; and
  - (ix) list of Release Management Plans for those Releases under Project Co ownership and that Project Co participates in.
- (g) Project Co shall submit the Project Co Commissioning Plan and any updated revisions of the Project Co Commissioning Plan to RSSOM Project Co as input for the integrated commissioning plan prepared by RSSOM Project Co in accordance with the RSSOM Project Agreement.
- (h) In addition to the tests and inspections specified in the Project Co Commissioning Plan, Contracting Authority and their representatives, with respect to the Project Co Infrastructure, and the applicable third parties, with respect to New Third Party Infrastructure, shall have the right, acting reasonably, to identify and require Project Co to successfully perform any other testing or verifications relating to Commissioning during the review of the Project Co Commissioning Plan and Test Plans, in accordance with Schedule 10 – Review Procedure.

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- (i) After the first tier 1 test, Project Co shall update and integrate the Project Co Commissioning Plan monthly with the Project Works Schedule.

#### 7.4 Project Co Commissioning Report

- (a) Project Co shall prepare and submit a report to Contracting Authority, the Independent Certifier and the Independent Safety Assessor to demonstrate the progress on Project Co's testing and Commissioning activities of the Project Co Infrastructure and the New Third Party Infrastructure in accordance with the Project Agreement (the "**Project Co Commissioning Report**").
- (b) Project Co shall send the Project Co Commissioning Report to RSSOM Project Co, using the Commissioning Steering Group.

For clarification, RSSOM Project Co will integrate the Project Co Commissioning Report into the integrated commissioning report prepared by RSSOM Project Co in accordance with the RSSOM Project Agreement. RSSOM Project Co will send the RSSOM commissioning report and integrated commissioning report to the Commissioning Steering Group in accordance with the RSSOM Project Agreement.

- (c) The Project Co Commissioning Report shall integrate the following documents:
- (i) Release Reports; and
  - (ii) Test Reports.
- (d) Project Co shall submit the Project Co Commissioning Report and any updated revisions of the Project Co Commissioning Report to the Commissioning Steering Group for review.
- (e) Project Co shall submit the Project Co Commissioning Report and any updated revisions of the Project Co Commissioning Report to RSSOM Project Co as input to the integrated commissioning report.

#### 7.5 Release Management Plan

- (a) For each Release appointed to Project Co, Project Co shall prepare and submit to Contracting Authority a plan (a "**Release Management Plan**") which includes:
- (i) the scope of the Release, including Release objectives and tests included in the release;
  - (ii) approach of the Release, including:
    - (A) required effort to plan, carry out and report on the Release;
    - (B) organization;
    - (C) risk mitigation; and
    - (D) planning;
  - (iii) the agreed Go/No go criteria;

- (iv) entry and exit criteria; and
  - (v) risk mitigation and opportunities relating to the Release.
- (b) The Release Management Plan shall contain the following documents:
- (i) list of Test Plans that are part of the Release; and
  - (ii) test procedures for the Release.
- (c) Project Co shall ensure the Release Management Plan is current.
- (d) Project Co shall send the Release Management Plan to the Commissioning Steering Group for review.

## 7.6 Release Report

- (a) Project Co shall prepare and issue a release report (each a “**Release Report**”), for each Release owned by Project Co, to report on the following:
- (i) evaluate the Release progress and success factors;
  - (ii) evaluate the readiness levels of the System of Interest;
  - (iii) entry and exit criteria;
  - (iv) evaluate whether the release testing and Commissioning activities met the Release objectives;
  - (v) the Release Report shall integrate the Test Reports for the Release; and
  - (vi) the configuration of all (sub)systems which are either part of the Release or which interact with the Release, shall be tracked and included in the Release Report.
- (b) Project Co shall send the Release Report to the Commissioning Steering Group within two weeks of completion of the relevant Release for review.
- (c) Project Co shall submit the Release Report to the Contracting Authority within two weeks of completion of the Release after review by the Commissioning Steering Group.

## 7.7 Test Plan

- (a) Project Co shall prepare individual test plans (each a “**Test Plan**”) for each test contained in the Tree of Tests.
- (b) Project Co shall prepare and issue test plans which shall include at a minimum:
- (i) list of requirements from the Commissioning Requirements Traceability Matrix which will be verified or validated;

- (ii) method statement(s);
  - (iii) the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Project Co Commissioning Plan or Applicable Law;
  - (iv) test scenarios and/or use cases;
  - (v) test pass/fail criteria; and
  - (vi) test procedures.
- (c) Project Co shall submit the Test Plans to Contracting Authority, the Independent Certifier and the Independent Safety Assessor.

### **7.8 Test Report**

- (a) Project Co shall prepare and issue a test report matching the scope of each Test Plan (a “**Test Report**”).
- (b) Test Reports shall contain at a minimum:
- (i) test objectives;
  - (ii) test results, including how these relate to the pass/fail criteria;
  - (iii) analysis of results;
  - (iv) conclusions, including possible follow-up or quality assurance activities; and
  - (v) recommendations.
- (c) Project Co shall submit the Test Reports to Contracting Authority, the Independent Certifier and the Independent Safety Assessor.

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## PART 2: ORGANIZATION, ROLES AND GOVERNANCE

### 8. COMMISSIONING RELATED TEAMS

#### 8.1 Organizational structure of the teams

- (a) The Commissioning activities shall be managed by the following three teams, at a minimum:
  - (i) The Commissioning Steering Group, under leadership of Contracting Authority;
  - (ii) The Project Co Commissioning Team, which is under leadership of the Project Co Commissioning Manager; and
  - (iii) Release Management Teams, which is under the leadership of a Release Manager.
- (b) The Project Co Commissioning Team and Release Management Teams report to the Commissioning Steering Group.

#### 8.2 Commissioning Steering Group

- (a) Project Co shall establish a group within twelve (12) months after Financial Close (the “**Commissioning Steering Group**”), which shall be responsible for:
  - (i) monitoring the progress of the commissioning of the Ontario Line Subway;
  - (ii) assigning Releases to the Release Management Teams;
  - (iii) removing bottlenecks or challenges that the Release Management Team cannot solve; and
  - (iv) ensuring that the project environment around the Release is stable enough for Releases to start and is kept stable during the Releases.
- (b) Project Co shall participate in the Commissioning Steering Group during the Project Term.
- (c) The permanent members of the Commissioning Steering Group are:
  - (i) Project Co Commissioning Manager;
  - (ii) RSSOM Project Co commissioning manager;
  - (iii) North Civil Project Co commissioning manager (when appointed);
  - (iv) RSSOM Project Co operations director;
  - (v) RSSOM Project Co maintenance director; and
  - (vi) Representative(s) of the Contracting Authority.
- (d) A representative of Contracting Authority chairs the Commissioning Steering Group.

- 
- (e) Commissioning Steering Group meetings shall be held on a monthly basis, or more regular, throughout the Project Term.
  - (f) The Commissioning Steering Group shall discuss each (set of) Release on a monthly basis, or more regularly if required.
  - (g) Commissioning Steering Group meetings shall focus on all matters pertaining to the integrated planning, execution, reporting and learning from all Releases for Commissioning the Ontario Line Subway.
  - (h) The Project Co Commissioning Manager, RSSOM Project Co commissioning manager and North Civil Project Co commissioning manager shall be responsible for official collection and dissemination of information pertaining to the Commissioning Steering Group and shall work within the Commissioning Steering Group to optimize and standardize the information flow.

### 8.3 Project Co Commissioning Team

- (a) Project Co shall establish a team within twelve (12) months after Financial Close (the “**Project Co Commissioning Team**”), which shall be responsible for:
  - (i) providing evidence of the:
    - (A) Performance Readiness;
    - (B) Organizational Readiness; and
    - (C) Operational Readiness;
  - (ii) contributing to the integration process;
  - (iii) contributing to safety and security process;
  - (iv) health and safety management for the Commissioning;
  - (v) configuration management of the Commissioning activities; and
  - (vi) Release management.
- (b) The Project Co Commissioning Manager shall lead the Project Co Commissioning Team.

### 8.4 Release Management Teams

- (a) A Release Management Team is responsible for the planning, setup, execution and reporting of the Releases assigned to it.
- (b) The Project Co Commissioning Manager shall appoint the Release Management Team with its Release Manager for each Release owned by Project Co.
- (c) The Release Management Team’s composition shall reflect the contents of the Release.



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- (d) The Release Management Team shall include representatives of RSSOM Project Co and North Civil Project Co involved in the Release.
- (e) Project Co shall accommodate temporary members from relevant third parties within the Release Management Team, to ensure that Works involving third parties are commissioned and coordinated.
- (f) The Release Management Team shall have at least the following tasks:
- (i) management and coordination of the Release;
  - (ii) planning and scheduling of the Release;
  - (iii) support each Section Substantial Completion and each Early Works Section Handover;
  - (iv) test management; and
  - (v) liaise with:
    - (A) contract management of Project Co;
    - (B) maintenance management of RSSOM Project Co;
    - (C) operational management of RSSOM Project Co;
    - (D) health and safety management of Project Co, RSSOM Project Co and North Civil Project Co; and
    - (E) overall integration management.

## **9. PROJECT CO COMMISSIONING MANAGER**

### **9.1 Appoint a Project Co Commissioning Manager**

- (a) Project Co shall appoint a manager to plan, manage, execute and report its Commissioning obligations, (the “**Project Co Commissioning Manager**”).
- (b) The Project Co Commissioning Manager shall report directly to the Design Build Director (as outlined in Schedule 9 – Key Individuals).

### **9.2 Responsibilities**

- (a) The Project Co Commissioning Manager shall appoint and lead the Project Co Commissioning Team to the successful execution of all Commissioning obligations.
- (b) The Project Co Commissioning Manager shall:
- (i) lead and be end responsible for Commissioning within Project Co;
  - (ii) represent Project Co in the Commissioning Steering Group;

- (iii) lead the effort to achieve readiness across all four of the readiness definitions described in Section 2.2(a); and
  - (iv) review and integrate the learning across all Releases within Project Co's scope.
- (c) The Project Co Commissioning Manager shall be responsible to ensure that all Works Submittals are submitted to the Contracting Authority in accordance with Schedule 10 – Review Procedure.
- (d) The Project Co Commissioning Manager shall be responsible for inviting the Contracting Authority, IC, ISA, New Third Party Infrastructure owners and relevant others to be present at tests, with the following arrangement:
  - (i) Contracting Authority has the right to attend all Commissioning activities, while complying with the relevant health and safety rules;
  - (ii) Project Co Commissioning Manager shall provide the schedule of tests with a two (2) month lookahead window; and
  - (iii) Project Co Commissioning Manager shall classify the presence of parties external to Project Co in the role of witness, checker or approver, and deal with the comments or findings accordingly.

## 10. RELEASE MANAGER

### 10.1 Responsibilities of a Release Manager

- (a) Project Co shall appoint a manager (the “**Release Manager**”) who shall be responsible for:
  - (i) achieving readiness of the scope of the Release, as assigned by the Commissioning Steering Group;
  - (ii) definition, setup, planning, execution, reporting and analysis (learning) of the Release; and
  - (iii) actively seeking out unallocated scope, missed scope, poorly allocated scope or poorly integrated scope and include this scope within the Release management framework using the Commissioning Steering Group.
- (b) The Release Manager shall act as a first point of contact for all matters pertaining to the Release assigned to the Release Manager, including coordination with RSSOM Project Co and North Civil Project Co.

APPENDIX A TO SCHEDULE 14

EXAMPLE TREE OF TESTS

[REDACTED]

**APPENDIX B TO SCHEDULE 14****NEW CITY INFRASTRUCTURE**

For clarity, the obligations of Project Co in this Appendix B are in addition to and not in substitution of any other requirements for Commissioning of the Works and/or any other requirements in respect of New City Infrastructure contained in the Project Agreement or this Schedule 14, including, for clarity, the process and requirements set out in Section 23.12 (*Inspection, Commissioning and Handover of New City Infrastructure*) of the Project Agreement. The obligations in this Appendix B are in respect of New City Infrastructure only.

**1. INSPECTION, COMMISSIONING AND HANDOVER****1.1 Interim Inspection of New City Infrastructure**

- (a) Project Co shall notify Contracting Authority and the City of Toronto of achievement of all milestones set out in the Inspection and Test Plan in respect of New City Infrastructure, as well as all Witness and Hold Points in respect of New City Infrastructure.
- (b) Project Co shall submit an inspection report of the interim inspection and a list of deficiencies identified by Contracting Authority and the City of Toronto within five (5) Business Days.

**1.2 Final Inspection of New City Infrastructure**

- (a) Prior to final inspection of New City Infrastructure, Project Co shall, in addition to all other requirements set out in Section 23.12 (*Inspection, Commissioning and Handover of New City Infrastructure*) of the Project Agreement:
  - (i) rectification of any defects and deficiencies that may have been identified during the interim inspection of New City Infrastructure;
  - (ii) remove all temporary work no longer required from the Site subject to final inspection, including but not limited to fencing, sign board, samples, and any other items not considered to be part of the Project Co Infrastructure or the New City Infrastructure, except for those items required for ongoing Works; and
  - (iii) clean all New City Infrastructure prior to Handover following final inspection of such New City Infrastructure, including:
    - (A) sweeping/spraying of roads, boulevards and sidewalks;
    - (B) flushing of sewers; and
    - (C) cleaning out of catch basins, maintenance holes, and valve chambers,

all taking into account ongoing Works.

**2. REQUIREMENTS FOR COMMISSIONING, HANDOVER AND ACCEPTANCE****2.1 Applicable to all New City Infrastructure**

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- (a) In addition to any other requirements in the Project Agreement, Project Co shall satisfy the requirements of this Appendix B prior to, and as a condition of, Handover of New City Infrastructure.
  - (b) Project Co shall, prior to and as a pre-condition of Handover of each component New City Infrastructure, complete and perform all requirements of the Output Specifications applicable to such New City Infrastructure.
  - (c) Prior to Handover, a final inspection in accordance with Section 1.2 of this Appendix B shall have occurred.
  - (d) Project Co shall, prior to and as a pre-condition of achievement of Handover of New City Infrastructure, submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix B for review in accordance with Schedule 10 – Review Procedure:
    - (i) certification of the New City Infrastructure in accordance with Section 4 of this Appendix B; and
    - (ii) final Record Drawings in accordance with Sections 3.1 and 3.2 of this Appendix B, unless final Record Drawings are not reasonably available at the time of Commissioning of the New City Infrastructure, in which case Project Co shall:
      - (A) provide red-lined As-Built Drawings within ten (10) Business Days after final inspection of the New City Infrastructure; and
      - (B) provide final Record Drawings in accordance with Sections 3.1 and 3.2 of this Appendix B within three (3) months of Handover of such New City Infrastructure.

## 2.2 Applicable to Storm, Sanitary and Combined Sewers

- (a) For each component of New City Infrastructure comprised of storm, sanitary and combined sewers, (including maintenance holes and catchbasins), in addition to the requirements of Section 2.1 of this Appendix B, Project Co shall, prior to and as a pre-condition of Handover of such New City Infrastructure:
  - (i) complete all Commissioning tasks for storm, sanitary and combined sewers pursuant to City of Toronto Standards and other obligations included in the Project Agreement; and
  - (ii) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix B, for review in accordance with Schedule 10 – Review Procedure:
    - (A) material testing results;
    - (B) performance test results;
    - (C) manufacturer’s manuals and instructions;
    - (D) compaction testing results for backfilling and paving;

- (E) video report and detailed written report and electronic files containing chainage-specific defect codes from a CCTV inspection. Where deficiencies have been identified by the CCTV inspection, Contracting Authority shall arrange for additional examinations as required to demonstrate that all deficiencies have been rectified;
- (F) design documents, including design sheets, reports, and technical studies; and
- (G) service connection cards prepared on the standard form supplied by Contracting Authority or the City of Toronto.

### 2.3 Applicable to Watermains

- (a) For each component of New City Infrastructure comprised of watermains, in addition to the requirements of Section 2.1 of this Appendix B, Project Co shall, prior to and as a pre-condition of Handover of such New City Infrastructure:
  - (i) complete all tasks for the Commissioning of watermains and all associated water distribution infrastructure assets and appurtenances pursuant to City of Toronto Standards, including the “Construction and Materials Specification Manual”;
  - (ii) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix B, for review in accordance with Schedule 10 – Review Procedure:
    - (A) material testing results;
    - (B) performance test results;
    - (C) manufacturer’s manuals and instructions;
    - (D) compaction testing results for backfilling and paving;
    - (E) documentation related to the applicable hydrostatic pressure testing, disinfection/chlorination and bacteriological test results, and tracer-wire reports as outlined in the City of Toronto’s Form 400; and
    - (F) design documents, including design reports, and technical studies; and
  - (iii) submit As-Built Drawings (and Record Drawings, if applicable) certified by a Professional Engineer for all alterations or extensions of the drinking water system and for all alterations or extensions to the City of Toronto's sanitary and storm sewer system no later than six (6) months after the City of Toronto has started operating the drinking water system and sanitary and storm sewer system.

### 2.4 Applicable to Roadways

- (a) For each component of New City Infrastructure comprised of roadways and public boulevards, including sidewalks and furnishing zones, in addition to the requirements of Section 2.1 of this Appendix B, Project Co shall, prior to and as a pre-condition of Handover of such New City Infrastructure:

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- (i) pave all road and hardscaped surfaces;
  - (ii) complete all structures and drainage systems;
  - (iii) install the marking of all permanent pavement markings at all intersections and on all major roads;
  - (iv) install all regulatory, warning and guide signing;
  - (v) rectify and repair of all damages, settlements and depressions to the above ground road subgrade; and
  - (vi) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix B, for review in accordance with Schedule 10 – Review Procedure:
    - (A) material testing results;
    - (B) performance test results;
    - (C) compaction testing results for backfilling and paving; and
    - (D) manufacturer manuals and instructions for all enhanced paving treatments.
  - (b) Project Co shall only Handover portions of roadway which will not require any further modifications as part of the Works. For clarity, Project Co shall ensure that all underground Utility Work on a portion of roadway (including all Utility Work with respect to streetlighting and traffic signals) has been fully completed and Commissioned prior to Handover of such portion of roadway.

## **2.5 Applicable to Bridges, Culverts, Retaining Walls, Noise Walls and Concrete Planters**

- (a) For each component of New City Infrastructure comprised of bridges, culverts, retaining walls, noise walls and concrete planters in addition to the requirements of Section 2.1 of this Appendix B, Project Co shall, prior to and as a pre-condition of Handover of such New City Infrastructure, submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix B, for review in accordance with Schedule 10 – Review Procedure:
  - (i) material testing results;
  - (ii) performance test results;
  - (iii) manufacturer’s manuals and instructions; and
  - (iv) CCTV for all culverts.

## **2.6 Applicable to Traffic Signals**

- (a) For each component of New City Infrastructure comprised of traffic signals, in addition to the requirements of Section 2.1 of this Appendix B, Project Co shall, prior to and as a pre-condition of Handover of such New City Infrastructure:

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- (i) complete all applicable tasks and tests outlined in Ontario Provincial Standard Specification 620 and as per City of Toronto Standards;
  - (ii) complete upgrades to existing transit signals equipment and installation of new traffic signals;
  - (iii) commission and testing of traffic signals;
  - (iv) replacement of any traffic signal infrastructure damaged as a result of Construction Activities; and
  - (v) submit the following to Contracting Authority in accordance with Section 3.1 of this Appendix B, for review in accordance with Schedule 10 – Review Procedure:
    - (A) as outlined in Ontario Provincial Standard Specification 620.07.10, a test plan that details, at a minimum, pre-installation testing and inspection as well as proof of performance testing and inspection;
    - (B) details of operation and maintenance instructions for equipment and systems, including a complete list of equipment and part lists consisting of make, size, capacity, and serial number;
    - (C) all warranty information; and
    - (D) any additional materials used in the applicable New City Infrastructure, including names of manufacturers and source supplies and manufacturers' literature.
  - (b) Contracting Authority will complete pre and post “turn-on” inspections to determine if the aboveground and underground traffic signal infrastructure complies with City of Toronto Standards. Deficiencies, if any, will be noted by Contracting Authority and Project Co will be notified by Contracting Authority and instructed to correct such deficiencies. Project Co shall submit the original approved and stamped traffic signal “as built” design immediately after the Handover of the fully completed traffic signal plant.

For any special equipment associated with traffic management, Project Co shall provide system demonstration and training to the City of Toronto for all roadways, which training shall include hands-on instruction of City of Toronto personnel in the operation, adjustment and maintenance of such special equipment.

## **2.7 Applicable to Streetlights**

- (a) For each component of New City Infrastructure comprised of streetlights, in addition to the requirements of Section 2.1 of this Appendix B, Project Co shall, prior to and as a pre-condition of Handover of such New City Infrastructure:
  - (i) complete all street lighting infrastructure as per Toronto Hydro-Electric Systems Limited and Toronto Urban Design Streetscape Manual requirements; and
  - (ii) all pole coordination, installation and removals complete.



## 2.8 Applicable to Street Trees

- (a) For each component of New City Infrastructure comprised of street trees, in addition to the requirements of Section 2.1 of this Appendix B, Project Co shall, prior to and as a pre-condition of Handover of such New City Infrastructure:
- (i) install all the soil cells as per manufacturer instructions;
  - (ii) provide required slopes drainage pipes to down-slope catch basins;
  - (iii) submit a full list for trees planted on City of Toronto lands, including but not limited to the road allowance; and
  - (iv) submit all warranty information.
- (b) In addition to the interim and final inspection requirements of Section 1 of this Appendix B, Project Co shall provide five (5) Business Days' notice to the City of Toronto prior to:
- (i) the delivery and installation of street trees and other and all plant material for inspection prior to installation; and
  - (ii) the removal of existing trees, for which the City of Toronto will inspect all tree protection hoarding, parkland protection hoarding and inspect public and private trees.

## 3. DOCUMENTATION

### 3.1 Submittals

- (a) Project Co shall submit to Contracting Authority all documentation (including drawings) required to be delivered under this Appendix B as follows:
- (i) to Contracting Authority for review in accordance with Schedule 10 – Review Procedure; and
  - (ii) in the following formats and quantities in respect of all documentation required to be delivered to Contracting Authority pursuant to this Appendix B:
    - (A) for As-Built Drawings, four CDs/DVDs, and one full size hard copy set in mylar format;
    - (B) for Record Drawings, four CDs/DVDs, one full size hard copy set in mylar format, and one reduced size hard copy set;
    - (C) for As-Built Drawings and Record Drawings in CADD/Microstation (V6). CADD/Microstation drawings, in accordance with the City of Toronto's geodetic coordinate system identified in the CADD Specification Manual and City of Toronto By-Law No.954-2009;
    - (D) for all other documents (other than documents referenced in Section 3.1(a)(ii)(A) to Section 3.1(a)(ii)(C)), four CDs/DVDs and one hard copy set; and

- (E) each of the foregoing shall be in PDF format generated from the source electronic document and not scanned from hard copies.

### **3.2 Record Drawings**

- (a) Project Co shall provide Record Drawings for the New City Infrastructure in compliance with City of Toronto Standards, or such other standards as are agreed to by Project Co and Contracting Authority, and in accordance with the Output Specifications.

### **3.3 Operations Data and Maintenance Manuals**

- (a) Project Co shall prepare operations data and maintenance manuals for Contracting Authority and the City of Toronto.

## **4. CERTIFICATION**

Prior to achievement of Handover of New City Infrastructure, and as a pre-condition of Handover, Project Co shall submit to Contracting Authority or the City of Toronto (if a Notice of Delegation has been issued in respect of the New City Infrastructure) written certification of the New City Infrastructure in the form attached as Attachment 1 of this Appendix B. Each certificate shall be stamped, signed and dated by professionals licensed in the Province of Ontario qualified to certify the specific type of work and equipment being certified.

## ATTACHMENT 1

## FORM OF NEW CITY INFRASTRUCTURE CERTIFICATION

Certificate (insert reference number)	Reference	Number	[...]
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## CERTIFICATE OF NEW CITY INFRASTRUCTURE

A. General

1. This certificate is in respect of:
  - (a) [...] (insert details of the New City Infrastructure to be certified) (the “**Certificate**”); and
  - (b) the Project Agreement between Contracting Authority and Project Co dated [...] (insert date of Project Agreement) (the “**Project Agreement**”) relating to the Project.
2. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.
3. This Certificate is used by Project Co for certifying, as applicable:
  - (a) the substantial completion of Construction Activities in respect of those components of the Works set out in paragraph A1 of this Construction Certificate; or
  - (b) the total completion of Construction Activities in respect of any Reinstatement Work carried out by the Construction Contractor pursuant to Section 11.10 (*Protection of Works and Property*) of the Project Agreement in accordance with a Reinstatement Plan, in accordance with the Project Agreement, City of Toronto Standards, the designs and plans submitted by Project Co and reviewed by the City of Toronto in accordance with Schedule 10 – Review Procedure, other standards that have been agreed to in writing by the City of Toronto and Project Co, and good engineering practices.

B. Construction Contractor’s Statement

1. We certify that the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A3(a)], [totally completed as set out in paragraph A3(b)]**, commissioned and tested in all respects in accordance with: [Inapplicable language to be deleted]
  - (a) the relevant Design Data, Design Certificates, and Construction Certificates pursuant to Schedule 10 – Review Procedure of the Project Agreement in each case to which there has been no objection under the Review Procedure;
  - (b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):

- (i) [...] (List, if any, the change(s) made by the issue of any Variation(s)); and
- (c) the requirements of City of Toronto Standards, the designs and plans submitted by Project Co and accepted by the City of Toronto, other standards that have been agreed to in writing by the City of Toronto and Project Co, and good engineering practices.

Signed..... (Construction Contractor’s representative)

Name.....

Date.....

C. Design Team’s Statement

1. We certify that the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A3(a)], [totally completed as set out in paragraph A3(b)]**, commissioned and tested in all respects in accordance with: the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations. [Inapplicable language to be deleted]
2. We further certify that in our professional opinion the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A3(a)], [totally completed as set out in paragraph A3(b)]**, commissioned and tested in all respects in accordance with: [Inapplicable language to be deleted]
  - (a) the relevant Design Data, Design Certificates, and Construction Certificates pursuant to Schedule 10 – Review Procedure of the Project Agreement in each case to which there has been no objection under the Review Procedure;
  - (b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):
    - (i) [...] (List, if any, the change(s) made by the issue of any Variation(s)); and
    - (c) the requirements of City of Toronto Standards, the designs and plans submitted by Project Co and accepted by the City of Toronto, other standards that have been agreed to in writing by the City of Toronto and Project Co, and good engineering practices.

Signed..... (Design Team’s Principal)

Name.....

Date.....

Professional Registration Number: ..... (Affix Professional Seal)

D. Contracting Authority Representative

- 1. This Certificate is:
  - i. No Comment\*
  - ii. Reviewed as Noted – Minor Issues\*
  - iii. Reviewed as Noted – Major Issues\*

\* delete as appropriate

Signed: ..... (Contracting Authority Representative)

Name: .....

Date: .....

**SCHEDULE 15**  
**OUTPUT SPECIFICATIONS**

[REDACTED]

## SCHEDULE 16

## ENCUMBRANCES

- (a) For purposes of this Schedule 16, the defined term “Lands” shall include any portion of the Lands.
- (b) Each of the following, to the extent affecting any interest (whether real property interest or contractual interest) in the 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, rights-of-way, rights to use, restrictive covenants, work orders, options or adverse claims of any kind or character whatsoever relating to the title to the Lands, disclosed in the Background Information as of the Technical Reference Date.
  - (ii) Liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by Contracting Authority.
  - (iii) Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to Contracting Authority pursuant to the *Construction Act* (Ontario) or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, Contracting Authority has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts.
  - (iv) The rights reserved to or vested in the public or any municipality or governmental or other public authority by any statutory provision.
  - (v) Any subsisting reservations, limitations, provisions and conditions contained in any grants from the Crown of any land or interests therein, including reservations of under-surface rights to mines and minerals of any kind including rights to enter, prospect and remove the same.
  - (vi) Any encroachments, easements, rights of way, rights to use or similar interests revealed by any survey of the Lands that has been disclosed in the Background Information as of the Technical Reference Date.
  - (vii) 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 in the Background Information as of the Technical Reference Date.

- (viii) Unregistered agreements, authorizations, consents, postponements, subordinations, licences or instruments entered into provided that they have been disclosed in the Background Information as of the Technical Reference Date.
- (ix) 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 in the Background Information as of the Technical Reference Date.
- (x) Minor imperfections of title.
- (xi) Statutory exceptions to title and any rights reserved to or vested in any person by any statutory provision.
- (xii) 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, provided such rights have been disclosed in the Background Information as of the Technical Reference Date.
- (xiii) The rights of any person entitled to any portion of the Lands through length of adverse possession or prescription.



## SCHEDULE 17

## ENVIRONMENTAL OBLIGATIONS

**1 DEFINITIONS AND ABBREVIATIONS****1.1 Definitions**

1.1.1 In this Schedule, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 17) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

1.1.2 **“Additional Construction Noise and Vibration Sensitive Receptor Performance Requirements”** has the meaning given in Section 6.4.4.8.

1.1.3 **“Additional Environmental Report”** has the meaning given in Section 5.1.1.

1.1.4 **“Additional Sensitive Receptor”** means a specific property or location susceptible to adverse effects from noise or vibration, but which is not explicitly defined in the Applicable Construction Noise and Vibration Requirements.

1.1.5 **“Adverse Effect”** has the meaning given in the Environmental Protection Act, R.S.O. 1990, c.E.19.

1.1.6 **“Aggregate”** has the meaning given in the Aggregate Resources Act, R.S.O. 1990, c.A.8.

1.1.7 **“Air Quality Sensitive Receptor”** means a property or location susceptible to adverse air pollution effects. Such properties or locations include, but are not limited to, residences as well as institutional, commercial and industrial buildings.

1.1.8 **“Air Quality Specialist”** means an individual possessing the minimum requirements set out in Section 4.6.3.1.

1.1.9 **“Annual Environmental Compliance Monitoring Report”** has the meaning given in Section 5.2.1.

1.1.10 **“ANSI Recommended Practice”** means ANSI/IES RP-8-18 – Recommended Practice for Design and Maintenance of Roadway and Parking Lighting Facility, as amended from time to time.

1.1.11 **“Applicable Construction Air Quality Criteria and Limits”** has the meaning given in Section 6.9.2.1.

1.1.12 **“Applicable Construction Noise and Vibration Requirements”** has the meaning given in Section 6.4.1.1(d).

1.1.13 **“Applicable Operations Air Quality Criteria and Limits”** has the meaning given in Section 6.10.2.1.

- 1.1.14 “**Applicable Operations Noise and Vibration Requirements**” has the meaning given in Section 6.5.1.5.
- 1.1.15 “**Aquatic Specialist**” means the individual possessing the minimum requirements set out in Section 4.6.3.2.
- 1.1.16 “**Arborist**” means an individual possessing the minimum requirements set out in Section 4.6.3.3.
- 1.1.17 “**Arborist Report – Metrolinx Lands**” has the meaning given in Section 6.8.3.2.
- 1.1.18 “**Arborist Report – Third Party Lands**” has the meaning given in Section 6.8.3.3.
- 1.1.19 “**Archaeological Risk Management Plan**” has the meaning given in Section 6.7.1.1.
- 1.1.20 “**Biologist**” means an individual possessing the minimum requirements set out in Section 4.6.3.11.
- 1.1.21 “**Canadian Certified Inspector of Sediment and Erosion Control**” means an individual possessing a CAN-CISEC certificate issued by CISEC, Inc.
- 1.1.22 “**Change**” for the purposes of this Schedule 17, means a change to the Project that is inconsistent with the Environmental Reference Documents.
- 1.1.23 “**Climate Mitigation and Resilience Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.16.
- 1.1.24 “**Construction Air Quality Impact Zone**” has the meaning given in Section 6.9.3.3(d).
- 1.1.25 “**Construction Air Quality Management Plan**” has the meaning given in Section 6.9.3.1.
- 1.1.26 “**Construction Noise and Vibration Management Plan**” has the meaning given in Section 6.4.3.
- 1.1.27 “**Construction Noise and Vibration Performance Limits**” has the meaning given in Section 6.4.2.1.
- 1.1.28 “**Construction Noise and Vibration Sensitive Receptors**” means a property or location susceptible to adverse noise or vibration effects. Such properties or locations include, but are not limited to, residences as well as institutional, commercial and industrial buildings.
- 1.1.29 “**Contamination Management Plan**” has the meaning given in Section 6.1.5.1.
- 1.1.30 “**Contracting Authority Environmental Commitments**” has the meaning given in Section 2.3.2.
- 1.1.31 “**Cultural Heritage Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.4.
- 1.1.32 “**Designated Substances and Hazardous Materials**” includes,

- 1.1.32.1 the substances identified and described as “designated substances” by Ontario Regulation 490/09, as amended, made under the Occupational Health and Safety Act (Ontario);
- 1.1.32.2 polychlorinated biphenyls, as identified and described in Ontario Regulation 362, as amended, made under the Environmental Protection Act (Ontario);
- 1.1.32.3 mould to the extent that it represents an area of continuous contamination greater than 10 square metres on visible surfaces or in building cavities and represents an unacceptable situation requiring remediation as determined by an accredited professional that is a Registered Occupational Hygienist accredited by the Canadian Registration Board of Occupational Hygienists, a Certified Industrial Hygienist licensed by the American Board of Industrial Hygiene, or a Professional Engineer with a relevant area of expertise; and
- 1.1.32.4 additionally includes designated substances and hazardous materials in accordance with the *Occupational Health and Safety Act*, O. Reg. 278/05 (Asbestos on Construction Projects and in Buildings and Repair Operations), Regulation 490 (Designated Substances), Regulation 860 (WHMIS Regulation), Regulation 833 (Control of Exposure to Biological or Chemical Agents Regulation), and/or R.R.O. 1990, Regulation 347 General - Waste Management, as amended (R.R.O. 1990, Reg. 347) under the EPA.
- 1.1.33 “**Designated Substances and Hazardous Materials Discovery Plan**” has the meaning given in Section 6.1.5.2(b).
- 1.1.34 “**Designated Substances and Hazardous Materials Management Plan**” has the meaning given in Section 6.1.2.2.
- 1.1.35 “**Designated Substances and Hazardous Materials Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.5.
- 1.1.36 “**Dewatering**” means the removal of groundwater from the ground through the following means:
- 1.1.36.1 active dewatering, using methods such as dewatering wells, eductor wells, or vacuum lances; or
- 1.1.36.2 passive dewatering, when groundwater inflow is allowed to occur through soil (such as from cohesionless seams in the soil) or through bedrock (such as from joints, shear zones or fault zones).
- 1.1.37 “**DFO**” means Fisheries and Oceans Canada.
- 1.1.38 “**Discharge**” means any deposit, emission, leak, spill or release to the environment of any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination thereof that,
- 1.1.38.1 arises, either directly or indirectly, from human activities; and
- 1.1.38.2 causes or may cause an Adverse Effect on the environment.

- 1.1.39 “**Documents Relating to Indigenous Nations**” has the meaning given in Section 3.4.2.
- 1.1.40 “**Electromagnetic Compatibility (EMC)/ Electromagnetic Interference (EMI) Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.6 and update with Section reference, as applicable.
- 1.1.41 “**EMS Software Solution**” has the meaning given in Section 5.4.2.
- 1.1.42 “**Endangered Species Act (Ontario)**” means the *Endangered Species Act*, 2007, S.O. 2007, c.6, as amended from time to time.
- 1.1.43 “**Environmental Activity Sector Registration**” or “**EASR**” means a registration requirement in respect of construction-related water taking activities prescribed under Ontario Regulation 63/16, as well as noise and vibration and air quality activities prescribed under Ontario Regulation 1/17 – Activities Requiring Assessment of Air Emissions made under the Environmental Protection Act (Ontario).
- 1.1.44 “**Environmental Amendment Proposal**” has the meaning given in Section 2.4.2.
- 1.1.45 “**Environmental Approvals**” means:
- 1.1.45.1 any authorizations(s) issued by the MECP; and
  - 1.1.45.2 any Permits, Licences, Approvals and Agreements relating to environmental matters or relating to Environmental Law, and any Permits, Licences, Approvals and Agreements relating to self-assessment standards that must be followed to demonstrate compliance with Environmental Law.
- 1.1.46 “**Environmental Aspect**” means an element of an organization’s activities or products or services that interacts or can interact with the environment.
- 1.1.47 “**Environmental Assessment**” means any environmental assessment completed or required under the Environmental Assessment Act (Ontario), including any environmental assessment or addendum to the environmental assessment required under Ontario Regulation 341/20 Ontario Line Project, made under the Environmental Assessment Act (Ontario). The Environmental Assessment includes the following documents:
- [REDACTED]
- 1.1.48 “**Environmental Assessment Act (Ontario)**” means the *Environmental Assessment Act*, R.S.O. 1990, c. E18, as amended from time to time.
- 1.1.49 “**Environmental Audit Report**” has the meaning given in Section 5.2.3.
- 1.1.50 “**Environmental Compliance Officer**” has the meaning given in Section 4.5.1.
- 1.1.51 “**Environmental Condition Summary**” has the meaning given in Section 6.2.2.4.
- 1.1.52 “**Environmental Consultant**” means one or more reputable, qualified and experienced environmental consulting or engineering firm(s) employing individuals that have been retained by Project Co to provide technical expertise and guidance to Project Co on all Project

Co Environmental Commitments, the Environmental Approvals and all other environmental obligation and matters, including monitoring, managing and addressing soil and groundwater impacts and occupational and public health and safety issues, for the duration of the Works.

- 1.1.53 “**Environmental Director**” has the meaning given in Section 4.2.1.
- 1.1.54 “**Environmental Incident**” means an occurrence or a set of circumstances that causes, directly or indirectly an actual or likely Adverse Effect on the environment:
- 1.1.54.1 due to a Spill or Discharge;
  - 1.1.54.2 due to an occurrence that contravenes Applicable Law or the Project Agreement;
  - 1.1.54.3 that results in a stoppage of work; and/or
  - 1.1.54.4 that requires reporting to a Governmental Authority.
- 1.1.55 “**Environmental Inspector**” has the meaning given in Section 4.7.1.
- 1.1.56 “**Environmental Law**” means all Applicable Law relating to environmental assessment processes, public health or the protection of the environment, including (as applicable) public safety or Species-at-Risk.
- 1.1.57 “**Environmental Management System**” or “**EMS**” has the meaning given in Section 5.3.1.
- 1.1.58 “**Environmental Manager**” has the meaning given in Section 4.3.1.
- 1.1.59 “**Environmental Permits and Approvals Coordinator**” has the meaning given in Section 4.4.1.
- 1.1.60 “**Environmental Planning Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.7.
- 1.1.61 “**Environmental Protection Act (Ontario)**” means the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended from time to time.
- 1.1.62 “**Environmental Reference Documents**” has the meaning given in Section 2.1.1.1.
- 1.1.63 “**Environmental Specialist**” has the meaning given in Section 4.6.1.
- 1.1.64 “**Environmental Working Group**” or “**EWG**” has the meaning given in Section 4.8.1.
- 1.1.65 “**Environmentally Sensitive Construction Activities**” means complex Construction Activities that have a high potential for causing adverse effects, including,
- 1.1.65.1 Construction Activities that have the potential to impact human health, including with respect to noise, vibration and air quality;
  - 1.1.65.2 rapid-bridge replacements;
  - 1.1.65.3 in-water Construction Activities;

- 1.1.65.4 steep slope Construction Activities;
- 1.1.65.5 deep foundation Construction Activities that take place near Sensitive Receptors; and
- 1.1.65.6 Construction Activities with respect to piers in a watercourse.
- 1.1.66 “**Erosion and Sediment Control Guide for Urban Construction**” means the document issued by TRCA dated 2019 and further amended from time to time.
- 1.1.67 “**Erosion and Sediment Control Plan**” has the meaning given in Section 6.2.8.2.
- 1.1.68 “**Excess Soil**” has the meaning defined by O.Reg 406/19.
- 1.1.69 “**Fish and Wildlife Conservation Act (Ontario)**” means the *Fish and Wildlife Conservation Act*, S.O. 1997, c.41, as amended from time to time.
- 1.1.70 “**Fisheries Act (Canada)**” means the *Fisheries Act*, R.S.C. 1985, c. F-14, as amended from time to time.
- 1.1.71 “**Groundwater Management and Dewatering/Unwatering Plan**” has the meaning given in Section 6.3.4.3.
- 1.1.72 “**Heritage Detailed Design Report**” has the meaning given in Section 6.6.2.1
- 1.1.73 “**Hydrogeologist**” means an individual possessing the minimum requirements set out in Section 4.6.3.8.
- 1.1.74 “**Identified Contaminated Materials**” means the Contaminated Materials set out in Appendix F to Schedule 17 – Environmental Obligations.
- 1.1.75 “**Indigenous Monitors**” means an individual appointed by an Indigenous Nation or an Indigenous Entity to monitor and/or perform fieldwork on behalf of such Indigenous Nation or Indigenous Entity or their assigned consultant.
- 1.1.76 “**Indigenous Nations Engagement**” means a process of meaningfully engaging with Indigenous Nations whose rights and interests may be affected by the Project, with the objective of providing relevant information to community leaders and members about the Project, meaningfully considering their input, and coordinating on matters of interest to avoid, reduce or mitigate potential adverse impacts.
- 1.1.77 “**Industrial, Commercial and Community Property Use**” has the meaning as per Ontario Regulation (O.Reg) 153/04.
- 1.1.78 “**Interpretation/Commemoration Strategy Framework**” has the meaning as outlined in the Heritage Detailed Design Report.
- 1.1.79 “**ISO 14001**” means CAN/CSA-ISO 14001:16 – Environmental management systems – Requirements with guidance for use.

- 1.1.80 “**Licensed Archaeologist**” means an individual possessing the minimum requirements set out in Section 4.6.3.10.
- 1.1.81 “**MECP**” means the Ontario Ministry of the Environment, Conservation and Parks, and any successor ministry thereto.
- 1.1.82 “**Memorandum of Understanding**” means the Memorandum of Understanding: Cultural Heritage Process to Support Accelerating Delivery of the Priority Transit Projects between Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) and Metrolinx and Ministry of Transportation (MTO).
- 1.1.83 “**Metrolinx Species at Risk Framework**” means the Species-at-Risk framework prepared by Metrolinx, dated 2021.
- 1.1.84 “**MHSTCI**” means the Ontario Ministry of Heritage, Sport, Tourism and Culture Industries, and any successor ministry thereto.
- 1.1.85 “**MOL Noise Regulation O. Reg. 381/15**” means Ontario Regulation (O. Reg.) 381/15: NOISE under *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended from time to time.
- 1.1.86 “**Monthly Environmental Report**” has the meaning given in Section 5.2.2.
- 1.1.87 “**Noise Specialist(s)**” means an individual possessing the minimum requirements set out in Section 4.6.3.9.
- 1.1.88 “**Ontario Water Resources Act**” means the *Ontario Water Resources Act*, R.S.O. c. O.40, as amended from time to time.
- 1.1.89 “**Operations Noise and Vibration Performance Limits**” has the meaning given in Section 6.5.2.1.
- 1.1.90 “**Overall Benefit Permit**” means a permit that:
- 1.1.90.1 is required to perform an activity that is not otherwise allowed under the Endangered Species Act (Ontario); and
- 1.1.90.2 authorizes a person, company or organization to perform the activity, as long as such person, company or organization provides an overall benefit to a species in the Province of Ontario.
- 1.1.91 “**Permit To Take Water**” or “**PTTW**” means a permit issued by the MECP for the taking of water in accordance with Ontario Regulation 387/04, made under the Ontario Water Resources Act, or an Environmental Activity Sector Registration in accordance with Ontario Regulation 63/16, made under the Environmental Protection Act (Ontario).
- 1.1.92 “**Project Area**” has the meaning given in Ontario Regulation 406/19, made under the Environmental Protection Act (Ontario).
- 1.1.93 “**Project Co Deviation Report**” has the meaning given in Section 2.4.3.

- 1.1.94 “**Project Co Environmental Commitments**” has the meaning given in Section 2.1.1.2.
- 1.1.95 “**Project Information Form**” means the form required by the MHSTCI, pursuant to the *Ontario Heritage Act* (Ontario).
- 1.1.96 “**Project Leader**” has the meaning given in Ontario Regulation 406/19, made under the Environmental Protection Act (Ontario).
- 1.1.97 “**Provincial Heritage Properties**” has the meaning given in the Standards and Guidelines for the Conservation of Provincial Heritage Properties issued by the MHSTCI pursuant to the *Ontario Heritage Act* (Ontario) (as amended from time to time).
- 1.1.98 “**Provincial Heritage Properties of Provincial Significance**” has the meaning given in the Standards and Guidelines for the Conservation of Provincial Heritage Properties issued by the MHSTCI pursuant to the *Ontario Heritage Act* (Ontario) (as amended from time to time).
- 1.1.99 “**Qualified Person**” when used in this Schedule 17 has the meaning given in Ontario Regulation 153/04, as amended, made under the Environmental Protection Act (Ontario).
- 1.1.100 “**Regional Storm**” means the rainfall event and soil conditions existing during Hurricane Hazel that occurred within the Humber River watershed in Toronto in 1954, transposed over a specific watershed and combined with local conditions as defined by the TRCA.
- 1.1.101 “**Representative Construction Noise and Vibration Sensitive Receptor**” means the Construction Noise and Vibration Sensitive Receptor exposed to the worst-case effects of ground borne vibration, and air and ground borne noise compared to all the nearby Construction Noise and Vibration Sensitive Receptors. The Representative Construction Noise and Vibration Sensitive Receptor is intended to represent all nearby Construction Noise and Vibration Sensitive Receptors.
- 1.1.102 “**Rules for Soil Management and Excess Soil Quality Standards**” means the document referenced by O. Reg. 406/19 and issued by the MECP, dated December 2020 and further amended from time to time.
- 1.1.103 “**Salt Management Plan**” has the meaning given in Section 6.8.1.4.
- 1.1.104 “**Sensitive Receptor**” means a specific property or location susceptible to adverse effect related to the Project Co Infrastructure. Such properties or locations include, but are not limited to, residences, institutional, commercial and industrial buildings, parklands, watercourses and wetlands.
- 1.1.105 “**Significant Change**” for the purposes of this Schedule 17, means a change to the Project that is inconsistent with the Environmental Assessments or issued environmental permits pertaining to the Project as determined to be significant by the Contracting Authority.
- 1.1.106 “**Soil**” has the meaning defined by O. Reg. 406/19.
- 1.1.107 “**Soil and Excavated Material Management Plan**” has the meaning given in Section 6.2.5.3.
- 1.1.108 “**Soil and Groundwater Contamination and Management Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.12.



- 1.1.109 “**Soil Importation Plan**” has the meaning given in Section 6.2.6.1.
- 1.1.110 “**Species at Risk Handover Report**” has the meaning given in Section 6.8.2.1(b).
- 1.1.111 “**Species at Risk Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.13.
- 1.1.112 “**Spill**” means, for the purposes of this Project Agreement and notwithstanding any less stringent definition under Applicable Law, a discharge or release to the environment of any liquid that,
- 1.1.112.1 arises, either directly or indirectly, from human activities; and
- 1.1.112.2 causes or may cause an Adverse Effect on the environment.
- 1.1.113 “**Spill Prevention and Response Occurrence Report**” has the meaning given in Section 6.1.1.3.
- 1.1.114 “**Spill Prevention and Response Plan**” has the meaning given in Section 6.1.1.1.
- 1.1.115 “**Stage 1 Archaeological Assessment**” means a determination made by a Licensed Archaeologist as to whether there is potential for archaeological sites on a property based on a review of reviewing geographic, land use and historical information for such property and the relevant surrounding area, a property inspection to document and assess its current condition and contact with the MHSTCI to identify registered archaeological sites on or near the property. A Stage 2 Archaeological Assessment is required when the Licensed Archaeologist identifies areas of archaeological potential during the Stage 1 Archaeological Assessment.
- 1.1.116 “**Stage 2 Archaeological Assessment**” is comprised of field investigations carried out by a Licensed Archaeologist to identify any archaeological resources on the property being developed based on recommendations made in the Stage 1 Archaeological Assessment. The Licensed Archaeologist will determine whether any archaeological resources found are of sufficient cultural heritage value or interest to require a Stage 3 Archaeological Assessment.
- 1.1.117 “**Stage 3 Archaeological Assessment**” determines the extent of the archaeological site and the characteristics of the artifacts. The purpose is to collect a representative sample of artifacts, assess the cultural heritage value or interest of the archaeological site, and to determine the need for mitigation of development impacts and recommend appropriate strategies for mitigation and future conservation.
- 1.1.118 “**Stage 4 Archaeological Assessment**” addresses development impacts on an archaeological site with a level of cultural heritage value or interest that has been determined to require mitigation, either by avoidance and protection or excavation.
- 1.1.119 “**Stationary Sources**” has the meaning as defined in MECP publication NPC-300.
- 1.1.120 “**Strategic Conservation Plan(s)**” is a document which identifies the conservation principles appropriate for the type of cultural heritage resource/attributes being conserved; provides detailed documentation of the resource and its heritage attributes; includes an assessment of current conditions and deficiencies; and recommends conservation measures and interventions

in the short, medium and long term to ensure preservation of the property's cultural heritage significance.

- 1.1.121 “**Substantial Completion Environmental Report**” has the meaning given in Section 5.2.7.
- 1.1.122 “**Sustainability Management Plan**” has the meaning given in Section 3.1.5.1 (*Sustainability Management Plan*) of the Output Specifications.
- 1.1.123 “**Sustainability Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.15.
- 1.1.124 “**System-Wide Noise Exposure Objectives**” has the meaning given in Section 6.5.2.1(a).
- 1.1.125 “**Topsoil**” means, as per *Municipal Act*, 2001, c. 25, s. 142 (1), those horizons in a soil profile, commonly known as the “O” and the “A” horizons, containing organic material and includes deposits of partially decomposed organic matter such as peat.
- 1.1.126 “**TRCA**” means Toronto and Region Conservation Authority.
- 1.1.127 “**Tree Tracker**” has the meaning given in Section 6.8.3.7.
- 1.1.128 “**Unwatering**” means the removal of accumulated water from a structure or excavation”.
- 1.1.129 “**Vegetation Compensation**” means the replacement of a lost/altered natural feature or area and its ecological functions, services, and value.
- 1.1.130 “**Vibration Sensitive Structures**” means heritage designated or listed properties and sensitive structures or buildings or infrastructure as defined in City of Toronto By-Law No. 514-2008.
- 1.1.131 “**Vibration Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.14.
- 1.1.132 “**Weekly Construction Air Quality Monitoring Report**” has the meaning given in Section 6.9.4.5.
- 1.1.133 “**Weekly Construction Noise and Vibration Monitoring Report**” has the meaning given in Section 6.4.6.4.
- 1.1.134 “**Well Decommissioning and Protection Plan**” has the meaning given in Section 6.3.1.8.
- 1.1.135 “**Zone of Influence**” is comprised of lands where the noise, vibration, Dewatering or air quality impact of an activity associated with the Project may cause exceedance of applicable exposure criteria or limits.

## 2 COMPLIANCE OBLIGATIONS

### 2.1 Compliance with Environmental Reference Documents

- 2.1.1 Without limitation to any of Project Co's rights, remedies or obligations under the Project Agreement, and any other obligations with respect to Project Co conducting its own due diligence investigations:

2.1.1.1 Project Co shall, at all times, perform the Works in accordance with Applicable Law and in a manner that ensures, to the extent within Project Co's and Project Co Party's control, that Contracting Authority and the Works are in compliance with all obligations (to the extent that each document is applicable to the Works) and as listed in Appendix B of this Schedule 17 (collectively referred to as the "**Environmental Reference Documents**").

- (a) Project Co shall provide, on an annual basis as part of the Annual Environmental Compliance Monitoring Report in accordance with Schedule 10 – Review Procedure, an updated list of Environmental Reference Documents as necessary to reflect changes in applicable requirements and Applicable Law.

2.1.1.2 Project Co shall, at no additional cost to Contracting Authority, comply with all recommendations and requirements, and perform all commitments and obligations in the Environmental Reference Documents, including those set out as the responsibility of the proponent or co-proponents in the Environmental Reference Documents, including, for clarity, the Project Co commitments and obligations that are set out in Appendix A-1 and A-3 of this Schedule 17, except that Project Co,

- (a) shall not be responsible for performance of and compliance with those commitments and obligations that are explicitly set out as Contracting Authority commitments or obligations in Appendix A-1 of this Schedule 17; and
- (b) shall be responsible for complying with the provisions of the Output Specifications, pertaining to the Environmental Reference Documents in the manner set out in the Output Specifications,

(collectively, the "**Project Co Environmental Commitments**").

2.1.1.3 For clarity, Project Co acknowledges and agrees that, notwithstanding that a recommendation or consideration is not expressed in an Environmental Reference Document as a requirement, commitment or obligation, and is instead expressed as a recommendation or consideration (for example, using the phrase, "may", "will", "should", "it is recommended", or "to be considered"), such recommendation or consideration is deemed to be a "Project Co Environmental Commitment" for the purposes of the Project Agreement, and a specific reference to the manner in which an obligation in the Output Specifications should be performed or complied with takes precedence over any discretion accorded to performance of or compliance with such obligation in the Environmental Reference Documents.

2.1.2 The Parties acknowledge and agree that if there is any conflict between any criterion, commitment or requirement contained in one or more of the Environmental Reference Documents or under Environmental Law, the more stringent criterion, commitment or requirement shall apply.

2.1.3 Project Co shall submit all documentation which demonstrates Project Co is compliant with the Project Co Environmental Commitments in accordance with Schedule 10 – Review Procedure.

## 2.2 Project Co Additional Environmental Obligations

2.2.1 Throughout the Project Term, Project Co shall manage all environmental matters and perform all environmental obligations associated with the Project in accordance with the Project Agreement, including this Schedule 17, and in coordination with Contracting Authority.

2.2.2 Project Co shall submit the following information for review by Contracting Authority in accordance with Schedule 10 – Review Procedure, and Section 11.3 (*Design Workshops*) of the Project Agreement:

- 2.2.2.1 information that is required by an Environmental Reference Document or an Additional Environmental Report, other than any information that is explicitly Contracting Authority’s obligation to provide pursuant to a Contracting Authority Environmental Commitment;
- 2.2.2.2 information that is required at any time pursuant to this Schedule 17, including all plans, reports, Works Submittals and other documents described herein; or
- 2.2.2.3 information that is otherwise requested by the Contracting Authority Representative, in its sole discretion, upon reasonable advance Notice to Project Co;
  - (a) that is in the possession and control of Project Co or otherwise contemplated in the Project Agreement, at no cost to Contracting Authority; or
  - (b) that is not in the possession and control of Project Co and which would require additional work or investigation of Project Co that is not otherwise contemplated in the Project Agreement, at the cost and expense of Contracting Authority.

For clarity, the information requested by Contracting Authority in accordance with this Section 2.2.2 may include documentation that is necessary and sufficient to demonstrate that the Works and the Project Co Infrastructure are in compliance with the Project Co Environmental Commitments. Project Co shall provide such documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure following a request by Contracting Authority.

2.2.3 Where any plan or document set out in this Schedule 17 is required to be submitted by Project Co in accordance with Schedule 10 – Review Procedure, Project Co shall revise each Works Submittal on receipt of a “RE-SUBMIT” comment.

- 2.2.3.1 Project Co shall implement such plan or document upon receipt of no further request for “RE-SUBMIT” for the plan or document by Contracting Authority, in accordance with Schedule 10 – Review Procedure.

**2.3 Contracting Authority’s Environmental Obligations**

- 2.3.1 Contracting Authority shall review all documentation submitted by Project Co under Section 2.2.2 or otherwise in accordance with this Schedule 17 and in accordance with Schedule 10 – Review Procedure.
- 2.3.2 Contracting Authority shall deliver, comply with and perform all commitments and obligations set out in Appendix A-1 of this Schedule 17 (the “**Contracting Authority Environmental Commitments**”). For clarity, the Contracting Authority Environmental Commitments are Contracting Authority’s obligations in Appendix A-1 of this Schedule 17 and Contracting Authority’s portions of the shared obligations are set out in Appendix A-2 of this Schedule 17.
- 2.3.3 No later than thirty (30) days following Financial Close, or such longer period as agreed upon by the Parties, Contracting Authority shall:
- 2.3.3.1 provide Project Co with a summary report of any activities known to Contracting Authority that have been completed, in whole or in part, and the status of works performed prior to Financial Close, by Contracting Authority and other Governmental Authorities relevant to Project Co’s obligations under Sections 2.1 and 2.2;
  - 2.3.3.2 provide Project Co with all applicable documentation related to any obligation or commitment contained in any Environmental Assessments that have been performed by Contracting Authority or a Governmental Authority and known to Contracting Authority prior to Financial Close;
  - 2.3.3.3 schedule a meeting between Project Co and Contracting Authority to review the summary report and documentation referred to in Sections 2.3.3.1 and 2.3.3.2; and
  - 2.3.3.4 schedule an appropriate number of site visits with Project Co to review field activities performed by Contracting Authority prior to Financial Close.

**2.4 Environmental Impacts and Changes to Environmental Assessment**

- 2.4.1 Subject to Section 2.4.2 and Section 2.4.3, Project Co shall carry out the Works in such a manner so that the environmental impacts of the Project Co Infrastructure are at all times within the magnitude and extent permitted by the Environmental Reference Documents, Additional Environmental Reports and Applicable Law.
- 2.4.2 Subject to Section 2.4.3, if it is not possible to contain the environmental impact of any aspect of the Works to what is permitted in the Environmental Reference Documents, Additional Environmental Reports and Applicable Law, Project Co shall comply with any amendment procedures required to amend the applicable Environmental Reference Document or Additional Environmental Report in accordance with Applicable Law, at Project Co’s sole cost and expense. Prior to contacting any Governmental Authority in respect of an amendment or addendum to any Environmental Reference Document or Additional Environmental Report, Project Co shall prepare and submit a proposal (the “**Environmental Amendment Proposal**”) setting out the reason for and details regarding the amendment to Contracting

Authority in accordance with Schedule 10 – Review Procedure and Project Co shall obtain the written consent of Contracting Authority.

- 2.4.3 If it is not possible to contain the environmental impact of any aspect of the Works to be within the magnitude and extent permitted by the Environmental Assessments, Environmental Reference Documents and the Additional Environmental Reports, then, prior to carrying out any activity that deviates from the Environmental Assessments, Environmental Reference Documents and the Additional Environmental Reports, Project Co shall prepare and submit a report setting out the reason and details for the deviation for review in accordance with Schedule 10 – Review Procedure (the “**Project Co Deviation Report**”) which shall include the following information:
- 2.4.3.1 a detailed description of and reason for the change(s) of the design of the Works from the design concept that served as the basis for the Environmental Assessments, Environmental Reference Documents and the Additional Environmental Reports, including the potential use of Additional Lands;
  - 2.4.3.2 Project Co’s assessment and evaluation of any environmental impacts, and the magnitude of such environmental impacts, that may arise, directly or indirectly, from the design of the Project Co Infrastructure, as compared to the reference design concept set out in the Environmental Assessments, Environmental Reference Documents and the Additional Environmental Reports;
  - 2.4.3.3 Project Co’s proposed measures for mitigating any negative environmental impacts that may arise, directly or indirectly, from the change(s);
  - 2.4.3.4 Project Co’s opinion as to whether additional Permits, Licences, Approvals and Agreements or updates to Permits, Licences, Approvals and Agreements are required as a result of the change(s); and
  - 2.4.3.5 Project Co’s proposed impacts to schedule and costs as a results of any change of the design concept set out in the Environmental Assessments, Environmental Reference Documents and the Additional Environmental Reports.
- 2.4.4 In accordance with Ontario Regulation 341/20: Ontario Line Project, made under the Environmental Assessment Act (Ontario), Contracting Authority shall, upon receiving the Project Co Deviation Report, determine in its sole discretion whether the change is a Significant Change to the transit project requiring an addendum to the Environmental Assessment or revisions to Environmental Approvals and whether such Significant Change should be implemented. To the extent that the deviation described by Project Co amounts to a Change or a Significant Change that Contracting Authority determines should be implemented:
- 2.4.4.1 which is not assessed in the design concept set out in the Environmental Assessment but is in compliance with the Project Agreement, including the Output Specifications, Project Co shall carry out all studies and evaluations necessary to assess the environmental effects associated with such Change or Significant Change, as applicable, in a manner consistent with the original assessment of environmental effects of the Works as documented in the Environmental Reference Documents, and in accordance with the conditions

within this Schedule 17, and Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation; or

2.4.4.2 which is not in compliance with the Project Agreement, including the Output Specifications, Project Co shall carry out all studies and evaluations necessary to assess the environmental effects associated with such Change or Significant Changes, as applicable, in a manner consistent with the original assessment of environmental effects of the Works as documented in the Environmental Reference Documents, and in accordance with the conditions of this Schedule 17, at Project Co's sole cost and expense.

2.4.5 With respect to any Environmental Assessment or amendments or addenda thereto that may be required as a result of Section 2.4.1, Section 2.4.2, Section 2.4.3, or Section 2.4.4, Metrolinx shall be the "proponent" under Ontario Regulation 341/20: Ontario Line Project, made under the Environmental Assessment Act (Ontario), and Project Co shall be Metrolinx's agent in preparing any such amendment, which shall be submitted to Contracting Authority in accordance with Schedule 10 – Review Procedure.

### **3 NOTIFICATION, RECORDS AND REPORTING REQUIREMENTS**

#### **3.1 Permits, Licences, Approvals and Agreements**

3.1.1 Project Co acknowledges that Section 11.8 (*Permits, Licences, Approvals and Agreements*) of the Project Agreement applies to all Permits, Licences, Approvals and Agreements necessary to fulfil Project Co's environmental obligations under the Project Agreement, including those relating to the amendment of any Environmental Reference Document or Additional Environmental Report.

#### **3.2 Notification to Contracting Authority**

3.2.1 Project Co shall immediately notify, within twenty-four hours or less, the Contracting Authority Representative of Project Co's knowledge of:

3.2.1.1 any breach by Project Co or any Project Co Party of any Environmental Law relating to the performance of the Works or the Lands;

3.2.1.2 any charge, order, investigation or notice of violation or non-compliance issued under any Environmental Law,

(a) against Project Co or any Project Co Party;

(b) relating to the Works; or

(c) relating to the Lands; or

3.2.1.3 any notice, claim, action or other proceeding brought by any person under any Environmental Law,

(a) against Project Co or any Project Co Party;

(b) relating to the Works; or

(c) relating to the Lands.

### 3.3 Communications with Governmental Authorities

- 3.3.1 Unless otherwise specified in the Project Agreement, Project Co shall liaise directly with the MECP and other applicable Governmental Authorities regarding Project Co's environmental obligations hereunder, except that Contracting Authority together with Project Co shall establish the first point of contact with MECP and other applicable Governmental Authorities following Commercial Close.
- 3.3.2 If requested by Contracting Authority, Project Co shall cooperate with and promptly provide the Contracting Authority Representative with any written documentation or authorizations required by Contracting Authority for any inquiry of any Governmental Authority relating to Project Co's compliance with this Schedule 17, any Environmental Law or any Permits, Licences, Approvals and Agreements in Schedule 34 – Permits, Licences, Approvals and Agreements relating to environmental matters on the Project.
- 3.3.3 Project Co shall submit to the Contracting Authority Representative a copy of any report, submission, application or other document relating to environmental matters on, at, affecting or otherwise relating to the Works or the Lands, concurrent with the filing or submission of the report, submission, application or other document to any Governmental Authority.
- 3.3.4 Project Co shall provide Contracting Authority with a minimum of five (5) Business Days advance Notice of all planned meetings with any Governmental Authority and Project Co acknowledges that Contracting Authority may, in the sole discretion of Contracting Authority, attend such meetings. Project Co shall minute all such meetings held and distribute all meeting minutes to Contracting Authority.

### 3.4 Indigenous Nations Engagement

- 3.4.1 Contracting Authority shall be responsible for all Indigenous Nations Engagement, and will liaise directly with the applicable Indigenous Nations throughout the Project Term. Contracting Authority may require Project Co to assist with, and support, Contracting Authority's Indigenous Nations Engagement, at the Contracting Authority's sole costs and expense.
- 3.4.2 Project Co shall comply with all requirements of Schedule 18 – Communication and Public Engagement Protocol with respect to providing information for, or completing any report, assessment, submission, application, communications material or other document relating to Indigenous Nations ("**Documents Relating to Indigenous Nations**") and all other planned communications between Contracting Authority and Indigenous Nations.
- 3.4.3 Without limiting or duplicating any other obligation which Project Co may have under the Project Agreement, including this Schedule 17, for any required archaeological assessment, Project Co shall ensure that the Licensed Archaeologist:
- 3.4.3.1 provides written Notice to Contracting Authority thirty (30) Business Days in advance of obtaining any Project Information Form;



- 3.4.3.2 complies with the MHSTCI's current Standards and Guidelines for Consultant Archaeologists, as at the Technical Reference Date. For clarity, Project Co shall meet both the standards as well as the guidelines as set out in the MHSTCI's current Standards and Guidelines for Consultant Archaeologists;
- 3.4.3.3 ensures that it follows the process for the involvement of Indigenous Monitors for Stage 2 Archaeological Assessment, Stage 3 Archaeological Assessment and/or Stage 4 Archaeological Assessment monitoring and/or performance of field work in coordination with the IRO's direction; and
- 3.4.3.4 ensures that the Stage 3 Archaeological Assessment or Stage 4 Archaeological Assessment includes protection, avoidance and construction monitoring strategy, as required under the MHSTCI's current Standards and Guidelines for Consultant Archaeologists.

### **3.5 Environmental Records**

- 3.5.1 Project Co shall maintain and submit to Contracting Authority all documents and records relating to Project Co Permits, Licences, Approvals and Agreements for the Project. When documents or records are submitted to Contracting Authority in a version other than the original, Project Co shall provide a blackline version of the document or record showing revisions made from the previous submitted version to the Contracting Authority in addition to the revised document or record in accordance with Schedule 26 – Record Provisions.
- 3.5.2 Project Co shall ensure that documents and records relating to environmental matters for the Project are retained in all revision and when documents or records are submitted to Contracting Authority in a revision other than the original, a blackline version of the document or record showing revisions made from the previous submitted version is provided to Contracting Authority in addition to the revised document or record.

## **4 KEY INDIVIDUALS AND ENVIRONMENTAL WORKING GROUP**

### **4.1 Environmental Positions**

- 4.1.1 Project Co shall ensure that a distinct and qualified individual is appointed to each of the following roles:
  - 4.1.1.1 Environmental Director;
  - 4.1.1.2 Environmental Manager;
  - 4.1.1.3 Environmental Permits and Approvals Coordinator;
  - 4.1.1.4 Environmental Compliance Officer;
  - 4.1.1.5 each Environmental Specialist role set out in Section 4.6; and
  - 4.1.1.6 Environmental Inspector(s).

- 4.1.2 Project Co shall ensure that no single individual occupies more than one of the roles listed in Sections 4.1.1.1 to 4.1.1.6 unless Project Co has obtained the prior written consent of Contracting Authority.
- 4.2 Environmental Director**
- 4.2.1 Project Co shall appoint an environmental director who shall, throughout the Project Term and irrespective of such person's other responsibilities, have defined authority for ensuring compliance with all of Project Co's environmental obligations for the Project (the "**Environmental Director**").
- 4.2.2 The Environmental Director shall be a Key Individual.
- 4.2.3 The Environmental Director shall have the following minimum qualifications:
- 4.2.3.1 a minimum fifteen (15) years of work-related experience for projects of similar size, scope, and complexity to the Project;
  - 4.2.3.2 a degree from a recognized post-secondary institution with specialization in planning, environmental planning, geography or another related discipline;
  - 4.2.3.3 knowledge of the Province of Ontario's Transit Project Assessment Process, GO Transit Class EA Document, and Environmental Assessment Act (Ontario);
  - 4.2.3.4 experience with implementation and management of environmental management systems that conform with ISO 14001;
  - 4.2.3.5 experience in successfully managing all Environmental Aspects of transit projects in the Province of Ontario;
  - 4.2.3.6 knowledge of relevant federal and provincial environmental policies, procedures and legislation;
  - 4.2.3.7 experience liaising with other specialty consultants, contractors and Governmental Authorities; and
  - 4.2.3.8 experience with similar projects in the Province of Ontario.
- 4.2.4 Without limiting the generality of Section 4.2.1, the job specification and responsibilities of the Environmental Director shall include the following:
- 4.2.4.1 directing all aspects of Project Co's environmental and sustainability programs for the Project, including the annual environmental and sustainability reporting activities;
  - 4.2.4.2 ensuring environmental and sustainability issues are addressed and requirements are met in accordance with the Project Agreement and all Environmental Reference Documents and Additional Environmental Reports;
  - 4.2.4.3 ensuring that all sustainability initiatives are coordinated with Contracting Authority and that the initiatives fit within Contracting Authority's corporate

- sustainability priorities and strategies, provided such priorities and strategies are shared with Project Co in advance;
- 4.2.4.4 establishing and maintaining working relationships with relevant Governmental Authorities and Stakeholders through the Contracting Authority Representative;
- 4.2.4.5 taking a lead role in internal environmental and sustainability design reviews including development of mitigation and compensation proposals acceptable to the Contracting Authority Representative and Governmental Authorities;
- 4.2.4.6 liaising with the Contracting Authority Representative and with Governmental Authorities (through the Contracting Authority Representative) as required and acting as the single point of contact for Project Co on all matters relating to environmental management and sustainability;
- 4.2.4.7 directing the preparation and submission to the Contracting Authority Representative of all plans, reports, documents and other information required by this Schedule 17;
- 4.2.4.8 acting as lead authorizing signatory for Project Co before the release of any new or amended environmental plan, report or document set out in Schedule 10 – Review Procedure and any other environmental plan, report or document identified under Section 2.2.2; and
- 4.2.4.9 acting as lead authorizing signatory for Project Co before the release of any new or amended plan, report or document pursuant to environmental components of Design Development Submittals, Construction Document Submittals and Project Works Schedules.
- 4.2.5 The Environmental Director shall have the authority up to and including stopping work where the Environmental Management System is not being followed, or where there is a risk of environmental impact.
- 4.2.6 The Environmental Director shall be independent of the Construction Contractor.
- 4.2.7 Project Co shall not assign the responsibilities and obligations of the Environmental Director to any other Project Co Party.
- 4.2.8 Project Co shall submit sufficient documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure to demonstrate that the qualifications of the Environmental Director are sufficient to carry out the responsibilities described in this Section 4.2.
- 4.3 Environmental Manager(s)**
- 4.3.1 Project Co shall appoint one or more environmental manager(s) who shall, throughout the Project Term and under the direction of the Environmental Director, have defined authority for ensuring the day-to-day implementation of Project Co’s environmental and sustainability obligations set out in the Project Agreement (each an “**Environmental Manager**”).
- 4.3.2 Each Environmental Manager shall be a Key Individual.

- 4.3.3 The Environmental Manager(s) shall have the following minimum qualifications:
- 4.3.3.1 ten (10) years of work-related experience on projects of similar size, scope, and complexity to the Project;
  - 4.3.3.2 a degree from a recognized post-secondary institution with specialization in planning, environmental planning, geography or another related discipline;
  - 4.3.3.3 knowledge of the Province of Ontario’s Transit Project Assessment Process, GO Transit Class EA Document, and Environmental Assessment Act (Ontario);
  - 4.3.3.4 experience in successfully managing all Environmental Aspects of transit projects in the Province of Ontario;
  - 4.3.3.5 knowledge of relevant federal and provincial environmental policies, procedures and legislation;
  - 4.3.3.6 experience liaising with other specialty consultants, contractors and Governmental Authorities; and
  - 4.3.3.7 experience with similar projects in the Province of Ontario.
- 4.3.4 Without limiting the generality of Section 4.3.1, the job specification and responsibilities of each Environmental Manager shall include the following:
- 4.3.4.1 managing all environmental and sustainability issues associated with the Project on a day-to-day basis, including overseeing the environmental monitoring and follow-up program in accordance with the Environmental Reference Documents, Additional Environmental Reports, Environmental Law and any applicable Permits, Licences, Approvals and Agreements;
  - 4.3.4.2 establishing and maintaining working relationships with relevant Governmental Authorities and Stakeholders in cooperation with the Contracting Authority Representative;
  - 4.3.4.3 ensuring effective operation of the Environmental Management System on a day-to-day basis;
  - 4.3.4.4 ensuring effective operation of the Sustainability Management Plan on an ongoing basis;
  - 4.3.4.5 ensuring environmental and sustainability issues are addressed and requirements are met in accordance with the Environmental Reference Documents, Additional Environmental Reports and the Project Agreement; and
  - 4.3.4.6 ensuring effective development, tracking and monitoring of environmental and sustainability metrics in line with best practice standards.
- 4.3.5 Project Co shall submit sufficient documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure to demonstrate that the qualifications of the Environmental Manager are sufficient to carry out the responsibilities described in this Section 4.3.

**4.4 Environmental Permits and Approvals Coordinator(s)**

- 4.4.1 Project Co shall appoint one or more environmental permits and approvals coordinator(s) (each an “**Environmental Permits and Approvals Coordinator**”) who shall, throughout the Project Term and under direction of an Environmental Manager, be responsible for obtaining environmental Permits, Licences, Approvals and Agreements in Schedule 34 – Permits, Licences, Approvals and Agreements, relating to the Works.
- 4.4.2 Without limiting the generality of Section 4.4.1, the job specification and responsibilities of each Environmental Permits and Approvals Coordinator(s) shall include the following:
- 4.4.2.1 managing all environmental and sustainability Permits, Licences, Approvals and Agreements associated with the Project as per Schedule 34 – Permits, Licences, Approvals and Agreements; and
  - 4.4.2.2 establishing and maintaining working relationships with relevant Governmental Authorities and Stakeholders through the Contracting Authority Representative.
- 4.4.3 The Environmental Permits and Approvals Coordinator shall have the following minimum qualifications:
- 4.4.3.1 ten (10) years of work-related experience;
  - 4.4.3.2 a degree from a recognized post-secondary institution with specialization in planning, environmental planning, geography or another related discipline;
  - 4.4.3.3 experience in successfully managing the process of procuring all environmental permits and approvals on transit projects in the Province of Ontario;
  - 4.4.3.4 knowledge of the Province of Ontario’s Transit Project Assessment Process, GO Transit Class EA Document, and Environmental Assessment Act (Ontario);
  - 4.4.3.5 knowledge of relevant federal and provincial environmental policies, procedures and legislation;
  - 4.4.3.6 ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
  - 4.4.3.7 experience with similar projects in the Province of Ontario.
- 4.4.4 Project Co shall submit sufficient documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure to demonstrate that the qualifications of each Environmental Permits and Approvals Coordinator are sufficient to carry out the responsibilities described in this Section 4.4.

**4.5 Environmental Compliance Officer**

- 4.5.1 Project Co shall appoint an Environmental Compliance Officer (the “**Environmental Compliance Officer**”) who shall, throughout the Project Term and under the direction of the Environmental Manager(s), be responsible for monitoring and managing the implementation

of the Environmental Aspects of the Works on a daily basis to confirm compliance by Project Co and all Project Co Parties with the requirements of:

- 4.5.1.1 the commitments of the Environmental Reference Documents;
  - 4.5.1.2 environmental Permits, Licences, Approvals and Agreements as per Schedule 34 – Permits, Licences, Approvals and Agreements; and
  - 4.5.1.3 all plans, documents and Additional Environmental Reports implemented pursuant to Section 2.2.3.
- 4.5.2 Project Co’s Environmental Compliance Officer shall have the following minimum qualifications:
- 4.5.2.1 an undergraduate degree or higher in a related discipline (ecology/biology/environmental science) from a recognized university;
  - 4.5.2.2 a minimum of five (5) years of experience conducting environmental inspections, monitoring and compliance;
  - 4.5.2.3 knowledge of methods, approaches, and best management practices related to environmental inspections, including experience with the Construction Administration and Inspection Task Manual (MTO, April, 2005, as amended from time to time); and
  - 4.5.2.4 experience with similar projects in the Province of Ontario.
- 4.5.3 Project Co shall submit sufficient documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure to demonstrate that the qualifications of the Environmental Compliance Officer are sufficient to carry out the responsibilities described in this Section 4.5.

#### **4.6 Environmental Specialists**

- 4.6.1 Project Co shall have available during the Project Term, under direction of an Environmental Manager, a multi-disciplinary team of specialists experienced in the disciplines required to meet Project Co’s obligations under this Schedule 17, including the following. The following roles can be fulfilled through the use of Subcontractors in accordance with Section 47.3 (*Subcontracting*) of the Project Agreement:
- 4.6.1.1 Air Quality Specialist(s);
  - 4.6.1.2 Aquatic Specialist(s);
  - 4.6.1.3 Arborist(s);
  - 4.6.1.4 Cultural Heritage Specialist(s);
  - 4.6.1.5 Designated Substances and Hazardous Materials Specialist;
  - 4.6.1.6 Electromagnetic Compatibility (EMC)/ Electromagnetic Interference (EMI) Specialist(s);

- 4.6.1.7 Environmental Planning Specialist(s);
- 4.6.1.8 Hydrogeologist(s);
- 4.6.1.9 Noise Specialist(s);
- 4.6.1.10 Licensed Archaeologist(s);
- 4.6.1.11 Species at Risk Specialist(s);
- 4.6.1.12 Vibration Specialist(s);
- 4.6.1.13 Soil and Groundwater Contamination and Management Specialist(s);
- 4.6.1.14 Climate Mitigation and Resilience Specialist(s);
- 4.6.1.15 Sustainability Specialist(s); and
- 4.6.1.16 Biologist(s),

(each an “**Environmental Specialist**”).

- 4.6.2 Project Co acknowledges and agrees that Contracting Authority requires distinct and qualified individuals to carry out the functions of each of the Environmental Specialist roles. Project Co shall ensure that no single individual occupies more than one of the Environmental Specialist roles listed in Section 4.6.1 unless Project Co has obtained the prior written consent of Contracting Authority.
- 4.6.3 Each Environmental Specialist used by Project Co to meet its obligations under the Project Agreement shall meet the following minimum qualifications:
  - 4.6.3.1 each Air Quality Specialist shall have:
    - (a) ten (10) years of work-related experience;
    - (b) a degree from a recognized university with specialization in chemical or civil or environmental engineering;
    - (c) experience in predicting the greenhouse gas emission implications of transportation alternatives;
    - (d) experience in designing and evaluating appropriate air quality impact mitigation for transportation projects;
    - (e) experience utilizing scientifically approved dispersion models, such as AERMOD, CAL4HQC and CAL3HQCR, and vehicle emission models, such as MOVES;
    - (f) experience in the determination of existing ambient air quality, exceedances in ambient air quality criteria prescribed by municipal,

provincial and/or national quality standards and identification of Air Quality Sensitive Receptors;

- (g) experience in Air Quality Sensitive Receptor identification, assessment of impacts, and the identification of mitigation;
- (h) understanding of federal, provincial and municipal laws and regulations as they pertain to air quality; and
- (i) ability to liaise with other specialty consultants, contractors and Governmental Authorities;

4.6.3.2 each Aquatic Specialist shall have:

- (a) ten (10) years of work-related experience;
- (b) a degree from a recognized post-secondary institution with specialization in ecology, conservation biology, environmental science or another related discipline;
- (c) knowledge of the Species at Risk Act (Canada), the Fisheries Act (Canada), the Endangered Species Act (Ontario), the Fish and Wildlife Conservation Act (Ontario) and related policies;
- (d) experience in applying for MECP permits and DFO approval as it pertains to aquatic species in preparing Overall Benefit Permits and compensation plans;
- (e) knowledge of the ecological concepts, function of ecosystems and how human land uses are impacting them;
- (f) demonstrated experience involving,
  - (i) the identification and assessment of aquatic species and habitat;
  - (ii) aquatic impact assessment;
  - (iii) development of aquatic mitigation measures; and
  - (iv) experience with similar projects in the Province of Ontario;

4.6.3.3 each Arborist shall have:

- (a) a minimum of five (5) years of work-related experience;
- (b) a degree from a recognized post-secondary institution in a field of study related to trees, landscaping and arboriculture;
- (c) certified membership in good standing with the International Society of Arboriculture;



- (d) knowledge of federal, provincial, municipal and Metrolinx policies, procedures and legislation;
- (e) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
- (f) experience with similar projects in the Province of Ontario;

4.6.3.4 each Cultural Heritage Specialist shall have:

- (a) a minimum of ten (10) years of work-related experience;
- (b) a degree from a recognized university in a field of study related to historical and architectural aspects of built heritage resources and cultural heritage landscapes;
- (c) membership in good standing with the Canadian Association of Heritage Professionals;
- (d) experience in the identification and evaluation of cultural heritage resources;
- (e) experience in the development of heritage resource mitigation measures, including relocation, salvage and conservation plans for architecture and landscape;
- (f) knowledge of federal, provincial and Metrolinx cultural heritage policies, standards and guidelines, procedures and legislation;
- (g) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
- (h) experience with similar projects in the Province of Ontario;

4.6.3.5 each Designated Substances and Hazardous Materials Specialist shall have:

- (a) a minimum of ten (10) years of work-related experience;
- (b) a degree or diploma from a recognized university in a field of study related to occupational hygiene, environmental health and safety, environmental science, civil or environmental engineering;
- (c) experience in the identification and evaluation of designated substances and hazardous materials in accordance with the *Occupational Health and Safety Act*, O. Reg. 278/05 (Asbestos on Construction Projects and in Buildings and Repair Operations), Regulation 490 (Designated Substances), Regulation 860 (WHMIS Regulation), Regulation 833 (Control of Exposure to Biological or Chemical Agents Regulation), R.R.O. 1990, Regulation 347 General - Waste Management, as amended (R.R.O. 1990, Reg. 347) under the EPA; and/or R.R.O. 1990, Regulation 362 Waste Management – PCB's under the EPA;

- (d) experience in the development of mitigation measures and removal plans for Designated Substances and Hazardous Materials;
  - (e) knowledge of federal, provincial and municipal policies, standards and guidelines, procedures and legislation with respect to Designated Substances and Hazardous Materials;
  - (f) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
  - (g) experience with similar projects in the Province of Ontario;
- 4.6.3.6 each Electromagnetic Compatibility (EMC)/ Electromagnetic Interference (EMI) Specialist shall have:
- (a) a minimum of five (5) years of work-related experience;
  - (b) a degree from a recognized university with specialization in environmental engineering, or related discipline;
  - (c) experience in EMC/EMI in the transit environment;
  - (d) knowledge of relevant federal and provincial environmental policies, procedures, legislation and EMC/ EMI reference documents specified in the Output Specifications; and
  - (e) ability to liaise with other specialty consultants, contractors and Governmental Authorities;
- 4.6.3.7 each Environmental Planning Specialist shall have:
- (a) a minimum of ten (10) years of work-related experience;
  - (b) a degree from a recognized university with specialization in urban and land use planning, environmental, geography or another related discipline;
  - (c) experience in successfully managing transit projects in the Province of Ontario;
  - (d) knowledge of the Province of Ontario's Transit Project Assessment Process;
  - (e) knowledge of relevant federal, provincial, municipal and Metrolinx environmental policies, procedures and legislation;
  - (f) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
  - (g) experience with similar projects in the Province of Ontario;

- 4.6.3.8 each Hydrogeologist shall have:
- (a) a minimum of ten (10) years of work-related experience;
  - (b) a bachelor or advanced degree from a recognized university in hydrogeology or geoscience or engineering;
  - (c) a designation as a “Professional Geoscientist” in the Province of Ontario and be a practicing member of the Association of Professional Geoscientists of Ontario and/or an appropriately trained Professional Engineer, or have other relevant credentials approved by Contracting Authority;
  - (d) experience designing, implementing and overseeing Dewatering and Unwatering systems, including obtaining all necessary Permits To Take Water, Environmental Activity Sector Registrations, municipal sewer use permits or other discharge permits;
  - (e) knowledge of Ontario Regulation 387/04, made under the Ontario Water Resources Act, and the Ontario Water Resources Act; and
  - (f) experience with similar projects in the Province of Ontario;
- 4.6.3.9 each Noise Specialist shall have:
- (a) a minimum of ten (10) years of work-related experience;
  - (b) a designation as an accredited Professional Engineer in the Province of Ontario, or have other relevant credentials approved by Contracting Authority;
  - (c) experience in successfully managing noise assessments for transit projects in North America;
  - (d) knowledge of relevant federal, provincial and municipal policies, procedures and legislation and, where none exist, knowledge of and experience with other appropriate legislation, guidance or standards;
  - (e) knowledge of municipal heritage policies and the City of Toronto’s Official Plan;
  - (f) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
  - (g) experience with similar projects in the Province of Ontario;
- 4.6.3.10 each Licensed Archaeologist shall have:
- (a) a minimum of ten (10) years of work-related experience;

- (b) a licence to practice archaeology in the Province of Ontario in accordance with the *Ontario Heritage Act* (Ontario);
- (c) knowledge of federal, provincial and Metrolinx archaeological and heritage policies, standards and guidelines, procedures and legislation;
- (d) experience in industrial archaeology, specifically in rail line construction and historic engineering;
- (e) ability to liaise with other specialty consultants, contractors and Governmental Authorities and Indigenous Nations; and
- (f) experience with similar projects in the Province of Ontario;

4.6.3.11 each Biologist shall have:

- (a) a minimum of ten (10) years of work-related experience;
- (b) degree from a recognized university in one, or several, of the following fields: conservation biology, wildlife biology (including avian and fish), zoology, terrestrial biology, aquatic biology, ecology, or a related field;
- (c) knowledge of ecological concepts, function of ecosystems and how human land uses are impacting them;
- (d) general familiarity with fauna, including bird species and their ecological requirements, which occur in the part of the Province of Ontario in which the Project is located;
- (e) knowledge of federal, provincial policies, standards and guidelines, procedures and legislation including the Species at Risk Act (Canada), the Endangered Species Act (Ontario) and the Fish and Wildlife Conservation Act (Ontario);
- (f) work-related experience involving:
  - (i) the identification and assessment of wildlife / ecosystem species and habitat;
  - (ii) wildlife / ecosystem environmental impact assessment; and
  - (iii) development of wildlife / ecosystem environmental mitigation measures; and
- (g) experience with similar projects in the Province of Ontario;

4.6.3.12 each Soil and Groundwater Contamination and Management Specialist shall have:

- (a) a minimum of ten (10) years of work-related experience;

- (b) designation as a “Qualified Person” as per Section 5 of Ontario Regulation 153/04, as amended, made under the Environmental Protection Act (Ontario);
- (c) no conflict of interest as set out in Ontario Regulation 153/04, made under the Environmental Protection Act (Ontario) including with respect to conducting or supervising environmental site assessments, completing certifications with respect to records of site condition, or undertaking any other obligations under Applicable Law;
- (d) experience with and understanding of the application and interpretation of Canadian Standards Association (CAN/CSA Z768 and CAN/CSA Z769) investigation criteria and criteria relating to the assessment of contaminated lands;
- (e) experience with and understanding of the application and interpretation of Ontario Regulation 153/04 and Ontario Regulation 406/19, made under the Environmental Protection Act (Ontario), as amended from time to time, investigation criteria relating to the assessment of contaminated lands;
- (f) experience in designing, implementing and overseeing:
  - (i) soil management plans;
  - (ii) phase 1 and 2 environmental site assessments;
  - (iii) soil and groundwater characterization programs;
  - (iv) vapour intrusion assessments;
  - (v) remedial action plans for soil and/or groundwater and/or surface water;
  - (vi) site inspection and monitoring programs for construction activities;
  - (vii) excess soil beneficial re-use strategies; and
  - (viii) water effluent treatment and discharge strategies;
- (g) knowledge of risk assessment procedures and requirements;
- (h) knowledge of relevant federal and provincial policies, procedures and legislation, including Waste management and related legislation, regulations, guidelines, policies for water protection and materials management and MTO contaminated property process, and archaeological investigations as applicable;
- (i) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and

- (j) experience with similar projects in the Province of Ontario;
- 4.6.3.13 each Species at Risk Specialist shall have:
- (a) a minimum of ten (10) years of work-related experience;
  - (b) a degree from a recognized university with specialization in ecology, conservation biology, environmental science or another related discipline;
  - (c) knowledge of the ecological concepts, function of ecosystems and how human land uses are impacting them;
  - (d) general familiarity with flora and fauna, and knowledge of the Species-at-Risk and their ecological requirements, that occur in the part of the Province of Ontario in which the Project is located;
  - (e) knowledge of the Species at Risk Act (Canada), the Fisheries Act (Canada), the Endangered Species Act (Ontario), and related policies;
  - (f) experience in registration of species with MECP and implementing MECP Species-at-Risk permits including Overall Benefit Permits for Species-at-Risk; and
  - (g) experience with similar projects in the Province of Ontario;
- 4.6.3.14 each Vibration Specialist shall have:
- (a) a minimum of ten (10) years of work-related experience;
  - (b) a designation as an accredited Professional Engineer in the Province of Ontario, or have other relevant credentials approved by Contracting Authority;
  - (c) experience in successfully managing vibration assessments for transit projects in North America;
  - (d) knowledge of relevant federal and provincial environmental policies, procedures and legislation and, where none exist, knowledge and experience of other appropriate legislation, guidance or standards;
  - (e) knowledge of municipal heritage policies and the City of Toronto's Official Plan; and
  - (f) ability to liaise with other specialty consultants, contractors and Governmental Authorities;
- 4.6.3.15 Each Sustainability Specialist shall have:
- (a) a minimum of five (5) years of work-related experience in sustainability considerations in infrastructure;

- (b) a degree from a recognized university with specialization in sustainability, environmental studies, or related discipline;
- (c) knowledge of sustainability systems and metrics;
- (d) experience on other transit and transportation projects in developing sustainability plans and tracking performance;
- (e) knowledge of the “Envision Rating System for Sustainable Infrastructure” published by the Institute for Sustainable Infrastructure; and
- (f) knowledge of the “LEED Rating System”;

4.6.3.16 each Climate Mitigation and Resilience Specialist shall have:

- (a) a minimum of five (5) years of work-related experience;
- (b) a degree from a recognized university in one, or several, of the following fields: geology, geochemistry, physics, geophysics, climatology, meteorology, or related field;
- (c) knowledge of methods, tools, and approaches to evaluating and mitigating the risks and vulnerability of infrastructure to climate change;
- (d) knowledge of methods and tools with respect to climate modelling; and
- (e) experience with similar projects in North America.

4.6.4 For each Environmental Specialist, Project Co shall submit sufficient documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure to demonstrate that the qualifications of the individual meet or exceed the applicable requirements described in Section 4.6.3.

#### **4.7 Environmental Inspector(s)**

4.7.1 Project Co shall appoint two or more environmental inspector(s) who shall, under direction of the Environmental Compliance Officer, ensure compliance of the Works with the Environmental Management System and the Project Agreement (each an “**Environmental Inspector**”).

4.7.2 Each Environmental Inspector shall have a minimum of three (3) years of demonstrated working experience in all aspects of environmental monitoring / mitigation during transportation project construction, specifically with respect to work in and around watercourses and in the application and correction of erosion and sedimentation control measures, reporting Spills and the containment of effluent and dust during construction, and with projects in the Province of Ontario of a similar scope and complexity to this Project. Each Environmental Inspector shall also hold certification as a Canadian Certified Inspector of Sediment and Erosion Control (CAN-CISEC), or have proven proficiency in observing, inspecting and reporting on the implementation of Erosion and Sediment Control Plans.

- 4.7.3 Without limiting the generality of Section 4.7.1, the job specification and responsibilities of each Environmental Inspector shall include the following:
- 4.7.3.1 as a minimum, conduct monitoring and inspections on all aspects of the Works in accordance with the Environmental Management System;
  - 4.7.3.2 maintain a log of monitoring and inspection events, which shall include photographic evidence to support the observations recorded during such monitoring and inspection events;
  - 4.7.3.3 complete monitoring and inspection reports and provide to the Environmental Compliance Officer and as part of the Monthly Environmental Report in accordance with Schedule 10 – Review Procedure; and
  - 4.7.3.4 provide advice and recommendations for improving environmental protection and correcting any inefficient practices and/or issues of non-compliance within 24 hours of noticing a potential issue.
- 4.7.4 Project Co shall submit sufficient documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure to demonstrate that the qualifications of each Environmental Inspector are sufficient to carry out the responsibilities described in this Section 4.7.

#### **4.8 Environmental Working Group**

- 4.8.1 Project Co shall have qualified representatives, including the Environmental Director, Environmental Manager(s), Environmental Permits and Approvals Coordinator(s), and the Environmental Compliance Officer, who shall form an environmental working group for the Project (the “**Environmental Working Group**” or the “**EWG**”). A representative or representatives from the Contracting Authority will also be a participant in the EWG.
- 4.8.2 The EWG shall meet on an every-other-week basis, or more frequently if required by Contracting Authority, within fourteen (14) days of Financial Close until Substantial Completion. The EWG shall provide teleconference details for those unable to attend in-person.
- 4.8.3 The EWG shall identify their working relationship, roles and responsibilities matrix, and approvals processes, to comply with the environmental requirements of this Project Agreement.
- 4.8.4 At the Contracting Authority Representative’s request, applicable Environmental Specialists shall attend EWG meetings to discuss environmental submissions, content, established submission dates and other relevant requirements in compliance with the Project Agreement and any Applicable Law.
- 4.8.5 At EWG meetings, Project Co shall report on:
- 4.8.5.1 key environmental issues and field activities associated with environmental obligations contemplated in this Schedule 17;
  - 4.8.5.2 environmental process, design activities and Construction Activities undertaken as part of the Works;



- 4.8.5.3 environmentally-related communications with Governmental Authorities;
  - 4.8.5.4 the identification of all Sensitive Receptors and Environmentally Sensitive Construction Activities for review by Contracting Authority;
  - 4.8.5.5 the status and frequency of the monitoring and inspection activities required in accordance with this Schedule 17;
  - 4.8.5.6 the status of environmental protection measures, issues of non-compliance and associated corrective actions and resolution of issues, including presentation of descriptions and photos as required to facilitate such;
  - 4.8.5.7 the status of information that is required at any time pursuant to this Schedule 17, including all plans, reports, submittals and other documents set out in this Schedule 17; and
  - 4.8.5.8 the status of key environmental, social and economic metrics and progress towards continual improvement, including a summary of trends identified in the Monthly Environmental Report, as they pertain to sustainability; and identify any new initiatives, interested parties, or findings as per Section 3.1.5.1(b) (*Sustainability Management Plan*) of the Output Specifications.
- 4.8.6 The EWG meetings shall be facilitated by Project Co and Project Co shall prepare and distribute an agenda and presentation to the Contracting Authority Representative at least 48 hours in advance of each EWG meeting.
- 4.8.7 Project Co shall prepare EWG meeting minutes and submit to the Contracting Authority Representative within five (5) Business Days following EWG meetings.
- 5 SYSTEMS AND REPORTING**
- 5.1 Additional Environmental Reports**
- 5.1.1 In addition to those plans and reports explicitly set out in this Schedule 17, Project Co shall prepare and submit to Contracting Authority (and to the applicable Governmental Authority, if required) any additional reports, plans and documentation relating to the Project that are required by any Applicable Law or any Environmental Reference Document (each an “**Additional Environmental Report**”). All plans and reports explicitly set out in this Schedule 17 and all Additional Environmental Reports shall be submitted to Contracting Authority in accordance with Schedule 10 – Review Procedure prior to submission to any Governmental Authority.
- 5.1.2 Without limiting Section 5.1.1 Project Co shall within ten (10) Business Days or within a time period agreed upon in advance with Contracting Authority provide the Contracting Authority Representative with copies of all evaluations and investigations, audits, monitoring data, reports, drawings, electronic files, checklists, documents, and lab or test results relating to the Lands and the Works, including all evaluations and investigations, audits, monitoring data, reports, drawings, electronic files, checklists, documents and lab or test results related to the Project conducted by or on behalf of or coming into the possession of Project Co at any time whether before or after Financial Close.

## 5.2 Other Required Environmental Plans and Reports

5.2.1 Project Co shall prepare annual environmental compliance monitoring reports (each an “**Annual Environmental Compliance Monitoring Report**”) in accordance with a format agreed upon by Contracting Authority. Project Co shall submit each Annual Environmental Compliance Monitoring Report to Contracting Authority in accordance with Schedule 10 – Review Procedure.

5.2.1.1 In each Annual Environmental Compliance Monitoring Report, Project Co shall document:

- (a) the status of all Project Co Environmental Commitments;
- (b) a summary of all environmental Permits, Licenses, Approvals and Agreements obtained or amended;
- (c) the status of communication with Governmental Authorities;
- (d) a summary of environmental non-compliance issues raised by Contracting Authority and Governmental Authorities, including corrective actions taken to resolve issues, status, and timeline for resolution of issues;
- (e) a summary of recommendations from the Environmental Audit Report and a description of actions including a timeline to implement recommendations; and
- (f) a roll-up summary of activities, issues, outcomes, and ongoing matters from the Monthly Environmental Reports of the previous calendar year. Project Co shall provide a clear summary, indicating the number and description of non-compliant items, and timelines for mitigation of outstanding environmental issues. The summary shall demonstrate data trends and continuous improvement

5.2.1.2 Provide an updated list of Environmental Reference Documents as applicable to the Works and the Project Co Infrastructure and as necessary to reflect changes in applicable requirements and Applicable Law in accordance with Section 2.1.1.1.

5.2.2 Project Co shall prepare and submit to Contracting Authority monthly environmental reports (each a “**Monthly Environmental Report**”). Project Co shall submit each Monthly Environmental Report to Contracting Authority in accordance with Schedule 10 – Review Procedure.

5.2.2.1 In each Monthly Environmental Report, Project Co shall document:

- (a) A summary of the environmental management activities undertaken in the reporting month, and a look-ahead for the next month for the following:

- (i) status of field activities associated with environmental obligations contemplated in this Schedule 17;
  - (ii) environmental process and design activities and Construction Activities undertaken as part of the Works during the period relevant to Project Co's obligations under this Schedule 17, including surveys, inspections, repairs, and construction work undertaken for environmental protection and mitigation measures;
  - (iii) key environmental issues, concerns and risks associated with the Works;
  - (iv) studies and permitting activities;
  - (v) consultation activities and environmentally related communications with Governmental Authorities;
  - (vi) design and implementation of mitigation measures (successes and failures), monitoring activities, resolutions to environmental impacts, and a status update on complying with Project Co Environmental Commitments; and
  - (vii) administrative activities, including training meetings, presentations and health and safety, progress of other environmental plans and reports and submission requirements;
- (b) A summary of compliance issues or activities for the reporting month, including:
- (i) description of issues encountered;
  - (ii) non-conformance, incidents, preventative and corrective actions;
  - (iii) outcomes;
  - (iv) follow-up actions;
  - (v) expected timelines; and
  - (vi) responsibilities; and
- (c) copies of any monitoring and inspection reports as completed by the Environmental Inspector(s) in accordance with Section 4.7.

5.2.3 Project Co shall obtain, from an independent Environmental Consultant acceptable to Contracting Authority, acting reasonably, an annual independent environmental audit (and a report from the independent environmental audit (“**Environmental Audit Report**”) of Project Co's compliance with its environmental and sustainability obligations under the Project Agreement.

- 5.2.3.1 Project Co shall submit the qualifications of the independent Environmental Consultant and a work plan for the independent environmental audit to Contracting Authority for review and approval in accordance with Schedule 10 – Review Procedure.
- 5.2.3.2 Project Co shall complete the Environmental Audit Report annually and submit to Contracting Authority no later than thirty (30) days following the completion of the Environmental Audit Report by the Environmental Consultant in accordance with Schedule 10 – Review Procedure.
- 5.2.3.3 Project Co may use the Environmental Audit Report to demonstrate compliance with the Environmental Management System as described in Section 5.3.
- 5.2.4 Project Co shall provide the Environmental Consultant undertaking the Environmental Audit Report with the complete Project Agreement including any documents referenced within the Project Agreement.
- 5.2.5 The Environmental Consultant undertaking the Environmental Audit Report shall have the knowledge and skills necessary to complete the defined Environmental Audit Report scope, including:
- 5.2.5.1 appropriate education, skills, experience and/or training considering Applicable Law and local or national guidelines;
- 5.2.5.2 relevant technical skills specific to the scope, boundaries, and Environmental Audit Report objective; and
- 5.2.5.3 knowledge of the requirements of best practice standards for environmental audits.
- 5.2.6 All costs and expenses associated with the Environmental Audit Report, including costs and expenses related to undertaking any additional investigations or remedial measures recommended by the Environmental Consultant, shall be borne by Project Co, provided the additional investigation or remedial measures are as a result of a breach by Project Co or a Project Co Party of a Project Co Environmental Commitment.
- 5.2.7 Project Co shall prepare a substantial completion environmental report (the “**Substantial Completion Environmental Report**”) and shall submit the Substantial Completion Environmental Report to the Contracting Authority Representative prior to Substantial Completion in accordance Schedule 10 – Review Procedure.
- 5.2.7.1 The report shall, at a minimum, document compliance with all Project Co Environmental Commitments as set out in Appendix A-2 and Appendix A-3 of this Schedule 17 and all other environmental obligations under this Project Agreement, as they are related but not limited to contamination management, soils, groundwater and stormwater, noise and vibration, cultural heritage, archaeology, natural heritage, air quality and any other environmental component.

- 5.2.7.2 The Substantial Completion Environmental Report shall also include a summary of:
- (a) all Spills, including locations, which had occurred during the Project Term and how all Spill Prevention and Response Plan activities in accordance with Section 6.1.1 were implemented during the Works and the associated outcomes;
  - (b) how all Designated Substances and Hazardous Materials Management Plan activities in accordance with Section 6.1.2 were implemented during the Works and the associated outcomes;
  - (c) contamination management activities as described in Sections 6.1.3, 6.1.4 and 6.1.5;
  - (d) MECP Hazardous Waste Information Network (HWIN) generator registrations as described in Section 6.1.5.
  - (e) Soil and excavated materials management activities as described in Section 6.2;
  - (f) well management and decommissioning activities as described in Section 6.3.1;
  - (g) groundwater, Dewatering/Unwatering and stormwater management activities as described in Sections 6.3.2, 6.3.4 and 6.3.5;
  - (h) noise and vibration management activities as described in Section 6.4;
  - (i) the noise and vibration self-assessment as described in Section 6.5.1.4;
  - (j) cultural heritage management activities as described in Section 6.6;
  - (k) archaeological management activities as described in Section 6.7;
  - (l) natural heritage management activities including but not limited to Species-at-Risk survey and mitigation activities as described in Section 6.8.2, vegetation and tree management activities as described by Section 6.8.3;
  - (m) air quality management activities as described in Section 6.9;
  - (n) the air quality self-assessment as described in Section 6.10.1.4; and
  - (o) any other environmental activities attributed to Project Co or Project Co Parties the environmental obligations as identified in this Schedule 17.
- 5.2.7.3 The Substantial Completion Environmental Report shall also include a summary of environmental compliance obligations as a result of the Works.

**5.3 Environmental Management System**

- 5.3.1 No later than one-hundred and twenty (120) days following Financial Close, Project Co shall establish an environmental management system (“**Environmental Management System**”) that conforms to ISO 14001 and that is administered through the EMS Software Solution. The Environmental Management System shall be submitted to Contracting Authority in accordance Schedule 10 – Review Procedure.
- 5.3.2 No later than three-hundred and sixty-five (365) days following Financial Close, Project Co shall obtain ISO 14001 certification for the Environmental Management System from a certification body accredited by the Standards Council of Canada.
- 5.3.3 The Environmental Management System shall be applicable to all of Project Co’s obligations, including the Works, throughout the Project Term.
- 5.3.4 Project Co shall be the “organization” for the purposes of applying ISO 14001.
- 5.3.5 Project Co shall ensure that Environmental Aspects in the Environmental Management System include all environmental impacts included in the Environmental Reference Documents and in this Schedule 17.
- 5.3.6 Project Co shall ensure that the compliance obligations required in accordance with ISO 14001 includes all requirements under Applicable Law, all requirements of Permits, Licences, and Approvals in Schedule 34 – Permits, Licences, Approvals and Agreements, and all requirements defined in this Schedule 17, including Project Co Environmental Commitments as per Appendix A-3.
- 5.3.7 Notwithstanding the requirement of ISO 14001 for the organization to determine monitoring, measurement, analysis and evaluation requirements, Project Co shall ensure that all requirements for performance evaluation in the Environmental Management System, including,
- 5.3.7.1 the methods for monitoring, measurement, analysis and evaluation;
  - 5.3.7.2 the criteria against which environmental performance is measured; and
  - 5.3.7.3 the timing for performance of monitoring and measuring,
    - (a) the timing for analysis and evaluation of the results from monitoring and measuring; and
    - (b) comply with the requirements set out in this Schedule 17.
- 5.3.8 Project Co shall ensure that the Environmental Management System includes a description of contingency measures developed by Project Co that will be implemented by Project Co during and immediately following Environmental Incidents, including storm and wind events.
- (a) Throughout the Project Term, Project Co shall implement, expand, update and continually improve the Environmental Management System in conformance with ISO 14001.

**5.4 Environmental Management System Software Solution**

- 5.4.1 Project Co and Project Co Parties shall use the soil tracking software specified by Contracting Authority, to be identified to the Preferred Proponent (as defined in the RFP) prior to Commercial Close.
- 5.4.1.1 Project Co is responsible for complying with the requirements of Section 5.4.5.
- 5.4.1.2 If, at any time during the Project Term, the soil tracking software vendor is no longer in business or otherwise no longer supports the soil tracking software, and the soil tracking software is not supported by another vendor, then Contracting Authority, in consultation with Project Co, will select and implement an alternative cloud-based soil tracking software solution that meets the requirements set out in Section 5.4.5.
- 5.4.2 No later than one-hundred and twenty (120) days following Financial Close, Project Co shall implement Cority Software Inc.'s relevant cloud-based software solutions for the administration of the Environmental Management System (the "**EMS Software Solution**"). The EMS Software Solution shall:
- 5.4.2.1 allow multiple users to remotely log in and access the solution with single sign-on capability;
- 5.4.2.2 allow users to upload user documents against any individual record contained within the database;
- 5.4.2.3 be equipped with document control capabilities that enable users to track versions and revisions and that ensure that the latest revision of documents is being employed by users;
- 5.4.2.4 allow easy access to data, real-time dashboarding features and business analytics features to enable monitoring of the performance indicators determined in accordance with ISO 14001. A monthly dashboard report shall be automatically generated on the first (1<sup>st</sup>) day of each month for the preceding month, containing at a minimum a summary of the information described in Sections 5.4.6, 5.4.7 and 5.4.8;
- 5.4.2.5 include a central repository for all historical and current versions of the documents required to be managed in the Environmental Management System, organized in a manner that promotes efficient access to the documents;
- 5.4.2.6 include a database that accurately and effectively records and tracks all data required to be managed in the Environmental Management System, which shall be maintained at minimum on a monthly basis or more frequently as required until such time as the Works have been completed; and
- 5.4.2.7 include the software applications set out in Sections 5.4.6, 5.4.7 and 5.4.8.

- 5.4.3 Throughout the Project Term, Project Co shall ensure that,
- 5.4.3.1 the EMS Software Solution is, at all times, the most current, vendor-supported version of the cloud-based software in consultation with Contracting Authority; and
  - 5.4.3.2 the EMS Software Solution and all data and documents contained therein are electronically accessible to Contracting Authority, at all times, on a real-time basis through the single sign-on capability.
- 5.4.4 If, at any time during the Project Term, the EMS Software Solution vendor is no longer in business or otherwise no longer supports the EMS Software Solution, and the EMS Software Solution is not supported by another vendor, then Project Co shall, in consultation with and upon written approval of Contracting Authority, select and implement an alternative cloud-based software solution for the Environmental Management System that meets the requirements set out in Section 2.2.1.
- 5.4.5 Soil and Excavated Material Software Application
- 5.4.5.1 the EMS Software Solution shall contain an application for Soil and excavated material monitoring, management, and tracking, where each movement of soil and excavated materials is captured in the required database. The soil and excavated material software application shall be executed prior to Soil shipping and capture each movement of Soil and excavated materials outside each Project Area in a real-time digital tracking system and shall include the following:
    - (a) an up-to-date and complete inventory of all receiver sites of soil and of excavated material generated by the Works that cannot be re-used on the Lands. This includes MECP licensed facilities, temporary storage areas, commercial fill operations, beneficial re-use sites, processing and recycling facilities, landfills and any other receiving site.
    - (b) , the following information shall be updated at minimum on a monthly basis until such time as the Works have been completed, including:
      - (i) a unique identification number assigned to each load of Soil and excavated materials shipped outside a Project Area;
      - (ii) the municipal address of each receiver site for each Project Area;
      - (iii) the name of receiver site owner and operator and documentation of when written consent was received;
      - (iv) the date(s) on which notice was filed and updated, as relevant, in the registry for each receiver site;
      - (v) the name of Qualified Person overseeing receiver site activities;
      - (vi) the Governmental Authority having jurisdiction over the receiver site;



- (vii) the type of Environmental Approval under which the receiver site is operating, if applicable;
- (viii) the quantity of each load of Soil and excavated material shipped from each Project Area to a receiver site or another Project Area within the Site;
- (ix) the total volume of Soil and excavated material shipped to the receiver site;
- (x) the time and date of each load of Soil and excavated material shipped from each Project Area to a receiver site or another Project Area within the Site;
- (xi) the time and date of each load of Soil and excavated material received at the receiver site or another Project Area within the Site;
- (xii) the description of the Soil and excavated material, including its point of origin location, shipped from each Project Area to the receiver site or another Project Area within the Site;
- (xiii) the name of the Project Co representative authorizing the departure of each load of Soil and excavated materials shipped from each Project Area;
- (xiv) the name of the hauling company, driver name and license plate of the vehicle hauling each load of Soil and excavated materials shipped from each Project Area;
- (xv) the name of the site representative acknowledging the receipt of each load of Soil and excavated materials at a receiver site or another Project Area within the Site;
- (xvi) a description of the number of samples collected and analyzed and a list of parameters included in the analyses that are representative of Soil quality for each load of Soil shipped;
- (xvii) documentation that a written opinion has been provided by Project Co's Qualified Person prior to Soil and excavated material shipment outside a Project Area stating that the quality of Soil and excavated material shipped to each receiver site or another Project Area within the Site is suitable for placement in compliance with Applicable Law based upon information reviewed by Project Co's Qualified Person;
- (xviii) the name and address of each source site of imported Soil and Aggregate;
- (xix) the Governmental Authority having jurisdiction over the source site of imported Soil and Aggregate, if applicable;

- (xx) the total volume of Soil and Aggregate imported from each source site;
  - (xxi) the location where imported Soil and Aggregate from each source site was placed within the Site, including the address and UTM coordinates;
  - (xxii) a description of the number of samples collected and analyzed and a list of parameters included in the analyses that are representative of the environmental quality of the Soil and Aggregate imported, if applicable; and
  - (xxiii) documentation that a written opinion has been provided by Project Co's Qualified Person prior to the import of Soil and Aggregate, if applicable, stating that the quality of Soil and Aggregate imported to the Site is suitable for placement at the Works in compliance with Project Co's Soil and Excavated Materials Management Plan and Applicable Law based upon information reviewed by Project Co's Qualified Person;
- (c) in-month evidence and certification by Project Co's Qualified Person that the quality of Soil and excavated materials shipped to each receiver site is compliant with the receiver site license, Environmental Approval, O. Reg. 406/19, and all Applicable Law;
- (d) in-month evidence and certification by Project Co's Qualified Person that each receiver site operated by Project Co within the Site is operating in compliance with O. Reg. 406/19 and all Applicable Law; and
- (e) any Waste manifests, weigh tickets, bills of lading or shipping documentation associated with soil or excavated material.
- 5.4.5.2 Project Co shall update and maintain the information within the soil and excavated material software application at minimum on a monthly basis or more frequently as required until such time as the Works have been completed.
- 5.4.5.3 The soil and excavated material software application shall include a monthly dashboard report as described in Section 5.4.2.4 which presents cumulative data for each calendar month. The soil and excavated material monthly dashboard shall include the following for the applicable month:
- (a) the total quantities of Soil and of excavated material resulting from the Works in each Project Area;
  - (b) the total quantities of Soil and of excavated material that were re-used on the Site in each Project Area;
  - (c) the total quantities of Soil and of excavated material that were transported from each Project Area for re-use or disposal, including a detailing of quantities by volume shipped to each receiver site; and

- (d) the total quantity of Soil and Aggregate imported to the Site in each Project Area, the provenance of the imported Soil and Aggregate, the location of imported Soil and Aggregate placement and the analytical results of testing conducted on the imported Soil.
  - (i) placement locations for imported Soil and Aggregate shall include UTM coordinates.
  - (ii) provenance of imported Soil and Aggregate shall include the name of the supplier, address and Environmental Approval under which the source of the imported Soil or Aggregate is operating, if applicable.

5.4.5.4 Upon implementation of a registration or tracking system for Soil movement by any Governmental Authority, Project Co shall be responsible for providing all necessary information to the Governmental Authority as prescribed by the Governmental Authority.

- (a) Project Co shall make the information in the Soil and excavated material software application available to any Governmental Authority when required by that Governmental Authority.

#### 5.4.6 Dewatering/Unwatering Management Software Application

5.4.6.1 The EMS Software Solution will contain an application for Dewatering/Unwatering effluent management and shall be executed prior to extraction and discharge of groundwater, Dewatering/Unwatering effluent and/or construction process water effluent, in accordance with Sections 6.3.2, 6.3.3 and 6.3.4 in a digital tracking system and shall include:

- (a) a unique identification number is assigned to each flow meter at each Dewatering/Unwatering location;
- (b) each flow meter collecting real-time flow of Dewatering/Unwatering effluent shall have data logging capability with recorded data transmitting capabilities;
- (c) Project Co shall ensure that Contracting Authority Representative receives real-time e-mail alerts of any exceedances of:
  - (i) water taking rates that exceed Environmental Approval limits;
  - (ii) Dewatering/Unwatering effluent discharge rates that exceed Environmental Approval limits; and
  - (iii) water quality data that exceed Environmental Approval criteria;
- (d) an up to date and complete inventory of all Dewatering/Unwatering effluent discharge points and Dewatering/Unwatering effluent receivers generated by the Works. This includes MECP licensed facilities, storm and sanitary sewer connections, surface water discharge points and any

other receiving site, including overland infiltration within the Site. This inventory shall, at a minimum, include the following details and Project Co shall update and maintain the inventory on a monthly basis until such time as the Works have been completed:

- (i) the municipal address and UTM coordinates of each Dewatering/Unwatering effluent discharge point;
  - (ii) the name and municipal address of each Dewatering/Unwatering effluent receiver site owner and operator;
  - (iii) the Governmental Authority having jurisdiction over the receiver;
  - (iv) the type of Environmental Approval under which the receiver is operating;
  - (v) the total volume of Dewatering/Unwatering effluent discharged to each receiver;
  - (vi) the description of the source of the Dewatering/Unwatering effluent discharged to each receiver;
  - (vii) a description of the number of samples collected and analyses and a list of parameters included in the analyses that are representative of Dewatering/Unwatering effluent discharge to each receiver; and
  - (viii) an electronic copy of the certificate(s) of analysis for the samples collected and analyzed;
- (e) in-month evidence and certification by the Hydrogeologist or Qualified Person that the quality, volume and discharge rate of Dewatering/Unwatering effluent discharged to each receiver is compliant with Environmental Approval conditions and is not expected to result in Worsened conditions; and
- (f) any Waste manifests or shipping documentation associated with transport of Dewatering/Unwatering effluent to a receiver.

5.4.6.2 Project Co shall update and maintain the information within the Dewatering/Unwatering management software application at minimum on a monthly basis or more frequently as required until such time as the Works have been completed.

5.4.6.3 Project Co's Dewatering/Unwatering management software application shall include a monthly dashboard report as described in Section 5.4.1 which presents cumulative data for each calendar month. The groundwater monthly dashboard shall include the following for the applicable month:

- (a) the daily and total quantities of Dewatering/Unwatering effluent derived from the Works;
  - (b) the daily and total quantities of Dewatering/Unwatering effluent derived from each unwatering location;
  - (c) the daily and total volume of Dewatering/Unwatering effluent discharged to each receiver from each Dewatering/Unwatering location and a description of the PTTW or EASR under which the taking occurred;
  - (d) the daily and total volume of Dewatering/Unwatering effluent discharged to each receiver from all locations and a description of the Environmental Approval under which the discharge occurred;
  - (e) the analytical results supporting the discharge and/or disposal of Dewatering/Unwatering effluent;
  - (f) the treatment technologies used at each discharge location, as applicable; and
  - (g) records of the monitoring program to monitor for potential effects of Dewatering/Unwatering as described in Section 6.3.4.4.
- 5.4.6.4 Project Co shall make the information in the Dewatering/Unwatering management software application available to any Governmental Authority when required by that Governmental Authority.
- 5.4.7 Noise and Vibration Software Application
- 5.4.7.1 In accordance with Section 6.4.5, Project Co shall ensure that real-time monitoring data can be accessed by Contracting Authority through the EMS Software Solution;
  - 5.4.7.2 As required, each noise monitor shall have data logging capability with recorded data transmitted to the EMS Software Solution; and
  - 5.4.7.3 Project Co shall ensure that Contracting Authority Representative receives real-time e-mail alerts of any exceedances of Applicable Construction Noise and Vibration Requirements.
- 5.4.8 Construction Air Quality Software Application
- 5.4.8.1 In accordance with Section 6.9.4, Project Co shall ensure that all baseline data and real-time monitoring data are available and can be accessed by Contracting Authority through the EMS Software Solution;
  - 5.4.8.2 As required, each monitor shall have data logging capability with recorded data transmitted to the EMS Software Solution; and

- 5.4.8.3 Project Co shall ensure that Contracting Authority Representative receives real-time e-mail alerts of any exceedances of Applicable Construction Air Quality Criteria and Limits.

## 6 ENVIRONMENTAL MANAGEMENT

### 6.1 Contamination Management and Emergency Response

#### 6.1.1 Spill Prevention and Response

- 6.1.1.1 Project Co shall prepare and implement a Spill prevention and response plan (a “**Spill Prevention and Response Plan**”) and shall submit the Spill Prevention and Response Plan to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure. The Spill Prevention and Response Plan shall:

- (a) describe the measures Project Co will take to prevent a Spill of uncontrolled groundwater, or tunnel slurry, chemicals, Waste, fuels, lubricants, or other Hazardous Substances, and manage or otherwise mitigate the effects of any such Spill during the Project Term. The Spill Prevention and Response Plan shall consider site-specific characteristics, and include, at a minimum, the following:
  - (i) the types and nature of tunnel slurry additives, uncontrolled ground water, chemicals, Waste, fuels and lubricants, or other Hazardous Substances to be used during the performance of the Works;
  - (ii) the facilities and procedures to be used for storing and handling such materials, including Spill response, containment and clean-up materials;
  - (iii) monitoring and inspection procedures, including monthly inspections of Spill response and safety equipment, to ensure that management requirements are maintained and that inspections are documented;
  - (iv) employee training on the storage and use of tunnel slurry additives, chemicals, Waste, fuels, lubricants and other Hazardous Substances and the prevention of Spills;
  - (v) identification of subsurface infrastructure (for example, weeping tile, infiltration galleries, etc.) that may influence the destination of any Spill material;
  - (vi) the identification of municipal and natural discharge locations (for example, municipal catch basins) and drainage pathways on the Lands, and a description of the direction of flow and receiving water body in the event of a Spill;

- (vii) Spill response procedures for each type of material that may be released, or spilled, and the various environmental media that may be affected (for example, atmosphere, surface water, groundwater, ground surface);
  - (viii) procedures for clean-up and restoration of surfaces and environmental media that may be affected by the Spill; and
  - (ix) procedures for notification and reporting of a Spill event to Project Co Parties, Governmental Authorities and other relevant regulatory agencies (e.g., conservation authority, City of Toronto), as applicable.
- 6.1.1.2 Project Co shall make available a hard copy of the latest revision of the Spill Prevention and Response Plan in all site trailers and all site offices.
- 6.1.1.3 After each and any occurrence of a Spill irrespective of the quantity or characteristics of the material spilled, Project Co shall prepare and submit a Spill prevention and response occurrence report (a “**Spill Prevention and Response Occurrence Report**”) to the Contracting Authority in accordance with Schedule 10 – Review Procedure.
- (a) The Spill Prevention and Response Occurrence Report shall summarize how all Spill Prevention and Response Plan activities were implemented during the remediation and management of the occurrence of the Spill and the associated outcomes, and shall include:
    - (i) the date and time when the Spill was discovered;
    - (ii) a description of the substance spilled;
    - (iii) a description of the location of the Spill (municipal address and/or UTM coordinates);
    - (iv) estimated quantity released and area or volume impacted;
    - (v) a detailed description of estimated damages caused by the Spill;
    - (vi) a description of the Spill response actions undertaken by Project Co during the remediation and management of the occurrence and the associated outcomes;
    - (vii) a description of whether the Spill entered the natural environment – soil, groundwater, surface water, storm drain, or other natural features;
    - (viii) a description of whether the Spill entered lands outside of the Lands;

- (ix) a description of whether Project Co notified any Governmental Authorities or third parties of the Spill, including date and time of notification and names of parties notified;
  - (x) a description of any direction provided by a Government Authority in response to notification and status of any actions related to that direction;
  - (xi) results of sampling and analysis, if undertaken;
  - (xii) root cause analysis;
  - (xiii) a description of Project Co's actions to prevent further Spills; and
  - (xiv) tracking log of all Spills.
- 6.1.1.4 Project Co shall prepare and submit as part of the Substantial Completion Environmental Report as per Section 5.2.7, a Spill prevention and response implementation summary that describes how all Spill Prevention and Response Plan activities were implemented during the Work and the associated outcomes.
- 6.1.2 Designated Substances and Hazardous Materials Management Plan
- 6.1.2.1 Contracting Authority shall provide Project Co with designated substance surveys available at the time of issuance of this document and in accordance with the Environmental Reference Documents outlined in Section 2.1.
- 6.1.2.2 Project Co shall prepare and implement a Designated Substances and Hazardous Materials management plan (a “**Designated Substances and Hazardous Materials Management Plan**”) and shall submit the Designated Substances and Hazardous Materials Management Plan to the Contracting Authority in accordance with Schedule 10 – Review Procedure. The Designated Substances and Hazardous Materials Management Plan shall describe:
- (a) how Project Co will manage all Designated Substances and Hazardous Materials, including abatement, handling, transportation, testing, disposal and/or ultimate disposition of all Designated Substances and Hazardous Materials generated as part of the Works, including management of Designated Substances and Hazardous Materials associated with building demolition, building dismantling or preservation of built heritage resources and cultural heritage landscapes as applicable;
  - (b) the general principles that Project Co will apply for managing the removal of Designated Substances and Hazardous Materials;
  - (c) Project Co's over-arching Designated Substances and Hazardous Materials management strategy in terms of sustainable principles and compliance with Applicable Law, regulatory requirements and best practices;



- (d) locations, types and estimated quantities of Designated Substances and Hazardous Materials to be abated, managed, removed by Project Co during the Works;
- (e) data gaps in Designated Substances and Hazardous Materials surveys provided to Project Co and procedures for addressing data gaps prior to abatement activities, including locations not addressed by Designated Substances and Hazardous Materials surveys such as utility conduits and asphalt pavement;
- (f) Project Co's protocols for safe handling, abatement, management and removals, including disposal requirements;
- (g) how Project Co will ensure that no impacts will result to adjacent properties, or the public, during the abatement, handling, management or removal of Designated Substances and Hazardous Materials;
- (h) how Project Co will ensure requirements for mitigation and monitoring associated with built heritage resources as required by the Heritage Detailed Design Report in accordance with Section 6.6 are addressed;
- (i) how Project Co will conduct its activities in compliance with the Occupational Health and Safety Act (Ontario) and all Applicable Law;
- (j) Project Co's contingency plans to mitigate impacts; and
- (k) Project Co's reporting procedures to document and report to Contracting Authority how all management activities, best practices and mitigation measures have been implemented.

6.1.2.3 Project Co shall prepare and submit as part of the Substantial Completion Environmental Report, as per Section 5.2.7, a Designated Substances and Hazardous Materials implementation summary that describes how all Designated Substances and Hazardous Materials Management Plan activities were implemented during the Works and the associated outcomes including:

- (a) An inventory of all Designated Substances and Hazardous Materials generated and disposed off-site by the Works. This inventory shall include the following details:
  - (i) the municipal address of receiver;
  - (ii) the name of receiver site owner and operator;
  - (iii) the Governmental Authority having jurisdiction over the receiver;
  - (iv) the type of Environmental Approval under which the receiver is operating;

- (v) the total quantity of Designated Substances and Hazardous Materials transported to each receiver;
  - (vi) the description of the source of the Designated Substances and Hazardous Materials transported to each receiver;
  - (vii) a description of the number of samples collected and analyses and a list of parameters included in the analyses, if applicable; and
  - (viii) an electronic copy of the certificate(s) of analysis for the samples collected and analyzed; and
- (b) certification by the Designated Substances and Hazardous Materials Specialist that the Designated Substances and Hazardous Materials transported to each receiver is compliant with receiver requirements.

### 6.1.3 Hazardous Substances Brought onto the Lands

6.1.3.1 Notwithstanding any Applicable Law or any other provision in the Project Agreement to the contrary, all products and materials, goods or other items which in their natural, original state, or through environmental transformation or degradation contain Hazardous Substances, that are brought onto the Lands by Project Co or any Project Co Party or any person for whom Project Co is at law responsible shall be and remain the sole and exclusive property and responsibility of Project Co and shall not become the property or responsibility of Contracting Authority, notwithstanding their incorporation into or affixation to the Lands, the Project Co Infrastructure or New Third Party Infrastructure and notwithstanding any termination or expiration of the Project Agreement. Any resulting Contamination at the Lands in respect of any Hazardous Substances so brought onto the Lands and the remediation and/or removal thereof and the cost of such remediation and/or removal shall be the sole responsibility of Project Co.

6.1.3.2 Notwithstanding the obligation set out in Section 6.1.3.1, Project Co is prohibited from using any materials identified in Appendix E of this Schedule 17 in carrying out Project Co responsibilities.

### 6.1.4 Notification Requirements in Respect of Contamination

6.1.4.1 Without limiting the notification obligations of Project Co in Section 18.3 (*Contamination*) of the Project Agreement in respect of the management of Contamination, Project Co shall comply with the following notification requirements:

- (a) Project Co shall immediately notify, within twenty-four hours or less, Contracting Authority of:
  - (i) the discovery of Contamination or Designated Substances and Hazardous Materials in accordance with Section 6.1.5;

- (I) each Notice shall include at minimum: (1) the date and time of discovery by Project Co; (2) a description of the type of Hazardous Substance or Contaminated Material discovered and the medium impacted; and (3) the estimated quantity, proposed method for handling and management, preliminary schedule for handling and management, and schedule impacts to Project Co due to discovery of Contamination or Designated Substances and Hazardous Materials;
  - (ii) any Discharge or Spill of any Hazardous Substance on, under, at, from or to the Lands, together with full particulars of such Discharge or Spill to the extent known including at minimum, the time and location of the Discharge or Spill, the time, Governmental Authorities notified, names of parties notified, a detailed description of estimated damages caused the Discharge or Spill and remedial action taken by Project Co; and
  - (iii) any notice, claim, action or other proceeding by any person against Project Co or any Project Co Party or third party relating to the Work concerning any actual or alleged Discharge or Spill of a Hazardous Substance or Designated Substances and Hazardous Materials.
- 6.1.4.2 In addition to notifying the Contracting Authority Representative in accordance with Section 6.1.4.1, where required by Applicable Law, Project Co shall notify the relevant Governmental Authority of any Discharge or Spill of a Hazardous Substance or Designated Substances and Hazardous Materials on, under, at, from or to the Lands.
- 6.1.5 Management, Removal and Remediation of Contamination or Designated Substances and Hazardous Materials
- 6.1.5.1 Upon the discovery of Contamination or Designated Substances and Hazardous Materials that is not addressed in the Designated Substances and Hazardous Materials Management Plan as per Section 6.1.2, or the Soil and Excavated Material Management Plan as per Section 6.2.5 or the Groundwater Management and Dewatering/Unwatering Plan as per Section 6.3.2, and,
- (a) that Project Co is responsible for pursuant to Section 18.3 (*Contamination*) of the Project Agreement;
  - (b) that Contracting Authority is responsible for in accordance with Section 18.3 (*Contamination*) of the Project Agreement and, only if instructed to do so by the Contracting Authority Representative in accordance with Section 18.3 (*Contamination*) of the Project Agreement; or
  - (c) that assignment of responsibility in accordance with Section 18.3 (*Contamination*) of the Project Agreement is in dispute or pending and,

only if instructed to do so by the Contracting Authority Representative in accordance with Section 18.3 (*Contamination*) of the Project Agreement,

- 6.1.5.2 unless otherwise instructed by Contracting Authority, Project Co shall, within the timeframe specified by Contracting Authority, prepare and submit to the Contracting Authority, in accordance with Schedule 10 – Review Procedure:
- (a) a plan for the management of the Contamination (“**Contamination Management Plan**”) in accordance with Section 6.1.5.4;
  - (b) a plan for the management of Designated Substances and Hazardous Materials (“**Designated Substances and Hazardous Materials Discovery Plan**”) in accordance with Section 6.1.5.5; and/or
  - (c) confirm, in writing to the Contracting Authority Representative, that no such remediation or removal of the Contamination or Designated Substances and Hazardous Materials is required by Applicable Law.
- 6.1.5.3 Project Co shall implement the Contamination Management Plan in accordance with Section 6.1.5.4, or the Designated Substances and Hazardous Materials Discovery Plan in accordance with Section 6.1.5.5, Section 2.2.3 and Schedule 10 – Review Procedure.
- 6.1.5.4 Each Contamination Management Plan shall include:
- (a) date and time when the Contamination was discovered;
  - (b) description of the Contamination identified including location (municipal address and/or UTM coordinates);
  - (c) description of the circumstances under which the Contamination was discovered, including the preliminary field assessment and observations;
  - (d) description of the handling and management of the Contamination prior to submittal of the Contamination Management Plan;
  - (e) description of the preliminary field investigation including date, time and depth of samples collected, sampling methods, number of samples collected, chemical parameters and media tested;
  - (f) figure depicting sampling locations, sample exceedances, estimated vertical and horizontal extent of the Contamination in relation to the Lands;
  - (g) copies of borehole and test pit logs for sample locations, including soil description and classification;
  - (h) copies of laboratory certificates of analysis for the samples collected, including grain size analysis (if applicable);
  - (i) sampling and analysis requirements to develop the implementation plan;

- (j) management options for addressing the Contamination and recommended approach, including whether contaminant containment measures are required to avoid re-contamination or contaminant migration;
- (k) implementation plan, including how Contamination will be managed and estimated quantities of Soil and groundwater to be disposed outside the Lands and re-used within the Lands, where applicable;
- (l) schedule;
- (m) costing; and
- (n) rationale for assigning responsibility for the Contamination, as per Section 18.3 (*Contamination*) of the Project Agreement, including an assessment and comparison of the discovered contamination characteristics with Project Co Known Contamination.

6.1.5.5 Each Designated Substances and Hazardous Materials Discovery Plan shall include:

- (a) date and time when the Designated Substances and Hazardous Material was discovered;
- (b) description of the Designated Substances and Hazardous Materials identified including location (municipal address and/or UTM coordinates);
- (c) description of the circumstances under which the Designated Substances and Hazardous Materials was discovered, including the preliminary field assessment and observations;
- (d) description of the handling and management of the Designated Substances and Hazardous Materials prior to submittal of the Designated Substances and Hazardous Materials Discovery Plan;
- (e) description of the preliminary field investigation including date, time and depth of samples collected, sampling methods, number of samples collected, parameters and media tested;
- (f) figure depicting sampling locations, sample exceedances, estimated quantity extent of the Designated Substances and Hazardous Materials in relation to the Lands;
- (g) copies of laboratory certificates of analysis for the samples collected (if applicable);
- (h) sampling and analysis requirements to develop the implementation plan;
- (i) implementation plan, including how Designated Substances and Hazardous Materials will be managed and estimated quantities of

Designated Substances and Hazardous Materials requiring management or disposal, where applicable;

- (j) schedule;
  - (k) costing; and
  - (l) rationale for assigning responsibility for the Designated Substances and Hazardous Materials, as per Section 16.3 (*Contamination*) of the Project Agreement, including an assessment and comparison of the discovered designated substances characteristics with Project Co Known Contamination.
- 6.1.5.6 Parties acknowledge that Project Co's reasonable costs and expenses associated with the preparation of the Contamination Management Plan or Designated Substances and Hazardous Materials Discovery Plan and characterization, testing, and analysis as set out in Section 6.1.5.4 and Section 6.1.5.5 shall be borne by,
- (a) Project Co, if Project Co is responsible for the Contamination or Designated Substances and Hazardous Materials in accordance with Section 18.3 (*Contamination*) of the Project Agreement; and
  - (b) Contracting Authority, if Contracting Authority is responsible for the Contamination or Designated Substances and Hazardous Materials in accordance with Section 18.3 (*Contamination*) of the Project Agreement.
- 6.1.5.7 Project Co shall be responsible for the characterization, testing, and analysis of Soil and Dewatering/Unwating effluent that requires off-Site disposal, off-Site re-use or on-Site re-use to the satisfaction of the receiver or disposal site and the satisfaction of the Contracting Authority's Qualified Person in accordance with applicable regulations.
- 6.1.5.8 Project Co shall be responsible for the characterization, testing and analysis of Designated Substances and Hazardous Materials that requires disposal or management outside of the Works to the satisfaction of the receiver site in accordance with Applicable Law.
- 6.1.5.9 Project Co shall be responsible for MECP Hazardous Waste Information Network (HWIN) generator registration for disposal of regulated Waste, as applicable.
- 6.1.5.10 Project Co shall re-use (rather than remove or replace), as feasible, as much Soil on the Lands as possible in a manner that is consistent with Ontario Regulation 153/04, Ontario Regulation 406/19 and the MECP's Rules for Soil Management and Excess Soil Quality Standard (2020, and as amended), provided that Project Co complies with its obligations under the Project Agreement.
- (a) Project Co shall evaluate re-use options to consider site-specific excess Soil quality criteria in cases where Soil is geotechnically suitable for re-

use as engineered fill, even subject to some reconditioning such as drying or wetting, but Soil quality does not meet the applicable generic excess Soil quality standard.

## 6.2 Soils

### 6.2.1 Soils – General

6.2.1.1 In the context of media managed in place, Soil or sediment is considered “contaminated” if the quality exceeds the applicable Ministry of the Environment, Conservation and Parks Generic Site Condition Standards at the Site for use under Part XV.1 of the Environmental Protection Act (O. Reg. 153/04) or site-specific standards approved by MECP.

6.2.1.2 For Soil extracted during construction and requiring management outside the Project Area, extracted Soil is considered contaminated if the following conditions are met:

- (a) the quality, as assessed and interpreted in alignment with the requirements of O. Reg. 406/19, exceeds the Table 3.1 Excess Soil Quality Standards for Industrial, Commercial and Community Property Use or Table 3.1 Leachate Standard Levels for Industrial, Commercial and Community Property Use (where testing is required). The understanding of quality must take into consideration O. Reg. 406/19 allowances for interpreting data (e.g., statistical compliance assessment);
- (b) the Soil quality exceeds the site-specific standard in an instrument for a receiver site or a document (i.e., fill management plan) referenced by an instrument for a receiver site issued by a municipal, provincial or federal agency; and
- (c) the Soil quality exceeds the site-specific standards developed by a Qualified Person using methods in accordance with O. Reg 406/19 (i.e., Beneficial Reuse Assessment Tool).

6.2.1.3 Notwithstanding the coming into force provisions set out in Section 30 of O. Reg. 406/19, Project Co shall comply with O. Reg. 406/19 throughout the Project Term.

### 6.2.2 Environmental Site Assessment

6.2.2.1 Contracting Authority shall provide Project Co with all relevant baseline reports, environmental site assessments, certificates of property use, and records of site condition available at the time of issuance of this document and in accordance with the Environmental Reference Documents outlined in Section 2.1.

- (a) Project Co shall be responsible for identifying and complying with all applicable records of site condition and certificates of property use based on property impacts determined by Project Co design, including

mitigation, and monitoring requirements in accordance with this Section 6.2, and in accordance with Section 6.3 and Section 6.10.

- (b) Project Co shall be responsible for completing records of site condition and obtaining or updating certificate of property use.

6.2.2.2 Project Co shall review the applicable Environmental Reference Documents in accordance with Section 2.1 to assess the actual or potential impacts to Soil and/or groundwater, to inform the Project design and to inform the development of the requirements for Excess Soil management in accordance with Section 6.2.4 and the Soil and Excavated Material Management Plan in accordance with Section 6.2.5.

6.2.2.3 Project Co shall utilize Schedule 44 – Geotechnical Baseline Report and the Geotechnical Baseline Statements therein as the reference document by which the basis of the estimated quantities and categories for Soils and excavated materials are to be defined.

6.2.2.4 Prior to handback of Lands to Contracting Authority or to RSSOM Project Co, Project Co shall be responsible for providing Contracting Authority with an environmental condition summary (each a “**Environmental Condition Summary**”) for each property within the Site which includes:

- (a) a general description of Project Co’s Construction Activities and Project Co’s use of the property throughout the Project Term; and
- (b) information required by Section 5.2.7.2 (a) through (f) of the Substantial Completion Environmental Report cross referenced to each property.

### 6.2.3 Soil and Excavated Materials Tracking Requirements

6.2.3.1 Where Project Co intends to remove Soil or excavated materials outside a Project Area or the Site for either disposal as Waste or use as Soil at a re-use site, Project Co shall ensure that testing and sampling protocols have been followed to establish concentrations for chemical parameters of concern and that Project Co has complied with all Applicable Law.

6.2.3.2 Project Co shall provide real-time tracking of each load of Soil and excavated materials shipped from each Project Area within the Site. Project Co shall ensure that real-time Soil shipments are tracked in accordance with Section 5.4.5.

6.2.3.3 Project Co shall ensure that all historical and real-time Soil shipping data is available and can be accessed by Contracting Authority through the EMS Software Solution in accordance with Section 5.4.4.

6.2.3.4 Project Co shall report to Contracting Authority any shipment of Soil outside a Project Area without the knowledge of Project Co’s Qualified Person or the discovery of unsuitable Soils shipped to a receiving site within two (2) Business Days of Project Co’s knowledge of the occurrence.



- 6.2.3.5 Contracting Authority is under no obligation to review or approve the information provided with respect to the management of Soil and excavated materials. Any materials removed, disposed or re-used inappropriately shall be at Project Co risk.
- 6.2.4 Excess Soil Management
- 6.2.4.1 Management of Excess Soil for possible re-use at a re-use site or a Soil management site will be conducted in accordance with O. Reg. 153/04 Records of Site Condition – Part XV.1 of the Environmental Protection Act, as amended, and O. Reg. 406/19.
- 6.2.4.2 Without limiting Project Co’s obligations to perform the Works at all times in accordance with Applicable Law, Project Co shall:
- (a) perform the respective obligations of the Project Leader and the operator of the project area for the Project under *Ontario Regulation 406/19* made under the *Environmental Protection Act* (Ontario);
  - (b) comply, and cause each Project Co Party to comply, with Applicable Law relating to the management of excavated and excess soil, including without limitation *Ontario Regulation 406/19*;
  - (c) develop and implement plans, procedures, assessments, and systems to ensure the Works are performed in compliance with all requirements of *Ontario Regulation 406/19*, including all such requirements applicable to Project Co in performing the respective obligations of the Project Leader and the operator of the project area; and
  - (d) plan and complete all excess soil management activities required for the performance of the Works in compliance with the Ontario Ministry of Environment, Conservation, and Parks “Management of Excess Soil – A Guide for Best Management Practices – PIBS 9603e” (as may be updated or amended from time to time).
- 6.2.4.3 Project Co shall comply with the requirements of O. Reg. 406/19 and prepare and implement the requirements as outlined in MECP’s Rules for Soil Management and Excess Soil Quality Standards (2020, and as amended) when managing Excess Soil, and shall provide the following when applicable:
- (a) Assessment of past uses report(s) for each Project Area;
  - (b) Soil sampling and analysis plan(s) for each Project Area;
  - (c) Soil characterization report(s) for each Project Area;
  - (d) Excess Soils destination assessment report(s) for each Project Area;
  - (e) Implementation of a tracking system, as further described in Section 5.4.5;

- (f) Written opinion of Project Co’s Qualified Person stating that Excess Soil is suitable for transport to each re-use site and/or Class 2 Soil management site at which the Excess Soil will be deposited;
  - (g) Written consent from the operator of each re-use site and/or Class 2 Soil management site at which the Excess Soil will be deposited, as required per O. Reg. 406/19; and
  - (h) Project Co shall file and update notice(s) in the registry per O. Reg. 406/19, as required, for each Project Area and re-use site operated by Project Co within the Site, as applicable.
- 6.2.4.4 Project Co shall submit all deliverables as described in Section 6.2.4.3 to the Contracting Authority and the Contracting Authority’s Qualified Person in accordance with Schedule 10 – Review Procedure.
- 6.2.5 Soil and Excavated Material Management
- 6.2.5.1 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that the monitoring and maintenance requirements related to Soil and Excavated Material Management Plan prepared in accordance with Section 6.2.5.3 can be achieved during the operation and maintenance of the Ontario Line Subway System.
- 6.2.5.2 Prior to Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance and monitoring requirements related to Soil and excavated materials management to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.
- 6.2.5.3 Project Co shall prepare and implement a Soil and excavated material management plan (a “**Soil and Excavated Material Management Plan**”) and shall submit the Soil and Excavated Material Management Plan to the Contracting Authority in accordance with Section 2.2.3 and Schedule 10 – Review Procedure.
- (a) The Soil and Excavated Material Management Plan shall describe how Project Co will address management of all excavated material (i.e. Soil, rock and solid Waste, including Contamination), including loading, handling, storage, stockpiling, transportation, testing, re-use or disposal and/or ultimate disposition of all excavated material generated as part of the Works.
  - (b) The Soil and Excavated Material Management Plan shall comply with the requirements of O. Reg. 153/04 Records of Site Condition – Part XV.1 of the Environmental Protection Act, O. Reg. 406/19, for clarity, all obligations thereunder applicable to Project Co in performing the obligations of the Project Leader, MECP’s “Management of Excess Soil – A Guide for Best Management Practices, as amended, and Section

3.1.8 (*Urban and Landscape Design*) of the Output Specifications, as well as all Applicable Law.

- (c) The Soil and Excavated Material Management Plan shall include, at a minimum, the following:
- (i) the general principles that Project Co will apply for managing Soil and excavated materials;
  - (ii) Project Co's over-arching Soil and excavated materials management strategy in terms of sustainable principles and compliance with regulatory requirements and standard industry practices;
  - (iii) how Excess Soil and excavated material generated by the Works will be managed according to applicable regulations;
  - (iv) Project Co's definition of each Project Area per O. Reg. 406/19 within the Lands;
  - (v) protocols for characterizing Soil and excavated material quality and determining management, including disposal requirements;
  - (vi) estimated quantities by location in each Project Area and by volume and mass of total Soil and excavated material resulting from the Works, Soil and excavated material that will be re-used on the Site, and Soil and excavated material to be transported from the Project Area for re-use or disposal; and proposed methods for minimizing these quantities;
  - (vii) procedures for testing and characterizing the Soil and excavated material in compliance with applicable regulations, with consideration given to the regulatory options for confirming compliance with applicable standards (e.g., statistical compliance, averaging two or more samples taken from the same sampling points at the same sampling location and depth);
  - (viii) how Soil and excavated materials will be temporarily staged or stored at each Project Area or other worksites for re-use or subsequent transfer for re-use or disposal with regard to potential environmental effects and impacts to human health and safety;
  - (ix) methods to maximize the re-use of excavated material within each Project Area, including in accordance with Section 6.1.5;
  - (x) how areas of known Contamination will be managed and estimated quantities of contaminated material to be re-used on the Lands and re-used or disposed outside of the Lands;
  - (xi) how the discovery of Contamination in areas not previously identified will be managed including a general plan of action for

the remediation or removal of Contamination as detailed in accordance with Section 6.1.5; and

- (xii) reporting procedures to document how all management activities, including how all Works are completed in accordance with applicable regulations and by or under the supervision of a Qualified Person as required by regulation, and standard industry practices have been implemented.

6.2.5.4 Materials from excavation operations may contain peat, Topsoil and subsoil materials. Project Co shall salvage and stockpile these materials in separate stockpiles in accordance with standard industry practices and in accordance with the requirement of O. Reg. 406/19, as applicable, and in accordance with Section 3.1.8 (*Urban and Landscape Design*) of the Output Specifications. Project Co shall not allow burial of any peat or Topsoil materials. To the extent possible, with the exception of peat materials, Project Co shall re-use geotechnically and environmentally suitable salvaged Topsoil and subsoil materials on the Site.

#### 6.2.6 Soil Importation Plan

6.2.6.1 Project Co shall prepare and implement a Soil importation plan (a “**Soil Importation Plan**”) that describes how Project Co will address management of all Soil imported to each Project Area as part of the Works and shall submit the Soil Importation Plan to the Contracting Authority in accordance with Schedule 10 – Review Procedure.

6.2.6.2 The Soil Importation Plan shall comply with the requirements of O. Reg. 153/04 Record of Site Condition – Part XV.1 of the Act, O. Reg. 406/19, and all Applicable Law, and shall include, at a minimum, the following:

- (a) procedures for determining suitable source sites for importing Soil to the Lands and what quality of Soil is suitable for importation to each Project Area;
- (b) how coordination with the source site Qualified Person will occur, including what documentation will be requested and reviewed by Project Co and provided to Contracting Authority for review; and
- (c) the analytical testing to be completed on Soil imported to the Lands.

#### 6.2.7 Soil and Excavated Materials Implementation Summary

6.2.7.1 Project Co shall prepare and submit a Soil and excavated material management implementation summary containing the following information as part of the Substantial Completion Environmental Report as per Section 5.2.7:

- (a) describe and summarize how all of Project Co’s excavated material management activities have been implemented during the Works;
- (b) provide a summary of the total quantities of Soil and excavated material resulting from the Works, Soil and excavated material that was re-used in

the Works, and Soil and excavated material that was transported from the Site for re-use or disposal, including details of quantities shipped to each receiver site;

- (c) include an accurate and final inventory at each receiver site of Soil and/or excavated material generated by the Works that cannot be re-used on the Lands. This includes MECP licensed facilities, temporary Soil storage areas, commercial fill operations, beneficial re-use sites, processing and recycling facilities, landfills and any other receiving site. This inventory shall include the following details and shall cover the period of the Works:
  - (i) the municipal address of receiver site;
  - (ii) the name of receiver site owner and operator;
  - (iii) the name of the Qualified Person overseeing receiver site activities;
  - (iv) the Governmental Authority having jurisdiction over the receiver site;
  - (v) the type of Environmental Approval under which the receiver site is operating, if applicable;
  - (vi) the total volume of Soil and/or excavated material shipped to the receiver site;
  - (vii) the description of the source of the Soil and/or excavated material shipped to the receiver site;
  - (viii) a description of the number of samples collected and analyzed and a list of parameters included in the analyses; and
  - (ix) any Waste manifests or shipping documentation associated with soil or excavated material.
- (d) include evidence and certification by a Qualified Person that the quality of Soil and/or excavated material shipped to each receiver site is compliant with the receiver site license, Environmental Approval, fill management plan and applicable regulations;
- (e) provide a summary of all sources of imported Soil and Aggregate, including the location of Soil and Aggregate placed from those sources and analytical results confirming the quality of the imported Soil and Aggregate meets that proposed in the Soil and Excavated Material Management Plan; and
- (f) summarize the information provided to Governmental Authorities related to Soil and excavated materials.

- 6.2.8 Erosion and Sediment Control
- 6.2.8.1 Project Co shall undertake an erosion risk assessment for each location where Construction Activities are proposed in accordance with the *Erosion and Sediment Control Guide for Urban Construction* (Toronto and Region Conservation Authority, 2019), as amended from time to time, the results of which shall be used to inform the Erosion and Sediment Control Plan.
- 6.2.8.2 Project Co shall prepare and implement erosion and sediment control plans (each an “**Erosion and Sediment Control Plan**”) in compliance with the Erosion and Sediment Control Guide for Urban Construction (TRCA, 2019), or other requirements as stipulated by Governmental Authorities, as amended from time to time. Each Erosion and Sediment Control Plan shall be Site-specific to address local conditions.
- 6.2.8.3 Project Co shall submit the Erosion and Sediment Control Plan to Contracting Authority in accordance with Section 2.2.3 and Schedule 10 – Review Procedure. Each Erosion and Sediment Control Plan shall, at a minimum, describe and include the following:
- (a) a description of land use, topography, drainage, and watercourses;
  - (b) a description of Soils on the site, including erodibility and grain size analysis;
  - (c) a description of the erosion and sediment control measures to be used on the site to manage erosion and the release of sediment to the site and to adjacent sites;
  - (d) a description of how erosion and sediment control measures will be monitored and maintained during the performance of the Works;
  - (e) a description of how the Lands will be stabilized after construction is complete; and
  - (f) erosion and sediment control drawings sealed and signed by an accredited Professional Engineer in Ontario.
- 6.2.8.4 Project Co shall conduct inspections of all protections used to control erosion and sediment on a weekly basis, after significant rainfall and snowmelt events (an event during which at least 15 mm has been received within 24 hours or an event with an intensity of at least 5 mm/hour during which at least 10 mm has been received), and daily during extended rain or snowmelt periods, and identify, correct and document any repairs to protections as required.
- 6.2.8.5 Project Co shall implement erosion and sediment control measures prior to commencement of the Construction Activities at any Site location.
- 6.2.8.6 When restoring and stabilizing disturbed soils, Project Co shall ensure seed mixes are appropriate to the local soil conditions and shall follow the Toronto

and Region Conservation Authority *Seed Mix Guidelines* (July 2004), as amended from time to time.

- 6.2.8.7 Project Co shall maintain the sediment and erosion control measures until effective stabilization has been achieved with a minimum ground cover of [REDACTED]%.  
6.2.8.8 Project Co shall prepare and submit to the Contracting Authority a monthly summary as part of the Monthly Environmental Report as set out in Section 5.2.2, describing the results of inspections and corrective actions for the reporting period in accordance with the Erosion and Sediment Control Guide for Urban Construction (TRCA, 2019), as amended from time to time.

### 6.3 Groundwater and Stormwater

#### 6.3.1 Protection/Decommissioning of Existing Monitoring Wells

- 6.3.1.1 Contracting Authority shall provide Project Co with a summary of monitoring well locations as presented in each geotechnical data report as well as the Environmental Monitoring Well Summary List listed in Appendix B of this Schedule 17, in accordance with Section 2.1 and as amended or replaced from time to time during the Project Term.
- 6.3.1.2 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that management of permanent monitoring wells during the operation and maintenance of the Ontario Line Subway System can be completed in accordance with O. Reg 903 under the Ontario Water Resources Act (Ontario).
- 6.3.1.3 For clarity, Project Co shall be responsible for the Project Co Infrastructure as described in the Output Specifications.
- 6.3.1.4 Prior to Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance and monitoring requirements related to monitoring wells to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.
- 6.3.1.5 Monitoring wells and piezometers shall be decommissioned by a licenced well driller in accordance with Ontario Regulation 903 under the Ontario Water Resources Act (Ontario), and as per the timeline described in Section 3.1.10.4 (*Geotechnical Instrumentation and Protection of Existing Adjacent Structures*) of the Output Specifications. Project Co shall be responsible for temporary protection and decommissioning of all monitoring wells and piezometers, including with respect to the following:
- (a) any and all monitoring wells installed as part of geotechnical, environmental, or hydrogeological investigations in connection with the Project;

- (b) all wells installed as part of the studies undertaken by Contracting Authority and that were provided as part of the Background Information; and
  - (c) all instruments associated with monitoring wells as specified in Section 3.1.10.4 (*Geotechnical Instrumentation and Protection of Existing Adjacent Structures*) of the Output Specifications.
- 6.3.1.6 Project Co shall complete monitoring well decommissioning at any additional locations identified and as directed by Contracting Authority from time to time prior to Commercial Close.
- 6.3.1.7 Project Co shall, prior to undertaking any Construction Activities, decommission any supplementary wells installed by Project Co as part of its own investigation and monitoring work as necessary to complete the Works.
- 6.3.1.8 Project Co shall, prior to the start of any tunneling activities, submit to Contracting Authority a well decommissioning and protection plan (a “**Well Decommissioning and Protection Plan**”) in accordance with Schedule 10 – Review Procedure. Each Well Decommissioning and Protection Plan shall outline the protection methods for wells that would be impacted by construction activities and demonstrate that decommissioning or protection methods proposed would be sufficient to protect against frac out of tunnel slurry during construction.
  - (a) Each Well Decommissioning and Protection Plan shall be Site-specific to address local conditions.
- 6.3.1.9 Project Co shall prepare and submit a well decommissioning summary containing the following information as part of the Substantial Completion Environmental Report as per Section 5.2.7:
  - (a) describe and summarize how all of Project Co’s well decommissioning activities have been implemented during the Works;
  - (b) provide a summary of the total number of wells decommissioned, UTM coordinates of each well decommissioned, a map depicting the location of each well decommissioned and a description of the methodology used to decommission each well; and
  - (c) provide copies of MECP well decommissioning records completed by the licensed well driller.
- 6.3.2 Groundwater Management, Dewatering/Unwatering and Construction Process Water Effluent – General
  - 6.3.2.1 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that the permanent Dewatering/Unwatering requirements can be achieved during the operation and maintenance of the Ontario Line Subway System.



- 6.3.2.2 For clarity, Project Co shall be responsible for the Project Co Infrastructure as described in the Output Specifications.
- 6.3.2.3 Prior to Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance and monitoring requirements related to permanent Dewatering/Unwatering to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.
- 6.3.2.4 Project Co shall comply with all applicable records of site condition and certificates of property use based on property impacts determined by Project Co design in accordance with Section 6.2.2.1.
- 6.3.2.5 In the context of media managed in place, groundwater and Dewatering/Unwatering effluent is considered “contaminated” if the quality exceeds the applicable Ministry of the Environment, Conservation and Parks Generic Site Condition Standards at the Site for use under Part XV.1 of the Environmental Protection Act (O. Reg. 153/04) or site-specific standards approved by MECP.
- 6.3.2.6 For groundwater and Dewatering/Unwatering effluent extracted during construction, extracted groundwater and Dewatering/Unwatering effluent is considered “contaminated” if the quality exceeds applicable sewer or stormwater bylaw criteria or other applicable water quality criteria for discharge as applicable to the destination of the groundwater discharge.
- 6.3.2.7 If Project Co intends to discharge Dewatering/Unwatering effluent or construction process water effluent, Project Co shall give Notice to Contracting Authority in advance of commencing discharge. The Notice shall include:
- (a) a description of the Dewatering/Unwatering effluent or construction process water effluent;
  - (b) the name and location of the intended receiver;
  - (c) the type of Environmental Approval under which the receiver operates; and
  - (d) a copy of the opinion of the Hydrogeologist or Qualified Person that the quality of the Dewatering/Unwatering effluent or construction process water effluent to be discharged to each receiver is compliant with the Environmental Approval under which the receiver operates and is not expected to result in Worsened conditions.
- 6.3.3 Groundwater Management, Dewatering/Unwatering, and Construction Process Water Effluent Tracking Requirements
- 6.3.3.1 Project Co shall provide real-time water taking rates, daily volume of water taken, Dewatering/Unwatering effluent rates, construction process water effluent rates, daily volume of Dewatering/Unwatering effluent, and daily volume of

construction process water effluent for the duration of the Works. Project Co shall ensure that real-time monitoring is tracked in accordance with Section 5.4.6.

- 6.3.3.2 Project Co shall ensure that all historical and real-time Dewatering/Unwatering water taking rates, daily volume of water taken, Dewatering/Unwatering effluent rates, construction process water effluent rates, daily volume of Dewatering/Unwatering effluent discharge, and daily volume of construction process water effluent discharge are available and can be accessed by Contracting Authority through the EMS Software Solution.
- 6.3.4 Groundwater Management, Dewatering/Unwatering and Construction Process Water Effluent Plan
- 6.3.4.1 Project Co shall review the applicable Environmental Reference Documents in accordance with Section 2.1 to assess the actual or potential impacts to surface or groundwater, to inform the Project design and to inform the development of the requirements of the Groundwater Management and Dewatering/Unwatering Plan in accordance with Section 6.3.4.3 and Section 3.1.10.2(i) (*Groundwater Control*) of the Output Specifications.
- 6.3.4.2 Project Co shall utilize Schedule 44 – Geotechnical Baseline Report and the Geotechnical Baseline Statements therein as the reference document by which the basis of the estimated quantities and categories of contaminated water are to be defined.
- 6.3.4.3 Project Co shall prepare and implement a Dewatering/Unwatering management plan (a “**Groundwater Management and Dewatering/Unwatering Plan**”) and shall submit the Groundwater Management and Dewatering/Unwatering Plan to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure.
- 6.3.4.4 The Groundwater Management and Dewatering/Unwatering Plan shall describe how Project Co will address the management of excess water, groundwater, construction process water and Dewatering/Unwatering effluent generated by the Project during the performance of the Works. The Groundwater Management and Dewatering/Unwatering Plan shall include any Dewatering/Unwatering requirements detailed in the Output Specifications and shall include, at a minimum, the following:
- (a) the general principles that Project Co will apply for managing groundwater and Dewatering/Unwatering activities and construction process water generating activities;
  - (b) Project Co’s over-arching groundwater, Dewatering/Unwatering and construction process water management in terms of sustainable principles and compliance with regulatory requirements and best practices;
  - (c) locations of anticipated groundwater management, Dewatering/Unwatering and construction process water generating

- activities and estimated timeframes of management activities at each location;
- (d) estimated quantities of Dewatering/Unwatering effluent and construction process water effluent to be managed during the Works and proposed methods for minimizing these quantities;
  - (e) the proposed Environmental Approval, in accordance with Schedule 34 – Permits, Licences, Approvals and Agreements, for the water taking at each Dewatering/Unwatering location and as required for the water discharge location;
  - (f) protocols for characterizing groundwater, Dewatering/Unwatering effluent and construction process water effluent quality and determining management, including disposal requirements in accordance with this Section 6.3.4;
  - (g) how groundwater, Dewatering/Unwatering effluent and construction process water effluent will be treated and disposed of with regard to potential environmental effects and impacts to human health and safety;
  - (h) procedures for water testing, containment, classification, treatment, and disposal/discharge of groundwater, Dewatering/Unwatering effluent and construction process water effluent;
  - (i) how Project Co will ensure that no impacts will result to adjacent trees, vegetation and ecosystems that may be dependent upon existing, near-surface groundwater conditions;
  - (j) how Project Co will conduct its groundwater and construction process water management activities in compliance with Applicable Law, and MECP, municipal and TRCA approvals as outlined in Schedule 34 – Permits, Licences, Approvals and Agreements;
  - (k) Project Co will conduct its Unwatering and/or stormwater management activities in compliance with industry best practices and in consideration of flood management recommendations and TRCA policies;
  - (l) monitoring program to establish baseline conditions and monitor for potential effects of Dewatering/Unwatering on the environment, migration of Contamination and on the structural integrity of adjacent structures;
  - (m) contingency plans to mitigate impacts due to Dewatering/Unwatering and/or unexpected water or stormwater discharge volumes; and
  - (n) reporting procedures to document how all management activities, best practices and mitigation measures have been implemented.

- 6.3.5 Groundwater Management, Dewatering/Unwatering and Construction Process Water Effluent Implementation Summary
- 6.3.5.1 Project Co shall prepare and submit a groundwater management and Dewatering/Unwatering implementation summary containing the following information as part of the Substantial Completion Environmental Report as per Section 5.2.7:
- (a) describe and summarize how all of Project Co’s groundwater management, Dewatering/Unwatering activities and construction process water generating activities have been implemented during the construction phase of the Works;
  - (b) provide a summary of the total quantities of groundwater, Dewatering/Unwatering effluent and construction process water effluent managed from the Works during construction, including a detailing of quantities transported to each receiver and a description of the volumes of water taken from each location and under each PTTW, EASR, City of Toronto permit or other Environmental Approval as identified in Schedule 34 – Permits, Licences, Approvals and Agreements;
  - (c) include an accurate and final inventory at each receiver of Dewatering/Unwatering effluent and construction process water effluent generated by the Works during construction. This includes MECP licensed facilities, storm and sanitary sewer connections and any other receiving site. This inventory shall include the following details and shall cover the period of the Works:
    - (i) the municipal address of receiver;
    - (ii) the name of receiver site owner and operator;
    - (iii) the Governmental Authority having jurisdiction over the receiver;
    - (iv) the type of Environmental Approval under which the receiver is operating;
    - (v) the total volume of groundwater, Dewatering/Unwatering effluent or construction process water effluent discharged to each receiver;
    - (vi) the description of the source of the groundwater or Dewatering/Unwatering effluent or construction process water effluent discharged to each receiver; and
    - (vii) a description of the number of samples collected and analyzed and a list of parameters included in the analyses;
    - (viii) an electronic copy of the certificate(s) of analysis for the samples collected and analysed; and

- (d) evidence and certification by the Hydrogeologist or Qualified Person that the quality of Dewatering/Unwatering effluent and construction process water effluent discharged to each receiver is compliant with the Environmental Approval under which the receiver operates and is not expected to result in Worsened conditions.

#### 6.3.6 Flood Hazard Analysis

- 6.3.6.1 As part of detailed design process and in accordance with the Output Specifications, Project Co shall wherever infrastructure is proposed to be located within the Regional Storm floodplain:
  - (a) complete flood hazard modelling analysis to demonstrate that there is no net increase in risk to human life or property as a result of proposed Works;
  - (b) confirm the flood hazard model to be used with TRCA and Waterfront Toronto; and
  - (c) provide to Contracting Authority the analysis and floodline mapping, prepared for the watercourse to an appropriate distance for any changes in the proposed condition, detailing the impacts of the proposed Works in accordance with Schedule 10 – Review Procedure.

### 6.4 Noise and Vibration – Construction

#### 6.4.1 Construction Noise and Vibration – General

- 6.4.1.1 Project Co shall carry out the Works in compliance with the noise and vibration obligations set out in this Section 6.4 and shall,
  - (a) implement measures to minimize and mitigate ground-borne and air-borne noise and vibration generated as a result of the Works;
  - (b) comply with,
    - (i) the construction noise limits set out in Section 6.4.2.1 when Project Co proposes to complete Construction Activities that deviate from the City of Toronto bylaws time-of-day construction periods (day, nights), in which case Project Co shall notify Contracting Authority prior to performing the Works outside of these time periods;
    - (ii) the environmental obligations as set out in Appendix A-1 and A-3 of this Schedule 17 in accordance with Section 2.1.1.2;
    - (iii) the Environmental Reference Documents listed in Appendix B of this Schedule 17; and

- (iv) standard industry practice for minimizing ground-borne and air-borne noise and vibration in respect of all performance of the Works;
  - (c) design and construct equipment in accordance with this Section 6.4.1.1; and
  - (d) use construction equipment and perform Construction Activities in a manner that minimizes ground-borne and air-borne noise and vibration,
- (collectively, the “**Applicable Construction Noise and Vibration Requirements**”).
- 6.4.1.2 If Project Co performs overnight Construction Activities Project Co shall,
  - (a) provide Notice to Contracting Authority in accordance with Schedule 18 – Communication and Public Engagement Protocol; and
  - (b) provide public notification in accordance with Schedule 18 – Communications and Public Engagement Protocol.
- 6.4.1.3 Project Co shall ensure that all mobile equipment and vehicles on the Site that have backup alarms are equipped with broadband backup ambient-sensitive alarms only.
- 6.4.1.4 In carrying out the Works, Project Co shall comply with construction noise and vibration reference documents applicable to the Project and listed in Appendix B – Environmental Reference Documents, in accordance with Section 2.1 and as amended or replaced from time to time during the Project Term.
- 6.4.2 Construction Noise and Vibration Performance Limits
  - 6.4.2.1 Project Co shall comply with,
    - (a) the airborne construction noise exposure limits set out in Table 6.4.2-1, unless otherwise indicated in Table 6.4.2-2 and Table 6.4.2-3;
      - (i) Project Co shall provide Notice to Contracting Authority of the start date for the listed Construction Activity at each location identified in Table 6.4.2-2 at least twenty (20) Business Days in advance of the start date of Construction Activity.
      - (ii) The maximum airborne noise exposure limit in Table 6.4.2-3 shall apply to the duration timeline of the Construction Activities identified in Table 6.4.2-2. The duration shall start on the date provided in the Notice to Contracting Authority as per Section 6.4.2.1(a)(i).
      - (iii) Construction Activities shall not exceed NC-30 (with HVAC) operating inside Osgoode Hall courtrooms and offices while they are in use, in accordance with Section 6.4.4.5(d).

- (I) If compliance with NC-30 cannot be achieved due to inaccessibility to the interior of Osgoode Hall, Project Co shall not exceed the maximum noise exposure limits set out in Table 6.4.2-4.
- (b) the maximum noise levels for construction equipment as set out in MECP NPC-115 and MECP NPC-118;
- (c) the ground-borne tunnel construction noise exposure limits for the construction set out in Table 6.4.2-5;
- (d) construction noise shall comply with MOL Noise Regulation O. Reg. 381/15 and workers exposed to construction noise at or above 85 dBA shall wear hearing protection;
- (e) the construction vibration limits set out in Table 6.4.2-6 for buildings and structures adjacent to any construction activity, including but not limited to those buildings and structures identified in the Heritage Detailed Design Report in accordance with Section 6.6.2.
  - (i) The higher of 0.14 mm/s RMS or the baseline level of vibration as determined in accordance with Section 6.4.4.5(e) inside Osgoode Hall courtrooms while they are in use.
  - (ii) If compliance with Section 6.4.2.1(e)(i) cannot be achieved due to inaccessibility to the interior of Osgoode Hall, Project Co shall not exceed the maximum vibration exposure limits as set out in Table 6.4.2-4.
- (f) In order to mitigate the risk of public annoyance and complaints, Project Co shall ensure that the vibration root-mean-square velocity from Construction Activities related to repetitive tunneling support operations (e.g., delivery of tunnel liners, removal of excavated materials) felt at any receiver extending over a period of more than 48 hours does not exceed the higher of 0.175 mm/s or the baseline level of vibration as determined in accordance with Section 6.4.4.5(b);
- (g) the construction vibration limits set out in OPSS 120 for underground utilities, pipelines and structures;
- (h) unless otherwise indicated, measurements for compliance with construction noise exposure limits, maximum noise levels for construction equipment and ground-borne construction noise exposure limits for tunnel construction shall be measured as described in MECP Publication NPC-103;
- (i) unless otherwise indicated, measurements for compliance with construction vibration limits shall be measured as described in ISO 8041-1 and ISO 5348; and

- (j) unless otherwise indicated, the more stringent noise or vibration criteria, limit or requirement shall be used as the performance limit,

(collectively, the “**Construction Noise and Vibration Performance Limits**”).

Table 6.4.2-1 Maximum Airborne Construction Noise Exposure Limits

[REDACTED]

Table 6.4.2-2 Maximum Airborne Construction Activity Noise Exposure Limit Exemption per Location

[REDACTED]

Table 6.4.2-3 Maximum Airborne Noise Exposure Limits for Specific Activities/Duration

[REDACTED]

Table 6.4.2-4 Maximum Construction Noise Exposure Limits for Osgoode Hall

[REDACTED]

Table 6.4.2-5 Maximum Ground-Borne Interior Noise Exposure Limits for Tunnel Construction

[REDACTED]

Table 6.4.2-6 Maximum Construction Vibration Peak Particle Velocity Limits

[REDACTED]

### 6.4.3 Construction Noise and Vibration Management Plans

- 6.4.3.1 Project Co shall develop and submit construction noise and vibration management plans (“**Construction Noise and Vibration Management Plan**”) to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure.
- 6.4.3.2 In accordance with Section 2.2.3, Project Co shall not commence any activity with the potential to exceed the Applicable Construction Noise and Vibration Requirements prior to receiving a notification from Contracting Authority on a Construction Noise and Vibration Management Plan.
- 6.4.3.3 The Construction Noise and Vibration Management Plan shall include Site-specific sections to address local conditions and, at a minimum, include a schedule of proposed activities and efforts as well as required methodologies, deliverables and inputs required to comply with Applicable Construction Noise and Vibration Requirements throughout the duration of the Project and shall:
- (a) identify mitigation measures to be applied when and where calculated ground-borne or air-borne noise or vibration levels exceed the Construction Noise and Vibration Performance Limits or any other limit



under the Applicable Construction Noise and Vibration Requirements, provided that the inclusion or absence of a mitigation measure from this Construction Noise and Vibration Management Plan shall not limit Project Co's obligation to mitigate any amount of noise and vibration required under the Project Agreement;

- (b) provide Project Co's procedures for conducting compliance verification measurements, measurement processes, measurement equipment and analysis methods to confirm that the Works are being carried out in compliance with Applicable Construction Noise and Vibration Requirements;
- (c) provide Project Co's procedures for conducting compliance verification measurements to confirm that Construction Noise and Vibration Sensitive Receptors are not exposed to noise and/or vibration that exceed the limits set out in this Section 6.4.2, including an outline of the measurement processes, measurement equipment, and analysis methods that will be implemented;
- (d) provide Project Co's procedures for identification of warning and alert levels to identify an increase in noise and vibration that results in approaching the Construction Noise and Vibration Performance Limits;
- (e) provide Project Co's procedure for the stop work process if the Construction Noise and Vibration Performance Limits are exceeded including identification and implementation of mitigation measures; and
- (f) specify how Project Co intends to consult with Construction Noise and Vibration Sensitive Receptors and any nearby residents.

6.4.3.4 The Construction Noise and Vibration Management Plan shall also include:

- (a) an approach for identifying and assessing potential Representative Construction Noise and Vibration Sensitive Receptors in accordance with Section 6.4.4;
- (b) define the construction, staging and laydown areas for each Station location in accordance with Schedule 35 – Lands;
- (c) an approach for assessing ground-borne and air-borne noise and vibration for Representative Construction Noise and Vibration Sensitive Receptors and possible mitigation measures in accordance with Section 6.4.5; and
- (d) an approach for construction noise and vibration monitoring in accordance with Section 6.4.6. The Construction Noise and Vibration Management Plan shall be prepared and signed by an accredited Professional Engineer with a minimum of 10 years of experience in assessing and controlling construction related noise and vibration.

## 6.4.4 Noise and Vibration Sensitive Receptors – Construction Activities

6.4.4.1 Prior to commencement of Construction Activities, Project Co shall conduct and complete a survey of the Lands and the vicinity of the Works, including a Zone of Influence for potential ground-borne or air-borne noise or vibration impacts from the planned Works, to identify Construction Noise and Vibration Sensitive Receptors, including Vibration Sensitive Structures, and to identify Representative Construction Noise and Vibration Sensitive Receptors, as deemed appropriate and sufficient by Contracting Authority, in its sole discretion. The survey shall:

- (a) include the identification of specific sensitive equipment, structures, facilities or procedures;
- (b) be conducted in consultation with the potential Construction Noise and Vibration Sensitive Receptors and in accordance with any public consultation requirements set out in Schedule 18 – Communications and Public Engagement Protocol;
- (c) shall include those receptors identified in accordance with Sections 6.6 and 6.7; and
- (d) select Representative Construction Noise and Vibration Sensitive Receptors such that they are:
  - (i) exposed to the worst-case effects of ground borne vibration, and air and ground borne noise compared to all the nearby Construction Noise and Vibration Sensitive Receptors that the Representative Construction Noise and Vibration Sensitive Receptor is intended to represent; and
  - (ii) distributed across areas with differing characteristics affecting noise and vibration levels from the Works. Example characteristics include:
    - (I) differences in setback from the designed track alignment;
    - (II) differences in grade elevation between the designed track alignment and Representative Construction Noise and Vibration Sensitive Receptor;
    - (III) differences in shielding from the Works (for example, buildings and barriers);
    - (IV) differences in sensitivity to vibration (for example, theatres and high sensitivity medical imaging);
    - (V) have soil and structural characteristics, geometry and propagation characteristics from the Project similar to the other Construction Noise and Vibration Sensitive

Receptors that the Representative Construction Noise and Vibration Sensitive Receptor is intended to represent; and

- (VI) Project Co shall include the results of the Construction Noise and Vibration Sensitive Receptor survey as part of the Construction Noise and Vibration Management Plan as set out in Section 6.4.3.

- 6.4.4.2 If two or more adjacent structures could potentially be subject to differences in impact from the worst-case effects of noise or vibration, then Project Co shall select all such adjacent structures to be included as Representative Construction Noise and Vibration Sensitive Receptors.
- 6.4.4.3 Project Co shall prepare, and keep up to date, a list of Representative Construction Noise and Vibration Sensitive Receptors for the Work and shall submit the list along with any updates, as part of the Construction Noise and Vibration Management Plan as set out in Section 6.4.3 and Schedule 10 – Review Procedure.
- 6.4.4.4 Project Co shall submit all existing conditions noise and vibration measurement data in respect of Representative Construction Noise and Vibration Sensitive Receptors to the Contracting Authority as a component of the Construction Noise and Vibration Management Plan as set out in Section 6.4.3 and Schedule 10 – Review Procedure.
- 6.4.4.5 Project Co shall perform and record existing conditions baseline noise and vibration measurements prior to the commencement of Construction Activities at or within each Representative Construction Noise and Vibration Sensitive Receptor, consisting of:
- (a) three (3) days of continuous noise monitoring at each Representative Construction Noise and Vibration Sensitive Receptor, provided that for any outdoor locations the weather conditions are suitable for measurement as per MECP Publication NPC-103;
  - (b) three (3) days of continuous vibration monitoring at each Representative Construction Noise and Vibration Sensitive Receptor as per ISO 8041-1 and ISO 5348;
  - (c) noise and vibration monitoring shall be conducted at the building façade of each Representative Construction Noise and Vibration Sensitive Receptor where permission has been obtained from the building owner. Where permission has not been obtained, then a location on public property as close to the Representative Construction Noise and Vibration Sensitive Receptor in direct impact of the construction noise or vibration source shall be used;
  - (d) where indoor noise baseline measurements are required, sound level measurements will be conducted in accordance with the following:

- (i) type 1 sound level meters shall be used;
  - (ii) measurements shall be conducted in one-third octave bands;
  - (iii) factory calibrated sound level meter within six (6) months and field calibrate the sound level meter before and after the indoor measurements such that dBA does not exceed +/- 0.5 dBA;
  - (iv) a minimum of three (3) sound level measurements shall be completed in each indoor space required for indoor noise assessment, with additional measurements (up to ten (10)) as space allows for in the room;
  - (v) the shortest distance from any sound level measurement to any major extended surface shall be at least 1.0 m;
  - (vi) each measurement location shall be at least 1.5 m from any other measurement;
  - (vii) each measurement shall be at a height of 1.5 m from the floor;
  - (viii) measurements shall be made in the third-octave mid-frequencies from 80 – 5000 Hz; and
  - (ix) measurements shall be consolidated into a single Noise Criterion (NC) number from third-octave measurements, provided with the NC data in tabular and graphic form; and
- (e) where indoor vibration baseline measurements are required, vibration level measurements will be conducted in accordance with the following:
- (i) indoor vibration levels shall measure the root-mean-square (RMS) value directly – conversion from peak-particle velocity (PPV) shall not be accepted;
  - (ii) root-mean-square (RMS) vibration levels shall be measured in 1 second intervals over a last a 1 hour period with [REDACTED]% overlap, with the highest RMS 1 second interval value being reported;
  - (iii) all vibration level data shall be provided, including 1 second interval data over 5 min measurement period for each measurement location;
  - (iv) vibration measurement equipment capable to measure frequencies to 4Hz and up to 250Hz;
  - (v) a minimum of three (3) vibration level measurements shall be completed in each indoor space with an area of over 9.5 m<sup>2</sup>, and one (1) vibration level measurement shall be completed in each indoor space with an area of 9.5 m<sup>2</sup> or less;

- (vi) one indoor vibration measurement shall be taken in the centre of the indoor space;
  - (vii) vibration measurements shall be 1 m from any wall; and
  - (viii) vibration equipment shall be factory calibrated within six (6) months of the indoor vibration measurement.
- 6.4.4.6 For the purposes of establishing the baseline noise levels for the purposes of Table 6.4.2-1, Project Co shall calculate baseline values for each Representative Construction Noise and Vibration Sensitive Receptor using the following averages from the continuous monitoring data obtained by the measurements taken in accordance with Section 6.4.4.5:
- (a) 16-hour weekday and weekend averages from 7:00 to 23:00 to be used for the day-time baseline in Table 6.4.2-1; and
  - (b) 8-hour weekday and weekend averages from 23:00 to 7:00 to be used for the nighttime baseline in Table 6.4.2-1.
- 6.4.4.7 If Project Co and a property owner or receiver do not agree on whether to designate a particular location or property as a Construction Noise and Vibration Sensitive Receptor, Contracting Authority shall make a final determination, in its sole discretion, based on,
- (a) a review of the baseline noise and vibration measurement data for the particular property or location; and
  - (b) any evidence of susceptibility of the location or property to noise or vibration levels at or lower than the Applicable Construction Noise and Vibration Requirements.
- 6.4.4.8 Project Co shall develop additional construction noise and vibration performance requirements for any Construction Noise and Vibration Sensitive Receptors not covered by the construction noise and vibration reference applicable to the Project and listed in Appendix B – Environmental Reference Documents through,
- (a) an assessment and evaluation of the baseline measurements;
  - (b) consultation with the Construction Noise and Vibration Sensitive Receptor groups, in accordance with Schedule 18 – Communications and Public Engagement Protocol; and
  - (c) a review of the noise and vibration requirements for any sensitive equipment or operation that may be impacted by the Works, (the **“Additional Construction Noise and Vibration Sensitive Receptor Performance Requirements”**).
- 6.4.4.9 Project Co shall submit all Additional Construction Noise and Vibration Sensitive Receptor Performance Requirements, including any associated

measurement data, as a component of the Construction Noise and Vibration Management Plan as per Section 6.4.3 and Schedule 10 – Review Procedure.

#### 6.4.5 Noise and Vibration Assessment During the Construction Activities

##### 6.4.5.1 Prediction and Assessment of Construction Noise and Vibration

- (a) Project Co shall, throughout the duration of the Project, undertake ground-borne and air-borne noise and vibration assessments for Representative Construction Noise and Vibration Sensitive Receptors and the possible mitigation measures identified in the Construction Noise and Vibration Management Plan in compliance with “Construction Noise Assessment” and “Construction Vibration Assessment” methods as such terms are defined and described in the FTA Manual (as defined in Appendix B hereto), as amended from time to time.
- (b) Project Co may apply alternative and equivalent methods of assessment to the methods set out in Section 6.4.5.1(a) if such alternatives are deemed appropriate by Contracting Authority, in its sole discretion.

##### 6.4.5.2 Prior to the commencement of any Construction Activity that is at any receptor referenced in Section 6.4.4.1(d), and that is,

- (a) expected to exceed the noise exposure limits in Table 6.4.2-1 and Table 6.4.2-5;
- (b) expected to exceed a construction vibration Zone of Influence threshold for a Vibration Sensitive Structure as per Table 6.4.2-6; or
- (c) expected to last more than seven (7) days and reasonably expected to produce air-borne or ground-borne noise exceeding the ambient Leq1h due to road traffic (as measured by Project Co in accordance with MECP procedures)<sup>2</sup>

Project Co shall conduct and submit to Contracting Authority an assessment at all Representative Construction Noise and Vibration Sensitive Receptors likely to be impacted by such Construction Activity. The assessment shall include estimated ground-borne and air-borne noise and vibration, the expected duration and the mitigation measures that Project Co will apply to demonstrably minimize any impacts of noise and vibration and to meet the Applicable Construction Noise and Vibration Requirements and shall be included as a component of the Construction Noise and Vibration Management Plan in accordance with Section 6.4.3, Section 2.2.3 and Schedule 10 – Review Procedure.

##### 6.4.5.3 Prior to the use of any construction equipment on a Site, Project Co shall conduct an assessment (using either the manufacturer’s noise data or by measurement) to confirm that such equipment can and will be used in compliance with the Applicable Construction Noise and Vibration Requirements. The results of the construction equipment assessment will be documented in a technical memo and

included as a component of the Construction Noise and Vibration Management Plan in accordance with Section 6.4.3 and Schedule 10 – Review Procedure.

#### 6.4.6 Noise and Vibration Monitoring During the Construction Activities

6.4.6.1 Project Co shall continuously monitor noise in accordance with the requirements of Section 6.4.5.1 of any Construction Activity that,

- (a) is localized and where receptors are exposed to the Project's noise for more than thirty (30) days within a 6-week period;
- (b) uses processes or equipment for over 10 minutes during the daytime with a noise emission level exceeding 85 dBA; or
- (c) uses processes or equipment for over 10 minutes during the nighttime with a noise emission level exceeding 75 dBA.

6.4.6.2 If Project Co is required to undertake continuous noise monitoring in accordance with Section 6.4.6, Project Co shall ensure that such continuous noise monitoring is carried out in accordance with the following requirements:

- (a) the location of the monitor shall be adjusted in response to changes in Construction Activity to capture the highest noise exposure level;
- (b) the microphone of the monitor shall be placed between 1.5 metres and 4.5 metres above the ground level;
- (c) continuous noise monitoring shall employ Type 1 or Class 1 integrating sound level meters meeting IEC Standard 61672-1:2013;
- (d) each sound level meter shall be calibrated no later than one week prior to its initial use and no less frequently than once per month thereafter;
- (e) the frequency weighting of the sound level meter shall be set to "A" and the speed of response shall be set to "fast";
- (f) each noise monitor shall have data logging capability with recorded data;
- (g) output data shall contain for each day:
  - (i) the maximum level recorded;
  - (ii) each 10-minute average; and
  - (iii) each 16-hour daytime average (7:00 to 23:00) and each 8-hour average (23:00 to 7:00);

Project Co shall ensure that real-time monitoring data can be accessed by Contracting Authority through the EMS Software Solution in accordance with Section 5.4.6.

- 6.4.6.3 Project Co shall undertake vibration monitoring in accordance with the Construction Noise and Vibration Management Plan for structures that are within the Zone of Influence of construction related vibration and expected to experience vibration peak particle velocities in exceedance of 5 mm/s. The Zone of Influence for vibration shall be established in accordance with the methodology described in the FTA Manual (as defined in Appendix B hereto).
- 6.4.6.4 Project Co shall undertake vibration monitoring in accordance with the Construction Noise and Vibration Management Plan for any heritage attributes identified for built heritage resource or cultural heritage landscapes (as identified in the Heritage Detailed Design Report as per Section 6.6.2), art structures or other vibration-sensitive structure from any Construction Activity within the construction, staging or laydown site where construction related vibration may results in vibration peak particle velocities in exceedance of the criteria set out in Table 6.4.2-6.
- 6.4.6.5 Project Co shall prepare and submit to the Contracting Authority a weekly report describing the monitoring conducted and summarizing the data collected for the reporting period (each a “**Weekly Construction Noise and Vibration Monitoring Report**”) in accordance with Schedule 10 – Review Procedure. The Weekly Construction Noise and Vibration Monitoring Report shall contain, at a minimum, the following:
- (a) cover page with project name, monitoring report type (noise or vibration), date of monitoring;
  - (b) document information and revision history, including author, quality and independent reviewer names and signatures;
  - (c) executive summary, indicating any noise or vibration exceedances including exceedance level, date and time of exceedance, and Project Co actions to investigate and mitigate the exceedance;
  - (d) introduction, identifying the purpose of the monitoring report;
  - (e) criteria, identifying the noise or vibration criteria used for the monitoring, including both a warning (before action is taken by Project Co) and alert (action is taken by Project Co) criteria;
  - (f) data in both tabular and graphical format, identifying hourly noise and vibration levels that were monitored and those monitoring levels that exceed criteria;
  - (g) technical issues encountered during the monitoring, including equipment issues, power failures, damage/theft, or other issues that affect the monitoring or data analysis;
  - (h) further investigation, including Project Co commitments to review and investigate noise and vibration exceedances, and what mitigation



measures are to be implemented to ensure exceedances do not continue to occur;

- (i) site summaries, showing the location of the monitoring equipment, including photograph, with UTM coordinates and address location on a map; and
- (j) include a summary of any complaints received and actions taken to address said complaint as set out in Section 6.4.7.

6.4.6.6 Project Co shall develop and implement mitigation measures to address any non-conformance identified through the monitoring conducted in accordance with Section 6.4.6 in consultation with any affected Construction Noise and Vibration Sensitive Receptor and Contracting Authority. The mitigation measures proposed shall be included in the Weekly Construction Noise and Vibration Monitoring Report in accordance with Section 6.4.6.4.

#### 6.4.7 Complaints During Construction Activities

6.4.7.1 Prior to the commencement of the Works, Project Co shall develop, as a component of its Complaints Protocol detailed in Schedule 18 – Communications and Public Engagement Protocol, a process for managing and responding to noise and vibration concerns during the Project Term. This component of the Complaints Protocol shall be developed in consultation with Construction Noise and Vibration Sensitive Receptors, if applicable, and other concerned Stakeholders identified by Project Co.

6.4.7.2 Project Co shall address and respond to each complaint regarding noise or vibration received during the Construction Activities in accordance with the Complaint Protocol developed in accordance with Schedule 18 – Communications and Public Engagement Protocol. Upon receipt of a request by Contracting Authority to investigate a complaint regarding noise or vibration, Project Co shall conduct additional ground-borne and air-borne noise and vibration measurements, as required by Contracting Authority, to determine:

- (a) the source of the ground-borne and air-borne noise and vibration that is the subject of the complaint;
- (b) if the ground-borne or air-borne noise or vibration exceeds any of the limits required by the Applicable Construction Noise and Vibration Requirements; and
- (c) if mitigation measures or additional monitoring are required to confirm compliance with the Applicable Construction Noise and Vibration Requirements.

6.4.7.3 If mitigation measures or additional monitoring are required pursuant to Section 6.4.7.2(c), then Project Co shall completely define the required mitigation measures and additional monitoring, as applicable, within two (2) Business Days of the completion of additional field measurements conducted in accordance with

the request by Contracting Authority to investigate, or within a longer time frame agreed to by the Contracting Authority. Project Co shall implement the mitigation measures and additional monitoring, as applicable, in full within a timeframe agreed upon by the Parties and shall rectify any non-conformance with Applicable Construction Noise and Vibration Requirements.

6.4.7.4 Project Co shall be responsible for all costs and expenses related to any noise and vibration measurements, investigations and mitigation and monitoring measures required in accordance with Section 6.4.7.2(a) in response to the first 30 separate requests by Contracting Authority to investigate a complaint during each year.

6.4.7.5 The costs of any additional site-specific noise and vibration measurements required in any year above the number set out in Section 6.4.7.4 shall be borne by:

- (a) Project Co if the results indicate that Project Co activities were not in compliance with Applicable Construction Noise and Vibration Requirements; or
- (b) Contracting Authority, subject to and in accordance with Schedule 22 – Variation Procedure, if the results indicate that Project Co activities were in compliance with Applicable Construction Noise and Vibration Requirements.

6.4.7.6 If Contracting Authority receives complaints from the public with respect to Construction Activities that are not in compliance with Applicable Construction Noise and Vibration Requirements, then Contracting Authority may, acting reasonably, require Project Co to cancel or discontinue such Construction Activities, and Project Co shall cancel or discontinue such Construction Activities as instructed by Contracting Authority.

- (a) Project Co may re-start Construction Activities upon demonstration of compliance with this Section 6.4.7.
- (b) Project Co shall not be entitled to a Variation, Delay Event, Compensation Event or Relief Event, or any other form of relief, delay or compensation whatsoever arising from any such instruction by Contracting Authority to discontinue Construction Activities.

## **6.5 Noise and Vibration – Operations**

### **6.5.1 Operational Noise and Vibration – General**

6.5.1.1 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that the overall noise and vibration criteria and limits as per Section 6.5.2 can be achieved during the operation and maintenance of the Ontario Line Subway System.

6.5.1.2 For clarity, Project Co shall be responsible for the Project Co Infrastructure as described in the Output Specifications.

- 6.5.1.3 Prior to Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance and monitoring requirements related to noise and vibration to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.
- (a) Project Co shall undertake a predictive analysis assessment of stationary noise sources to demonstrate that the total noise emission from stationary sources meets a sound level limit in compliance with Section 6.5.2.1(d).
- 6.5.1.4 Project Co shall undertake and complete a self-assessment to demonstrate compliance with Sections 9 and 47.3 of the Environmental Protection Act (Ontario), and the requirements of O. Reg. 1/17 Registrations Under Part II.2 of the Act – Activities Requiring Assessment of Air Emissions.
- (a) Project Co shall provide a summary of the self-assessment as part of the Substantial Completion Environmental Report as per Section 5.2.7.
- (b) For clarity, Project Co is not responsible for obtaining any permits if identified in the self-assessment completed in accordance with this Section 6.5.1.4.
- 6.5.1.5 Project Co shall, design and construct the Project Co Infrastructure in compliance with the noise and vibration obligations set out in this Section 6.5, specifically:
- (i) the Operations Noise and Vibration Performance Limits set out in Section 6.5.2;
- (ii) the Environmental Reference Documents as listed in Appendix B of this Schedule 17; and
- (iii) standard industry practice for ground-borne and air-borne noise and vibration in respect to operations where a noise and vibration limit is not otherwise identified under Applicable Law or in Section 6.5.2,
- (collectively, the “**Applicable Operations Noise and Vibration Requirements**”).
- 6.5.2 Operations Noise and Vibration Performance Limits
- 6.5.2.1 Project Co shall,
- (a) comply with the system-wide, long-term maximum noise exposure objectives set out in Table 6.5.2-1 (the “**System-Wide Noise Exposure Objectives**”);
- (b) ensure that the Station fire ventilation openings comply with NPC-300 noise limits for stationary sources at the nearest point of reception, and not exceed 80 dBA at 3 m from the outdoor ventilation opening;

- (c) ensure that the Station outdoor paging system does not exceed the noise limits in NPC-300 for stationary sources at the nearest point of reception;
- (d) ensure that the total noise emission from stationary sources shall meet a sound level limit of 47dBA for daytime (07:00-23:00) operation and 42dBA for nighttime (23:00-07:00) operation at the nearest receptors;
- (e) ensure that the fire ventilation system servicing the Station complies with noise limits identified in Section 3.1.21.2(c) (*Tunnel Ventilation System*) of the Output Specifications;
- (f) ensure that the Station paging system complies with noise limits identified in Section 3.1.13.5(g) (*Acoustical Sound Levels and Acoustics*) of the Output Specifications;
- (g) Project Co shall coordinate with RSSOM Project Co to ensure the Station vibration levels from the track do not generate vibration levels greater than 2 mm/s inside the Station to address human comfort;
- (h) unless otherwise indicated, ensure that the measurements for compliance with operational indoor or outdoor noise exposure limits shall be measured as described in MECP Publication NPC-103;
- (i) unless otherwise indicated, ensure that the measurements for compliance with operational vibration limits shall be measured with equipment that meets the requirements of ISO 8041-1, ISO 10815:2016 and ISO 5348; and
- (j) unless otherwise indicated, ensure that the more stringent noise or vibration criteria, limit or requirement shall be used as the performance limit,

(collectively, the “**Operations Noise and Vibration Performance Limits**”).

Table 6.5.2-1 System-Wide Noise Exposure Objectives

[REDACTED]

### 6.5.3 Prediction and Assessment of Operations Noise and Vibration

- 6.5.3.1 Verified by predicative analysis compliance with Section 6.5.2.1(a) in accordance with ISO 9613-2 based on a sound measurement inventory of all stationary sources.
- 6.5.3.2 Project Co shall undertake ground-borne and air-borne noise and vibration assessments in compliance with MECP NPC-300 and NPC-233 in relation to noise and vibration emitted by Stationary Sources.
  - (a) Project Co shall complete an operational noise audit in accordance with MECP NPC-233 to verify compliance with MECP NPC-300 noise

criteria, using the baseline noise levels measured in accordance with Section 6.4.4.5.

- 6.5.3.3 Project Co may apply an alternative and equivalent method of assessment to the method set out in Section 6.5.3.1 if such alternative is deemed appropriate by Contracting Authority, in its sole discretion.

#### 6.5.4 Noise and Vibration Commissioning

- 6.5.4.1 Project Co shall develop and implement a noise and vibration compliance verification measurement plan for Commissioning of Project Co Infrastructure and New Third Party Infrastructure to demonstrate compliance with applicable performance limits and applicable environmental permits or approvals in accordance with Schedule 14 – Commissioning. The compliance verification noise and vibration measurements shall be representative of the applicable criteria, and be taken at the same locations, where possible, referenced in Section 6.5.2, and be representative of the worst-case sensitive points of reception surrounding the Project.
- 6.5.4.2 Test equipment, including all microphones and transducers, shall be selected appropriately to ensure they have low enough noise floors to measure levels consistent with the applicable criteria. As a minimum, Project Co shall use the following measurement equipment: Type 1 sound level meter with octave band filters and vibration transducers with sensitivities of 1 V/g.
- 6.5.4.3 Measurements shall be conducted by Project Co with consideration for the intended use of the space. Unless dictated otherwise by the use of the space, ambient noise measurements shall be performed in octave bands with the meter time constant set to fast (125 ms) response and shall be performed during ambient conditions that are representative of the intended usage of the space. Where appropriate, and consistent with its intended use, extraneous noise interruptions shall be excluded from the measurements.
- 6.5.4.4 The measured noise and vibration levels shall not exceed the Operations Noise and Vibration Performance Limits as set out in Section 6.5.2. If the Operations Noise and Vibration Performance Limits are exceeded then Project Co shall carry out remedial measures as are appropriate to reduce the noise and/or vibrations levels as applicable and then repeat the measurement in accordance with Section 6.5.4.1 to demonstration compliance.

## 6.6 Cultural Heritage

### 6.6.1 Cultural Heritage – General

- 6.6.1.1 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that that the overall cultural heritage management can be achieved during the operation and maintenance of the Ontario Line Subway System.

- 6.6.1.2 For clarity, Project Co shall be responsible for Project Co Infrastructure as described in the Output Specifications.
- 6.6.1.3 Prescribed heritage mitigation requirements are provided in Section 3.1.13.7 (*Heritage Facilities*) of the Output Specifications.
- 6.6.1.4 Prior to Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance, and monitoring requirements related to cultural heritage to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.
- 6.6.1.5 Project Co shall comply with the cultural heritage reference documents in accordance with Appendix B of this Schedule 17 and Section 2.1.
- 6.6.1.6 Contracting Authority shall prepare any required Strategic Conservation Plan(s) for built heritage resources and cultural heritage landscapes as identified in the Heritage Detailed Design Report in accordance with Section 6.6.2.
- 6.6.1.7 Contracting Authority shall prepare any required Strategic Conservation Plan(s) and any supplemental documentation as identified in Appendix C of this Schedule 17 for built heritage resources and cultural heritage landscapes as a result of Minister’s Consent Conditions in consultation with Project Co.
- (a) Project Co shall implement the recommendations of the documentation described in Section 6.6.1.7.
- 6.6.1.8 For all heritage buildings identified in Table 3.1.13.7-1 (*Overview of Heritage Buildings Scope of Work*) of the Output Specifications, Contracting Authority will complete salvage reports to identify salvageable material and/or heritage attributes prior to alteration in order to inform what building components should be retained and conserved and/or restored for all directly impacted built heritage resources and cultural heritage landscapes thirty (30) days prior to the Commencement Dates identified in Schedule 35 – Lands.
- 6.6.1.9 In accordance with Section 3.1.13.7(b) (*Heritage Documentation*) of the Output Specifications, Project Co shall submit a Heritage Documentation Package (as defined in the Output Specifications) for each heritage building which will satisfy documentation requirements described in the Heritage Detailed Design Report. Where a Heritage Documentation Package is not required, as identified in Table 6.6.1-1 below, the Contracting Authority will prepare documentation, where required.

Table 6.6.1-1: Contracting Authority Documentation Subject Sites

**[REDACTED]**

6.6.1.10 As per the Heritage Detailed Design Report, Project Co shall consider the use of salvage materials in their design as described in the salvage reports as provided by Contracting Authority in accordance with Section 6.6.1.8. Project Co shall include their rationale for use or non-use of salvage materials in their revised Heritage Detailed Design Report as per Section 6.6.2.2 and in accordance with Section 3.1.13.7 (*Heritage Facilities*) of the Output Specifications.

6.6.1.11 As per the Heritage Detailed Design Report, where permanent relocation or demolition/alteration of a built heritage resource or cultural heritage landscape is required, Project Co shall prepare an Interpretation/Commemoration Strategy Framework. These shall be included as an appendix to the Heritage Detailed Design Report for comment by the City of Toronto and include commemorative signage text to communicate the cultural heritage value of the relocated/removed structure/landscape to the public.

**6.6.2 Heritage Detailed Design Report**

6.6.2.1 Contracting Authority shall provide Project Co with the preliminary heritage detailed design report (the “**Heritage Detailed Design Report**”) in accordance with the Cultural Heritage Report (as defined in Appendix B hereto).

6.6.2.2 Project Co shall review, update and submit a revised Heritage Detailed Design Report based on final design, consistent with preliminary Heritage Detailed Design Report format, to the Contracting Authority, including all supplementary reports, and comparative requirements required based on detailed design to the Contracting Authority in accordance with Schedule 10 – Review Procedure.

(a) Project Co shall ensure that the revised Heritage Detailed Design report is prepared by a Cultural Heritage Specialist.

(b) Project Co shall comply with the mitigation measures, monitoring, and commitments made within the Heritage Detailed Design Report and all supplementary reports or any supplementary revisions.

6.6.2.3 In accordance with Section 2.2.3, Project Co shall file the revised Heritage Detailed Design Report with the MHSTCI after receipt of notification from Contracting Authority in accordance with Schedule 10 – Review Procedure.

**6.7 Archaeology****6.7.1 Archaeology Risk Management**

6.7.1.1 Project Co shall comply with the archaeological reference documents in accordance with Section 2.1.

6.7.1.2 Contracting Authority shall undertake additional archaeological assessments at the locations identified in Appendix D of this Schedule 17.

- 6.7.1.3 Project Co shall prepare and implement an archaeological risk management plan for the Works (the “**Archaeological Risk Management Plan**”). The Archaeological Risk Management Plan shall be consistent with Project Co’s obligations set out in Section 18.4 (*Items of Geological, Historical Heritage or Archaeological Interest or Value*) of the Project Agreement and shall address any recommendations resulting from Environmental Reference Documents, as identified in Appendix B of this Schedule 17 in accordance with Section 2.1, prepared for the Project.
- (a) The Archaeological Risk Management Plan shall include, at a minimum, the following requirements:
- (i) the actions required resulting from the recommendations of the Archaeological Reports identified in Appendix B of this Schedule 17 including any archaeological monitoring requirements by a Licensed Archaeologist during the Construction Activities;
  - (ii) a review of registered archaeological sites located within one kilometre of the Project footprint;
  - (iii) a process for amending the Archaeological Risk Management Plan to incorporate any additional actions required resulting from subsequent archaeological assessment reports completed;
  - (iv) a protocol to be followed if human remains are discovered which includes how Project Co will ensure that human remains are managed in compliance with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the Funeral, Burial and Cremations Services Act, 2002 (Ontario) and the Standards and Guidelines for the Conservation of Provincial Heritage Properties issued by the MHSTCI pursuant to the *Ontario Heritage Act* (Ontario);
  - (v) a protocol to be followed if previously undocumented archaeological resources are discovered which describes how Project Co will comply with Applicable Law regarding management of previously undocumented archaeological resources;
  - (vi) a process to ensure that Project Co complies with Applicable Law for the management of archaeological sites, including the City of Toronto’s Terms of Reference for archaeological assessment;
  - (vii) a process to ensure that Project Co complies with Applicable Law for the management of archaeological resources at a National Historic Site;



- (viii) a process for the involvement of Indigenous Monitors for Stage 2 Archaeological Assessment, Stage 3 Archaeological Assessment and/or Stage 4 Archaeological Assessment field work, as applicable, in accordance with Schedule 18 – Communication and Public Engagement Protocol;
  - (ix) be developed in accordance with any Indigenous Nations Engagement commitments as identified in the Archaeological Reports identified in Appendix B of this Schedule 17 as provided by Contracting Authority; and
  - (x) all public consultations will be carried out in accordance with the requirements set out in Schedule 18 – Communications and Public Engagement.
- (b) Project Co shall submit the Archaeological Risk Management Plan to Contracting Authority in accordance with Schedule 10 – Review Procedure.

## 6.8 Natural Heritage

### 6.8.1 Natural Heritage – General

- 6.8.1.1 Project Co shall carry out the Works in compliance with the Erosion and Sediment Control Plan as per Section 6.2.8.
- 6.8.1.2 Project Co shall carry out the Works in compliance with Tree Management as per Section 6.8.3, and the planting and landscape plan in accordance with the Output Specifications.
- 6.8.1.3 For Construction Activities that may result in the death of fish or the harmful alteration, disruption or destruction of fish habitat, Project Co shall complete an assessment and DFO request for review, as required.
- 6.8.1.4 Project Co shall develop and implement a salt management plan (a “**Salt Management Plan**”). The Salt Management Plan shall be submitted to Contracting Authority in accordance with Section 2.2.3 and Schedule 10 – Review Procedure.
- (a) The Salt Management Plan shall outline the best management practices for road salt use in accordance with Environmental and Climate Change Canada’s (ECCC) Code of Practice for the Environmental Management of Road Salts.
- 6.8.1.5 Project Co shall be Smart Salt certified as per the requirements of the Smart About Salt Council (SASC) Certification program.
- 6.8.1.6 Should any works be proposed below the high-water mark, Project Co shall develop an in-water works plan in accordance with the Erosion and Sediment Control Guide for Urban Construction (TRCA, 2019), as amended from time to

time and consult with the TRCA in accordance with Schedule 34 – Permits, Licences, Approvals and Agreements.

6.8.1.7 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that that the overall natural heritage management can be achieved during the operation and maintenance of the Ontario Line Subway System.

6.8.1.8 Prior to Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance, and monitoring requirements related to natural heritage in accordance with Sections 6.8.2 and 6.8.3 to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.

## 6.8.2 Endangered Species and Species-at-Risk

6.8.2.1 Project Co shall carry out the Works in compliance with the obligations set out in this Section 6.8.2 and in compliance with Permit #: CR-D-002-19 and in accordance with the Species-at-Risk framework as set out in the Metrolinx Species at Risk Framework.

(a) Throughout the Project Term, Project Co shall comply with and implement the Project Co requirements of the Metrolinx Species at Risk Framework. Project Co shall be responsible for:

(i) additional investigations and assessment of impacts associated with Project Co's design of the Project, as identified in the Metrolinx Species at Risk Framework;

(ii) adherence to the timing constraints, environmental parameters and requirements identified in the Metrolinx Species at Risk Framework, and where necessary, confirmation of timing constraints, environmental parameters and requirements in consultation with Contracting Authority and the appropriate Governmental Authority;

(iii) preparation of all documentation and deliverables identified in the Metrolinx Species at Risk Framework;

(iv) monitoring and associated reporting as identified in the Metrolinx Species at Risk Framework;

(v) decommissioning and inspection activities as identified in the Metrolinx Species at Risk Framework and any required or associated corrective actions and reports.

(b) Project Co shall submit to Contracting Authority a Species-at-Risk handover report (the "**Species at Risk Handover Report**") in

accordance with Schedule 10 – Review Procedure. The Species at Risk Handover Report shall include:

- (i) the status of Works related to Species-at-Risk, including Works completed and to be completed prior to the end of the Project Term; and
- (ii) all conditions identified in the Metrolinx Species at Risk Framework that are the responsibility of Project Co.

6.8.2.2 If required, Project Co shall obtain any and all necessary approvals, clearances or permits required under the Endangered Species Act (Ontario MECP), the Fish and Wildlife Conservation Act (Ontario MNRF), the Species at Risk Act (Canada ECCC), Migratory Birds Convention Act (ECCC), the Fisheries Act (DFO) or from the TRCA and shall provide any required protection, mitigation, compensation or monitoring required to adhere to such approvals, clearances or permits, and shall provide any supplementary documentation or reporting needed to achieve compliance with such approvals, clearances or permits, except where such obligations are set out specifically as Contracting Authority Environmental Commitments.

6.8.2.3 During detailed design, if it is determined that a suitable habitat to support identified Species-at-Risk exists within the Metrolinx Lands, Project Co shall complete targeted surveys to confirm the presence or absence of the Species-at-Risk listed in Table 6.8.2-1 as required in compliance with the Metrolinx Species at Risk Framework.

Table 6.8.2-1 Species-at-Risk Identified within Proposed Metrolinx Lands

**[REDACTED]**

### 6.8.3 Tree Management

6.8.3.1 Project Co shall be responsible for tree protection and management on the Lands until Substantial Completion, including compliance with all Applicable Law, Environmental Reference Documents and the Project Agreement.

- (a) Where applicable, Project Co shall be responsible for tree protection and management in accordance with the municipal and permit requirements as per Schedule 34 – Permits, Licences, Approvals and Agreements, and the recommendations of an Arborist as documented through an arborist report or tree protection plan.
- (b) Project Co shall determine the required compensatory activities related to all permitting requirements, as per the Metrolinx Vegetation Guidelines.
- (c) Project Co shall be responsible for costs associated with compensatory activities for the Works except for Moss Park and Osgoode Hall Station sites.

- (d) Contracting Authority will be responsible for costs associated with all compensatory activities at Moss Park and Osgoode Hall Station sites.
- 6.8.3.2 Project Co shall engage an Arborist to develop an arborist report for the Metrolinx Lands that are owned by Metrolinx (the “**Arborist Report – Metrolinx Lands**”) that includes,
- (a) a detailed inventory of all trees on the Metrolinx Lands as of Commercial Close, including,
- (i) a description of the type of tree and the GPS location of tree; and
- (ii) a clear indication of whether each tree will be removed, protected, or left as is by Project Co during the course of the Works; and
- (b) for the trees that Project Co intends to protect during the course of the Works, a description of Project Co’s protection measures to ensure that the trees will be preserved and undamaged.
- 6.8.3.3 Project shall engage an Arborist to develop an arborist report for Lands that are not Metrolinx Lands or Metrolinx Lands that are not owned by Metrolinx (the “**Arborist Report – Third Party Lands**”) which
- (a) meets the requirements of applicable municipal by-laws;
- (b) is developed in accordance with the municipalities’ requirements and Schedule 34 – Permits, Licences, Approvals and Agreements;
- (c) provides a detailed inventory of all trees on the Lands (other than Metrolinx Lands) as of Commercial Close, including,
- (i) a description of the type of tree and the GPS location of tree; and
- (ii) a clear indication of whether each tree will be removed, protected, or left as is by Project Co during the course of the Works; and
- (d) for the trees that Project Co intends to protect during the course of the Works, a description of Project Co’s protection measures to ensure that the trees will be preserved and undamaged.
- 6.8.3.4 Project Co shall submit the Arborist Report – Metrolinx Lands and the Arborist Report – Third Party Lands to Contracting Authority in accordance with Schedule 10 – Review Procedure.
- 6.8.3.5 Project Co shall include a tree end use section within the Arborist Report – Metrolinx Lands or the Arborist Report – Third Party Lands in accordance with Section 6.8.3.2 or Section 6.8.3.3, as applicable, for trees located within the Osgoode Hall and Moss Park properties. The Arborist shall assign a high,

medium or low value to each tree inventoried in accordance with the Metrolinx Vegetation Guideline (2020).

- (a) Project Co shall include a timeline for tree removal as a component of the Project Work Schedules in accordance with Schedule 12 – Work Schedules Requirements.
- (b) Project Co shall provide sixty (60) days Notice to Contracting Authority prior to felling of high value trees.
- (c) Project Co shall cut trees identified as high value, as per the Arborist Report – Metrolinx Land or Arborist Report – Third Party Lands, as applicable, to a maximum section length of 5 m, or longest possible length, for use by community groups. Project Co shall salvage high value trees for this purpose.
- (d) Project Co shall store the high value logs on the Site in a designated laydown area identified by Project Co. Project Co shall notify the Contracting Authority for collection of the logs.
  - (i) Contracting Authority will collect the logs within twenty (20) Business Days of notification to Contracting Authority. If the logs are not collected within this timeframe, or at an alternate agreed-to timeframe, Project Co shall have no obligation to maintain the logs on the Site.
- (e) Project Co may use trees that are not identified as high value for innovative sustainability ideas or design solutions in accordance with the Output Specifications.

6.8.3.6 For Lands that are not Metrolinx Lands or Metrolinx Lands that are not owned by Metrolinx, Project Co shall obtain all tree removal/injury permits from the City of Toronto that are required to perform the Works in accordance with Appendix B of Schedule 34 – Permits, Licences, Approvals and Agreements. Project Co shall ensure that Contracting Authority is kept apprised of all discussions and agreements respecting tree and vegetation replacement and compensation with municipalities.

6.8.3.7 Throughout the Project Term, Project Co shall continuously manage and update a tracker that includes a detailed inventory of all trees on the Metrolinx Lands and Third Party Lands that are greater than 10 cm diameter at breast height and that have been removed during the Project Term, including a description of the type of tree and the GPS location of tree (the “**Tree Tracker**”). Project Co shall provide such list to Contracting Authority upon request by Contracting Authority in accordance with Schedule 10 – Review Procedure.

- (a) Project Co shall provide updates on permitting and tree compensation requirements as part of the Monthly Environmental Report in accordance with Section 5.2.2 and Schedule 10 – Review Procedure.

**6.9 Air Quality During Construction****6.9.1 Air Quality During Construction – General**

6.9.1.1 Project Co shall meet all applicable regulatory requirements and standards regarding air emissions, including fugitive dust and odour, during the performance of the Works, and shall:

- (a) comply with all applicable Environmental Approvals and Permits, Licences, Approvals and Agreements as they relate to air quality management, including when designing, purchasing and operating equipment;
- (b) implement measures for managing the Project’s constructed-related air emissions, including fugitive dust and odour; and
- (c) if any Applicable Construction Air Quality Criteria and Limits are exceeded, implement mitigation measures to achieve compliance with the Applicable Construction Air Quality Criteria and Limits.

**6.9.2 Applicable Construction Air Quality Criteria and Limits**

6.9.2.1 In carrying out the Works, Project Co shall ensure that ambient particulate matter generated from construction activities complies with:

- (a) Ontario Regulation 419/05 for Air Pollution – Local Air Quality (O. Reg. 419/05)
- (b) Ontario Ambient Air Quality Criteria (AAQC), published by MECP and updated April 2019;
- (c) The Canadian Ambient Air Quality Standards (CAAQS), published by CCME, and dated 2017; and
- (d) Metrolinx mitigation threshold for construction projects shown in Table 6.9.2-1,

(collectively, the “**Applicable Construction Air Quality Criteria and Limits**”).

Table 6.9.2-1 Applicable Construction Air Quality Criteria and Mitigation Thresholds for PM2.5, PM10 and Silica

**[REDACTED]**

6.9.2.2 Project Co shall ensure that odours from sulfur-containing and other odour producing substances are controlled to meet the 10-minute odour standards in the Ontario Ambient Air Quality Criteria or Schedule 3 of O. Reg. 419/05, made under the Environmental Protection Act (Ontario).

6.9.2.3 Project Co shall ensure that other contaminants generated from construction activities, such as combustion gases from vehicles/equipment used for

construction, meet Applicable Construction Air Quality Criteria and Limits. All off-road diesel-powered equipment used during the Project must meet the Canadian Non-Road (Off-Road) Compression Ignition Engine Exhaust Emission Standards or Canadian Non-Road (Off-Road) Spark Ignition Engine Exhaust Emission Standards. These standards are aligned with corresponding US EPA standards.

- 6.9.2.4 All road vehicles will meet applicable Canadian road vehicle exhaust and evaporative emission standards. Project Co shall maintain diesel and electric equipment and their emission control systems to manufacturers' specifications.

6.9.3 Construction Air Quality Management Plan

- 6.9.3.1 Project Co shall submit a detailed and comprehensive air quality management plan (“**Construction Air Quality Management Plan**”) for all Construction Activities to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure.

- 6.9.3.2 The Construction Air Quality Management Plan shall include Site-specific sections to address local conditions and will include a description of Project Co's mitigation and dust control measures for each and all Construction Activities to demonstrate conformance, as practical, to recognized standard specifications as outlined in the Best Practices for the Reduction of Air Emissions from Construction and Demolition Activities (Environment Canada, 2005), as amended from time to time, and in accordance with the Metrolinx Environmental Guide for Air Quality and Greenhouse Gas Emissions Assessment (2019), as amended from time to time.

- 6.9.3.3 The Construction Air Quality Management Plan shall include, at a minimum, the following:

- (a) a description of the Construction Activity(ies) and conditions with the potential to result in the generation or dispersion of airborne particulate matter or other airborne contaminants including crystalline silica, that are identified to exceed [REDACTED]% of the criteria limit as set out in Table 6.9.2-1 as determined in accordance with Sections 6.9.2 and 6.9.4;
- (b) a description of potential environmental impacts, nuisance impacts and impacts on human health and safety of the contaminants;
- (c) identify specific air quality objectives relevant to the Project identified in Table 6.9.2-1 and as outlined in the Metrolinx Environmental Guide for Air Quality and Greenhouse Gas Emissions Assessment (2019), as amended from time to time;
- (d) based on air dispersion modelling or other scientific approaches consistent with the requirements of O. Reg. 419/05 and in accordance with Metrolinx Environmental Guide for Air Quality and Greenhouse Gas Emissions Assessment (2019), as amended from time to time. Project Co's estimation of the potential worst-case air quality impacts of

the Works on lands within a 500 m radius of the boundaries of the Site (“**Construction Air Quality Impact Zone**”);

- (e) identification of all sensitive receptors (such as residences, daycare, schools, hospitals, senior housing) within the Construction Air Quality Impact Zone per Best Practices for the Reduction of Air Emissions from Construction and Demolition Activities (Environment Canada, 2005) and Metrolinx Environmental Guide for Air Quality and Greenhouse Gas Emissions Assessment (2019), both as amended from time to time;
- (f) a description of the existing conditions baseline air sampling and monitoring program in accordance with Section 6.9.4.1;
- (g) provide Project Co’s procedures for identification of warning and alert levels to identify an increase in emissions that results in approaching the Applicable Construction Air Quality Criteria and Limits;
- (h) provide Project Co’s procedure for the stop work process if the Applicable Construction Air Quality Criteria and Limits are exceeded including identification and implementation of mitigation measures;
- (i) establish protocols for documenting, reporting and addressing public complaints in accordance with Section 6.9.5;
- (j) a list of mitigations to be implemented by Project Co for each and all major Construction Activity in order to reduce, control and manage emissions to prevent the discharge of airborne particulate matter, fugitive dust and other airborne contaminants to offsite areas, including,
  - (i) relevant best practices per Construction Activity from the Best Practices for the Reduction of Air Emissions from Construction and Demolition Activities, published by Environment Canada, dated 2005, as amended from time to time; and
  - (ii) the best practices set out in Section 6.9.6; and
- (k) including measures required by any and all of the Environmental Reference Documents in accordance with Appendix B of this Schedule 17 and Section 2.1.

#### 6.9.4 Air Quality Monitoring Requirements – Construction Activities

6.9.4.1 Project Co shall develop and implement an existing conditions baseline air sampling program prior to commencement of construction and a monitoring program during construction to,

- (a) establish air monitoring and sampling methods, locations and frequencies of air contaminants; the rationale for the choice of such methods, locations and frequencies; and any changes that will be made to such methods, locations and frequencies over the duration of the Project for any contaminant;



- (b) establish protocols for action items when relevant air quality criteria are exceeded, such as investigation procedures, mitigation measures and timeframes to implement;
  - (c) establish reporting requirements and timeframes, such as, reporting to Metrolinx any exceedance of any continuously monitored ambient air quality objective at any location within one hour of the occurrence; reporting of an exceedance of a non-continuously monitored contaminant will be made within 24-hours of receipt of the data;
  - (d) prior to the commencement of any Demolition or other Construction Activities, establish an existing conditions level by monitoring air contaminants typically generated from Construction Activities with known health hazards, including particulate matter within the Construction Air Quality Impact Zone. The existing conditions air quality should be measured over a minimum period of one week prior to construction activities, where large local sources of pollution, such as highways directly affect the zone of influence of the Project; and
  - (e) monitoring of particulate matter and other contaminants in the air during and following Demolition and any other Construction Activities in the Construction Air Quality Impact Zone.
- 6.9.4.2 No later than thirty (30) days following Financial Close, Project Co shall develop, as a component of the Complaints Protocol set out in Schedule 18 – Communication and Public Engagement Protocol, a process for managing and responding to air quality concerns during the Project Term. This component of the Complaints Protocol shall be developed in consultation with concerned Stakeholders identified by Project Co.
- 6.9.4.3 For Construction Activities that take place on a specific Site for fewer than thirty (30) consecutive days over a 6 week period, and that have the potential to exceed the Applicable Construction Air Quality Criteria and Limits, Project Co shall ensure that there are no visible dust emissions discharged into the atmosphere beyond the geographical boundaries of the Site. Dust shall be considered “visible” if opacity at a geographical boundary of the Site exceeds [REDACTED]% for more than 3 minutes during any 60-minute period, as measured with a calibrated opacity meter.
- 6.9.4.4 For longer-term Construction Activities that take place on a specific Site for a minimum of thirty (30) or more consecutive days within a 6-week period, and that have the potential to exceed the Applicable Construction Air Quality Criteria and Limits, Project Co shall continuously and simultaneously monitor PM2.5 and PM10 over the course of the performance of the Construction Activities in order to assess compliance with the Applicable Construction Air Quality Criteria and Limits in accordance with the following:
- (a) Project Co shall log data frequently, and at a maximum of fifteen-minute intervals and the monitoring instrument shall have an accuracy of  $\pm$ [REDACTED]%;

- (b) Project Co shall ensure that Contracting Authority Representative receives real-time e-mail alerts of any exceedances of the Applicable Construction Air Quality Criteria and Limits for PM2.5, PM10 and any other air contaminant being monitored; and
  - (c) Project Co shall ensure that all historical and real-time monitoring data are available and can be accessed by Contracting Authority through the EMS Software Solution in accordance with Section 5.4.7.
- 6.9.4.5 Project Co shall prepare and submit to the Contracting Authority Representative, for information, a weekly report describing the monitoring conducted and data collected in accordance with Section 6.9.4 as well as instrument calibration data (“**Weekly Construction Air Quality Monitoring Report**”). Project Co shall submit each Weekly Construction Air Quality Monitoring Report to the Contracting Authority Representative in accordance with the time frame set out Schedule 10 – Review Procedure.
- 6.9.4.6 Project Co shall develop and implement air quality mitigation measures to address any non-conformance with the Applicable Construction Air Quality Criteria and Limits in consultation with Contracting Authority.
- 6.9.5 Complaints During Construction Activities
  - 6.9.5.1 Project Co shall address and respond to each complaint regarding air quality arising from the Works in accordance with the Complaints Protocol developed in accordance with Schedule 18 – Communication and Public Engagement Protocol. Upon receipt of a request by Contracting Authority to investigate a complaint regarding air quality, Project Co shall conduct additional air quality investigations and measurements, as required by Contracting Authority, in order to determine:
    - (a) the source of the air quality issue that is the subject of the complaint;
    - (b) if concentration of the contaminant of concern exceeds any of the Applicable Construction Air Quality Criteria and Limits; and
    - (c) if mitigation measures or additional monitoring are required to confirm compliance with the Applicable Construction Air Quality Criteria and Limits.
  - 6.9.5.2 If mitigation measures or additional monitoring are required pursuant to Section 6.9.4.1(e), then Project Co shall completely define the required mitigation measures and additional monitoring, as applicable, within two (2) Business Days following Project Co’s completion of additional air quality investigations and measurements required by Contracting Authority, or within a longer timeframe that may be agreed to by the Parties. Project Co shall implement the mitigation measures and additional monitoring, as applicable, in full within a timeframe agreed upon by the Parties and shall rectify any non-conformance with Applicable Construction Air Quality Criteria and Limits.

- 6.9.5.3 Project Co shall be responsible for all costs and expenses related to any air quality measurements and investigations and mitigation and monitoring measures required in accordance with Section 6.9.5.1(b) in response to the first 30 separate requests by Contracting Authority to investigate a complaint during each year.
- 6.9.5.4 The costs of any additional site-specific air quality measurements required in any year above the number set out in Section 6.9.5.3 shall be borne by:
- (a) Project Co if the results indicate that Project Co did not comply with Applicable Construction Air Quality Criteria and Limits; or
  - (b) Contracting Authority, subject to and in accordance with Schedule 22 – Variation Procedure, if the results indicate that Project Co activities were in compliance with Applicable Construction Air Quality Criteria and Limits.
  - (c) If Contracting Authority receives complaints from the public with respect to Construction Activities that are not in compliance with Applicable Construction Air Quality Criteria and Limits, then Contracting Authority may, in its sole discretion, require Project Co to cancel or discontinue such Construction Activities, and Project Co shall cancel or discontinue such Construction Activities as instructed by Contracting Authority.
- 6.9.6 Equipment and Best Practice Requirements
- 6.9.6.1 Project Co shall ensure that all diesel fuel and gasoline powered on-road and off-road equipment meet applicable exhaust and evaporative exhaust emission standards established pursuant to O. Reg. 457/19, and the Off-Road Compression-Ignition Engine Emissions Regulations (SOR/2005-32), as amended from time to time, and are maintained in accordance with the applicable manufacturer's specifications.
- 6.9.6.2 Project Co shall coordinate its air pollution management and noise mitigation measures for maximum effectiveness, so as to ensure that the use of noise walls, curtains, enclosures and other potential noise control methods are also effective for air pollution control where possible.
- 6.10 Air Quality During Operations**
- 6.10.1 Air Quality During Operations – General
- 6.10.1.1 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that the overall air quality criteria and limits as per Section 6.10.2 can be achieved during the operation and maintenance of the Ontario Line Subway System.
- 6.10.1.2 For clarity, Project Co shall be responsible for the Project Co Infrastructure as described in the Output Specifications.

- 6.10.1.3 Prior to Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance and monitoring requirements related to air quality to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.
- 6.10.1.4 Project Co shall:
- (a) undertake and complete a self-assessment to demonstrate compliance with Section 9 of the Environmental Protection Act (Ontario), the requirements of O. Reg. 419/05 Air Pollution and Local Air Quality and the requirements of O. Reg. 1/17 Registrations Under Part II.2 of the Act - Activities Requiring Assessment of Air Emissions.
    - (i) Project Co shall provide a summary of the self-assessment as part of the Substantial Completion Environmental Report as per Section 5.2.7.
    - (ii) For clarity, Project Co is not responsible for obtaining any permits if identified in the self-assessment completed in accordance with this Section 6.10.1.4.
  - (b) comply with all applicable Environmental Approvals and Permits, Licences, Approvals and Agreements as set out in Schedule 34 – Permits, Licences, Approvals and Agreements as they relate to air quality management when designing, purchasing and operating equipment;
  - (c) comply with all applicable records of site condition and certificate of property use based on property impacts determined by Project Co design in accordance with Section 6.2.2.1;
  - (d) design and construct the Project Co Infrastructure to include measures for managing vapour intrusion of Hazardous Substances or seepage of Hazardous Substance into Project Co Infrastructure.
  - (e) implement measures for managing Project-related air emissions including fugitive dust, odour,
  - (f) implement measures for preventing and managing vapour intrusion of Hazardous Substances or seepage of Hazardous Substances into Project Co Infrastructure from soil or groundwater contamination; and
  - (g) design the Project Co Infrastructure to be in compliance with the Applicable Operations Air Quality Criteria and Limits in accordance with Section 6.10.2.1.

## 6.10.2 Applicable Operations Air Quality Criteria and Limits

- 6.10.2.1 Project Co shall design the Project Co Infrastructure to ensure that ambient air quality complies with:
- (a) Ontario Regulation 419/05 for Air Pollution - Local Air Quality;
  - (b) Ontario Ambient Air Quality Criteria, published by MECP, and updated April 2019; and
  - (c) The Canadian Ambient Air Quality Standards, published by CCME, and dated 2017,
- (collectively, the “**Applicable Operations Air Quality Criteria and Limits**”).

## 6.10.3 Equipment and Best Practice Requirements

- 6.10.3.1 Project Co shall design and construct the Project Co Infrastructure so that mitigation measures for minimizing air quality emissions during the performance of operations are in accordance with Metrolinx Environmental Guide for Air Quality and Greenhouse Gas Emissions Assessment (2019).
- 6.10.3.2 Project Co shall ensure that all new equipment complies with Canadian emissions standards applicable to new equipment at the time of purchase.

**6.11 Other Environmental Components**

## 6.11.1 Light Pollution

- 6.11.1.1 Project Co shall assign lighting zone designations for the Site and all adjacent areas that may be impacted by the Work in accordance with ANSI Recommended Practice in order to determine the ratings that apply to each lighting zone, as further set out in this Section 6.11.1.
- 6.11.1.2 Project Co shall undertake all mitigation measures that may be required in order to:
- (a) prevent areas with lower lighting zone designations from being impacted by the Work occurring in areas with higher lighting zone designations; and
  - (b) minimize light trespass or to address visibility problems caused by eye adaptation when transitioning from a brightly lit area to a more dimly lit area.
- 6.11.1.3 If Project Co uses outdoor luminaires in a lighting zone, such luminaires shall not, where reasonably practicable, exceed the ratings shown in Table 6.11.1-1, Table 6.11.1-2 and Table 6.11.1-3 that are applicable to such lighting zone.

Table 6.11.1-1 MLO Recommended Uplight Ratings for Light Zones

Lighting Zones	Recommended Uplight Rating
LZ-0	U0
LZ-1	U1
LZ-2	U2
LZ-3	U3
LZ-4	U4

Table 6.11.1-2 MLO Recommended Backlight Ratings for Light Zones

Location of Luminaire from the Property Boundary	Lighting Zone and Recommended Backlight Rating				
	LZ-1	LZ-1	LZ-2	LZ-3	LZ-4
Greater than 2 mounting heights	B1	B3	B4	B5	B5
1 to less than 2 mounting heights and ideally oriented	B1	B2	B3	B4	B4
0.5 to 1 mounting heights and ideally oriented	B0	B1	B2	B3	B3
Less than 0.5 mounting heights and ideally oriented	B0	B0	B0	B1	B2

Table 6.11.1-3 MLO Maximum Allowable Glare Ratings for Light Zones

Orientation and Location of Luminaire	Lighting Zone and Maximum Allowable Glare Rating				
	LZ-1	LZ-1	LZ-2	LZ-3	LZ-4
Luminaire ideally oriented	G0	G1	G2	G3	G4
Luminaire not ideally oriented and 1 to 2 mounting heights from property line of concern	G0	G0	G1	G1	G2
Luminaire not ideally oriented and 0.5 to 1 mounting heights from property line of concern	G0	G0	G0	G1	G1
Luminaire not ideally oriented and less than 0.5 mounting heights from property line of concern	G0	G0	G0	G0	G1

- 6.11.1.4 If adherence to ratings set out in Table 6.11.1-1, Table 6.11.1-2 and Table 6.11.1-3 is not reasonably practicable, Project Co shall not be permitted to use outdoor luminaires, other than full cut-off outdoor luminaires for temporary nighttime illumination.
- 6.11.1.5 Project Co shall not exceed the maximum initial vertical illuminance spill light from exterior lighting recommended for a lighting zone, as recommended by ANSI Recommended Practice.
- 6.11.1.6 Project Co shall mitigate sources of glare to observers within line of sight of light sources on construction work areas. Mitigation methods may include one or several options such as using an internal or external shield of light source,

adjusting mounting heights, decreasing source lumens, using luminaires with low-G BUG ratings, or dimming light sources.

- 6.11.1.7 Project Co shall provide a summary of lighting mitigation implemented by Project Area as part of the Monthly Environmental Report in accordance with Section 5.2.2 and Schedule 10 – Review Procedure.

## APPENDIX A-1 TO SCHEDULE 17

**CONTRACTING AUTHORITY ENVIRONMENTAL COMMITMENTS**

Excerpted from Ontario Line Project,  
Environmental Impact Assessment Report

I.D.#	EIAR Commitment	Notes
<b>1.0</b>	<b>Cultural Heritage</b>	
1.1	In the case of properties identified as Provincial Heritage Property of Provincial Significance and where the proposed project infrastructure shall require demolition or removal and/or transfer out of provincial control, Metrolinx shall need to obtain Ministry of Heritage, Sport, Tourism, and Culture Industries (MHSTCI) Minister’s consent.	
1.2	The Minister’s Consent Package shall be prepared which meets MHSTCI requirements and satisfy Metrolinx’s obligations under the <i>Ontario Heritage Act</i> (Ontario).	
<b>2.0</b>	<b>Property</b>	
2.1	The property acquisition process shall emphasize the achievement of a mutually satisfactory agreement between Metrolinx and the owner. Only when negotiation has not produced an agreement and the property is required for construction to begin, shall Metrolinx initiate expropriation. The property acquisition process and resulting compensation is intended to leave the affected owner “whole”, thereby mitigating any negative impacts.	
2.2	Prior to construction, soil and groundwater investigations shall be considered along project alignment, including Phase II Environmental Site Assessments for property acquisitions.	
<b>3.0</b>	<b>Land Use Access and Disruption</b>	
3.1	Metrolinx to communicate all changes associated with land use access to impacted properties throughout the duration of the construction phase.	



I.D.#	EIAR Commitment	Notes
3.2	The property acquisition process shall emphasize the achievement of a mutually satisfactory agreement between Metrolinx and the owner. Only when negotiation has not produced an agreement and the property is required for construction to begin, shall Metrolinx initiate expropriation. The property acquisition process and resulting compensation is intended to leave the affected owner “whole”, thereby mitigating any negative impacts.	
3.3	Metrolinx shall inform the City of Toronto, communities, residents, business owners and institutions (e.g., school boards) directly impacted by new construction. Specific mitigation measures shall be developed once property impacts are further refined and confirmed.	
<b>4.0</b>	<b>Visual Effects from Construction Areas/Activities</b>	
4.1	Metrolinx shall consider maintenance of vegetation to the extent possible during construction and replanting of vegetation to maintain natural buffers where appropriate and feasible.	

## APPENDIX A-2 TO SCHEDULE 17

**SHARED ENVIRONMENTAL COMMITMENTS**

Excerpted from Ontario Line Project,  
Environmental Impact Assessment Report

I.D.#	EIAR Commitment	Notes
<b>1.0</b>	<b>Road Network</b>	
1.1	Traffic signal timing optimization may be assessed/implemented to increase capacity of affected intersections and to aid in the movement of traffic. Traffic signal timing adjustments would require coordination between Metrolinx and the relevant municipality, and shall be undertaken if required, to determine appropriate changes to traffic signal timings.	
<b>2.0</b>	<b>Socio-Economic and Land Use</b>	
2.1	Access to driveways and side streets shall be restored to the greatest extent possible if any changes are required. Where restoration could not be completed and if required, Metrolinx shall conduct further investigations and negotiate with the affected property owner.	
2.2	Continue to consult with the City of Toronto and TRCA on impacts to parkland and natural areas as the Project progresses	
2.3	Municipality and public engagement as Project planning and design progresses.	
2.4	Coordinate design and construction with the City of Toronto regarding the planned redevelopment of Moss Park.	
2.5	Metrolinx shall inform the City of Toronto, communities, residents, business owners and institutions (e.g., school boards) directly impacted by new construction. Specific mitigation measures shall be developed once property impacts are further refined and confirmed.	
2.6	Metrolinx shall replant vegetation to maintain natural buffers, where appropriate and feasible.	

I.D.#	EIAR Commitment	Notes
2.7	Metrolinx shall maintain vegetation to the extent possible and replanting of vegetation to maintain natural buffers where appropriate and feasible.	
2.8	Ongoing coordination with the City of Toronto shall be required to ensure the integration of Moss Park Station, Leslieville Station, and Gerrard Station with existing parkland and open spaces.	
2.9	Metrolinx shall follow Design Excellence principles and guidelines to ensure that all new infrastructure is constructed to a high visual standard and enhances the surrounding area.	
2.10	Municipality and public engagement as Project planning and design progresses.	
<b>3.0</b>	<b>Consultation</b>	
3.1	Contracting Authority may request Project Co to assist or support Contracting Authority’s Indigenous Nations Engagement. If and where Contracting Authority determines that there is a duty to consult an Indigenous Nation, that duty lies with Contracting Authority. Contracting Authority may request Project Co to assist or support such consultation with Indigenous Nations.	

## APPENDIX A-3 TO SCHEDULE 17

**PROJECT CO'S GENERAL ENVIRONMENTAL COMMITMENTS**

Excerpted from Ontario Line Project,  
Environmental Impact Assessment Report

**Table 1: Required Environmental Mitigation Measures**

I.D.#	EIAR Commitment
<b>1</b>	<b>Natural Environment</b>
1.1	Compensation for tree removals shall be undertaken in accordance with provisions outlined in the Metrolinx Vegetation Guideline (2020). Adhere to all applicable by-laws and regulations for tree removals outside of Metrolinx properties.
1.2	Further consideration to minimize potential effects on Toronto and Region Conservation Authority's Terrestrial Natural Heritage System to the extent possible shall be undertaken during detailed design.
1.3	Compensation for the removal of vegetation in accordance with Metrolinx's Vegetation Guideline (2020) and integrated Vegetation Management approach shall consider maintaining or enhancing connectivity.
1.4	Vegetation removal shall be kept to a minimum and limited to within the construction footprint.
1.5	Construction fencing and/or silt fencing, where appropriate, shall be installed and maintained to clearly define the construction footprint and prevent accidental damage or intrusion to adjacent vegetation or Ecological Land Classification communities.
1.6	Provide compensation for the removal of vegetation in accordance with Metrolinx's Vegetation Guideline (2020) and Integrated Vegetation Management approach.
1.7	Temporarily disturbed areas shall be re-vegetated using non-invasive, preferably native plantings and/or seed mix appropriate to the site conditions and adjacent vegetation communities. Seed mixes shall be used in conjunction with an appropriate non-invasive cover crop as needed.
1.8	Vegetation removals shall also consider and mitigate potential impacts to sensitive species (e.g., migratory birds and Species at Risk) and features (e.g., Significant Wildlife Habitat). Refer to the Wildlife, Significant Wildlife Habitat and Species at Risk mitigation measures described below.
1.9	An Arborist Report by an I.S.A. Certified Arborist may be prepared with regard to the Ontario Forestry Act R.S.O. 1990, and other regulations and best management practices as applicable.
1.10	The Arborist Report may include, but not be limited to the individual identification of trees within the Study Area including those that require removal or preservation, or trees that may be injured as a result of the Project. Trees to be identified within the Study Area may include those on Metrolinx property, trees on public and private lands, and boundary trees. The City of Toronto by-laws dictate the minimum area buffers to be inventoried and Diameter at Breast Height (DBH) which requires inventory.

I.D.#	EIAR Commitment
1.11	The Arborist Report shall include information needed to establish compensation ratios and tree end use (including identification of high value trees) as per the Metrolinx Vegetation Guideline (2020b).
1.12	Prior to the undertaking of tree removals, a Tree Removal Strategy / Tree Preservation Plan shall be developed during detailed design to document tree protection and mitigation measures that follow the City of Toronto Tree Protection Policy and Specifications for Construction Near Trees Guidelines (2016) and adherence with best practices, standards and regulations on safety, environmental and wildlife protections.
1.13	Pruning of branches shall be conducted through the implementation of proper arboricultural techniques.
1.14	Tree Protection Zone fencing shall be established to protect and prevent tree injuries. Tree Protection Zones shall be clearly staked prior to construction using barriers in accordance with local by-law requirements.
1.15	Stockpiled materials or equipment shall be stored within the construction footprint but shall be kept at least 30 metres away from any watercourse. Signs shall be put up on site to indicate the 30 metres setback from any watercourse.
1.16	A Spill Prevention and Contingency Plan shall be developed and adhered to. Spills shall be immediately contained and cleaned up in accordance with provincial regulatory requirements and the contingency plan.
1.17	Refueling of equipment shall occur at least 30 metres away from any watercourse, where possible. Signs shall be put up on site to indicate the 30 metres setback from any watercourse.
1.18	All machinery, construction equipment and vehicles arriving on site should be in clean condition (e.g., free of fluid leaks, soils containing seeds of plant material from invasive species) and be inspected and washed in accordance with the Clean Equipment Protocol for Industry (Halloran et al., 2013) prior to arriving and leaving the construction site in order to prevent the spread of invasive species to other locations.
1.19	If wildlife is encountered, measures shall be implemented to avoid destruction, injury, or interference with the species, and/or its habitat. For example, construction activities shall cease or be reduced and wildlife shall be encouraged to move off-site and away from the construction area on its own. A qualified Biologist shall be contacted to define the appropriate buffer required from wildlife.
1.20	Prior to construction, investigation of the Project footprint for wildlife and wildlife habitat that may have established following the completion of previous surveys shall be undertaken, as appropriate.
1.21	Work within turtle habitat shall be planned in consideration of turtle overwintering period which occurs from October 1 to April 30 in any given year. It is also possible that turtle surveys would need to be conducted prior to the work.
1.22	Post-construction habitat restoration shall be implemented as required.

I.D.#	EIAR Commitment
1.23	Where project activity occurs adjacent to suitable snake hibernacula, exclusionary fencing shall be erected along the activity area to fully isolate the area of activity during the active snake season. In the event that exclusionary fencing cannot be installed, follow-up discussions with the Ministry of the Environment, Conservation and Parks and the Ministry of Natural Resources and Forestry (Ministry of Natural Resources and Forestry) shall be required to determine adequate alternative mitigation measure(s).
1.24	For areas where the hibernacula feature requires removal to facilitate development, the exclusion fencing is to be installed during the active snake season and prior to any construction activities commencing to prevent snakes from entering the feature pre-removal. Any snakes encountered within the exclusion fencing shall be relocated outside the fencing and within suitable habitat containing suitable vegetation cover / refuge by a qualified biologist in accordance with the required permit(s) in accordance with the Ministry of Natural Resources and Forestry's Reptile and Amphibian Exclusion Fencing (2013).
1.25	Demolition of buildings should be scheduled outside of the breeding bird season of April 1 to August 31. If this is not possible and buildings must be demolished during this period, the following shall be completed:  The roofs shall be checked for presence of gravel. If gravel is not present, then the building is unlikely to provide suitable nesting habitat for Common Nighthawk. If gravel is present, a search for eggs and nesting activity for Common Nighthawk on the roof shall be conducted. If nests or nesting activity of Common Nighthawk are confirmed, the building cannot be demolished until it is confirmed by a Qualified Biologist that young have fully fledged and left the nest.
1.26	All works must comply with the Migratory Birds Convention Act, including timing windows for the nesting period (April 1 to August 31 in Ontario).
1.27	If activities are proposed to occur during the general nesting period a breeding bird and nest survey shall be undertaken prior to required activities. Nest searches by an experienced searcher are required and shall be completed by a qualified Biologist no more than 48 hours prior to vegetation removal.
1.28	If a nest of a migratory bird is found outside of this nesting period (including a ground nest) it still receives protection.
1.29	Opportunities to enhance the natural environment and provide a connection to the surrounding natural areas shall be explored to the extent possible.
1.30	All requirements of the Endangered Species Act and Species at Risk Act shall be met. Species-specific mitigation measures shall be implemented based on any recommended surveys undertaken prior to construction, and consultation with Ministry of the Environment, Conservation and Parks / Ministry of Natural Resources and Forestry.
1.31	If Species at Risk is present and conservation strategies have been developed by Ministry of Natural Resources and Forestry / Ministry of the Environment, Conservation and Parks, the Constructor shall follow the commitments in the recover strategy.
1.32	On-site personnel shall be provided with information (e.g., factsheets) that addresses the existence of potential Species at Risk on site, the identification of the Species at Risk species and the procedure(s) to follow if an individual is encountered or injured.
1.33	Field surveys shall be undertaken prior to construction to confirm the number of nests present at the known locations and whether the nests remain active.

I.D.#	EIAR Commitment
1.34	If construction activities are scheduled during the nesting season for Barn and/or Bank Swallow (April 1 to August 31), a nest search shall be undertaken to confirm that no Barn and/or Bank Swallows are nesting on structures or banks that may be affected by construction activities on or near these areas. If possible, the area shall be netted prior to nesting season to dissuade use of these areas for nesting.
1.35	If repair, maintenance or demolition of buildings / structures with suitable roosting / nesting habitat (e.g., chimneys) is to take place, targeted surveys for Chimney Swift shall be completed as per the Bird Studies Canada Chimney Swift Monitoring Protocol (2009) during the nesting season of April 15 to October 15.
1.36	Repair, maintenance, or demolition of an identified roosting / nesting structure may constitute destruction of critical habitat and would be discussed in advance with the Ministry of the Environment, Conservation and Parks and requirements of the Endangered Species Act shall be met.
1.37	Additional monitoring, mitigation and compensation for removal of suitable treed or anthropogenic roosting habitat may be required based on the results of additional surveys and consultation with the Ministry of the Environment, Conservation and Parks
1.38	If any works are proposed within the critical root zone (i.e., 25 metres radius from stem) of a butternut, mitigation, monitoring and compensation to address impacts to butternuts may be required based on the results of additional surveys (i.e., Butternut Health Assessment).
1.39	Construction activities shall maintain the buffers established during the design phase to minimize potential negative impacts to wetlands and waterbodies.
1.40	Shorelines or banks disturbed by construction activities shall be immediately stabilized by any activity associated with the project to prevent erosion and/or sedimentation, preferably through re-vegetation with native species suitable for the site.
1.41	In wetland areas where vernal pooling occurs, prior to dewatering isolated work areas, wildlife shall be captured and relocated to suitable habitat outside of the work area
1.42	Vegetation removals shall also consider and mitigate potential impacts to wetland communities. Until such a time that an Ontario Wetland Evaluation System evaluation is completed and evaluated by Ministry of Natural Resources and Forestry, unevaluated wetlands should be considered as significant for the purposes of assessing impacts.
1.43	Wetland communities potentially affected by the Project shall be clearly staked out on site.
1.44	If dewatering is proposed, it is recommended to be undertaken during the winter when the potential effects of changes in water levels are less significant in wetland communities. During detailed design the need for a dewatering zone of influence assessment and dewatering monitoring plan should be evaluated. The dewatering monitoring plan, should it be deemed required, shall monitor for potential negative effects to nearby wetlands and adjacent vegetation communities if affected due to dewatering activities, and shall provide an adaptive management plan should negative effects be observed.
1.45	All requirements of the Fisheries Act shall be met.
1.46	In the event that in-water and/or near water construction works are required appropriate mitigation measures shall be followed, as identified in Applicable Law and through consultation with the relevant authorities including Department of Fisheries and Oceans Canada. In water works shall be planned to consider timing windows to protect fish, including their eggs, juveniles, spawning adults and/or the organisms upon which they feed.

I.D.#	EIAR Commitment
1.47	Prior to dewatering isolated work areas, fish shall be captured and relocated to suitable habitat outside of the work area under a License to Collect Fish for Scientific Purposes from the Ministry of Natural Resources and Forestry.
1.48	Design water management system and dewatering operations to prevent erosion and/or release of sediment-laden or contaminated water to the waterbody or adjacent wetlands.
1.49	Onsite inspection shall be undertaken to confirm the implementation of the mitigation measures and identify corrective actions, if required. Corrective actions may include additional site maintenance and alteration of activities to reduce impacts.
1.50	Removal of ash trees, or portions of ash trees, shall be carried out in compliance with the Canada Food and Inspection Agency Directive D03-08: Phytosanitary Requirements to Prevent the Introduction into and Spread within Canada of the Emerald Ash Borer, <i>Agrilus planipennis</i> (Fairmaire) (2014), as amended from time to time. To comply with this Directive, ash trees requiring removal, including wood, bark or chips, shall be restricted from being transported outside of the emerald ash borer regulated areas of Canada.
1.51	Confirm precautions are being taken to reduce the risk of the spread of invasive species by cleaning equipment prior to moving sites.
1.52	Regular monitoring shall be undertaken to confirm that activities do not encroach into nesting areas or disturb active nesting sites.
1.53	Monitoring for dewatering shall be undertaken to confirm sediment-laden discharge; changes in visible scour/erosion; and changes in temperature within any receiving watercourse.
1.54	Identify opportunities to promote pollinator species and habitat in accordance with the Metrolinx Vegetation Guideline (2020). This may include planting or seeding native flowering plants in temporarily disturbed areas.
1.55	Each butternut that may potentially be removed or impacted must be assessed by a qualified butternut health assessor, in accordance with MNRF Butternut Assessment Guidelines (2014). The Assessor shall prepare a butternut health assessment report and document the mitigation monitoring and corrective actions implemented.
1.56	Herbicide applications shall be administered subject to the Pesticides Act.
1.57	Vegetation removal and soil disturbance in designated natural areas shall be avoided where possible and shall be kept to a minimum. In support of this, a tree protection plan and an Erosion and Sediment Control Plan shall be developed and implemented prior to construction.
1.58	Vegetation removal shall also consider and mitigate potential impacts to sensitive species (e.g. migratory birds and SAR) and features (e.g., designated natural areas and significant wildlife habitat).
1.59	Opportunities to plant milkweed or forage vegetation outside of and in the rail right-of-way shall be undertaken, where possible, and in accordance with the Metrolinx Vegetation Guideline (2020b).
1.60	If vegetation clearing proceeds when monarch larvae may be present (April 1 to September 30), milkweed plants should be inspected for monarch larvae prior to their removal. If larvae are present, they may be moved to a location that is suitable and safe, under the direction of a qualified biologist. Monarch caterpillars may be moved to other milkweed plants; for other larval stages (e.g. eggs and chrysalis). Entire milkweed plants shall be transplanted.



I.D.#	EIAR Commitment
1.61	Reptile exclusion fencing shall be installed according to the Reptile and Amphibian Exclusion Fencing Best Practices (MNR 2013) and fencing should be inspected daily to ensure it is tight and no species are entangled in locations where it is required as determined through pre-construction surveys.
1.62	Disturbance to bat roosting habitat shall be avoided during the active season for bats from April 1 to September 30, to the extent possible.
1.63	Prior to construction, develop a flood contingency plan with specific mitigation measures for any proposed works or temporary laydown and staging areas, as required. The flood contingency plan may include risk mapping, and a monitoring strategy.
1.64	Include construction site on TRCA flood warning system to prepare site in advance of possible flood events.
1.65	Prior to construction, a stormwater management plan that shall outline stormwater discharges management associated with construction activities, and an Erosion and Sediment Control Plan shall be developed.
1.66	The overall stormwater quality and quantity control strategy shall be developed in accordance with all relevant municipal, provincial, and federal requirements, as amended, and outlined in a stormwater management report. Stormwater management design shall consider guidance provided by the MECP, formerly the Ministry of the Environment and Climate Change Stormwater Management Planning and Design Manual (2003) and MTO Drainage Management Manual (2008), TRCA Stormwater Management Criteria (2012), and the Low Impact Development Stormwater Management Planning and Design Guide (TRCA/Credit Valley Conservation 2010), as required.
1.67	<p>The following stormwater management best management practices shall be considered and implemented, as required:</p> <ul style="list-style-type: none"> <li>• reduce clearing and amount of exposed soil;</li> <li>• install key sediment control before grading/land alterations begin;</li> <li>• sequence construction activities so that the soil is not exposed for long periods of times;</li> <li>• protect storm drain inlets to filter out debris; and</li> <li>• stabilize all exposed soil areas as soon as land alterations have been completed.</li> </ul>
1.68	The TRCAs Living City Policies shall be followed during detailed design, including those policies related to outfall placement.
1.69	The TRCAs Stormwater Management Criteria shall be followed, including those policies related to impervious areas.
<b>2</b>	<b>Soil and Groundwater</b>
2.1	Complete a detailed settlement analysis during the detailed design phase.
2.2	Excavation support systems shall be employed, as required.
2.3	Conduct ground treatment such as jet grouting to reduce the risk of ground loss.
2.4	Remedial action plans, risk assessment and risk mitigation plans for encountering contamination, as necessary.
2.5	Develop a Soil and Excavated Material Management Plan for the handling, management and disposal of all excavated material (i.e., soil, rock and waste) that is generated or encountered during the work.

I.D.#	EIAR Commitment
2.6	Further hydrogeologic assessments shall be conducted at locations requiring dewatering to estimate groundwater flow rates, predict impacts (such as lowering groundwater table), and evaluate treatment/discharge options. These studies are also needed to support potentially required water taking permits from the Ministry of the Environment, Conservation and Parks, including registration under the Ministry's Environmental Activity Sector Register or Permit to Take Water applications.
2.7	Additional investigations to determine the Zone of Influence of any required dewatering shall be necessary to fully consider the impacts to nearby structures and infrastructure. Further mitigation plans shall be developed prior to construction.
2.8	A Groundwater Management and Dewatering/Unwatering Plan shall be developed to guide the handling, management, and disposal of groundwater encountered.
2.9	Comply with the requirements of the Soil and Excavated Material Software Application for the monitoring, management, and tracking, where each movement of soil and excavated materials is captured in the required database. The soil and excavated material software application shall be executed prior to Soil shipping and capture each movement of Soil and excavated materials outside each Project Area in a real-time digital tracking systems.
2.10	Any existing City lands proposed for future open space shall be returned in the same environmental condition. Third party lands proposed for future open space shall meet the requirements set out under Ontario Regulation 153/04 under the Environmental Protection Act."
2.11	Excavation support systems shall be employed, as required.
2.12	Conduct dewatering such that ground loss is controlled/reduced.
2.13	Use tunneling equipment designed to reduce the potential for frac-out, ground loss and the associated potential for settlement.
2.14	If required, prepare a frac-out contingency plan that is intended to reduce the potential for a frac-out associated with tunneling activities.
2.15	Potential impacts to groundwater-dependent natural features and/or private groundwater supply wells (if present) shall be mitigated with measures such as avoidance of dewater cut-off techniques to physically exclude groundwater from flowing into excavations advanced for construction.
2.16	<p>The construction dewatering assessment shall be completed as required to:</p> <ul style="list-style-type: none"> <li>• provide an estimate of groundwater and/or surface water taking rates and quantities;</li> <li>• estimate a zone of influence for each dewatering area;</li> <li>• characterize groundwater and/or surface water quality.</li> <li>• recommend appropriate dewatering methodologies; and</li> <li>• provide an assessment of potential impacts related to the dewatering.</li> </ul>
2.17	Dewatering shall be assessed in accordance with the TRCA Technical Guidelines for the Development and Environmental Management Plans for Dewatering (TRCA 2013), O. Reg. 64/16 and 387/04, as amended under the Ontario Water Resources Act, as required.
2.18	<p>The plan to manage groundwater shall be completed as required to:</p> <ul style="list-style-type: none"> <li>• evaluate potential groundwater discharge options;</li> <li>• identify effluent treatment requirements;</li> <li>• outline monitoring, mitigation, and contingency program (if required);</li> </ul>

I.D.#	EIAR Commitment
	<ul style="list-style-type: none"> <li>• determine the potential need for regulatory approvals; and</li> <li>• identify notification and reporting requirements.</li> </ul>
2.19	Identification of site-specific mitigation measures and monitoring programs relating to potential groundwater impacts within the anticipated dewatering zone of influence shall be determined prior to works commencement.
2.20	The existing groundwater conditions within each potential construction dewatering area shall be characterized prior to construction activities, during a site-specific hydrogeological investigation, as required.
2.21	Conduct on-site treatment of dewatering effluent, if required, such that parameters in excess of the established discharge criteria are removed/reduced and discharge can proceed.
2.22	Pre-construction (baseline) groundwater quality testing should be performed at all construction dewatering locations before the outset of any discharge activities and compared to appropriate regulatory guidelines (e.g. Provincial Water Quality Objectives for discharge to the natural environment, storm and sanitary by-laws for discharge to municipal sewers). Appropriate water quality management (e.g. filtration systems and/or water treatment systems) shall be required to be designed and implemented in the event that exceedances of regulatory guidelines or limits are detected in the influent groundwater quality. Discharge of dewatering effluent shall be governed by the discharge approval(s) obtained for the Project, which could include one or a combination of Municipal Discharge Permits, Conservation Authority Approval, and/or MECP Environmental Compliance Approval.
2.23	Maintain machinery free of leaks to reduce the possibility of fluid release.
2.24	Store potential contaminants (e.g., oils, fuels, and chemicals) in designated areas using appropriate secondary containment, where necessary.
<b>3</b>	<b>Air Quality</b>
3.1	Conduct a quantitative assessment for the construction phase of the Project once sufficient detail on the construction planning is available. The quantitative assessment shall be used to update the construction mitigation plan and shall be submitted to MECP for review prior to the start of construction activities.
3.2	<p>Develop and implement a Construction Air Quality Management Plan (AQMP). A copy of the AQMP should be provided to the MECP.</p> <p>The AQMP shall:</p> <ul style="list-style-type: none"> <li>• Demonstrate compliance with the specific air quality criteria and limits in the Metrolinx Environmental Guide for Air Quality and Greenhouse Gas Emissions Assessment (2019).</li> <li>• Define the Project’s air quality impact zone and identify applicable sensitive receptors in this area.</li> <li>• Estimate and document the predictable worst-case air quality impacts of the Project on sensitive receptors in the air quality impact zone, develop appropriate mitigation measures, demonstrate their effectiveness, and commit to their timely implementation.</li> <li>• Include explicit commitment to the implementation of all applicable best practices identified in the ECCC document, Best Practices for the Reduction of Air Emissions from Construction and Demolition Activities (2005), and the MECP’s Technical Bulletin Management Approaches for Industrial Fugitive Dust Sources (MECP, 2017), where practical.</li> </ul>
3.3	Develop a Communications Protocol and a Complaints Protocol to respond to issues that develop during construction.

I.D.#	EIAR Commitment
3.4	Schedule construction related activities to avoid overlapping construction activities where possible.
3.5	Reduce the number of machines operating in any one area at any given point in time.
3.6	<p>Mitigation measures to be considered for each of the construction activities:</p> <ul style="list-style-type: none"> <li>• Site Preparation, Excavation and Grading</li> <li>• Demolition</li> <li>• Material Storage</li> <li>• Material Handling and Transfer</li> <li>• Road Surfaces (in and around Construction Sites)</li> <li>• On-site Fabrication Processes</li> <li>• Tunneling (TBM or SEM)</li> <li>• Construction Vehicles and Equipment</li> <li>• On-site Fabrication Processes</li> </ul>
3.7	<p>Conduct visual and olfactory inspections during excavation or for incoming loads to screen for odour, visible staining or debris per the MECP's Management of Excess Soils: A Guide for Best Management Practices (MECP, 2019b). If contaminated soil or materials are suspected, conduct further investigation and soil analysis to confirm if contamination is present and what contaminants are present. Take appropriate preventive actions or suspend activities to reduce potential adverse impacts, including odour or air emissions, from contaminated materials. Prior to commencement of construction, develop a Soil and Excavated Materials Management Plan (SEMMP) for the handling, management and disposal of all excavated material (i.e., soil, rock and waste). The SEMMP shall describe how to address the management of the excavated or imported materials, including contaminated materials. Metrolinx shall follow appropriate best management practices to manage, transport, or dispose of the contaminated materials. Where applicable, consult with the MECP Central Region Office to discuss the requirements in dealing with contamination issues and ambient monitoring requirements.</p>
3.8	<p>Apply for air approval for the OMSF and station operations and air emission sources as applicable. Assess and model air emissions following MECP guidance and comply with applicable Ontario Regulation 419/05 standards.</p>
3.9	<p>Develop a detailed Operations Air Quality Management Plan and implement the plan to document the controls and methods that shall be implemented during project operations at the OMSF to limit the generation and dispersion of airborne particulate matter and air contaminants associated with the project operations.</p>
3.10	<p>Undertake on-site inspections confirm the implementation of the mitigation measures and identify corrective actions if required.</p>
3.11	<p>Where practicable, implement the following mitigation measures to reduce air contaminant emissions intensity (amount of pollutant emitted per passenger kilometre travelled):</p> <ul style="list-style-type: none"> <li>• Selecting a less polluting form of energy or fuel (i.e., electricity or hydrogen rather than diesel fuel) for equipment used at the OMSF or stations.</li> <li>• Selecting equipment (such as backup generators) with engines and propulsion systems that meet higher emission standards (i.e., Tier 4 rather than a lower tier).</li> <li>• Maintaining engines and emission control equipment to manufacturers' specifications.</li> <li>• Selecting vehicles that have lower emissions for the mobile maintenance crew</li> </ul>

I.D.#	EIAR Commitment
3.12	Consider the following when designing and planning to reduce/limit non-exhaust particulate matter/metals emissions from the trains: <ul style="list-style-type: none"> <li>• Automatic train control/braking systems, wheel and track materials and design, optimizing the wheel profile and applying friction modifiers on wheels or rails to decrease wear particles, choice of brake pad materials</li> <li>• Ventilation system and controls used to control flow rates and air flow movement</li> <li>• Emission control/filter systems</li> </ul>
4	<b>Noise and Vibration</b>
4.1	Use construction equipment compliant with noise level specifications in Ministry of the Environment, Conservation and Parks guidelines NPC-115 and NPC-118.
4.2	To mitigate noise impacts from construction, consider the following: <ul style="list-style-type: none"> <li>• perform construction during day-time hours where possible. If night-time construction is necessary, limit activities that may exceed noise limits;</li> <li>• if construction shall occur outside of normal daytime hours, inform local residents before construction of type of construction and expected duration outside of daytime hours;</li> <li>• use equipment compliant with NPC-115 and NPC-118 as well as selecting the quieter option when multiple options are available;</li> <li>• limit the number of heavy trucks on site to the minimum required;</li> <li>• stage construction vehicles away from noise sensitive locations, if feasible;</li> <li>• keep equipment in good working order and operate with effective muffling devices;</li> <li>• undertake noise monitoring and regular reporting throughout the construction phase. Where noise level limits are exceeded, additional noise mitigation measures shall be implemented;</li> <li>• use localized movable noise barriers/screens for specific equipment and operations.</li> <li>• reduce simultaneous operation of equipment where feasible;</li> <li>• implement a no idling policy on site (unless necessary for equipment operation);</li> <li>• develop a communications protocol which includes timely resolution of complaints; and</li> <li>• additional mitigation measures not listed above may be considered.</li> </ul>
4.3	Establish a communication and complaint protocol for the Project and establish communication with potentially impacted receptors prior to start of construction activities nearby.
4.4	A detailed construction noise assessment should be completed based on the actual location of the equipment and manufacturer's sound levels to identify the specific mitigation required for each location and to ensure that the noise limits are met for the Project construction.
4.5	Haul route planning should include consideration for minimizing potential impacts on sensitive receptors and limiting increase in traffic noise.
4.6	The contractor should continuously monitor vibration levels at sensitive receptors during construction and adhere to the specified vibration limits.
4.7	To mitigate vibration impacts from construction, consider the following: <ul style="list-style-type: none"> <li>• owners of properties within the Zone of Influence should be notified at least a week before commencing any nearby construction activities;</li> </ul>

I.D.#	EIAR Commitment
	<ul style="list-style-type: none"> <li>• maintain minimum setback for construction equipment;</li> <li>• utilize construction equipment with lower vibration levels;</li> <li>• plan sequence of construction activities to avoid higher vibration potential during the night-time hours or at consecutive times;</li> <li>• route heavily loaded trucks and equipment away from vibration sensitive receptors Use non-vibratory roller where possible near sensitive sites;</li> <li>• excavators may only be used at least 6.5m (Heritage) or 4.5m (other structure) away from the structure or conduct sample vibration measurements to confirm alternate setback distance if required. Use back-hoe instead of excavator where possible when minimum setback distance cannot be met; and</li> <li>• use speed reduction on TBM where required to minimize potential impacts. Adjust supporting force according to monitored vibration velocity to maintain compliance with limits.</li> </ul>
4.8	Contractor should conduct test vibration measurements to check conditions at specific setback distances if they plan to have construction activities at or closer than the minimum recommended setback distances. Sample tests should be performed for all significant vibration-generating equipment anticipated to operate within the ZOI to confirm that vibration levels are compliant with the allowable limits. The measured vibration levels can be used to estimate setback distances and/or the operational condition at a certain distance in which the construction equipment should be allowed to operate.
4.9	To mitigate potential ground borne vibration and ground borne noise impacts from operations consider the following: high-resilience fasteners light mass-spring system floating slab track
4.10	Compliance with noise limits during operations is required. Where noise limits are predicted to exceed the limits, mitigation using noise barriers is to be considered.
4.11	Stationary sources associated with stations, emergency exit and emergency services, portal jet fans, outdoor paging systems, transformers, generators and sources associated with the OMSF require compliance with NPC-300. Design should consider maximum sound levels to meet these limits and mitigation such as silencers, enclosures and operational restrictions can be considered.
4.12	Equipment exceeding the MECP limits would require an investigation of additional noise control required for the construction phase
4.13	Caisson drilling shall be monitored, and the auguring speed should be controlled in accordance with the monitored vibration level.
4.14	In addition, as per the Metrolinx Environmental Guide, construction monitoring may be warranted when: The duration of construction is over a month The construction includes pile driving Nighttime construction is anticipated The anticipated community response to the construction is negative
5	<b>Socio-Economic and Land Use</b>

I.D.#	EIAR Commitment
5.1	Specific property requirements shall be confirmed during detailed design. Where access to property is required, ongoing consultation with affected landowners shall help identify appropriate site-specific mitigation measures.
5.2	A construction staging plan shall be developed and can be devised to specifically limit impacts to sensitive receivers.
5.3	Property requirements shall be carefully determined and refined during the next design phase of the Project, in order to minimize the amount of private land required for the Project.
5.4	Access to driveways shall be maintained during construction where possible. When temporary closures of side-streets are required, appropriate detour signage shall be installed and affected property owners shall be consulted.
5.5	Complete detailed review of proposed development applications including development applications submitted since the completion of this report during the detailed design process to reduce site impacts and determine feasible methods of design integration where needed.
5.6	Reduce potential impacts to recreational uses, parks and open spaces to the extent feasible.
5.7	An Erosion and Sediment Control Plan shall be developed in accordance with the Toronto and Region Conservation Authority's Erosion and Sediment Control Guide for Urban Construction (2019), as amended from time to time, that addresses sediment release to adjacent properties and roadways.
5.8	Develop a Communications Protocol in accordance with the Contract Documents, which shall indicate how and when surrounding property owners and tenants shall be informed of anticipated upcoming construction works, including work at night.
5.9	Develop a strategy to reduce the impacts of light pollution, trespass, and glare in accordance with the contract documents.
5.10	Perform the work in such a way that any adverse effects of construction lighting are controlled or mitigated to avoid unnecessary and obtrusive light impacts on adjoining residents, communities and/or businesses.
5.11	Provide well connected, clearly delineated, and appropriately signed walkways and cycling route options, with clearly marked detours where required.
5.12	Provide temporary walkways with a pedestrian clearway of 2.1 meters, where possible. Temporary walkways required during construction shall also meet AODA requirements for universal accessibility.
5.13	A construction staging plan shall be developed with focus on pedestrian flow and limiting disruption.
5.14	Maintain access to on-street parking and parking facilities, where feasible. Where regular parking cannot be maintained, provide clear communication, alternative access and signage.
5.15	Provide temporary lighting and wayfinding signs and cues to aid navigation around the construction site.
5.16	Reduce potential impacts on and maintain access to recreational uses, parks and open spaces to the extent feasible.
5.17	Where impacts to institutional uses or community groups and resources are anticipated, consult with the property owner to identify and develop appropriate mitigation measures.
5.18	Maintain access to businesses during working hours, where feasible. Where regular access cannot be maintained, provide alternative access and signage.

I.D.#	EIAR Commitment
5.19	Implement Crime Prevention Through Environmental Design principals to address these concerns during detailed design.
5.20	Provide walkways with a pedestrian clearway of 2.1 meters, where possible. Walkways shall also meet AODA requirements for universal accessibility.
5.21	Provide lighting and wayfinding signs and cues to aid navigation around each station site.
5.22	Restore parkland once construction is complete.
5.23	Reconnect trails where possible once construction is complete or provide alternative routing.
5.24	Project infrastructure shall be designed to reduce light trespass, glare, and pollution.
5.25	A screened enclosure for the development site shall be provided, with particular attention to the waste disposal and material storage areas.
5.26	Construction schedule delays shall be avoided to the extent possible in order to reduce the duration of construction and corresponding visual impacts.
5.27	Consideration shall be given to providing temporary landscaping along the borders of the construction site between site fencing/enclosure and walkways, where space allows, and where necessary.
5.28	Comply with local applicable municipal by-laws and Ministry of Transportation practices for lighting in areas near or adjacent to highways and roadways regarding outdoor lighting for both permanent and temporary construction activities, and incorporate industry best practices provided in ANSI/IES RP-8-18 – Recommended Practice for Design and Maintenance of Roadway and Parking Facility Lighting, as described in the contract documents.
5.29	Work shall be performed in such a way that adverse impacts of construction lighting are controlled or mitigated in such a way as to avoid unnecessary and obtrusive light with respect to adjoining residents, communities and/or businesses.
5.30	Reduce disruptions to the public realm such as sidewalks and cycling facilities and keep in a state of good repair during construction.
5.31	Surrounding communities shall be notified of initial construction plans, as well as future modifications as they occur.
5.32	Consult with residents, businesses, and other stakeholders in relation to the elevated guideway and stations during design.
5.33	Alterations to key features such as sidewalks, trails, parks, and street trees should be reduced and restored to pre-existing conditions following construction, as much as is feasible.
5.34	Retaining walls, tunnel walls, noise walls, and abutments that are public facing or accessible to the walking-public shall have plain surface finishes acceptable by the local road authority and shall require anti-graffiti coating treatment (if artwork shall be installed by the municipality, anti-graffiti coating shall be applied after artwork installation). On all other wall treatment cases, a patterned concrete finish acceptable by the local road authority and anti-graffiti coating shall be applied unless otherwise enhanced.
5.35	Reduce the visual effects of project structures (e.g., elevated guideways, support structures, retaining walls) by considering their location, building materials, architectural design, and surrounding landscape treatments.
5.36	Operations activities such as corridor maintenance to be reduced in duration and footprint to the extent possible.



I.D.#	EIAR Commitment
5.37	Regular (existing) access shall be maintained, where feasible. Where existing access cannot be maintained, alternative access and signage shall be provided.
5.38	Provide temporary lighting and wayfinding signs and cues to aid navigation around the construction site.
5.39	Project infrastructure shall be designed to reduce light trespass, glare, and pollution.
<b>6</b>	<b>Built Heritage Resources and Cultural Heritage Landscapes</b>
6.1	Properties subject to potential impacts, mitigation measures, and monitoring activities are provided in the Heritage Detailed Design Report (HDDR). Project Co shall revise the HDDR based on updates to the Project design as required in this Schedule 17.
6.2	Mitigation measures and monitoring activities shall be completed in accordance with the HDDR and shall in all cases consider avoidance as the preferred alternative.
6.3	Where impacts are anticipated, and in the case of a direct impact all other approaches were considered and eliminated prior to determining a direct impact as the only viable option, a series of site-specific mitigation measures have been prepared as summarized in Section 8.4 of the EIAR. Non-property specific approaches and presented below based on the impact identified:
6.4	Encroachment Consult with City of Toronto’s Heritage Planning Unit as part of the Detailed Design phase, as applicable. Design Project to encroach onto the property as little as possible, while avoiding impacts to the building or landscape and/or heritage attributes identified.
	New physical element or alteration (no impact to heritage attributes) Consult with City of Toronto’s Heritage Planning Unit as part of the Detailed Design phase, as applicable. Design the Project to integrate new physical elements with the building or landscape and to be sympathetic and compatible with site-specific design (consideration of Parks Canada’s Standards & Guidelines for the Conservation of Historic Places in Canada, 2010).
6.5	Modification to fit new use Consult with City of Toronto’s Heritage Planning Unit as part of the Detailed Design phase, as applicable. Complete Adaptive Reuse Study for the reuse of the building, if appropriate.
	New physical element or alteration (impacts to heritage attribute) Consult with City of Toronto’s Heritage Planning Unit as part of the Detailed Design phase, as applicable. Complete detailed documentation of the property that includes the identification of salvageable material and/or heritage attributes prior to alteration in order to inform what building components should be retained and conserved and/or restored. Design the Project to integrate new physical elements with the building or landscape and to be sympathetic and compatible with site-specific design (consideration of Parks Canada’s Standards & Guidelines for the Conservation of Historic Places in Canada, 2010).
6.7	Relocation Consult with City of Toronto’s Heritage Planning Unit as part of the Detailed Design, as applicable.

I.D.#	EIAR Commitment
	<p>Complete detailed documentation of the property that includes the identification of salvageable material and/or heritage attributes prior to relocation in order to inform what building components should be retained and conserved and/or restored.</p> <p>Stabilize the interior and exterior of the building before relocation.</p> <p>Prepare the new site, i.e., construction of a new foundation, prior to relocation.</p> <p>During Design, complete an Interpretation/Commemoration Strategy Framework in consultation with the City of Toronto Heritage Planning Unit. Incorporate commemoration signage to communicate the cultural heritage value of the relocated structure on the property to the public, if required.</p>
6.8	<p>Demolition</p> <p>Consult with the City of Toronto’s Heritage Planning Unit as part of the Detailed Design, as applicable.</p> <p>Complete detailed documentation of the property that includes the identification of salvageable materials and/or heritage attributes.</p> <p>Complete an Interpretation/Commemoration Strategy Framework in consultation with the City of Toronto Heritage Planning Unit. Incorporate salvageable materials and commemoration signage to communicate the cultural heritage value of the demolished structure on the property to the public.</p>
6.9	<p>Where an indirect impact has been identified associated with the potential for vibration effects to a built heritage resource or cultural heritage landscape, vibration monitoring is required. The detailed procedure is provided below:</p> <p>Document (review and establish) the structural condition of the building to determine if the structure is vulnerable to vibrations impacts;</p> <p>Establish vibration limits based on building conditions, founding soil conditions, and type of construction vibration;</p> <p>Implement vibration mitigating measures on the construction site and/or at the building;</p> <p>Monitor vibration during construction using seismographs, with notification by audible and/or visual alarms when limits are approached or exceeded;</p> <p>Conduct regular condition surveys and reviews during construction to evaluate efficacy of protective measure in place prior to construction</p>
6.10	Efforts should be made to retain as many of the existing landscape elements as possible.
6.11	Alterations must be complimentary and subordinate to the cultural heritage value and heritage attributes of the property/HCD.
6.12	Prior to property modifications, including but not limited to demolition, the following should be completed: Sensitive and Compatible Design.
7	<b>Archaeological Resources</b>
7.1	Areas identified as retaining archaeological potential, as per the Stage 1 Archaeological Assessment report, must be subject to further archaeological assessment, as recommended and in advance of any ground disturbance.
7.2	Any additional Archaeological Assessments (e.g., Stage 2, Stage 3 and possibly Stage 4, if required) shall be completed as early as possible, and prior to the completion of detailed design. This work shall be done in accordance with the Ministry of Heritage, Sport, Tourism and Culture Industries’ Standards and Guidelines for Consultant Archaeologists (2011), and the appropriate components of the City of Toronto’s Official Plan Chapter 3 to identify any archaeological resources that may be present

I.D.#	EIAR Commitment
7.3	Undertake future work in a manner that protects archaeological sites by conserving them in their original location or through archaeological field work, and endeavor to conserve significant archaeological resources in their original location through documentation, protection, and avoidance of impacts. Where activities could disturb significant archaeological resources or areas of archaeological potential, Metrolinx shall take appropriate measures to mitigate impacts.
7.4	Include provisions in contract as recommended by archaeological assessment(s) (e.g., in case archaeological resources are discovered, protection of sites). All future Stage 2 Archaeological Assessment findings shall be shared with all Indigenous Nations that were engaged during the Stage 1 Archaeological Assessment process, and the City of Toronto as applicable
7.5	Should previously unknown or unassessed deeply buried archaeological resources be uncovered during construction activities, they may be a new archaeological site and therefore subject to section 48(1) of the <i>Ontario Heritage Act</i> (Ontario). The proponent or person discovering the archaeological resources must cease alteration of the site immediately and engage a Licensed Archaeologist to carry out archaeological field work, in compliance with section 48 (1) of the <i>Ontario Heritage Act</i> (Ontario). Any person discovering human remains must immediately notify the police or coroner and the Registrar of Cemeteries, Ministry of Government Services. In addition, consultation with relevant Indigenous Nations shall be initiated in the event that archaeological resources or human remains are discovered.
7.6	The Funeral, Burial and Cremation Services Act, 2002, S.O. 2002, c.33 (Government of Ontario 2002), requires that any person discovering or having knowledge of a burial site shall immediately notify the police or coroner. It is recommended that the Registrar of Cemeteries at the Ministry of Government and Consumer Services is also immediately notified.
7.7	Indigenous Nations shall be invited to participate in any subsequent archaeological work. All future archaeological assessment findings shall be shared with the Indigenous Nations that were engaged.
7.8	If in-water work is required, a marine archaeological assessment shall be completed.
7.9	If detailed design moves the Project footprint onto lands not previously assessed for archaeological potential, additional archaeological assessments may be required in order to conserve archaeological resources through documentation, protection, and/or avoidance from impacts.
7.10	Archaeological sites recommended for further archaeological fieldwork or protection remain subject to section 48(1) of the <i>Ontario Heritage Act</i> (Ontario) and may not be altered, or have artifacts removed from them, except by a person holding an archaeological license.
<b>8</b>	<b>Traffic and Transportation</b>
8.1	Maintain reasonable access through work zones, to the extent possible. Provide advance warning signage and notification to drivers and optimize signal timing plans.
8.2	Access to nearby land uses shall be maintained to the extent possible. Potentially affected residents, tenants and business owners shall be notified of initial construction schedules, as well as modifications to these schedules as they occur.
8.3	Potential effects to pedestrian and cyclist activities during construction shall be mitigated through the installation of appropriate wayfinding, regulatory, and warning signs.

I.D.#	EIAR Commitment
8.4	Consult with the City of Toronto and local school board(s) during construction planning including consideration of route detours.
8.5	Ensure that the public is notified in advance of any potential service disruptions.
8.6	Consult with local transit agencies to establish a suitable mitigation strategy to be implemented.
8.7	Consult with the City of Toronto and local school board(s) during construction planning including consideration of impacts to school bus stops.
8.8	Albert Street shall be converted to two-way traffic to accommodate inbound movements during construction.
8.9	At Exhibition Station: During Construction, identify multiple haul routes for trucks to navigate through Liberty Village that abide by existing municipal bylaws while minimizing infiltration at some sensitive neighborhood streets. Spread truck volume evenly across several routes to lower the impact to one specific area.
8.10	At King / Bathurst intersection, introduce further turn restrictions if turning movements are impact during construction.
8.11	Evaluate opportunities for replacing facility parking at Moss Park during construction.
8.12	During design, review options for traffic optimization at the Queen St West / Simcoe St including but not limited to banning westbound left turn movements and/or increasing sidewalk width by either removing existing Line 1 entrance or widening sidewalk.
8.13	Accessibility for Ontarians with Disabilities Act compliant curb ramps shall be provided in locations where the pedestrian detour path moves from the boulevard onto a protected path on the street.

**Table 2: Environmental Monitoring Requirements**

I.D.#	EIAR Commitment	Notes
<b>1.0</b>	<b>Natural Environment</b>	
1.1	Recommendations for additional monitoring related to vegetation removal within TRCA or Ravine Natural Feature Protection regulated areas may be determined through consultation with Toronto and Region Conservation Authority or the City of Toronto, respectively.	
1.2	On site inspection shall be undertaken to confirm the implementation of the mitigation measures and identify corrective actions if required. Corrective actions may include additional site maintenance and alteration of activities to minimize impacts.	
1.3	The approach to compensation monitoring shall be determined by property ownership, applicable governing by-laws / regulations and location with respect to ecological functioning.	
1.4	Regular inspection in areas of vegetation removal shall be undertaken as required during construction to ensure that fencing is intact, only specified trees are removed and no damage is caused to the remaining trees and adjacent vegetation communities.	
1.5	Regular monitoring shall be undertaken during construction to prevent unauthorized impacts to the Migratory Butterfly Stopover Areas.	
1.6	Monitoring shall be undertaken prior to construction to survey exclusionary fencing installation and regular monitoring during construction to survey for snakes potentially trapped within exclusionary areas.	Applies to disturbance or destruction of Reptile Hibernaculum
1.7	Continuous monitoring of feature removal shall be undertaken during activity.	Applies to disturbance or destruction of Reptile Hibernaculum
1.8	Regular monitoring shall be undertaken to confirm that activities do not encroach into nesting areas or disturb active nesting sites.	Applies to disturbance or destruction of migratory bird nests
1.9	Species-specific monitoring activities shall be developed in accordance with any registration and/or permitting requirements under the Endangered Species Act Permit.	
1.10	On site inspection shall be undertaken to confirm the implementation of the mitigation measures and identify corrective actions if required. Corrective actions may include additional site maintenance and alteration of activities to minimize impacts.	Applies to habitat loss, disturbance and/or mortality to Barn and/or Bank Swallow, Chimney Swift, Species at Risk Bats, and Butternut

I.D.#	EIAR Commitment	Notes
1.11	On site inspection shall be undertaken to confirm the implementation of the mitigation measures and identify corrective actions if required. Corrective actions may include alteration of activities to minimize impacts and enhance mitigation measures.	Applies to removal or impacts to wetland, aquatic and riparian vegetation, degradation of wetlands as result of dewatering and discharge activities; erosion and sedimentation to wetlands / waterbodies from construction; risk of contamination to wetlands / waterbodies as a result of spills.
1.12	Monitoring for dewatering shall be undertaken to confirm sediment-laden discharge, visible scour/erosion and/or changes in temperature within any receiving watercourse does not occur.	
<b>2.0</b>	<b>Soil and Groundwater</b>	
2.1	Develop and conduct a settlement monitoring program to document construction effects, identify adverse trends and identify additional mitigation measures.	
2.2	Soil and groundwater sampling and monitoring plans shall be implemented as required prior to, during, and post construction. Track soil in registry as required by Ontario Regulation 406/19.	
2.3	Best management practices shall be implemented for managing groundwater, including establishing a baseline and monitoring program during construction.	
2.4	Monitor groundwater discharge as required.	
2.5	Establish groundwater monitoring wells as required.	
2.6	Regular site inspections and monitoring activities such as monitoring of water levels in adjacent groundwater and/or surface water features, if required, shall be completed by qualified members of the construction team to ensure that mitigation measures are fulfilled and that all regulatory requirements are met.	
2.7	Regular inspections of equipment for fuel/fluid leaks, dewatering equipment and containment tanks for leakage, and installed erosion and sediment control measures.	
<b>3.0</b>	<b>Air Quality</b>	

I.D.#	EIAR Commitment	Notes
3.1	<p>As part of the Construction Air Quality Management Plan, develop and implement Ambient Air Quality Monitoring Plan that documents how air quality monitoring would be conducted and compliance assessed to effectively prevent unacceptable rates of air emissions in accordance with the following guidelines:</p> <ul style="list-style-type: none"> <li>• The construction related air contaminants of primary concern are in the form of particulate matter, with the principal construction related fractions of PM2.5 and PM10 - particulate matter of less than 2.5 and 10 micron in diameter, respectively. Other contaminants of concern include crystalline silica and oxides of nitrogen. The list of contaminants shall be expanded with any anticipated air pollutants that may be produced as a result of the work.</li> <li>• Applicable criteria for air contaminants of concern include Ontario Ambient Air Quality Criteria , Canadian Ambient Air Quality Standards, and the various schedules of Ontario Regulation 419/05. Mitigation thresholds for PM2.5, PM10 and crystalline silica are provided in Metrolinx’s Environmental Guide for Air Quality and Greenhouse Gas Emissions Assessment (2019).</li> </ul>	
3.2	<p>Monitor for dust and air quality parameters during construction to assess if implemented mitigation measures are effective and to identify if additional mitigation is required.</p> <p>Siting of the monitors should generally follow the guidelines provided in the Ministry of the Environment, Conservation and Parks Operations Manual for Air Quality Monitoring in Ontario (2018).</p>	

I.D.#	EIAR Commitment	Notes
3.3	<p>For Project construction locations that are considered short-duration projects (i.e. less than 30 days), periodical opacity monitoring (see ECCC 2005) at the active construction zone boundary and at closest sensitive receptor may be sufficient.</p> <p>For long duration Project construction locations where sensitive receptors are identified 5 to 10 m from the active construction zone, continuous monitoring of PM10 and PM2.5 is recommended at locations upwind and downwind of the active construction zone, as well as at a selected closest sensitive receptor. Monitoring should commence for more than one week prior to the start of any construction activities to establish pre-construction levels and continue through the active phase of the construction project. As the active construction zone moves or changes, the locations of the monitoring equipment shall follow to maintain its relevance. Consider monitoring setup including a meteorological station (for measuring wind speed and direction) and datalogger/modem for downloading data, power/battery source, and capability to send alarm notifications at mitigation thresholds.</p> <p>Calibration of the instruments should be included as part of the monitoring program.</p>	
3.4	<p>Prepare and submit weekly or monthly reports to Metrolinx to provide construction monitoring results, and document air quality monitoring activities, assessment of compliance and effectiveness of mitigation activities.</p>	
3.5	<p>Additional ambient air monitoring may be required if contaminated soils are encountered during construction activities. The list of contaminants and monitoring requirements should be assessed at that time based on the results of investigation and soil/material analysis.</p>	
3.6	<p>If laboratory work is required, consult the Standards Council of Canada (SCC) or the Canadian Association for Laboratory Accreditation (CALA) for a list of accredited Ontario analytical laboratories to perform specific air analyses.</p>	



I.D.#	EIAR Commitment	Notes
3.7	The expected impacts from operations should be effectively mitigated provided that mitigation measures established in the Air Quality Management Plan are followed. Ambient air quality monitoring is not expected to be required. However, if air quality monitoring is deemed applicable, develop an Air Sampling and Monitoring Plan and submit monthly or annual reports, summarizing sampling and monitoring results accumulated over the preceding year.	
3.8	Relevant construction monitoring activities from the guidelines Best Practices for the Reduction of Air Emissions from Construction and Demolition Activities (ECCC 2005) shall be implemented during construction.	
<b>4.0</b>	<b>Noise and Vibration</b>	
4.1	A pre-construction consultation should be completed with potentially impacted property owners for cosmetic damage. A commitment to conduct pre-construction measurements of background vibration and pre-construction inspections (i.e., identify existing cracks in walls, floors and exterior cladding of the first two storeys above grade and interior finishes of all storeys below grade) should be in place.	
4.2	Vibration monitoring should be conducted for the structures where the minimum setback distances required for construction vibration cannot be maintained.	
4.3	Perceptible vibration should be monitored in terms of RMS (mm/s) while structural damage should be monitored in terms of PPV (mm/s). The construction vibration monitoring equipment should be capable of taking measurements in three axes (i.e., transverse, vertical and longitudinal) simultaneously, and the conversion from PPV to RMS using a crest factor is not acceptable for the monitoring purposes.	
4.4	The Metrolinx environmental guide should be reviewed and details from the guide should be included in the vibration monitoring plan.	

I.D.#	EIAR Commitment	Notes
4.5	<p>Operations noise and vibration monitoring procedures can include:</p> <ol style="list-style-type: none"> <li>1. Over the first five years of operations a survey of ground-borne vibration measurements and compare to operations requirements should be completed.</li> <li>2. For the first year, vibration monitoring should include all identified representative operational vibration sensitive receptors.</li> <li>3. For Year 2 through Year 5, and provided vibration monitoring for the First 1 shows compliance at all identified representative receptors, vibration monitoring should be provided to include at least [REDACTED]% of the identified representative operational vibration sensitive receptors.</li> <li>4. For each year after the first 5 years of operations and provided vibration monitoring for the first five years shows compliance at all identified representative receptors, vibration monitoring should be provided to include at least [REDACTED]% of the identified representative operational vibration sensitive receptors.</li> </ol> <p>The monitored locations should be approximately equally distributed along the Project footprint and vary from year to year. Priority should be placed on locations near special track work or tight-radius curves.</p>	
4.6	<p>An operations monitoring program shall be established and can include the following:</p> <ol style="list-style-type: none"> <li>1. Station, emergency exit and emergency services noise levels for fire ventilation and comfort ventilation should be monitored at the nearest points of reception.</li> <li>2. OMSF noise should be monitored at sensitive receptors.</li> <li>3. Operational noise from train movements on tracks to be monitored for representative receptors and for at least the first 5 years of operation.</li> </ol>	
4.7	<p>Operations monitoring locations should be approximately equally distributed along the Project footprint and vary from year to year. Priority should be placed on locations near special track work or tight-radius curves.</p>	
<b>5.0</b>	<b>Socio-Economic and Land Use</b>	

I.D.#	EIAR Commitment	Notes
5.1	Regular monitoring of temporary access paths, walkways, cycling routes and fencing.	
5.2	Construction activities shall be monitored by a qualified Environmental Inspector to confirm that all activities are conducted in accordance with mitigation plans and within specified areas.	
5.3	Regular monitoring of mitigation measures to verify effectiveness and inform adaptive management, as required.	
<b>6.0</b>	<b>Built Heritage Resources and Cultural Heritage Landscapes</b>	
6.1	Vibration monitoring should be conducted for built heritage resources where the minimum setback distances required for construction vibration cannot be maintained.	
<b>7.0</b>	<b>Traffic and Transportation</b>	
7.1	Traffic impacts to be monitored and mitigation adjusted as necessary during the Project Term.	
7.2	Cycling network impacts to be monitored and mitigation adjusted as necessary during the Project Term.	
7.3	Ensure that the public is notified in advance of any potential service disruptions or modifications.	
7.4	Signal timing optimizations should be applied based on actual field conditions to accommodate the future traffic patterns and demands at the intersection after opening day.	

APPENDIX B TO SCHEDULE 17

**ENVIRONMENTAL REFERENCE DOCUMENTS**

**Table 1: Environmental Reports**

[REDACTED]

**Table 2: Environmental Guidelines, Legislation and Regulations**

[REDACTED]

APPENDIX C TO SCHEDULE 17

MINISTER'S CONSENT CONDITIONS

[REDACTED]

APPENDIX D TO SCHEDULE 17

LOCATIONS OF ARCHAEOLOGICAL ASSESSMENTS

[REDACTED]

APPENDIX E TO SCHEDULE 17

METROLINX BANNED SUBSTANCE LIST

[REDACTED]

APPENDIX F TO SCHEDULE 17

IDENTIFIED CONTAMINATED MATERIALS

[REDACTED]



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**SCHEDULE 18****COMMUNICATION AND PUBLIC ENGAGEMENT PROTOCOL****1. DEFINITIONS**

In this Schedule 18, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 18) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 “**Accessibility for Ontarians with Disabilities Act (Ontario)**” means the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11, as amended from time to time.
- 1.2 “**Business Improvement Areas**” means any municipally designated “Business Improvement Areas” as recognized by the City of Toronto.
- 1.3 “**Communications and Public Engagement Protocol**” means this Schedule 18.
- 1.4 “**Communications Calendar**” has the meaning given in Section 4.4(a)(ii).
- 1.5 “**Communications Repository**” has the meaning given in Section 5(a).
- 1.6 “**Communications Signage**” has the meaning given in Section 9.9(b).
- 1.7 “**Communications Working Group**” has the meaning given in Section 4.1(a).
- 1.8 “**Complaints Protocol**” has the meaning given in Section 9.14(b)(i).
- 1.9 “**Construction Activities Incident**” has the meaning given in Section 10.5(a).
- 1.10 “**Construction Liaison Committee**” has the meaning given in Section 4.3(a).
- 1.11 “**Crisis Communication Plan**” has the meaning given in Section 9.3(b)(vi).
- 1.12 “**Documents Relating to Indigenous Nations**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.13 “**Elected Officials**” means any Member of Parliament or their staff or representatives, any Member of the Provincial Parliament (including the Premier) or their staff or representatives or any Municipal Councillor (including the Mayor) or their staff or representatives.
- 1.14 “**Indigenous Entities Engagement**” means a process of meaningfully engaging with Indigenous Entities whose interests may be affected by the Project, with the objective of providing relevant information to Indigenous Entities about the Project and meaningfully considering their input.
- 1.15 “**Indigenous Nations Engagement**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.16 “**Level 1 Call**” means a comment, suggestion and/or complaint where a caller is providing an opinion on, or reaction to, construction activities and is requesting items be addressed as soon as

possible. This Level 1 Call will be tracked, and an initial response by Project Co is to be provided to Contracting Authority within twenty-four (24) hours of receipt.

- 1.17** “**Level 2 Call**” means a media request for information and/or influencer escalation where a caller belongs to a category of media that has stakeholder impact and is looking to have that information provided to them on a fast track. Initial response by Project Co for a Level 2 Call is to be provided to Contracting Authority within two (2) hours. Project Co is to work with Contracting Authority to resolve the response.
- 1.18** “**Level 3 Call**” means a report of personal injury and/or allegations of a safety concern or serious and illegal misconduct where a caller is witness to, or party of, an event on or adjacent to construction activities for which security and health and safety or site supervisory staff must investigate upon receipt of call in order to secure public safety. Incidents and emergencies will require members of the Project Co team to resolve issues overnight, or on weekends.
- 1.19** “**Major Impact**” has the meaning given in Section 10.2(b).
- 1.20** “**Medium Impact**” has the meaning given in Section 10.3(b).
- 1.21** “**Metrolinx Brand**” has meaning in Section 9.8.1(a).
- 1.22** “**Metrolinx Branded Items**” has meaning in Section 9.8.1(a).
- 1.23** “**Minor Impact**” has the meaning given in Section 10.4(b).
- 1.24** “**Monthly Editorial Meeting**” has the meaning given in Section 9.2(c).
- 1.25** “**Project Co Brand**” has meaning in Section 9.8.2(a);
- 1.26** “**Project Co Branded Items**” has meaning in Section 9.8.3(a);
- 1.27** “**Project Co Communications Plan**” has the meaning given in Section 7.1(a).
- 1.28** “**Project Co Communications Protocol**” has the meaning given in Section 6(a).
- 1.29** “**Project Co Communications Team**” has the meaning given in Section 3(a).
- 1.30** “**Project Co Shop Local Plan**” has the meaning given in Section 9.11(a).
- 1.31** “**Project Website**” means Contracting Authority’s websites [www.metrolinx.com](http://www.metrolinx.com) and [www.infrastructureontario.ca](http://www.infrastructureontario.ca), a section of which will be designated for the Project.
- 1.32** “**Project Website and Social Media Calendar**” has the meaning given in Section 4.4(a)(ii).
- 1.33** “**Signage and Hoarding Coverage Plan**” has the meaning given in Section 9.9(a).
- 1.34** “**Stakeholder Working Group**” has the meaning given in Section 4.2(a).

## **2. GENERAL**

## 2.1 General Communications Principles

- (a) The Project represents an important transit infrastructure commitment by Contracting Authority. During the Project Term, Project Co will lead the communication and community engagement requirements pertaining to its scope of work under the Project Agreement. By developing comprehensive communication plans and materials, Project Co must ensure the public and Stakeholders are informed and engaged in a timely manner, and that appropriate action is taken to address complaints, mitigate impacts to residents and businesses, and to effectively communicate such impacts and progress of the Works. Project Co will also provide support and collaborate with RSSOM Project Co and North Civil Project Co, who are leading their own communication and community engagement requirements, by providing information, messaging and participation in events and meetings, as reasonably requested by Contracting Authority.
- (b) Project Co acknowledges that:
- (i) Project Co is Contracting Authority's and the Stakeholders' primary source of information with respect to all matters within Project Co's control in respect of the Project; and
  - (ii) Contracting Authority and the Stakeholders, at all times during the Project Term, shall rely upon Project Co to,
    - (A) anticipate matters which may be of interest and concern to Contracting Authority or the Stakeholders during the Project Term (based on its experience as well as lessons learned during the course of the Project); and
    - (B) proactively organize and disseminate information in accordance with its obligations in the Project Agreement so as to permit the Parties to perform their obligations hereunder.
  - (iii) Project Co shall work together with Contracting Authority to deliver the communications and public engagement activities pursuant to the Project Agreement, including this Schedule 18.

## 2.2 General Communications Responsibilities

- (a) During the Project Term, Project Co shall:
- (i) proactively identify communication issues;
  - (ii) 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;
  - (iii) be accountable for the effective delivery of communications and community engagement plans as set out in the Project Agreement;
  - (iv) recognize the contribution of the Parties in the Project Agreement;
  - (v) 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;

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- (vi) develop all plans, protocols, and other documentation that Project Co is required to develop in accordance with this Schedule 18 in consultation with Contracting Authority, Stakeholders, and Governmental Authorities, and submit all such plans, protocols and documentation to Contracting Authority for review in accordance with Schedule 10 – Review Procedure;
  - (vii) in consultation with Contracting Authority, Stakeholders, and Governmental Authorities, implement and comply with all plans, protocols and other documentation that have been reviewed and accepted or approved by Contracting Authority in accordance with this Schedule 18;
  - (viii) provide all information, materials, support and consultation to Contracting Authority as Contracting Authority may require with respect to Contracting Authority’s communications, public engagement, community liaison and public and customer notification activities, Stakeholder consultation, and reporting related to the Project;
  - (ix) be available to assist Contracting Authority in responding to media, government and public enquiries related to the Project as requested and in accordance with all timelines prescribed by Contracting Authority;
  - (x) review and develop communications and/or technical materials reasonably requested by Contracting Authority;
  - (xi) support Contracting Authority with the following Stakeholders when carrying out Project Co’s obligations as set out in this Schedule 18:
    - (A) the City of Toronto and the TTC;
    - (B) MTO, MOI, conservation authorities and other Governmental Authorities;
    - (C) Utility Companies; and
    - (D) Emergency Service Providers;
  - (xii) provide experienced communications and public engagement staff, as set out in Section 3(a), to support the implementation of this Schedule 18;
  - (xiii) ensure that all Project Co Parties exhibit a high degree of professionalism and courtesy when working on the Project and when interacting with Elected Officials, Stakeholders, Indigenous Nations, Indigenous Entities, customers, businesses, residents and the public when carrying out Project Co’s obligations under this Schedule 18. This includes:
    - (A) acting with appropriate decorum when attending public consultations and events;
    - (B) parking in a manner that will not negatively impact neighbourhood or station access or customer parking;
    - (C) not littering and being respectful of public and private property;

- (D) replacing or repairing waste receptacles, plantings and signage should these items become damaged or defaced; and
- (E) not engaging in inconsiderate conversation near public spaces;
- (xiv) provide experienced staff, as set out in Section 3(a)(i), to participate in the Communications Working Group, Stakeholder Working Group, Construction Liaison Committee meetings, internal and external meetings, public in-person and virtual events;
- (xv) communicate anticipated construction activities and impacts, construction progress, Project highlights, potential traffic, transit system, service or station access changes and other traffic or transit information to the public and customers;
- (xvi) ensure that Stakeholder input is obtained in a timely manner so that it may be properly considered by the Parties;
- (xvii) 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, and congestion impacts on businesses and residents and other actual and potential impacts of Project activities;
- (xviii) support Contracting Authority to mitigate impacts and rectify complaints to Stakeholders, residents and businesses where appropriate;
- (xix) provide regular updates and support to Contracting Authority related to all community impacts associated with the Project;
- (xx) work with Contracting Authority to build and foster relationships with local businesses and the public in order to address the community's concerns about the Works that may impact the community, and use best practices for seeking and receiving public comments;
- (xxi) develop and execute business disruption mitigation and business engagement strategies, in consultation with Contracting Authority, in order to address businesses' concerns about Construction Activities;
- (xxii) consult with Contracting Authority with respect to design opportunities to engage the community in the Project's design process where feasible, and as directed by Contracting Authority;
- (xxiii) support Contracting Authority with the following Stakeholders when carrying out Project Co's obligations as set out in this Schedule 18:
  - (A) neighbourhood groups (including property owners, ratepayers, citizens);
  - (B) local businesses (including individual operators and Business Improvement Areas); and
  - (C) various community interest groups (including employment, environmental, health, natural and cultural heritage, advocacy groups); and

- (xxiv) carry out all activities required to fulfill all of Project Co’s obligations set out in Section 26.4 (*Claims Management*) of the Project Agreement and Section 19 (*Incident Reporting and Claim Statement*) of Schedule 25 – Insurance and Performance Security Requirements.
- (b) Project Co shall ensure that all public-facing communications materials and information are provided in colour (and not black and white), unless otherwise directed by Contracting Authority.
- (c) Project Co acknowledges and agrees that, notwithstanding any other provision in this Schedule 18,
- (i) all communications-related protocols, plans, materials, advertisements, notices, activities, approaches and strategies with respect to the Project, shall be subject to Contracting Authority’s review and approval; and
- (ii) Project Co may not engage with, consult with, communicate with or disseminate any materials to the public, Governmental Authorities, Stakeholders, Indigenous Nations or Indigenous Entities with respect to the Project without the prior written consent of Contracting Authority.
- (d) No later than three (3) months after the Scheduled Substantial Completion Date, Project Co shall handover to Contracting Authority, all communications submittals, stakeholder/contact and comment database, logs, documents, plans, deliverables, agendas, photos, videos, and any other communications-related information related to the Project. Project Co shall ensure there is a seamless transition of the Complaints Protocol data and all public-facing communications material to Contracting Authority.
- (e) Project Co may fulfill any obligations that are required to be performed “in person”, as required by this Schedule 18, by hosting a virtual event or participating virtually, subject to the prior written approval of Contracting Authority, not to be unreasonably withheld.

### 3. PROJECT CO COMMUNICATIONS TEAM

- (a) No later than thirty (30) days following Financial Close, Project Co shall form a dedicated communications team (the “**Project Co Communications Team**”). The Project Co Communications Team shall be comprised of the following:
- (i) During the Project Term,
- (A) a communications and public engagement lead who shall,
- (I) be a media-trained spokesperson with a minimum of twelve (12) years of communications experience in media relations, crisis communications, issues management, communications marketing, corporate and community relations and experience in managing a team;
- (II) have relevant experience with linear projects in a dense urban environment, such as in the transportation, transit, energy, construction, utilities or infrastructure sectors, managing or engaging with impacted communities;

- (III) oversee the Project Co Communications Team in Section 3(a)(i)(B) who shall directly report to the communications and public engagement lead;
  - (IV) ensure that Project Co’s communications-related obligations under the Project Agreement are being met, with the responsibility to review and sign-off on all plans submitted by Project Co; and
  - (V) be a Key Individual that has a direct reporting relationship to or is embedded with the design and construction team, to ensure appropriate flow of relevant information;
- (B) a communications team that shall possess no fewer than five (5) additional full-time staff members, each of whom shall possess a minimum of five (5) years of communications, marketing or other relevant experience in media relations, customer communications, crisis communications, issues management, community relations and public engagement (transportation, transit, energy, construction, utility or infrastructure sector experience will be considered an asset); and
- (C) any additional staff that may be required in order for Project Co to fulfill its communications obligations under the Project Agreement.
- (b) The Project Co Communications Team shall work closely with Contracting Authority’s staff at community office locations, when required.

#### 4. WORKING GROUPS

##### 4.1 Communications Working Group

- (a) For the Project Term, Contracting Authority representatives and the Project Co Communications Team shall form a communications working group (the “**Communications Working Group**”). The Communications Working Group shall develop and implement all communications plans and public consultation, marketing and community engagement activities for the Project in accordance with this Schedule 18. Project Co shall ensure that Key Individuals and any other staff from Project Co or any Project Co Party that Contracting Authority may require, are made available to support the Communications Working Group as required. Strategies and tactics developed and employed by the Communications Working Group shall,
- (i) provide for timely, open, transparent, effective, consistent and proactive communications with Contracting Authority, elected officials and the public;
  - (ii) foster and maintain positive and constructive relationships with neighbourhoods, Stakeholders, residents and customers that may be affected by decisions regarding the scope or in-service operations of the Project; and
  - (iii) build trust and maximize public understanding and support for the Project.
- (b) No later than forty-five (45) days following Financial Close, the Communications Working Group shall convene to discuss the Project Co Communications Protocol and to identify the working relationship, roles and responsibilities matrix, and approvals processes for the Project. The

Communications Working Group shall provide direction and feedback on communications deliverables and plans expected from Project Co on an ongoing basis.

- (c) During the Project Term, the Communications Working Group shall meet bi-weekly (or more frequently as the Parties agree, acting reasonably), to plan and implement communications, marketing 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.

#### 4.2 Stakeholder Working Group

- (a) During the Project Term, Contracting Authority representatives, the Project Co Communications Team, and representatives from the City of Toronto, community, agency and others, as identified by Contracting Authority, shall form a stakeholder working group (the “**Stakeholder Working Group**”). The Stakeholder Working Group shall meet quarterly, or more frequently as the Parties agree acting reasonably, to discuss best practices, share information, develop strategies, and provide oversight and support towards Project Co’s obligations with respect to local employment and local business procurement opportunities, as per Section 8.3(j) of this Schedule 18, in each case in connection with the Parties’ obligations under this Schedule 18.
- (b) The strategies and tactics developed and employed by the Stakeholder Working Group shall,
  - (i) foster and maintain positive and constructive relationships with community groups and agencies that may be affected by the Project; and
  - (ii) maximize public understanding of the employment and training opportunities and benefits to the community as a result of the Project.
- (c) Project Co shall ensure that Key Individuals and any other staff from Project Co or any Project Co Party that Contracting Authority may require, are made available to support the Stakeholder Working Group as required.
- (d) No later than sixty (60) days following Financial Close, the Stakeholder Working Group shall convene to provide an overview of the Project and discuss objectives, roles and responsibilities.
- (e) The Stakeholder Working Group shall provide direction and feedback to Project Co and Contracting Authority on deliverables expected from Project Co.

#### 4.3 Construction Liaison Committee

- (a) During the Project Term, Project Co shall lead monthly construction liaison committee meetings to provide construction updates for the Project (the “**Construction Liaison Committee**”).
- (b) Representatives from the City of Toronto, emergency services, business improvement areas, resident, school, business and community organizations will be invited to serve on the Construction Liaison Committee. As members, they are responsible for:
  - (i) actively participating in meetings;



- (ii) acting as representatives of their communities and formally communicating back to them; and
  - (iii) providing meaningful and timely feedback to Project Co.
- (c) Project Co will prepare a presentation for each Construction Liaison Committee meeting to be distributed five (5) Business Days prior to the meeting, and will present an overview of the works schedule, local impacts and address questions during the meeting, in addition to supporting Contracting Authority in following-up with the various representatives on matters concerning their communities.

#### 4.4 Submittals for Communications Working Group

- (a) No later than five (5) Business Days prior to each Communications Working Group meeting, Project Co shall provide the following submittals to Contracting Authority for review:
- (i) a draft agenda for the Communications Working Group meeting, a final version of which is to be circulated at least two (2) Business Days prior to the meeting; and
  - (ii) an up-to-date calendar outlining the communications deliverables and activities for the next six (6) month period, including,
    - (A) the identification and scope of the deliverable or activity being addressed;
    - (B) the tactic or tools to be employed in order to achieve each deliverable and carry out each activity;
    - (C) the objectives, target audience, timing and deadline associated with each deliverable and activity; and
    - (D) the Project Co resource(s) assigned to each deliverable and activity,
- (the “**Communications Calendar**”). As part of the Communications Calendar, Project Co shall provide a stand-alone content calendar that includes the timeline for development, submission, review and approval for the content described in Section 9.2(b) (the “**Project Website and Social Media Calendar**”).
- (b) Contracting Authority may, in its sole discretion, provide comments to Project Co with respect to the conformance of the Communications Calendar and the Communications Repository with the requirements of the Project Agreement. Project Co shall incorporate all such comments provided by Contracting Authority and shall provide updated, corrected versions to Contracting Authority in accordance with the timeframes prescribed by Contracting Authority, acting reasonably.
- (c) The minutes of all meetings, recommendations and decisions of the Communications Working Group, 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 two (2) Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority notifies Project Co within five (5) Business Days of receipt of the minutes that Contracting Authority disagrees with the contents of the minutes, Contracting Authority and Project Co shall be deemed to have approved such minutes. Project Co shall

maintain a complete set of all minutes of the meetings of the Communications Working Group and shall make such minutes available for inspection by Contracting Authority during regular business hours.

#### 4.5 Submittals for Stakeholder Working Group

- (a) No later than ten (10) Business Days prior to each Stakeholder Working Group meeting, Contracting Authority shall provide,
- (i) a draft agenda for the Stakeholder Working Group meeting, a final version of which is to be circulated at least two (2) Business Days prior to the meeting; and
  - (ii) meeting minutes from the previous meeting, if applicable, for review prior to commencement of the next meeting.
- (b) At each Stakeholder Working Group meeting, Project Co shall provide a presentation and/or report for discussion, which provides an overview of the following:
- (i) a dashboard comprised of statistics as noted for activities in Section 8.3(j) regarding Construction Activities, including,
    - (A) magnitude of local procurement investments, investments supporting local business promotions and main street beautification and cleaning efforts by Project Co Parties;
    - (B) number of jobs created by Project Co Parties;
    - (C) a high-level overview of the Project Works Schedule, with anticipated non-trades professional administrative and technical positions on a year-by-year basis;
    - (D) key schedule milestones; and
    - (E) any other submittal that may be requested by Contracting Authority, acting reasonably.
  - (c) The minutes of all meetings, recommendations and decisions of the Stakeholder Working Group, 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 (5) Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority notifies Project Co within five (5) Business Days of receipt of the minutes that Contracting Authority disagrees with the contents of the minutes, Contracting Authority and Project Co shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Stakeholder Working Group and shall make such minutes available for inspection by Contracting Authority during regular business hours.

### 5. COMMUNICATIONS REPOSITORY

- (a) Project Co shall implement and maintain, throughout the Project Term, an electronic repository using software that is agreed upon by the Parties (the “**Communications Repository**”). The

Communications Repository shall include all communications submittals, stakeholder/contact and comment database, documents, plans, deliverables, agendas, photos, videos, and other media contemplated in this Schedule 18. Project Co shall, throughout the Project Term, allow Contracting Authority users to remotely log in and access the Communications Repository to review and/or export all information set out in the Communications Repository.

## 6. PROJECT CO COMMUNICATIONS PROTOCOL

- (a) Project Co shall, no later than sixty (60) days following Financial Close, submit a communications protocol for review by Contracting Authority pursuant to Schedule 10 – Review Procedure that describes how Project Co will meet its communications-related obligations under the Project Agreement (the “**Project Co Communications Protocol**”). The Project Co Communications Protocol shall include the following:
- (i) an executive summary of objectives and description of Project Co’s approach to all communications aspects of the Project;
  - (ii) a summary of proposed communications tools to be used by Project Co to consult with and report to Contracting Authority in accordance with this Schedule 18, with a view towards ensuring that a system is in place for media and community relations, social media management, graphics capabilities, issues management, complaints management, dispute resolution and crisis communications for the purposes of informing and engaging the community, businesses and other Stakeholders about the progress of the Project, as well as any impacts and the benefits of the Project;
  - (iii) a summary of Project Co’s proposed plan with respect to notifying, in consultation with Contracting Authority, affected residents and businesses, including Contracting Authority’s community relations representatives, as soon as possible of unplanned or unexpected impacts of the Works (including going door-to-door, providing updates for Contracting Authority’s Project Website and information telephone line, including after-hours support), and providing an estimate of the expected duration of the impact to affected residents and businesses; and
  - (iv) a description of the Project Co Communications Team, including,
    - (A) the identification by name of the communications and public engagement lead and all other staff comprising the Project Co Communications Team; and
    - (B) the roles, responsibilities and experience of each member of the Project Co Communications Team.
- (b) Project Co shall update the Project Co Communications Protocol,
- (i) on an annual basis; or
  - (ii) more frequently as required to account for any changes in circumstances with respect to the Project or lessons learned, or as directed by Contracting Authority, acting reasonably.

Project Co shall resubmit each updated Project Co Communications Protocol to Contracting Authority for review pursuant to Schedule 10 – Review Procedure.

## 7. PROJECT CO COMMUNICATIONS PLAN

### 7.1 Project Co Communications Plan

- (a) Project Co shall, no later than ninety (90) days following Financial Close submit a communications plan for review by Contracting Authority pursuant to Schedule 10 – Review Procedure that describes how Project Co will meet its communications-related obligations under the Project Agreement (the “**Project Co Communications Plan**”). The Project Co Communications Plan shall include:
- (i) a description of Project Co’s objectives and strategies and specific tactics, timelines, deliverables and responsibilities to support,
    - (A) initiatives for public engagement and consultation, including in-person and virtual; and
    - (B) local or community-based communications, advertising and notification related to the Works;
  - (ii) a detailed description of the communications tools outlined in the Project Co Communications Protocol;
  - (iii) a description of the communications and community engagement activities as set out in Section 8 and Section 9, including a description of how Project Co will carry out such communications activities in accordance with its obligations set out in this Schedule 18;
  - (iv) a description of how the approach will be coordinated with respect to other protocols and plans developed by Contracting Authority or Project Co as part of this Schedule 18;
  - (v) the Communications Calendar, including, for clarity, the Project Website and Social Media Calendar; and
  - (vi) a description of Project Co’s approach and strategy with respect to maintaining and updating the Communications Calendar and Communications Repository.
- (b) Project Co shall update the Project Co Communications Plan,
- (i) on an annual basis; or
  - (ii) more frequently as may be directed by Contracting Authority, acting reasonably, 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 Plan to Contracting Authority for review pursuant to Schedule 10 – Review Procedure.

## 8. COMMUNITY ENGAGEMENT

### 8.1 General

- (a) During the Project Term, public engagement activities shall be conducted by Contracting Authority and Project Co on a range of topics, in accordance with the Project Co Communications Plan.
- (b) During the Project Term, Project Co shall identify in its Project Co Communications Plan how it will lead community engagement activities, in consultation with Contracting Authority, related to:
  - (i) each future Station location; and
  - (ii) communicating any other Works which may impact the community and require notification and which are not covered as part of the RSSOM Project and the North Civil Project.
- (c) During the Project Term, Project Co shall support community engagement activities in consultation with Contracting Authority, related to:
  - (i) the RSSOM Project;
  - (ii) the North Civil Project;
  - (iii) the Early Contractor Activities undertaken by Metrolinx or its contractors; and
  - (iv) any other works or initiatives that may be required by Contracting Authority on a reasonable basis.

### 8.2 Community Engagement – Events

- (a) Contracting Authority and Project Co shall collaborate to develop, plan, and coordinate various events during the Project Term. Project Co shall,
  - (i) participate in planning and executing events for the Project as needed and as requested by Contracting Authority;
  - (ii) participate in supporting events for the RSSOM Project and the North Civil Project as needed and as requested by Contracting Authority;
  - (iii) facilitate reasonable access to the Metrolinx Lands and the Project Co Infrastructure from time to time for governmental, public relations, media and public tours and events;
  - (iv) ensure sufficient insurance and liability coverage is in place for any special events or venues;
  - (v) make Project Co staff available for events and tours and provide access and support as may be required by Contracting Authority;
  - (vi) where in-person events are not feasible, provide resources to deliver virtual events; and

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- (vii) provide support to produce various communication materials required for the event and for other events related to the Ontario Line Subway System, as reasonably requested.
- (b) During the Project Term, Contracting Authority shall,
- (i) lead and organize ministerial and government events, including tours of the Metrolinx Lands for dignitaries, costs of which will be borne by Contracting Authority; and
  - (ii) provide no less than two (2) weeks advance notice to Project Co to support the events described in Section 8.2(b)(i) as requested by Contracting Authority.
- (c) During the Project Term, Project Co shall, in consultation with Contracting Authority, lead or support up to twenty-four (24) formal public engagement events or meetings per year, such as town halls and open houses, to help mitigate contentious community issues directly related to the Project, including but not limited to business impacts, noise and vibration impacts, traffic impacts, and safety concerns. This will include:
- (i) planning, organizing, leading, resourcing and executing these events or meetings;
  - (ii) preparing and submitting to Contracting Authority for review and approval individual plans and materials for each public engagement event or meeting, at least one (1) month prior to each event or meeting, including clear objectives, target audiences, event or meeting format, approach and tactics;
  - (iii) being responsible for all logistics for the events and meetings, including,
    - (A) renting the venue (which can consist of a school, library, community centre, place of worship, etc. but must be publicly accessible), tables and chairs;
    - (B) producing displays, invitations, signage and printed material;
    - (C) undertaking print, social media and radio advertising in trade, community and national media outlets as determined by Contracting Authority;
    - (D) issuing invitations, tracking RSVPs and administering surveys to attendees;
    - (E) using reasonable commercial efforts to ensure that the majority of attendees at each event and meeting are residents, individuals associated with a business, and Stakeholders located within a one kilometre radius of the area; and
    - (F) supplying computers, projectors, cables, power cords, screens, easels, flip charts, pens, markers, registration and sign in sheets;
  - (iv) providing Project Co staff to present on the event or meeting topic or theme, conduct outreach by engaging with the public and responding to inquiries related to the Project;
  - (v) preparing event and meeting summaries for submission to Contracting Authority for approval, including both quick turnaround synopses for Contracting Authority's exclusive use and more comprehensive reports at the conclusion of a particular public engagement program (e.g., a set of workshops);

- (vi) submitting high resolution, professional-quality photos and video clips of the event or meeting which may be used publicly; and
  - (vii) collecting feedback from participants, note lessons learned, and collect stakeholder contact information, all of which is to be stored in the Communications Repository.
- (d) Upon reasonable notice by Contracting Authority, Project Co shall attend, with representatives of Contracting Authority, Stakeholder meetings, municipal council meetings and presentations, and such other events or meetings as Contracting Authority deems necessary, including providing sufficient and appropriately experienced personnel to present at or to staff the event and meeting and to provide draft meeting materials for review by Contracting Authority.
- (e) Project Co shall support Contracting Authority in arranging events or meetings, in advance, with residents and businesses where Project Co requires access to properties of such residents and businesses.
- (f) In addition to the requirements set out in Section 8.2(c), Project Co shall also attend and participate in no fewer than fifty (50) events or meetings per year, which are organized by local schools, community associations, Stakeholders, the RSSOM Project Co and the North Civil Project Co, and other events or meetings as reasonably requested by Contracting Authority. Project Co shall,
- (i) provide materials for such events and distribute marketing information for the Project;
  - (ii) provide Project Co staff to present on the event topic or theme, conduct outreach by engaging with the public and to respond to inquiries related to the Project;
  - (iii) no later than ten (10) Business Days after the event/meeting, submit high resolution, professional-quality photos and video clips of the event/meeting which may be used publicly; and
  - (iv) collect feedback from participants, note lessons learned, and collect stakeholder contact information, all of which is to be stored in the Communications Repository.
- (g) Project Co shall, in consultation with Contracting Authority, plan, organize, and execute one public tradeshow no later than one-hundred and eighty (180) days following Financial Close, in accordance with the following requirements:
- (i) no later than sixty (60) days prior to the tradeshow, Project Co shall prepare and submit to Contracting Authority for review and approval plans and materials for the tradeshow, including an outline of clear objectives, target guest list, tradeshow format, approach and tactics;
  - (ii) the tradeshow plan shall ensure that the tradeshow provides a beneficial and efficient networking opportunity between Project Co and local contractors, vendors, job-seekers, community businesses and agencies, with the intent to foster mutually-beneficial relationships and contracts;
  - (iii) hosting relevant stakeholders, Project Co Parties and community agencies to staff their own booth or table to provide beneficial networking, business and job information to attendees;

- (iv) Project Co shall be responsible for planning, implementing and paying for all logistics for the public tradeshow, including:
  - (A) renting the venue, tables and chairs. The venue is to be in a central location for the Project which is publicly accessible, can accommodate a tradeshow layout with booths set up from various stakeholders and partners, and a capacity to hold up to three-hundred (300) people;
  - (B) organizing other logistics such as supplying computers, projectors, cables, power cords, screens, easels, flip charts, pens, markers, and registration and sign in sheets;
  - (C) providing a virtual option for engagement and presentation (for example, telephone and online town hall);
  - (D) producing displays, invitations, signage and printed material;
  - (E) catering for a full-day event, which accommodates the hours between 8:00 am to 8:00 pm EST;
  - (F) print, social media and radio advertising in trade and community and national media outlets in consultation with Contracting Authority targeted to industry vendors, suppliers, businesses and job seekers as Project Co seeks to promote procurement and employment opportunities early on regarding the Project;
  - (G) issuing invitations, tracking RSVPs and administering a survey to attendees; and
  - (H) providing Project Co staff to make presentations, conduct outreach by engaging with the public and responding to inquiries related to the Project, business and job opportunities;
- (v) promptly following the tradeshow, Project Co shall prepare and submit to Contracting Authority a post-tradeshow report summarizing feedback from event participants, lessons learned and confirmed contracts and business opportunities attained for the Project as a result of the tradeshow;
- (vi) promptly following the tradeshow, Project Co shall submit high resolution, professional-quality photos and video clips to Contracting Authority, the content of which may be posted publicly; and
- (vii) following the tradeshow, during the Project Term, Project Co and Project Co Parties shall continue to track and report on their progress of the tradeshow objectives and outcomes as per Section 8.3(j)(ii).

### 8.3 Community Engagement – General Obligations

- (a) Project Co shall provide technical staff for involvement and participation in community events and meetings, including,
  - (i) Key Individuals;



- (ii) architects;
  - (iii) urban designers;
  - (iv) landscape architects;
  - (v) noise and vibration specialists; and
  - (vi) other technical staff as requested by Contracting Authority.
- (b) Technical staff must have strong presentation skills to deliver appropriate messages and to respond appropriately to questions and concerns in a public forum. It is therefore recommended that these technical staff be media-trained to best represent the Project and Project Co's interests.
- (c) In consultation with Contracting Authority, Project Co shall 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.
- (d) Project Co shall provide any necessary information required to demonstrate compliance with and fulfillment of the consultation related provisions of the Environmental Approvals.
- (e) In order to allow local residents and businesses easy access to information about progress, Construction Activities, mitigation measures and other Project information, Project Co shall provide dedicated communications staff in accordance with Section 3 to work out of Contracting Authority's community offices at the following location:
- (i) 770 Queen Street East, Toronto, Ontario.
- (f) Notwithstanding Section 9.14, Project Co shall make staff available and support Contracting Authority to respond to enquiries from the public and Stakeholders about the Works.
- (g) In consultation with Contracting Authority, Project Co shall provide 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 includes having processes to proactively address any Works-related enquiries and issues (for example, public enquiries and complaints regarding noise, hours of work and dust).
- (h) In consultation with Contracting Authority, Project Co shall notify affected residents and businesses, including Contracting Authority's community relations representatives, as soon as possible of unplanned or unexpected Level 3 impacts of Construction Activities (including local outreach if necessary by delivering supplies or notices by going door-to-door to affected buildings as well as providing updates for the Project Website and updated messages on Contracting Authority's information telephone line, including after-hours support), and provide an estimate of the expected duration of the impact.
- (i) Project Co shall maintain a written record of all public enquiries, complaints and communications and shall provide copies to Contracting Authority's lead communications contact on a weekly basis (or immediately if urgent) as per the Complaints Protocol as set out Section 9.14.
- (j) Project Co shall develop and track a dashboard that is agreed by the Parties to,

- (i) demonstrate other local employment impacts, including the hiring of professional, administrative and technical staff for the Project by Project Co and Project Co Parties, in order to track economic benefits, including employment benefits, arising from the Project; and
- (ii) demonstrate how Project Co has utilized local businesses for goods and services during the construction of the Project, noting:
  - (A) business name and location;
  - (B) type(s) of good(s) or service(s) procured and dollar amount of the contract;
  - (C) details pertaining to the performance or quality of the work; and
  - (D) how the contract was sourced.

#### **8.4 Communications with Indigenous Nations and Indigenous Entities**

- (a) Contracting Authority shall be responsible for Indigenous Entities Engagement and will liaise directly with Indigenous Entities throughout the Project Term. Contracting Authority may require Project Co to assist with, and support, Contracting Authority's Indigenous Entities Engagement.
- (b) No later than forty-five (45) days following Financial Close, Project Co shall attend a meeting with the IRO as directed and organised by Contracting Authority. The meeting shall be for the purpose of the IRO providing Project Co with an overview and a series of guidelines for Indigenous Nations Engagement and Indigenous Entities Engagement and ensuring that Project Co's communications and interactions in connection with its participation in such Indigenous Nations Engagement and Indigenous Entities Engagement will be appropriately culturally sensitive.
- (c) Project Co shall consult with the IRO prior to establishing any contact with any Indigenous Nation or Indigenous Entity, and shall follow any direction of the IRO relating to the Project.
- (d) During the Project Term, Project Co shall attend and provide assistance to Contracting Authority with respect to planning and executing one special event for, and a maximum of two meetings collectively, with any Indigenous Nation and Indigenous Entity identified by Contracting Authority, for which Project Co shall be responsible for,
  - (i) logistical and organizational requirements;
  - (ii) catering; and
  - (iii) provision of presentation or other meeting materials that are required for the special event and meetings.
- (e) Project Co shall prepare, in accordance with templates provided by Contracting Authority, as requested by Contracting Authority:
  - (i) Documents Relating to Indigenous Nations, all communications and communications materials, to support Contracting Authority's Indigenous Nations Engagement; and

- (ii) any report, assessment, submission, application, communication, communications material or other documents to support Contracting Authority’s Indigenous Entities Engagement.
- (f) Project Co shall submit to Contracting Authority in accordance with Schedule 10 – Review Procedure and clearly noted as an “Indigenous Relations Matter”:
- (i) as it relates to Indigenous Nations Engagement, all Documents Relating to Indigenous Nations and all other planned communications with Indigenous Nations;
  - (ii) as it relates to Indigenous Entities Engagement, all planned reports, assessments, submissions, applications, communications, communications materials or other document concerning or with Indigenous Entities,

prior to providing to any Governmental Authority, Indigenous Nation or Indigenous Entity as applicable. Project Co shall proceed only after receipt of a “NO COMMENT” notification from Contracting Authority in accordance with Schedule 10 – Review Procedure, unless a longer period for review is otherwise prescribed by the Project Agreement.

- (g) Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation where Contracting Authority’s request for assistance, support, information or documentation is not specified as being a responsibility of Project Co with respect to Indigenous Nations Engagement and Indigenous Entities Engagement pursuant to the Project Agreement.
- (h) For clarity, Project Co shall not contact or provide information to persons beyond the Project Co Parties related to Indigenous Nations Engagement and Indigenous Entities Engagement, or comment on any issues related to Indigenous Nations and Indigenous Entities, unless permission is first obtained from Contracting Authority, or as otherwise contemplated by this Project Agreement.
- (i) Project Co shall provide Contracting Authority with a minimum of five (5) Business Days advance Notice of any identified need for meetings or communications with any Indigenous Nation or Indigenous Entity. Project Co shall not proceed with any such meeting or communication without Contracting Authority’s authorization. Project Co acknowledges and agrees that Contracting Authority may, in the sole discretion of Contracting Authority, attend, facilitate, or lead any meeting with Indigenous Nations or Indigenous Entities. The IRO shall minute any such meetings and distribute those minutes, including attendance, key issues discussed and action items.

## **9. COMMUNICATIONS ACTIVITIES**

### **9.1 Communications Activities – General**

- (a) Project Co shall support Contracting Authority in the implementation of the following communication tactics during the Project Term:
- (i) Project Website and social media;
  - (ii) crisis communications;
  - (iii) issues management;

- (iv) media relations;
- (v) government relations;
- (vi) branding;
- (vii) signage;
- (viii) advertising;
- (ix) shop local campaigns;
- (x) marketing delivery and support;
- (xi) photography and video production; and
- (xii) complaints protocol.

## 9.2 Project Website and Social Media

- (a) Throughout the Project Term, Project Co shall:
  - (i) support Contracting Authority’s social media strategy for the Project (which includes tools such as Twitter, Facebook, YouTube and Instagram);
  - (ii) support the Project Website by providing static (written) and dynamic (multimedia) content; and
  - (iii) ensure the quality of multimedia content aligns with the latest Metrolinx branding standards.
- (b) During the Project Term, as part of Project Co’s obligations set out in Section 9.2(a), Project Co shall provide the following content for review and approval by Contracting Authority:
  - (i) no less frequently than once per week, Project Co shall provide static (written) and dynamic (multimedia) content related to the Works and upcoming notifications, with a minimum length of 150 words;
  - (ii) no less frequently than once per week, Project Co shall provide professional-grade, high resolution visuals, graphics, renderings, photos or video clips showcasing the design of the Works and progress of Construction Activities;
  - (iii) no less frequently than once per month, Project Co shall provide a monthly feature web article that,
    - (A) is of a minimum length of 500 words;
    - (B) includes static (written) and dynamic (multimedia content); and

- (C) highlights no fewer than one aspect of the Project, including design, innovations on the Project, local workers, general contractors, local companies, Construction Activities, or Project benefits, along with additional content to support related posts on the Project’s social media channels and content for virtual public engagement events;
- (iv) no less frequently than once per month, Project Co shall provide e-newsletter content and associated multimedia content, using the design template provided by Contracting Authority; and
- (v) as requested by Contracting Authority, acting reasonably, Project Co shall provide,
  - (A) draft content with respect to public notification of events, public consultations, consultation materials and post-consultation summaries; and
  - (B) draft content to support government and Stakeholder (for example, MTO, MOI and City of Toronto) web and social media communications needs.
- (c) No later than fifteen (15) days following the finalization of the Project Co Communications Plan, and thereafter on a monthly basis, Project Co shall attend and participate in an editorial meeting with Contracting Authority for the purpose of planning and discussing the content described in Section 9.2(b) (each, a “**Monthly Editorial Meeting**”). At the Monthly Editorial Meetings, Project Co shall present on the topics and content, and shall incorporate all comments received from Contracting Authority into the content that is submitted to Contracting Authority for review and approval.
- (d) In addition to the submittal requirements set out in Section 4.4(a), no later than one week in advance of each Monthly Editorial Meeting, Project Co shall provide an updated Project Website and Social Media Calendar to Contracting Authority.
- (e) Project Co shall employ social media tools to monitor and analyze public responses to the Project, and, no later than two hours after Project Co or Contracting Authority becomes aware of an adverse impact identified by the public that could attract media attention, spread misinformation or pose a safety risk, Project Co shall provide draft responses to online comments for Contracting Authority to review and issue.

### 9.3 Crisis Communication

- (a) No later than thirty (30) days following Financial Close, Contracting Authority shall submit to Project Co the Contracting Authority’s crisis communication plan;
- (b) No later than sixty (60) days following Financial Close, Project Co shall submit a crisis communications plan for the Project Term that is consistent with Contracting Authority’s crisis communications plan as provided to Project Co as at Financial Close and that includes the following:
  - (i) the identification of individuals comprising Project Co’s crisis response team, including the name, title and role of lead staff;

- (ii) a description of the roles and responsibilities of Project Co, Contracting Authority and other partners and Stakeholders as required (for example, City of Toronto, local transit authorities and MTO) with respect to crisis communications;
  - (iii) a list of tools and tactics to be employed by Project Co in crisis communications;
  - (iv) identification and ranking of a list of potential crisis issues that could develop during the performance of the Works;
  - (v) key messages to be communicated to the public; and
  - (vi) a description of the crisis simulations that Project Co intends to conduct during the Project Term, (the “**Crisis Communication Plan**”).
- (c) Project Co shall submit the Crisis Communication Plan to Contracting Authority for review in accordance with Schedule 10 – Review Procedure. Project Co shall update each of the Crisis Communication Plan,
- (i) on an annual basis; or
  - (ii) more frequently as may be directed by Contracting Authority, in its sole discretion, 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 Crisis Communication Plan to Contracting Authority for review pursuant to Schedule 10 – Review Procedure.

- (d) During the Project Term, Project Co shall:
- (i) consult with and provide assistance to Contracting Authority to implement the Crisis Communication Plan and update the Crisis Communication Plan;
  - (ii) during a crisis situation, make available sufficient Project Co communications staff and Project Co resources in order to work effectively with Contracting Authority to proactively manage and perform Project Co’s communications responsibilities as set out in this Schedule 18; and
  - (iii) conduct a crisis simulation annually (tabletop, full scale or in-person, depending on the crisis topic and resources required) in accordance with the Crisis Communication Plan, and Project Co shall take all actions and make all adjustments in response to lessons learned from each crisis simulation exercise.

#### 9.4 Issues Management

- (a) During the Project Term, Project Co shall consult with and provide assistance to Contracting Authority, as reasonably requested by Contracting Authority, with respect to:
- (i) identifying issues and trends as they emerge, including social media monitoring approach, 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 Stakeholders.
- (b) Project Co shall respond to all issues identified by Contracting Authority within a timeframe determined by Contracting Authority.

#### 9.5 Media Relations

- (a) During the Project Term, Project Co shall,
- (i) direct all media enquiries and interview requests to Contracting Authority's lead communications contact who will determine the organization that is most suitable to respond to the enquiry or request;
  - (ii) provide draft responses and messaging to Contracting Authority with respect to all media enquiries and interview requests in a timely manner;
  - (iii) implement and maintain an electronic media request log using software, and in a format, agreed upon by the Parties, which shall track each request that Project Co receives and responds to;
  - (iv) support Contracting Authority with respect to all media enquiries and interview requests;
  - (v) provide designated media relations staff (with back-up media-trained personnel, as required) with 24/7 availability to monitor, draft messaging and respond to enquiries as requested by Contracting Authority;
  - (vi) make available a Project Co designated media relations spokesperson and construction manager or similar expert who is media trained, for the purposes of responding to technical matters related to media and interview requests as requested by Contracting Authority; and
  - (vii) provide communications training to Project Co staff, including refresher training regarding Contracting Authority's communication protocols and policies for handling media, public, and Stakeholder interaction.

## 9.6 Government Relations

- (a) Except as otherwise set out in this Section 9.6, Contracting Authority shall be responsible for any government relations activities.
- (b) Throughout the Project Term, Project Co shall:
  - (i) support Contracting Authority as Contracting Authority liaises with affected Governmental Authorities and boards to provide information about the Project status, upcoming milestones, and issues that may affect the Project;
  - (ii) support Contracting Authority by regularly providing information about construction status, upcoming Works milestones, and issues related to Construction Activities and reviewing messaging for government relations purposes; and
  - (iii) participate in meetings with Contracting Authority, the City of Toronto and Stakeholders as and when requested by Contracting Authority.
- (c) Except as otherwise set out in this Schedule 18, Project Co, in carrying out its obligations as set out in this Schedule 18, shall not engage with any elected officials or their staff or agents at any level of government without the prior written approval of Contracting Authority.

## 9.7 Branding Requirements – General

- (a) Unless explicitly permitted or required by this Schedule 18, Project Co shall not apply any advertising or branding to any infrastructure, Cars, plant, equipment, or other items with respect to the Project without the prior written consent of Contracting Authority, which consent may be withheld in Contracting Authority’s sole discretion.
- (b) Project Co acknowledges and agrees that Project Co shall not be entitled to receive any payment or compensation from Contracting Authority or any third party (in any form) from any branding or advertising in respect of the Project, and that Contracting Authority reserves the right to all such branding and advertising.

## 9.8 Branding

### 9.8.1 Metrolinx Brand and Metrolinx Branded Items

- (a) Metrolinx shall provide Project Co with its corporate brand name and logo (the “**Metrolinx Brand**”). Project Co shall apply the Metrolinx Brand to the Stations and the Ontario Line Subway in accordance with the standards set out in Section 9.7 (collectively, the “**Metrolinx Branded Items**”).

### 9.8.2 Project Co Brand

- (a) During the Project Term, Project Co shall develop and use a single corporate brand name and logo for the Project (the “**Project Co Brand**”). The Project Co Brand shall,
  - (i) have a name that is clearly distinguishable from each of Metrolinx, Infrastructure Ontario, GO Transit, UP Express, and any other stakeholders of Contracting Authority, and that is



- clearly distinguishable from the name of any other brand used in other Contracting Authority projects;
- (ii) have a logo of distinctive design that is visually and graphically distinct of the Metrolinx logo; and
  - (iii) be simple in design and consistently applied by Project Co on Project Co Branded Items throughout the Project Term.
- (b) No later than ninety (90) days following Financial Close, Project Co shall submit the designs and sample of the Project Co Brand to Contracting Authority for review. Project Co shall not apply the Project Co Brand on any item with respect to the Project, including on any Metrolinx Branded Item, unless and until Contracting Authority approves Project Co's design and samples.

### 9.8.3 Project Co Branded Items

- (a) Project Co shall apply the Project Co Brand that is reviewed and accepted by Contracting Authority in accordance with Section 9.8.2(b) on the following items:
- (i) each of Project Co's corporate communications materials;
  - (ii) each of Project Co's personnel uniforms and forms of identification;
  - (iii) each of Project Co's vehicle liveries and equipment
- (collectively, the "**Project Co Branded Items**").
- (b) Project Co shall provide each Project Co Branded Item to Contracting Authority for review. Project Co shall not introduce any Project Co Branded Item into the Project Term unless and until Contracting Authority approves each Project Co Branded Item.

### 9.9 Communications Signage

- (a) Project Co shall submit a signage and hoarding short-term and long-term coverage plan ("**Signage and Hoarding Coverage Plan**") in accordance with Schedule 10 – Review Procedure, no later than one-hundred and twenty (120) days following Financial Close, which shall include:
- (i) the mapping of signage to be installed, the number of signage required and the locations for each future Station location, type and purpose of each sign, including other details as reasonably requested by Contracting Authority
- (b) Project Co shall, for each Station site, design, translate (if required), print and install various communications signage, including Project promotional signage, business support and shop local signage, wayfinding and safety campaign signage in accordance with any signage templates that may be provided by Contracting Authority from time to time or tailored signs developed in consultation with Contracting Authority and stakeholders (the "**Communications Signage**") including:
- (i) install purpose-built billboards (2 panels, 12ft x 8ft per panel – 24ft x 8ft in total) to promote the benefit of the work to the customer, using Metrolinx provided templates and

messaging, following Financial Close but in advance of construction commencement, at the direction of Contracting Authority;

- (ii) install one government sign (Ontario Builds) to promote the investment by government, using government provided templates and messaging, following Financial Close but in advance of construction commencement, at the direction of Contracting Authority. The sign shall always be displayed in a visible location; and
  - (iii) ensure a minimum of [REDACTED] per cent of the public-facing surface area of all construction hoarding, fencing and barriers at each future Station location are covered with Communications Signage. Project Co shall provide to Contracting Authority the dimensions of all hoarding, fencing and barriers at each future Station location in order to enable Contracting Authority to evaluate Project Co's conformance with this requirement. Project Co shall ensure that appropriate Communications Signage is provided in a visible location on the Site to indicate the presence of and means of accessing affected businesses.
- (c) Prior to installing any Communications Signage, Project Co shall provide to Contracting Authority for approval, stamped shop drawings of the sign fabrication (where required by local zoning by-laws) and installation details, together with a graphic design mock-up of the signage including panel dimensions, location and confirmation of the applicable Permits, Licences, Approvals and Agreements;
- (d) Project Co shall ensure Communication Signage is installed in accordance with the requirements for signage as set out in Section 9.9(b) within twenty-one (21) days of Contracting Authority approval (or much longer period of time agreed to by the Parties, acting reasonably).
- (e) During the Project Term, Project Co shall,
- (i) use signage material for Communications Signage based on Good Industry Practice and in accordance with Applicable Law;
  - (ii) choose hoarding or fencing to accommodate signs tailored for specific sites to limit the intrusion of the construction site, as far as reasonably practical;
  - (iii) ensure that all Communications Signage is kept in good condition;
  - (iv) replace any Communications Signage that is damaged at Project Co's expense;
  - (v) remove graffiti on all Communications Signage within forty-eight (48) hours;
  - (vi) provide personnel to install, remove and relocate signage within two (2) weeks, as requested by Contracting Authority from time to time at its sole discretion;
  - (vii) install, remove or relocate any signage that is provided by Contracting Authority or a Governmental Authority, and ensure that such signs are visibly displayed on the Site; and
  - (viii) remove all construction-related Communications Signage along the corridor within three (3) months of Substantial Completion.

- (f) The requirements for signage as set out in this Section 9.9 shall not limit and are intended to supplement Project Co's other obligations with respect to signage as set out in the rest of the Project Agreement including, for clarity, the Output Specifications.

### 9.10 Advertising

- (a) During the Project Term, Contracting Authority shall:
- (i) plan, develop and execute advertisement strategies for the Project;
  - (ii) review and approve advertisements produced by Project Co related to the Project; and
  - (iii) provide templates to Project Co to use as well as messaging, where required.
- (b) During the Project Term, Project Co shall:
- (i) support and contribute to the planning, development and execution of Contracting Authority's public education and advertising campaigns related to the Works;
  - (ii) 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 print community and commuter newspapers, multi-lingual community newspapers and radio stations, radio and television, digital programmatic platforms, social media and online video, along with unaddressed mail in accordance with this Section 9.10;
  - (iii) identify ethnic and diverse populations across the full Project alignment and coordinate the booking of appropriate advertisements via a multichannel media approach and in a multi-lingual format (where required), including print (newspapers, magazine etc.) display media units (email, programmatic banners etc.), social platforms (Facebook, Twitter, Instagram etc.), terrestrial/digital audio (Spotify), and online video placements (OLV) such as YouTube/Connected TV spots;
  - (iv) for social media campaigns, Project Co shall plan, develop and execute an effective community management strategy where applicable to measure campaign impact and adjust such strategy as needed (e.g. respond to comments, provide information to users, sentiment tracking etc.);
  - (v) for each of the 24 public engagement meetings set out in Section 8.2(c), provide one advertisement insertion in two local community newspapers (in full colour and half page in size); as well as considerations of digital executions such as Facebook event advertisement, as digital platforms provide a more measurable response and target for success (for example, in volume of total signups and cost-per acquisition);
  - (vi) for construction notices that indicate significant, long-term construction impacts of more than six (6) months in duration, provide advertisements and notices, including one local newspaper and one major daily newspaper per major Works stage (in full colour and quarter page in size);

- (vii) procure and coordinate the distribution of construction notices, through Canada Post, based on a distribution area of five-hundred (500) metre radius of the Works, where the applicable Construction Activities are set up;
- (viii) produce and use sample designs in public information and public engagement materials to illustrate principles, provided that such information and materials are reviewed and approved by Contracting Authority;
- (ix) not use hoarding or any other areas within the Lands for advertisement and shall not permit, engage or authorize any third party to use any areas within the Lands for advertisement, without the prior written consent of Contracting Authority; and
- (x) submit all advertisements, insertions, construction notices, messages, and other associated documentation contemplated in Section 9.10(b) for review and approval by Contracting Authority prior to distributing, placing, posting, issuing, or producing any such advertisement, insertion, construction notice, message or any other documentation.

### 9.11 Shop Local

- (a) Project Co shall, no later than ninety (90) days following Financial Close, submit a shop local plan for review by Contracting Authority pursuant to Schedule 10 – Review Procedure that describes how Project Co will meet its construction shop local-related obligations under the Project Agreement (the “**Project Co Shop Local Plan**”). The Project Co Shop Local Plan shall include Project Co’s plan to support “shop local” or local business sustainment and promotion efforts, including:
  - (i) release two direct mail pieces (printed in full colour) annually to residential and business owners, tenants and other property occupants who own, lease and otherwise occupy property within a 1,000-metre radius on either side and end of the corridor;
  - (ii) annually issue four advertisements in each of the City of Toronto consisting of two ad insertions in local newspapers (in full-colour and half page in size);
  - (iii) hire an external team to conduct quantitative and qualitative research on an annual basis with local Chambers of Commerce, Business Improvement Areas or equivalent to develop, and amend as required, a “shop local” campaign and business support strategy, in which Project Co shall:
    - (A) develop and fund promoted social media advertising to support a “shop local” campaign; promoted as always on component (full year) along with other digital media considerations (for example, YouTube and display banners);
    - (B) develop promotions and “construction hat specials” for local businesses (particularly the restaurants and service industry);
    - (C) leverage restaurant week-type events or create events if no program exists on the corridor for the duration of construction, and on-board restaurants along the corridor with food delivery platforms;

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- (D) hire a promotional or events company to design and carry out community events in support of a “shop local” campaign and cover street event fees for community events, if applicable; and
  - (E) in conjunction with local arts councils or equivalent, conduct a review of street art, mural, and alleyway opportunities along the corridor and commission new projects at Project Co’s expense; and
- (iv) develop and implement a community engagement program, in which Project Co shall,
- (A) canvass every street-level, front-facing corridor property within a 1,000-metre radius of the corridor, on an annual basis, in order to raise awareness for the Project, provide information about Project social media, and obtain email addresses from local residents and businesses for newsletter updates. Project Co is expected to reach out to these properties both in-person and digitally;
  - (B) produce and print canvassing materials for distribution to the public as directed by Contracting Authority;
  - (C) twice annually, provide information sessions during a four to six week period for residential and commercial high rises, to provide project updates, address concerns and inform on-going communications planning;
  - (D) use a source cloud-based canvass software to support the program, which Project Co shall use while canvassing to record email addresses and keep track of where Project Co has canvassed; and
  - (E) recruit, train, support and manage a part-time, seasonal team, as needed to facilitate the program and in accordance with the requirements as set out in this Section 9.11(a)(iv), who Project Co shall provide with seasonal apparel with project identifier and logos as identified by Contracting Authority for the purposes of canvassing.
- (b) Within the Project Co Shop Local Plan, Project Co shall include a separate section that describes how Project Co will meet its construction shop local-related obligations, specifically related to the permitted Lane Closures (as defined in the Output Specifications) of all traffic lanes along Queen Street as set out in Section 3.2.8.6 (*Permitted Lane Closures*) of the Output Specifications. This shall also include Project Co’s plan to support “shop local” or local business sustainment and promotion efforts along Queen Street, including consideration of partnerships with:
- (i) the City of Toronto;
  - (ii) the Eaton Centre and its businesses, staff and patrons;
  - (iii) the Hudson’s Bay Queen Street location and its businesses, staff and patrons;
  - (iv) the St. Michael’s Hospital and its staff, patients and visitors;
  - (v) the two provincial courthouses at 60 Queen Street West and its staff;

- (vi) and other users as applicable, in accordance with the requirements of the Project Agreement.
- (c) For significant, long-term construction impacts and in support of “shop local” or local business sustainment and promotion efforts, Project Co shall produce and book regular 15 second sponsor messages on the radio on weekdays, in the morning and afternoon peak commuter times for the duration of the long-term construction impacts in accordance with the following:
  - (i) radio advertisements shall 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; and
  - (ii) radio advertisements shall appear on local Toronto radio stations (for example, CFRB and 680 News).

### 9.12 Marketing Delivery and Support

- (a) During the Project Term, Project Co shall:
  - (i) secure paid advertising space for a four (4) week time slot per quarter that includes,
    - (A) two (2) transit shelters near each future station/shop location between Don Yard and Ontario Place;
    - (B) up to ten (10) horizontal billboards and mobile signs (colour and 10’ x 20’ in size);
    - (C) up to three (3) superboards (48’ x 14’ in size) and/or horizontal backlights (22’ x 9’); and
    - (D) Geotargeted programmatic display advertising at each future Station between Don Yard and Ontario Place;
  - (ii) secure paid radio advertising space for a four (4) week time slot, semi-annually to appear on local Toronto radio stations such as CFRB and 680 News;
  - (iii) secure paid TV advertising space for a four (4) week time slot, semi-annually, to appear on local Toronto TV station such as CP24; and
  - (iv) support Contracting Authority’s efforts to communicate with English speaking populations, as well as ethnic and diverse populations by:
    - (A) identifying ethnic and diverse populations along the corridor, their share of the market, and their associated languages;
    - (B) working with Contracting Authority to draft and translate content for advertisements, according to the ethnic and diverse populations identified;
    - (C) securing paid media space in ethnic publications for the placement of advertisements including print (newspapers, magazines, etc.), display media units (email, programmatic banners, etc.), social platforms (Facebook, Twitter,

Instagram, etc.), terrestrial/digital audio (Spotify), and online video placements (OLV) such as YouTube/Connected TV spots, as directed by Contracting Authority; and

- (D) placing the final advertisements produced by Contracting Authority in the media spaces outlined in Section 9.12(a)(iv)(C), as approved by Contracting Authority.

### 9.13 Photography and Video

- (a) During the Project Term, for the purposes of record-keeping and demonstrating the progress of the Project, Project Co shall provide the following to Contracting Authority:
- (i) professional quality (high resolution) photos of the Site, on a weekly basis;
  - (ii) high-resolution photos that capture the same angles as renderings provided in design on a monthly basis;
  - (iii) annually, a professional quality (high resolution) time-lapse video that is branded using templates provided by Contracting Authority and that is professionally edited with music, capturing the construction of the Site from start to finish;
  - (iv) monthly, a professional quality (high resolution) video clip, that is branded using templates provided by Contracting Authority and that is professionally edited with music, capturing the construction of the Project at the Site; and
  - (v) twice annually, a professional quality (high resolution) video of drone footage, that is branded using templates provided by Contracting Authority and that is professionally edited with music, capturing the construction of the Project at the Site.
- (b) During the Project Term, Project Co shall,
- (i) obtain all of the rights necessary for Project Co and Contracting Authority to use, reproduce, modify and brand all of the images and footage described in this Schedule 18 without restrictions;
  - (ii) ensure that Project Co and all Project Co Parties provide consent to disclosure of photos and videos relating to the Project and that all photo and video content has been reviewed by Project Co for health and safety clearance; and
  - (iii) review all photo and video content before submitting to Contracting Authority, to reduce the number of revisions back and forth.
- (c) During the Project Term, Project Co shall provide Contracting Authority with access to all images and video files through a cloud-based server that is accessible to Contracting Authority's authorized users throughout the duration of the Project Term.
- (d) During the Project Term, Project Co shall, from time to time, as reasonably requested by Contracting Authority, facilitate on-site access for Contracting Authority-designated photographers and videographers.

## 9.14 Complaints Protocols

- (a) Until Scheduled Substantial Completion Date, Contracting Authority shall:
- (i) be responsible for approving all responses to complaints and enquiries relating to the Project;
  - (ii) implement the Contracting Authority community telephone number 416-212-5100 which will be in operation to take complaint calls from the public 24/7/365;
  - (iii) in-take all Level 1 Calls, Level 2 Calls and Level 3 Calls from the public, and triage and forward to Project Co to manage in accordance with Section 9.14(b); and
  - (iv) submit to Project Co an invoice no later than sixty (60) days prior to the Scheduled Substantial Completion Date for a total of up to \$[REDACTED] per month from Financial Close to the Scheduled Substantial Completion Date. This invoice will set out the costs associated with Contracting Authority’s obligations under Section 9.14(a)(iii) to in-take, triage and forward calls to Project Co.
- (b) Until Scheduled Substantial Completion Date, Project Co shall:
- (i) incorporate into the Project Co Communications Plan, and align with the Crisis Communication Plan, a complaints protocol (the “**Complaints Protocol**”) that,
    - (A) addresses how Project Co will deal with and respond to enquiries, suggestions, claims and complaints received with respect to the Project and identify complaints that require escalation; and
    - (B) requires that Project Co deal with all enquiries, suggestions, claims and complaints and suggestions no later than the initial response period required by Level 1 Calls, Level 2 Calls and Level 3 Calls, as applicable;
  - (ii) provide 24/7 call service support staff to be available to provide regular and timely in-take and responses to Level 1 Calls, Level 2 Calls and Level 3 Calls;
  - (iii) provide drafted responses and tactics to implement for Level 1 Calls, Level 2 Calls and Level 3 Calls, as required, to Contracting Authority for review;
  - (iv) maintain a software system that will track all complaints, enquiries and responses, and for each entry, document the response and the date in which it was provided;
  - (v) provide monthly complaint reports to Contracting Authority, including an analysis of the main areas of concern to complainants;
  - (vi) coordinate Project Co’s complaint tracking and complaint reports with any internal complaint tracking or complaint reports established by Contracting Authority with respect to the Project, as requested by Contracting Authority; and
  - (vii) pay Contracting Authority up to \$[REDACTED] per month from Financial Close to the Scheduled Substantial Completion Date in accordance with the invoice from Contracting



Authority set out in Section 9.14(a)(iv) within thirty (30) days from receipt of such invoice.

- (c) Project Co shall update the Complaints Protocol,
  - (i) on a semi-annual basis; or
  - (ii) more frequently as may be requested by Contracting Authority, or as may be required to account for any changes in the circumstances of or lessons learned with respect to the Project.
- (d) Project Co acknowledges and agrees that the Complaints Protocol may be made publicly available at the request of Contracting Authority.

## **10. NOTIFICATION**

### **10.1 Major Impact on Third Party Owners**

- (a) With respect to Construction Activities that are reasonably anticipated to have a Major Impact on third-party property owners, Project Co shall:
  - (i) provide Notice to Contracting Authority of such Construction Activities no later than six (6) months prior to the commencement of such Construction Activities or impacts;
  - (ii) provide a draft public notification for Contracting Authority's review, no later than four (4) months prior to the commencement of such Construction Activities; and
  - (iii) prepare and distribute, via Canada Post, public notifications printed in full colour and approved by Contracting Authority, to all property owners within a five-hundred (500) metre radius of the Construction Activities, at least one (1) month prior to the commencement of the Works or impact.
- (b) The public notifications provided by Project Co in accordance with this Section 10.1 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 relating to such Construction Activities.

### **10.2 Major Impact on Transit Users, Customers and Public**

- (a) With respect to Construction Activities that are reasonably anticipated to have a Major Impact on transit users, pedestrians, cyclists, residents, traffic, and/or the public generally, Project Co shall:
  - (i) provide Notice to Contracting Authority of such Construction Activities no later than three (3) months prior to the commencement of such Construction Activities or impacts;

- (ii) provide a draft public notification for Contracting Authority’s review, no later than two (2) months prior to the commencement of such Construction Activities;
  - (iii) prepare and distribute, via Canada Post, public notifications printed in full colour and approved by Contracting Authority, to residents, business owners and the community within a five-hundred (500) metre radius of the Construction Activities, at least one (1) month prior to the commencement of the Works or impact; and
  - (iv) provide notification using geo-targeted advertising on social media to residents, business owners and the community based on the same distribution area for printed notifications, unless otherwise instructed by Contracting Authority at least one (1) month prior to the commencement of the Works or impact.
- (b) For the purposes of Section 10.1 and this Section 10.2, a major impact shall include overnight construction, temporary Construction Activities, paving, privately owned elements to be relocated or removed by Project Co, transit stop relocations, any disruption to water, gas and/or other utilities, and activities that affect pedestrian circulation (“**Major Impact**”).

### 10.3 Medium Impact

- (a) With respect to Construction Activities that are reasonably anticipated to have a Medium Impact on business owners, property owners, transit users, pedestrians, cyclists, residents, traffic, and/or the public generally, Project Co shall:
- (i) provide Notice to Contracting Authority of such Construction Activities no later than twenty (20) Business Days prior to the commencement of such Construction Activities or impacts;
  - (ii) provide a draft public notification for Contracting Authority’s review, no later than fifteen (15) Business Days prior to the commencement of such Construction Activities;
  - (iii) prepare and distribute, via Canada Post, public notifications printed in full colour and approved by Contracting Authority, to residents, business owners and the community within a five-hundred (500) metre radius of the Construction Activities at least ten (10) Business Days prior to the commencement of the Works or impact; and
  - (iv) provide notification using geo-targeted advertising on social media to residents, business owners and the community based on the same distribution area for printed notifications, unless otherwise instructed by Contracting Authority at least ten (10) Business Days prior to the commencement of the Works or impact.
- (b) For the purposes of this Section 10.3, a medium impact shall include major intersection work, and impacts from noise, vibration or dust (“**Medium Impact**”). For clarity, the notification provided by Project Co pursuant to Section 10.3(a)(ii) shall be delivered by Contracting Authority to all affected properties by Project Co and in consultation with Utility Companies, as applicable.

### 10.4 Minor Impact

- 
- (a) With respect to Construction Activities that are reasonably anticipated to have a Minor Impact on business owners, property owners, transit users, pedestrians, residents, traffic and/or the public generally, Project Co shall:
- (i) provide Notice to Contracting Authority of such Construction Activities no later than five (5) Business Days prior to the commencement of such Construction Activities or impacts;
  - (ii) provide a draft public notification for Contracting Authority’s review no later than forty-eight (48) hours prior to the commencement of such Construction Activities to Contracting Authority for review; and
  - (iii) prepare and distribute by hand delivery, public notifications printed in full colour and approved by Contracting Authority, to all impacted residents, business owners and the community within a five-hundred (500) meter radius at least twenty-four (24) hours prior to the commencement of the Works or impact.
- (b) For the purposes of this Section 10.4, a minor impact shall include short-term lane closures, minor pedestrian detours, and minor access and driveway work (“**Minor Impact**”). Project Co shall ensure that access is maintained to properties impacted by the Construction Activities.

## 10.5 Other Impact

- (a) With respect to incidents related to Construction Activities that are reasonably anticipated to have an impact on Project Co’s employees and contractors, transit users, pedestrians, residents, traffic and/or the public generally, and with respect to which Project Co cannot reasonably provide advance notice of any kind to Contracting Authority or the public (each a “**Construction Activities Incident**”), Project Co shall:
- (i) immediately notify Contracting Authority of such Construction Activities Incident;
  - (ii) comply with all requirements of Schedule 29 – Safety, System Assurance and Security;
  - (iii) provide a draft public notification or messaging to Contracting Authority for review, no later than two (2) hours following the commencement of the Construction Activities Incident to Contracting Authority for review;
  - (iv) be prepared to provide a public statement with respect to the Construction Activities Incident at the request of Contracting Authority; and
  - (v) be prepared to enact a Crisis Communication Plan in consultation with Contracting Authority and to react quickly to provide an immediate response to the public and Stakeholders.
- (b) For the purposes of this Section 10.5, a Construction Activities Incident shall include an accident on site or a major catastrophe.

## 11. ACCESSIBILITY

### 11.1 Accessibility

- 
- (a) Project Co shall ensure that all communications with respect to the Project comply with the *Accessibility for Ontarians with Disabilities Act* (Ontario).
  - (b) As required by Contracting Authority, Project Co shall provide translation of communication materials (which could include video and photo captions, advertising, multimedia and other communication content) into French and in the top five (5) languages most commonly used in the City of Toronto, as reasonably requested by Contracting Authority, in accordance with this Schedule 18

## 12. PUBLIC DISCLOSURE AND MEDIA RELEASES

### 12.1 Public Disclosure and Media Releases

- (a) Except as otherwise permitted in the Project Agreement:
  - (i) neither Project Co or its staff nor any of Project Co's Parties or its staff shall issue or disseminate any media release, public announcement, social media post or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, the Project Agreement, Contracting Authority's activities or any related matters, without the prior written consent of Contracting Authority; and
  - (ii) neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, the Project Agreement, Contracting Authority activities or any matter related thereto, without the prior written consent of the other Party.
- (b) Project Co shall comply and shall ensure that all Project Co Parties comply, at all times, with Contracting Authority's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by Contracting Authority from time to time.

## SCHEDULE 19

## LIQUIDATED DAMAGES AND CONSTRUCTION ENFORCEMENT REGIME

## 1. INTERPRETATION AND DEFINITIONS

## 1.1 Interpretation

- (a) In this Schedule 19, and for the purposes of all calculations pursuant to this Schedule 19, all amounts cited in respect of capital costs and/or costs in respect of the construction of the Works are amounts prior to any *Construction Act* (Ontario) holdback.

## 1.2 Definitions

In this Schedule 19, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 19) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Alternative Transportation Event**” has the meaning given in Section 3.1(d).
- (b) “**Construction Period Deduction**” means a deduction for any Construction Period Quality Failure, as calculated in accordance with Section 6.2.
- (c) “**Construction Period Event**” means an incident or state of affairs that does not meet or comply with the Construction Period Performance Criteria, and that is capable of becoming a Construction Period Quality Failure.
- (d) “**Construction Period Failure Category**” means the failure category described in the column entitled “Construction Period Failure Category” in the table set out in Appendix A to this Schedule 19.
- (e) “**Construction Period Failure Type**” means the failure type described in the column entitled “Construction Period Failure Type” in the table set out in Appendix A to this Schedule 19.
- (f) “**Construction Period Performance Criteria**” means the level of performance (as set out in the column entitled “Requirement to be Met” in the table set out in Appendix A to this Schedule 19) that Project Co must achieve to avoid a Construction Period Event for a failure to achieve compliance with the applicable provision of the Project Agreement.
- (g) “**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” as set out in the column entitled “Construction Period Failure Type” in the table set out in Appendix A to this Schedule 19.
- (h) “**Construction Period Quality Failure Deduction**” has the meaning given in Section 6.2(a).
- (i) “**Contested Non-Conforming Works**” means Works in respect of which Contracting Authority has given Notice to Project Co, pursuant to Section 49 (*Notices*) of the Project Agreement (but not an NCR initiated by Contracting Authority pursuant to Schedule 11 – Quality Management),

that, in the opinion of Contracting Authority, 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.

- (j) **“Critical Construction Period Quality Failure”** means a Construction Period Quality Failure designated as “Critical” in the column entitled “Construction Period Failure Category” in the table set out in Appendix A to this Schedule 19.
- (k) **“Critical Qualifying NCR”** means a Qualifying NCR raised by Contracting Authority or Project Co on a Non-Conformance that requires all or any portion of Project Co Accepted Works to be removed or repeated because such Project Co Accepted Works have, or would reasonably be expected to have, a significant adverse or material adverse impact on:
  - (i) the safety of the Project, the environment, System Users or the public;
  - (ii) the quality of the Works; or
  - (iii) the durability of the Works.
- (l) **“Critical Qualifying Process NCR”** means a Qualifying Process NCR raised by Contracting Authority or Project Co on a Non-Conformance that requires physical progress on any part of Works to be stopped for longer than 24 hours.
- (m) **“Failure to Vacate”** has the meaning given in Section 3.2(a).
- (n) **“Incident of Train Delay”** means an incident of delay to an applicable train that causes a Train Delay, including one or more subsequent related Train Delays.
- (o) **“Integration Milestone Delay”** means any delay in achieving Section Substantial Completion for a Project Co Infrastructure Section, achieving a Subsection RSSOM Access Date for a Project Co Infrastructure Subsection, delivering Critical Data or completing Critical Works, in each case referred to in Section 5.1.
- (p) **“Medium Construction Period Quality Failure”** means a Construction Period Quality Failure designated as “Medium” in the column entitled “Construction Period Failure Category” in the table set out in Appendix A to this Schedule 19.
- (q) **“Medium Qualifying NCR”** means a Qualifying NCR raised by Contracting Authority or Project Co on a Non-Conformance for all or any portion of Project Co Accepted Works. If a Qualifying NCR meets both definitions of:
  - (i) Critical Qualifying NCR; and
  - (ii) this definition of Medium Qualifying NCR,then the Qualifying NCR shall be a Critical Qualifying NCR and not a Medium Qualifying NCR.
- (r) **“Medium Qualifying Process NCR”** means a Qualifying Process NCR raised by Contracting Authority or Project Co on a Non-Conformance that requires changes to a Works Submittal being

used by Project Co in its delivery of the Works. If a Qualifying Process NCR meets both definitions of:

- (i) Critical Qualifying Process NCR; and
- (ii) this definition of Medium Qualifying Process NCR,

then the Qualifying Process NCR shall be a Critical Qualifying Process NCR and not a Medium Qualifying Process NCR.

- (s) **“Minor Construction Period Quality Failure”** means a Construction Period Quality Failure designated as “Minor” in the column entitled “Construction Period Failure Category” in the table set out in Appendix A to this Schedule 19.
- (t) **“Minor Construction Period Quality Failure Tolerance”** has the meaning given in Section 6.3(a).
- (u) **“Minor Qualifying NCR”** means a Qualifying NCR raised by Contracting Authority on a Non-Conformance on all or any portion of the Works that have been inspected and tested or approved by Project Co at a Witness and Hold Point, pursuant to the Inspection and Test Plan, but are not yet Project Co Accepted Works. For clarity, a Minor Qualifying NCR does not mean a Qualifying NCR raised by Project Co.
- (v) **“Minor Qualifying Process NCR”** means a Qualifying Process NCR raised by Contracting Authority on a Non-Conformance that is not a Critical Qualifying Process NCR or Medium Qualifying Process NCR. For clarity, a Minor Qualifying Process NCR does not mean a Qualifying Process NCR raised by Project Co.
- (w) **“NCR”** means a Non-Conformance Report.
- (x) **“Project Co Accepted Works”** means all physical elements of the Works that have been accepted by Project Co as meeting its acceptance criteria for those Works pursuant to the Inspection and Test Plan.
- (y) **“Qualifying NCR”** means a Non-Conformance Report in accordance with Schedule 11 – Quality Management regarding any Non-Conformance discovered in the physical elements of any of the Works:
  - (i) for which Project Co has continued, or has stated the intention to continue, construction of the Works past the relevant Witness and Hold Point in contravention of the Inspection and Test Plan; or
  - (ii) following Project Co’s stated completion of a task or component and Project Co’s statement that the requirements for the Design and Construction Certification Procedure 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 shall include “Critical Qualifying NCR”, “Medium Qualifying NCR” or “Minor Qualifying NCR”.

- (z) “**Qualifying Process NCR**” means a Non-Conformance Report in accordance with Schedule 11 – Quality Management regarding any Non-Conformance that is not a Qualifying NCR and shall include “Critical Qualifying Process NCR”, “Medium Qualifying Process NCR” or “Minor Qualifying Process NCR”.
- (aa) “**Remedial Period**” means the applicable remedial period set out in the column entitled “Remedial Period” in the table set out in Appendix A to this Schedule 19.
- (bb) “**Repeated Minor Construction Period Quality Failure**” has the meaning given in Section 6.3(c).
- (cc) “**Specified Costs**” means the ordinary course costs and expenses of Contracting Authority or the Province Persons in relation to staffing, technical advisors and other consultants engaged by Contracting Authority or the Province Persons for the Project and the Independent Certifier, in each case assuming normal utilization.
- (dd) “**Significant Incident of Train Delay**” means an Incident of Train Delay that causes one or more Train Delays that last for more than five minutes.
- (ee) “**Significant Train Delay Event**” has the meaning given in Section 7.1(b).
- (ff) “**Substantial Completion LD Commencement Date**” has the meaning given in Section 4.1(a).
- (gg) “**Total Construction Period Deduction**” has the meaning given in Section 6.1(a).
- (hh) “**Train Cancellation**” means the cancellation of an in-service passenger train or the cancellation of a non-passenger train that is heading into or out of service.
- (ii) “**Train Delay**” has the meaning given in Section 3.1(a).
- (jj) “**Train Delay Rectification Plan**” has the meaning given in Section 7.1(a).
- (kk) “**Work Plan Methodology Template**” has the meaning given to it in Schedule 40 – Rail Corridor Access and Flagging.

## 2. LIQUIDATED DAMAGES – GENERAL

- (a) Except as expressly provided herein, nothing in this Schedule 19 shall restrict, limit, prejudice or in any other way impair the rights or remedies of the Parties under any other provision of this Project Agreement.
- (b) Project Co acknowledges and agrees that all liquidated damages set out in this Schedule 19 shall be payable whether or not Contracting Authority incurs or mitigates these damages, and that Contracting Authority shall not have an obligation to mitigate these damages.
- (c) Project Co agrees that it is, and shall be, estopped from alleging that any liquidated damages set out in this Schedule 19 are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such damages were not incurred.



- (d) If liquidated damages are incurred by Project Co in accordance with this Schedule 19, Contracting Authority may, in its sole discretion and at any time, subject to Section 2(e), deduct the amount of those liquidated damages, as calculated and determined by Contracting Authority in accordance with this Schedule 19, from any amount due to Project Co by Contracting Authority.
- (e) Contracting Authority shall not deduct liquidated damages from any Milestone Payment.
- (f) The Parties agree that the liquidated damages set out in this Schedule 19 are not a penalty but represent a genuine and reasonable pre-estimate of,
- (i) with respect to Section 3.1(a), all costs and losses, including customer ticket refunds, in circumstances where Project Co has caused an individual Train Delay or has caused an Incident of Train Delay;
  - (ii) with respect to Section 3.1(c), all costs and losses, including customer ticket refunds, in circumstances where an actual Incident of Train Delay has caused an individual Train Cancellation;
  - (iii) with respect to Section 3.1(d), all costs and losses associated with an Alternative Transportation Event where a Project Co has caused a Train Cancellation;
  - (iv) with respect to Section 3.2(a), all costs and losses for an individual Failure to Vacate;
  - (v) with respect to Section 4.1, Specified Costs arising from Project Co failing to achieve the requirements for the Substantial Completion Certificate and a Substantial Completion Certificate not being issued on or before the Substantial Completion LD Commencement Date; and
  - (vi) with respect to Section 5.1, all costs and losses arising from Project Co failing to achieve Section Substantial Completion for a Project Co Infrastructure Section or a Subsection RSSOM Access Date or deliver Critical Data by the dates identified in Section 5.1 respectively.
- (g) The liquidated damages payable by Project Co in accordance with Section 4.1 and the Construction Period Deductions calculated in accordance with Section 6, shall only apply for the period prior to the Substantial Completion Date. The liquidated damages payable by Project Co in accordance with Section 3 shall apply during the entire Project Term, together with any period thereafter in which Warranty Work is performed by Project Co or any Project Co Party.

### **3. LIQUIDATED DAMAGES – TRAIN DELAYS**

#### **3.1 Train Delay**

- (a) If, during the performance of the Works, Project Co, contrary to its obligations pursuant to the Project Agreement,

- (i) causes a delay to a GO Transit in-service passenger train, or to a GO Transit non-passenger train (including GO Transit non-passenger trains heading into or out of service), from the then current GO Transit train schedule;
- (ii) causes a delay to a VIA Rail in-service passenger train, or to a VIA Rail non-passenger train (including VIA Rail non-passenger trains heading into or out of service) from the then current VIA Rail train schedule;
- (iii) causes a delay to a freight train,

(each, a “**Train Delay**”), then Project Co shall pay to Contracting Authority liquidated damages in the following amounts:

- (iv) except as provided in Section 3.1(a)(v), for the first Train Delay caused by an Incident of Train Delay, which first Train Delay lasts for five minutes or more, \$[REDACTED] for each minute of that Train Delay (for clarity, including the first five minutes); plus
  - (v) for the first Train Delay caused by an Incident of Train Delay, an additional \$[REDACTED] for each minute (to a total of \$[REDACTED] per minute) of that first Train Delay commencing at 15 minutes of delay; plus
  - (vi) a lump sum amount of \$[REDACTED] for each Train Delay to a GO Transit in-service passenger train or to a GO Transit non-passenger train that is heading into service or out of service that, in any such case, lasts 15 minutes or more; plus
  - (vii) a lump sum amount of \$[REDACTED] for each Train Delay to a VIA Rail in-service passenger train or a VIA Rail non-passenger train that is heading into service or out of service that, in any such case, lasts for one hour or more, but less than four hours; plus
  - (viii) a lump sum amount of \$[REDACTED] for each Train Delay to a VIA Rail in-service passenger train or to a VIA Rail non-passenger train that is heading into or out of service that, in any such case, lasts for four hours or more.
- (b) For clarity, the liquidated damages for delay to a GO Transit train as set out in Section 3.1(a) shall not apply if Contracting Authority has agreed with Project Co, in advance and in writing, that such delay to the GO Transit train (measured against the then current GO Transit train schedule), shall not incur liquidated damages in accordance with this Section 3.1.
- (c) In addition to any amount Project Co is obligated to pay Contracting Authority pursuant to Section 3.1(d), if, in the sole discretion of Contracting Authority, any actual Incident of Train Delay requires a Train Cancellation, Project Co shall be obliged to pay liquidated damages to Contracting Authority in accordance with Sections 3.1(a)(iv) and 3.1(a)(v), subject to the following:
- (i) if the Incident of Train Delay that required the Train Cancellation lasted for less than 15 minutes, the Incident of Train Delay shall be deemed to be an Incident of Train Delay that lasted for 15 minutes; and

- (ii) if the Incident of Train Delay that required the Train Cancellation lasted for 15 minutes or more, liquidated damages shall be assessed on the full period of the Incident of Train Delay.
- (d) If, in the sole discretion of Contracting Authority, a Train Cancellation requires the use of a bus bridge or the use of alternative transportation (each use of a bus bridge and each use of alternative transportation, an “**Alternative Transportation Event**”), Project Co shall, in addition to any other liquidated damages payable pursuant to this Section 3.1, pay to Contracting Authority a lump sum amount of \$[REDACTED] for each Alternative Transportation Event.
- (e) For the purpose of calculating the liquidated damages payable by Project Co in accordance with this Section 3.1, the timing (including commencement, duration and cessation) of any Train Delay, any Incident of Train Delay, and any Train Cancellation,
  - (i) in the case of Sections 3.1(a)(i) and 3.1(a)(ii), shall be determined based on the train data that is established and maintained by the GO Transit control centre; and
  - (ii) in the case of Section 3.1(a)(iii), shall be determined to commence as soon as the GO Transit control centre is notified of a freight train stoppage, due to an inability to pass through the Rail Corridor Access Site, and will end when such freight train is cleared for passage and passes through the Rail Corridor Access Site.

### 3.2 Rail Corridor Access

- (a) For a Permitted Rail Corridor Access, if Project Co fails to vacate and reinstate any of the tracks by the deadline set out in the corresponding Rail Corridor Access Permit and in the manner approved by Contracting Authority and set out in the approved Work Plan Methodology Template for the Rail Corridor Access (each, a “**Failure to Vacate**”), Project Co shall pay to Contracting Authority liquidated damages as follows:
  - (i) \$[REDACTED] for each minute of the Failure to Vacate, until the Failure to Vacate triggers a Train Delay; *plus*
  - (ii) all liquidated damages for each Train Delay, or Train Cancellation, if any, related to the Failure to Vacate payable pursuant to Section 3.1.

## 4. LIQUIDATED DAMAGES – SUBSTANTIAL COMPLETION

### 4.1 Failure to Achieve Substantial Completion

- (a) If Project Co has failed to achieve the requirements for the Substantial Completion Certificate and a Substantial Completion Certificate has not been issued on or before the date which is thirty (30) days following the Scheduled Substantial Completion Date (the “**Substantial Completion LD Commencement Date**”) Project Co shall pay the liquidated damages in the amount of \$[REDACTED] per Business Day, commencing on the Substantial Completion LD Commencement Date and concluding on the earlier of,
  - (i) the Substantial Completion Date; and

- (ii) the date on which the termination of the Project Agreement takes effect in accordance with its terms.
- (b) Subject and without prejudice to the other remedies of Contracting Authority in the Project Agreement (including remedies for termination for a Project Co Event of Default), payment in accordance with Section 4.1(a) shall constitute full and final satisfaction of any and all damages for Specified Costs that may be claimed by Contracting Authority and Province Persons as a result of Project Co not achieving Substantial Completion by the Scheduled Substantial Completion Date.
- (c) Notwithstanding Section 4.1(a), Project Co's obligation to indemnify and save harmless Contracting Authority and the Province Persons pursuant to Section 44.1(a)(i) (*Project Co Indemnities to Contracting Authority*) of the Project Agreement shall remain unaffected by, and shall apply in addition to, any liquidated damages payable by Project Co pursuant to Section 4.1(a), provided, however, that any amount for which Project Co is required to indemnify and save harmless Contracting Authority and the Province Persons pursuant to Section 44.1(a)(i) (*Project Co Indemnities to Contracting Authority*) of the Project Agreement shall exclude Specified Costs and expenses in respect of which liquidated damages have been paid or are payable.

## 5. LIQUIDATED DAMAGES – INTEGRATION MILESTONE DELAYS

### 5.1 Failure to Achieve Section Substantial Completion, Subsection RSSOM Access Date or Deliver Critical Data or Critical Works on Time

- (a) In the event that Project Co fails to achieve Section Substantial Completion for a Project Co Infrastructure Section (or Project Co Infrastructure Sections, where the column titled "Liquidated Damages" in Part A of Schedule 45 – Integration with RSSOM Project identifies a single amount by reference to multiple Project Co Infrastructure Sections for which the same No Later Than Date applies) by the No Later Than Date applicable thereto, Project Co shall pay to Contracting Authority liquidated damages in an amount as specified in the column titled "Liquidated Damages" in Part A of Appendix A to Schedule 45 – Integration with RSSOM Project, per calendar day, commencing on the applicable No Later Than Date and concluding on the earlier of (i) the date on which Project Co achieves Section Substantial Completion for said Project Co Infrastructure Section, and (ii) the date on which the termination of the Project Agreement takes effect in accordance with its terms.
- (b) In the event that Project Co fails to achieve a Subsection RSSOM Access Date for a Project Co Infrastructure Subsection by the No Later Than Date applicable thereto, Project Co shall pay to Contracting Authority liquidated damages in an amount as specified in the column titled "Liquidated Damages" in Part A of Appendix A to Schedule 45 – Integration with RSSOM Project, per calendar day, commencing on the applicable No Later Than Date and concluding on the earlier of (i) the date the Subsection RSSOM Access Date occurs for said Project Co Infrastructure Subsection, and (ii) the date on which the termination of the Project Agreement takes effect in accordance with its terms.
- (c) In the event that Project Co fails to deliver any Critical Data by the applicable Critical Data Deadline, Project Co shall pay to Contracting Authority liquidated damages in an amount equal to \$[REDACTED] per calendar day, commencing on the applicable Critical Data Deadline and

concluding on the earlier of (i) the date on which Project Co delivers such Critical Data to the Contracting Authority, and (ii) the date on which the termination of the Project Agreement takes effect in accordance with its terms.

- (d) In the event that Project Co fails to Critical Works Complete any Critical Works on or prior to the applicable Critical Works Deadline, Project Co shall pay to Contracting Authority liquidated damages in an amount equal to \$[REDACTED] per calendar day, commencing on the applicable Critical Works Deadline and concluding on the earlier of (i) the date on which such Critical Works are Critical Works Complete, and (ii) the date on which the termination of the Project Agreement takes effect in accordance with its terms.

## 6. CONSTRUCTION ENFORCEMENT REGIME

### 6.1 Construction Period Deductions

- (a) If, at any time prior to Substantial Completion, Project Co commits one or more Construction Period Quality Failures, Contracting Authority may, in its sole discretion, deduct corresponding Construction Period Deductions from the Substantial Completion Payment. The cumulative amount of all Construction Period Deductions (the “**Total Construction Period Deduction**”) shall be applied against and shall decrease the Substantial Completion Payment.

### 6.2 Calculation of the Total Construction Period Deduction and the Construction Period Deductions

- (a) The Total Construction Period Deduction shall be calculated in accordance with the following formula:

[REDACTED]

(the “**Construction Period Quality Failure Deduction**”).

- (b) The Construction Period Deduction attributable to each Construction Period Quality Failure shall be as follows:
- (i) in the case of a Minor Construction Period Quality Failure for an NCR initiated by Project Co, there shall be no Construction Period Deduction;
  - (ii) in the case of a Medium Construction Period Quality Failure for an NCR initiated by Project Co, each Construction Period Deduction shall equal \$[REDACTED];
  - (iii) subject to Section 6.3, in the case of a Minor Construction Period Quality Failure for an NCR initiated by Contracting Authority:
    - (A) the first Construction Period Deduction shall equal \$[REDACTED]; and
    - (B) each subsequent Construction Period Deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period, shall be [REDACTED]% of the immediately previous Construction Period Deduction

but shall not exceed [REDACTED]% of the applicable first Construction Period Deduction;

- (iv) in the case of a Medium Construction Period Quality Failure for an NCR initiated by Contracting Authority:
  - (A) the first Construction Period Deduction shall equal \$[REDACTED]; and
  - (B) each subsequent Construction Period Deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period shall equal [REDACTED]% of the immediately previous Construction Period Deduction but shall not exceed [REDACTED]% of the applicable first Construction Period Deduction; and
- (v) in the case of a Critical Construction Period Quality Failure for an NCR initiated by either Party:
  - (A) the first Construction Period Deduction shall equal \$[REDACTED]; and
  - (B) each subsequent Construction Period Deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period shall equal [REDACTED]% of the immediately previous Construction Period Deduction but shall not exceed [REDACTED]% of the applicable first Construction Period Deduction.
- (c) For clarity, the occurrence of a Construction Period Quality Failure will immediately give rise to a right, on behalf of Contracting Authority, to apply the Construction Period Deductions against the Substantial Completion Payment, irrespective of the Remedial Period permitted.
- (d) After the occurrence of a Construction Period Quality Failure, Project Co shall remediate the Construction Period Quality Failure prior to the expiration of the applicable Remedial Period set out in Appendix A to this Schedule 19. If, prior to the expiration of the applicable Remedial Period, Project Co demonstrates, to the satisfaction of the Contracting Authority Representative, acting reasonably, that it has remedied the Construction Period Quality Failure, no further Construction Period Deduction shall be made in respect of that Construction Period Quality Failure. If Project Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period, Contracting Authority, may, in its sole discretion, apply a further Construction Period Deduction, calculated in accordance with this Section 6.2, and a further Remedial Period (or Remedial Periods) of the same duration shall be deemed to have commenced. Contracting Authority may, in its sole discretion, apply the applicable Construction Period Deduction each time Project Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period until such time as Project Co demonstrates, to the satisfaction of the Contracting Authority Representative, acting reasonably, that it has remediated the applicable Construction Period Quality Failure.

**6.3 Tolerances for Minor Construction Period Quality Failures for NCRs Initiated by Contracting Authority**

- (a) Contracting Authority shall assess Construction Period Quality Failures on a month to month basis. Except as provided in Section 6.3(c), Contracting Authority shall not apply a Construction Period Deduction due to a Minor Construction Period Quality Failure for an NCR initiated by Contracting Authority in respect of any month in which the total number of Minor Construction Period Quality Failures for NCRs initiated by Contracting Authority for that month is less than or equal to 10 (the “**Minor Construction Period Quality Failure Tolerance**”).
- (b) If the Minor Construction Period Quality Failure Tolerance is exceeded, Contracting Authority may, in its sole discretion, apply a Construction Period Deduction for each Minor Construction Period Quality Failure for an NCR initiated by Contracting Authority in excess of the Minor Construction Period Quality Failure Tolerance during the applicable month.
- (c) If, in any month, a Minor Construction Period Quality Failure for an NCR initiated by Contracting Authority is due to circumstances that are substantively the same cause as a previous Minor Construction Period Quality Failure for an NCR initiated by Contracting Authority (within the same month or in a different month) (a “**Repeated Minor Construction Period Quality Failure**”), then a Construction Period Deduction shall be made in respect of the third and each subsequent Repeated Minor Construction Period Quality Failure, irrespective of the Minor Construction Period Quality Failure Tolerance.

**6.4 Administration of Construction Period Quality Failures and Construction Period Deductions**

- (a) Subject to Sections 6.4(b), 6.4(c), 6.4(d) and 6.4(e), Contracting Authority shall use the Monthly Non-Conformance Report produced by Project Co for the purposes of calculating the relevant Construction Period Deductions.
- (b) If either Party believes that there is an error or omission in a Monthly Non-Conformance Report, that Party shall promptly provide Notice to the other Party of such error or omission. Immediately after a Notice given pursuant to this Section 6.4(b), Project Co and Contracting Authority shall attempt to resolve or clarify the error or omission and amend the applicable Monthly Non-Conformance Report, to their mutual satisfaction, acting reasonably. Subject to Section 6.4(e), if the Parties fail to resolve or clarify the error or omission within ten (10) 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 in the applicable Monthly Non-Conformance Report pursuant to this Section 6.4(b) after the expiration of sixty (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 a Minor Construction Period Quality Failure.

- (d) In the event that Contracting Authority or Project Co discovers 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, Contracting Authority may, in its 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 Substantial Completion Payment. For clarity, the sixty (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 any 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 sixty (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.

## 6.5 Additional Requirements for Tracking and Reporting

- (a) In addition to the requirements of Section 7.2 (*Non-Conformance Report Tracking System*) of Schedule 11 – Quality Management, the Non-Conformance Tracking System shall record Construction Period Deductions pursuant to this Schedule 19.
- (b) In addition to the requirements of Section 7.2 (*Non-Conformance Report Tracking System*) of Schedule 11 – Quality Management, the Monthly Non-Conformance Report shall contain:
- (i) the number of Construction Period Deductions in each Construction Period Failure Category accrued within the last month pursuant to this Schedule 19; and
  - (ii) summary statistics and historic trends since Financial Close for the number of Construction Period Deductions in each Construction Period Failure Category each month pursuant to this Schedule 19.
- (c) Project Co shall track and set out the Total Construction Period Deduction in each monthly Works Report (both on a month by month basis and as a running total). Project Co shall report on the final Total Construction Period Deduction in the Substantial Completion Notice. If Contracting Authority disagrees with the Total Construction Period Deduction set out by Project Co in any Works Report or in the Substantial Completion Notice, then Contracting Authority shall notify Project Co and the Independent Certifier of such disagreement. In the event of a disagreement between the Parties over the Total Construction Period Deduction set out in the Substantial Completion Notice, the Parties shall seek to agree to any matter(s) in dispute with



respect to the Total Construction Period Deduction. If the matter(s) cannot be resolved within fifteen (15) Business Days after Contracting Authority's notification of disagreement (or such other period as may be otherwise agreed by the Parties), then such matter shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure. For clarity, notwithstanding any disagreement or Dispute between the Parties with respect to the quantum of the Total Construction Period Deduction, the Total Construction Period Deduction as calculated and determined by Contracting Authority in accordance with this Section 6 shall be applied against and shall decrease the Substantial Completion Payment.

## 6.6 Disputing an NCR During the Works

- (a) In respect of the following circumstances, the Parties shall be subject to the binding determination of the Independent Certifier, and the Independent Certifier's decision shall be final and shall not be subject to resolution pursuant to Schedule 27 – Dispute Resolution Procedure:
- (i) a Notice of objection to an NCR has not been resolved by mutual agreement between Contracting Authority and Project Co within five (5) Business Days after the delivery of a Notice of the objection pursuant to Sections 7.1(a)(vii) and 7.1(a)(ix) (*Non-Conformance Reporting Process*) of Schedule 11 – Quality Management; and
  - (ii) the NCR 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.

## 6.7 Relief from Construction Period Deductions

- (a) Subject to Project Co meeting the obligations set out in Section 30.2 (*Consequences of a Delay Event*) and Section 30.3 (*Mitigation*) of the Project Agreement, if a Construction Period Quality Failure,
- (i) has been assessed in accordance with this Schedule 19; and
  - (ii) has arisen from a Non-Conformance that has been directly caused by one or more of the events set out in Section 30.1(a) (*Delay Events – Definition*) of the Project Agreement, 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 in accordance with this Section 6.

## 7. WITHDRAWAL OF RAIL CORRIDOR ACCESS PRIVILEGES

### 7.1 Withdrawal of Rail Corridor Access Privileges

- (a) If, on any day, Project Co causes more than one Significant Incident of Train Delay, it shall, no later than five (5) Business Days after the day on which that Significant Incident of Train Delay occurred, provide a detailed explanation to Contracting Authority as to the cause of each applicable Significant Incident of Train Delay and a rectification plan designed to eliminate future Train Delays (each a "**Train Delay Rectification Plan**"), for review and approval by Contracting Authority, in its sole discretion.

- (b) If Project Co causes more than three (3) Significant Incidents of Train Delay in a 90-calendar day period (each a “**Significant Train Delay Event**”), Project Co shall immediately lose its rights to access the Rail Corridor, subject to demobilization and any directions issued by Contracting Authority with respect to vacating the Rail Corridor. Project Co shall, no later than five (5) Business Days after the Significant Train Delay Event occurs, provide to Contracting Authority both a Train Delay Rectification Plan and a revised Rail Corridor Access Plan, each setting out a rectification plan designed to eliminate future Train Delays, for review and approval by Contracting Authority. Project Co’s right to access the Rail Corridor shall not be re-instated until Contracting Authority has reviewed and approved, in its sole discretion, the Train Delay Rectification Plan and the revised Rail Corridor Access Plan, which approval may contain conditions imposed on Project Co and intended to eliminate Train Delays.

APPENDIX A TO SCHEDULE 19  
CONSTRUCTION PERIOD PERFORMANCE CRITERIA

[REDACTED]

**SCHEDULE 20**

**WARRANTY LETTER OF CREDIT**

[REDACTED]

**SCHEDULE 22****VARIATION PROCEDURE****1. VARIATIONS****1.1 Definitions**

- (a) In this Schedule 22 – Variation Procedure, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 22 – Variation Procedure) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 22.
  - (ii) “**Estimate**” has the meaning given in Section 1.4(a).
  - (iii) “**Overhead**” has the meaning given in Appendix C of this Schedule 22.
  - (iv) “**Overhead and Profit**” has the meaning given in Appendix B of this Schedule 22.
  - (v) “**Project Co Variation Notice**” has the meaning given in Section 2.1(a).
  - (vi) “**Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.
  - (vii) “**Variation Confirmation**” has the meaning given in Section 1.7(a)(ii).
  - (viii) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the Contracting Authority Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
  - (ix) “**Variation Enquiry**” has the meaning given in Section 1.3(a).

**1.2 General**

- (a) Contracting Authority has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22, provided that Contracting Authority shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which Contracting Authority is obligated to proceed with a Variation.
- (b) Contracting Authority shall be obligated to proceed with a Variation in certain circumstances specified in the Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.

- (c) The only payment or compensation payable by Contracting Authority to Project Co in connection with any Variation shall be the sum of the following amounts:
- (i) the Direct Cost of such Variation; *plus*
  - (ii) Overhead and Profit, other than in the case of Pandemic and Epidemic Change in Law Compensation for which only Overhead shall be included.
- (d) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 22.
- (e) Project Co shall attend and shall cause any relevant Subcontractors to attend any meetings requested by Contracting Authority from time to time to discuss the implementation of any Variation or Variations generally, including with respect to the administration and pricing of Variations.

### 1.3 Variation Enquiry

- (a) If Contracting Authority proposes or is obligated pursuant to the terms of the Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co a written Notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
- (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
  - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether Contracting Authority intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Guaranteed Price (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 fifteen (15) Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6 and in the form prescribed by Contracting Authority, acting reasonably.

### 1.5 Project Co Grounds for Objection

- 
- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to Contracting Authority's satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:
- (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
  - (ii) the implementation of the Variation would:
    - (A) infringe Applicable Law;
    - (B) cause to be revoked any of the existing Permits, Licences, Approvals and Agreements required by Project Co to perform the Works, and any of such Permits, Licences, Approvals and Agreements is not, using commercially reasonable efforts, capable of amendment or renewal; or
    - (C) require any new Permits, Licences, Approvals and Agreements for Project Co to perform the Works, any of which will not, using commercially reasonable efforts by Project Co or Contracting Authority, as applicable, be obtainable;
  - (iii) the proposed Variation would have a material and adverse effect on performance of the Works (except those Works 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) Contracting Authority does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
  - (vi) the Variation would, if implemented, result in a change in the essential nature of the Project Co Infrastructure and the New Third Party Infrastructure, provided that:
    - (A) for this purpose, Project Co Infrastructure and New Third Party Infrastructure shall be deemed to include the RSSOM Project Infrastructure, the North Civil Project Infrastructure and TOC Developments; and
    - (B) Project Co shall not be permitted to refuse any Variation which the Contracting Authority in its sole discretion considers necessary for the integration of the RSSOM Project, the North Civil Project, the Early Works Infrastructure or the TOC Developments with the Project Co 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); or
  - (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.

- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to Contracting Authority a written Notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

## 1.6 Estimate Requirements

- (a) Unless Contracting Authority in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to Contracting Authority's reasonable satisfaction:
- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances, including a schedule, work breakdown structure, contact list, description of roles and responsibilities and an organizational structure chart;
  - (ii) any impact on any Scheduled Milestone Payment Completion Date or the Scheduled Substantial Completion Date, and any other schedule impact on the provision of the Works or the remainder of the Project Co Infrastructure and the New Third Party Infrastructure and the 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 Works 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 amendments to the Project Agreement or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of Contracting Authority to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
  - (v) any impact on the Direct Cost to Project Co and each Subcontractor of the proposed Variation, including:
    - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or Contracting Authority); and
    - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
  - (vi) either, subject to Section 1.9:
    - (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;
- (vii) Project Co's preliminary indication of the potential increase or decrease, if any, to the Guaranteed Price;
- (viii) any Permits, Licences, Approvals and Agreements that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and Project Co or Contracting Authority, as applicable, must obtain or amend such Permits, Licences, Approvals and Agreements for the Estimate to remain valid; and
- (ix) the proposed methods of certification of any construction or operational aspect of the Works required by the Variation if not covered by the provisions of the Project Agreement,
- in each case, together with such supporting information and justification as is reasonably required.
- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to Contracting Authority's satisfaction, acting reasonably, that:
- (i) subject to Sections 1.6(c) and 1.6(e), Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders to minimize any increase in costs and to maximize any reduction in costs;
- (ii) except as otherwise set out in this Schedule 22, all costs of Project Co and each Subcontractor are limited to the Direct Cost of the proposed Variation described in Appendix A of this Schedule 22;
- (iii) Overhead has been calculated in accordance with Appendix C of this Schedule 22 in respect of Pandemic and Epidemic Change in Law Compensation and, in respect of all other Variations, Overhead and Profit has been calculated in accordance with Appendix B of this Schedule 22;
- (iv) all costs of providing Works, including Capital Expenditures, reflect:
- (A) labour and material rates applying in the open market to providers of services similar to those required by the Variation;
- (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
- (C) any and all changes in risk allocation;
- (v) the full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) and that all such expenditures, including all applicable amounts

for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and

- (vi) Project Co has mitigated or will mitigate the impact of the Variation, including on the Project Works Schedules, the performance of the Works, the expected usage of utilities, and the Direct Cost of the proposed Variation to be incurred.
- (c) Project Co shall use commercially reasonable efforts to obtain the best value for money when procuring and/or delivering any work, services, supplies, materials or equipment required by the Variation, including, at the request of Contracting Authority, applying, using and comparing applicable industry benchmarks or benchmarking data for such purposes, and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to Contracting Authority, including using commercially reasonable efforts to mitigate such costs. Also, to the extent the procurement or delivery of any work, services, supplies, materials or equipment required by the Variation results in costs or expenses that are in excess of those costs or expenses established by industry benchmarks or benchmarking data, Project Co shall provide Contracting Authority sufficient information and analysis to demonstrate to Contracting Authority's satisfaction, acting reasonably, that such excess costs or expenses are reasonable and justified in the context of the subject Variation.
- (d) As soon as practicable, and in any event not more than fifteen (15) Business Days after Contracting Authority receives an Estimate, Project Co and Contracting Authority shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) At the request of Contracting Authority, including if Contracting Authority is required by Applicable Law or any policy applicable to Contracting Authority, to competitively tender any contract in relation to the proposed Variation, Project Co shall seek and evaluate competitive tenders for the proposed Variation, including in accordance with such Applicable Law or policy.
- (f) Contracting Authority may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than ten (10) Business Days after receipt of such modification, notify Contracting Authority in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 – Dispute Resolution Procedure.

## 1.7 Variation Confirmation

- (a) As soon as practicable, and in any event within fifteen (15) Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 – Dispute Resolution Procedure, Contracting Authority shall either:
  - (i) subject to Section 1.2(b) and Section 1.7(f), withdraw the Variation Enquiry by written Notice to Project Co; or

- (ii) issue a written confirmation of the Estimate signed by Contracting Authority (the “**Variation Confirmation**”), including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.8.
- (b) Within five (5) Business Days following Project Co’s receipt of a Variation Confirmation issued pursuant to Section 1.7(a)(ii), Project Co shall execute and deliver a copy of such executed Variation Confirmation to Contracting Authority.
- (c) If Contracting Authority does not issue a Variation Confirmation within such fifteen (15) Business Days, then, subject to Section 1.2(b) and Section 1.7(f), the Variation Enquiry shall be deemed to have been withdrawn.
- (d) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.8:
  - (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 1.7(d)(i), all provisions of the Project Agreement applicable to the Works shall apply to the Works 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 1.7(d)(i).
- (e) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.8, then the Variation Confirmation shall not be effective until:
  - (i) Project Co obtains such financing acceptable to Contracting Authority in its sole discretion; or
  - (ii) Contracting Authority in its sole discretion waives such requirement.
- (f) Except as hereinafter provided, until a Variation Confirmation has been issued:
  - (i) the determination of whether or not to proceed with a Variation shall at all times be at Contracting Authority’s sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined in accordance with Schedule 27 – Dispute Resolution Procedure; and
  - (ii) Contracting Authority may at any time withdraw a Variation Enquiry and, subject to Section 1.7(g), Contracting Authority shall not be obligated to Project Co in respect of a Variation until such time as Contracting Authority in its sole discretion issues a Variation

Confirmation and, if applicable, Project Co has obtained the financing requested by Contracting Authority or Contracting Authority has waived such requirement,

provided that Contracting Authority may not withdraw a Variation Enquiry in circumstances where Contracting Authority is obligated pursuant to the terms of the Project Agreement to proceed with a Variation. In such circumstances Schedule 27 – Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.

- (g) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, Contracting Authority shall reimburse Project Co for the Direct Cost reasonably and properly incurred by Project Co in connection with preparing the Estimate.

## 1.8 Financing

- (a) Subject to Section 1.9, if Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if Contracting Authority requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co and Contracting Authority, provided that, Project Co shall not be required to seek debt financing from any source other than the existing Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and Contracting Authority within sixty (60) days following the date that Contracting Authority issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (c) Subject to Section 1.9, if Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide Contracting Authority with details of such financing, and Contracting Authority shall, in its sole discretion, determine whether Project Co should proceed with such financing. If Contracting Authority determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (d) Subject to Section 1.9, Contracting Authority may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Contracting Authority in its sole discretion waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.

- (e) If Contracting Authority waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.8(b), 1.8(c) or 1.8(d), then Project Co shall proceed with the Variation as set out in the Variation Confirmation and Contracting Authority shall pay for the Variation as provided for in Section 1.10(a)(ii).

### **1.9 Increase or Decrease in the Cost of the Financing**

- (a) If there is an increase or a decrease in the Cost of the Financing as a result of a Variation, the Guaranteed Price shall be increased or decreased by the increase or decrease to the Cost of the Financing. Project Co shall provide the calculation of the increase or decrease in the Cost of the Financing, together with a certificate of the Lenders' Agent verifying such calculation. Where the increase in the Cost of the Financing includes breakage costs, but the impact of the Variation on the Cost of the Financing could also be accommodated without incurring breakage costs, calculations for both options shall be provided to Contracting Authority, together with a certificate of the Lenders' Agent addressed to Project Co (which will expressly provide that the certificate may be relied upon by Contracting Authority) verifying such calculations. Contracting Authority shall, in its sole discretion, within five (5) Business Days after receiving such certificate from the Lenders' Agent, select its preferred option by providing written Notice to Project Co and the Lenders' Agent. For greater certainty, the increases or decreases in the Cost of the Financing shall be calculated in a commercially reasonable manner and in accordance with the Lending Agreements, and without regard to the identity of the party paying such costs and expenses and, with respect to any swap breakage costs or gains, such costs or gains shall be calculated in accordance with standard market practices.
- (b) If a Variation gives rise to a net benefit to Project Co through a reduction of the Cost of the Financing, then Project Co shall pay any net benefit received by Project Co to Contracting Authority.

### **1.10 Payment**

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by Contracting Authority, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
- (i) the Guaranteed Price shall be adjusted as set out in the Variation Confirmation; or
  - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
    - (A) Contracting Authority shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by Contracting Authority and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by Contracting Authority; and
    - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to

each occasion when payment is due under the payment schedule has been duly carried out.

In the event Contracting Authority and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by Contracting Authority, the process under Schedule 27 – Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by Contracting Authority in time to make payments to that third party in accordance with its contract with Project Co.

For greater certainty, (I) the Milestone Payments and the Substantial Completion Payment shall only be adjusted as a result of a Variation if the Guaranteed Price is adjusted pursuant to Section 1.10(a)(i), and (II) none of the Guaranteed Price, the Milestone Payments or the Substantial Completion Payment shall be adjusted as a result of the Variation if Project Co is paid for Capital Expenditures pursuant to Section 1.10(a)(ii).

- (b) Contracting Authority shall make payment to Project Co within twenty (20) Business Days following receipt by Contracting Authority of invoices presented to Contracting Authority in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Payments by Contracting Authority in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Act* (Ontario), as applicable.
- (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Project Co, Contracting Authority shall provide to Project Co copies of any consent or approval issued by Contracting Authority's board of directors in connection with a proposed Variation.

### **1.11 Reduction in Works**

- (a) If a Variation involves any reduction in the Works which results in savings in the Direct Cost to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under the Project Agreement in an amount equal to such reduction in the Direct Cost and the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment, the Fourth Milestone Payment, the Fifth Milestone Payment, the Sixth Milestone Payment, the Seventh Milestone Payment, the Eighth Milestone Payment, the Ninth Milestone Payment, the Tenth Milestone Payment or the Substantial Completion Payment (as applicable, at Contracting Authority's discretion) shall be reduced accordingly.

### **1.12 Variation Directive**

- (a) If an Estimate is not promptly agreed upon by Contracting Authority and Project Co or if there is a Dispute in relation thereto or if Contracting Authority, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then Contracting Authority may issue a Variation Directive and, following receipt of the Variation Directive, Project Co shall promptly proceed to implement the Variation.
- (b) Without limiting Project Co's obligation to promptly implement such Variation:
  - (i) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation;
  - (ii) the Contracting Authority Representative shall initially determine the valuation of such Variation, acting reasonably, and making the determination in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 27 – Dispute Resolution Procedure; and
  - (iii) Contracting Authority shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

## 2. PROJECT CO VARIATIONS

### 2.1 General

- (a) Project Co shall deliver to Contracting Authority a written Notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

### 2.2 Project Co Variation Notice

- (a) A Project Co Variation Notice shall:
  - (i) set out details of the proposed Variation in sufficient detail to enable Contracting Authority to evaluate it in full;
  - (ii) specify Project Co's reasons for proposing the Variation;
  - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to Contracting Authority; and
  - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If Contracting Authority, in its sole discretion, elects to consider the Variation proposed by Project Co, Contracting Authority may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.
- (c) Project Co shall, promptly upon demand, reimburse Contracting Authority for all out-of-pocket costs and expenses reasonably incurred by Contracting Authority in connection with Contracting Authority's consideration of any Variation proposed by Project Co pursuant to Section 2 of this Schedule 22, including legal and consulting fees and disbursements, regardless of whether (i) a

Variation Enquiry or Estimate is issued in connection therewith or (ii) such Variation is implemented.



**APPENDIX A TO SCHEDULE 22****CALCULATION OF DIRECT COST****1. DIRECT COST**

**1.1** Subject to Section 1.2 of this Appendix A, the term “Direct Cost” means the aggregate total, without duplication, of only the following amounts, as paid or incurred by Project Co or each Subcontractor, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:

- (i) wages and benefits paid for labour in the direct employ of Project Co or each Subcontractor while performing that part of the Works 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 for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) the cost of materials (including hand tools which have a retail value of \$[REDACTED] or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (vi) the rental costs of all tools (excluding hand tools which have a retail value of \$[REDACTED] or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
- (vii) deposits lost;
- (viii) except as otherwise set out in the Project Agreement, a reasonable amount of profit consistent with prevailing market rates that is charged by any Subcontractor, other than the Construction Contractor and any entity not at arms-length from Project Co;
- (ix) the reasonable fees and disbursements of the Lenders’ Consultant and the external technical consultants and external legal advisors of Project Co and its Subcontractors;

- (x) the cost of third party quality assurance required by Contracting Authority, such as independent inspection and testing services;
- (xi) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xii) subject to Section 1.1(iv) of this Appendix A, Taxes (and without limiting the obligation of Contracting Authority to pay HST payable by it under the Project Agreement), but excluding:
  - (A) HST;
  - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the Income Tax Act (Canada), the Income Tax Act (Ontario) or any similar statute in any other jurisdiction;
  - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
  - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
  - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Works;
- (xiii) the cost of removal and disposal of contaminants, hazardous substances, Waste products and debris for which Project Co is not responsible under the Project Agreement;
- (xiv) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Works, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xv) the cost of debt financing provided by the Lenders, including all additional financing costs related to any delay caused by the implementation of the Variation;
- (xvi) the cost of competitively tendering any contract in relation to the proposed Variation that is required by Contracting Authority, including as a result of any Applicable Law or any policy applicable to Contracting Authority;
- (xvii) the cost of any additional insurance or performance security required or approved by Contracting Authority; and
- (xviii) the cost of obtaining all Project Co Permits, Licences, Approvals and Agreements.

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 Works as a result of the Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the Direct Cost with respect to the per hour cost charged by Project Co or any Subcontractor for salaried personnel shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in the Greater Toronto Area;
- (v) any amounts paid in accordance with this Appendix A for fees, wages, salaries and benefits charged by Project Co or any Subcontractor shall be reasonable and shall not exceed commercially competitive rates available in the Greater Toronto Area;
- (vi) the Direct Cost shall not include:
  - (A) any cost incurred due to the failure on the part of Project Co or any Project Co Party to exercise reasonable care and diligence in its attention to the execution of that part of the Works (including any cost due to any negligence, improper work, deficiencies or breaches of contract by Project Co and/or any Subcontractor);
  - (B) the fees, costs or expenses, or any other form of compensation, paid or payable by Project Co or any Subcontractor to any person performing asset management, personnel services and/or similar, comparable or like services to or for the benefit of Project Co or any Subcontractor;
  - (C) the cost and expense of maintaining corporate offices, the cost and expense of office administration, estimation, accounting, payroll, printing, office supplies, phones and courier/postal service, the cost and expense of personnel not directly involved in the implementation of the Variation and any other overhead cost or expense;
  - (D) the cost of travel and subsistence expenses; or
  - (E) any costs or expenses associated with the participation of Project Co and any Subcontractor in the meetings described in Section 1.2(e) of this Schedule 22; and
- (vii) the Direct Cost must be quantifiable and supported by evidence and proper documentation, such as invoices, proof of payments, and detailed hourly rate information as required by Contracting Authority. Proper documentation shall include unit rates or

prices and quantities for all items, including labour and materials that comprise the Direct Cost, including for all work completed by any Subcontractor. Any Direct Cost item claimed as a percentage of any other Direct Cost item, such as a “risk contingency”, will not be permissible, unless approved by Contracting Authority in writing.

**APPENDIX B TO SCHEDULE 22****CALCULATION OF OVERHEAD AND PROFIT**

- (a) “**Overhead and Profit**” means, for each of rows 1, 2 and 3 in Table A – Applicable Overhead and Profit, the product of:
- (i) the Direct Cost of, as applicable, the work or services within the category described in such row, multiplied by;
  - (ii) the percentage set out in such row as determined based on the Direct Cost of the Variation.
- (b) For greater certainty, the percentages applicable to Overhead and Profit shall not be determined based on any component or components of the subject Variation.
- (c) Project Co and the Construction Contractor shall charge no more than the amount of Overhead and Profit calculated in accordance with this Appendix B.
- (d) No amount for Overhead and Profit shall be charged on any other amount of Overhead and Profit.
- (e) No other methodology for the calculation of Overhead and Profit shall be permitted or apply.
- (f) Project Co acknowledges and agrees that the Overhead and Profit payable in accordance with this Schedule 22 is intended to compensate Project Co and the Construction Contractor for all costs and expenses incurred in connection with a Variation other than the Direct Cost, including all overhead, profit, office administration and the amounts expressly excluded from the Direct Cost pursuant to Section 1.2 of Appendix A of this Schedule 22.

**TABLE A**  
**APPLICABLE OVERHEAD AND PROFIT**

Entity	Overhead and Profit		
	For a Variation with a Direct Cost under \$[REDACTED]	For a Variation with a Direct Cost of between \$[REDACTED] and \$[REDACTED]	For a Variation with a Direct Cost over \$[REDACTED]
1. Project Co (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
2. Construction Contractor (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
3. Construction Contractor (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%

## APPENDIX C TO SCHEDULE 22

**CALCULATION OF OVERHEAD FOR PURPOSES OF PANDEMIC AND EPIDEMIC  
CHANGE IN LAW COMPENSATION**

- (a) “**Overhead**” means, for each of rows 1, 2 and 3 in Table B – Applicable Overhead for purposes of Pandemic and Epidemic Change in Law Compensation, the product of:
- (i) the Direct Cost of, as applicable, the work or services within the category described in such row, multiplied by,
  - (ii) the percentage set out in such row as determined based on the Direct Cost of the Variation.
- (b) For greater certainty, the percentages applicable to Overhead shall not be determined based on any component or components of the subject Variation.
- (c) Project Co and the Construction Contractor shall charge no more than the amount of Overhead calculated in accordance with Appendix C of this Schedule 22.
- (d) No amount for Overhead shall be charged on any other amount of Overhead.
- (e) No other methodology for the calculation of Overhead shall be permitted or apply.
- (f) Project Co acknowledges and agrees that the Overhead payable in accordance with this Schedule 22 is intended to compensate Project Co and the Construction Contractor for all costs and expenses incurred in connection with a Variation as a result of a Pandemic and Epidemic Change in Law other than the Direct Cost, including all overhead, office administration and the amounts expressly excluded from the Direct Cost pursuant to Section 1.2 of Appendix A of this Schedule 22, and excluding profit.

**TABLE B**

**APPLICABLE OVERHEAD FOR PURPOSES OF PANDEMIC AND EPIDEMIC CHANGE IN  
LAW COMPENSATION**

Entity	Overhead		
	For a Variation with a Direct Cost under \$[REDACTED]	For a Variation with a Direct Cost of between \$[REDACTED] and \$[REDACTED]	For a Variation with a Direct Cost over \$[REDACTED]
1. Project Co (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
2. Construction Contractor (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
3. Construction Contractor (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%



## SCHEDULE 23

## COMPENSATION ON TERMINATION

## 1. DEFINITIONS

## 1.1 Definitions

In this Schedule 23, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 23) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Contracting Authority Default Termination Sum”** has the meaning given in Section 2.1(b) of this Schedule 23.
- (b) **“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.
- (c) **“Invoice Date”** means the date that is the later of:
  - (i) the date on which Contracting Authority receives an invoice from Project Co for the relevant termination sum; and
  - (ii) the date on which Contracting Authority receives the supporting evidence required pursuant to Section 5.1(a) of this Schedule 23.
- (d) **“Junior Debt Amount”** has the meaning set out in the Project Agreement.
- (e) **“Junior Debt Makewhole”** has the meaning set out in the Project Agreement.
- (f) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b) of this Schedule 23.
- (g) **“Project Co Amount”** means any amount payable to Project Co as a return and/or profit to Project Co shown in the Financial Model, including for greater certainty any loans made or capital contributed to Project Co by any Affiliate of Project Co or a Project Co Party, prorated by

a fraction, the numerator of which is the period between the date of commencement of the Works and the Termination Date, and the denominator of which is the period between the date of commencement of the Works and the Scheduled Substantial Completion Date.

- (h) “**Project Co Default Termination Sum**” has the meaning given to it in Section 3.1(b) of this Schedule 23.
- (i) “**Senior Debt Amount**” has the meaning set out in the Project Agreement.
- (j) “**Senior Debt Makewhole**” has the meaning set out in the Project Agreement.
- (k) “**Subcontractor Losses**” means, subject to Project Co’s obligations under the Project Agreement to limit any compensation to Subcontractors, the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Design and Construction Contract as a direct result of the termination of the Project Agreement (including any commercially reasonable 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, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:
  - (i) 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 commercially reasonable breakage fee set out in any of the Ancillary Documents);
  - (ii) 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
  - (iii) 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.

## 2. **COMPENSATION ON TERMINATION FOR CONTRACTING AUTHORITY DEFAULT OR CONVENIENCE**

### 2.1 **Compensation**

- (a) If Project Co terminates the Project Agreement pursuant to Section 35 (*Contracting Authority Default*) of the Project Agreement or Contracting Authority terminates the Project Agreement pursuant to Section 36.3 (*Termination for Convenience*) of the Project Agreement, Contracting Authority shall pay to Project Co the Contracting Authority Default Termination Sum.
- (b) The “**Contracting Authority Default Termination Sum**” shall be an amount equal to the aggregate of:
  - (i) the Senior Debt Amount and the Senior Debt Makewhole;
  - (ii) the Junior Debt Amount and the Junior Debt Makewhole;

- (iii) any amount payable by Contracting Authority to Project Co in accordance with Sections 32.2(b) (*Consequences of a Relief Event*) and 33.2(b) (*Consequences of Force Majeure*) 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) the Project Co Amount;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of the Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under the Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Works, 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 Works, the Project and the Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims;
- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to the Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (ix) amounts which Contracting Authority is entitled to set off pursuant to Section 4.11(a)(i) (*Set-Off*) of the Project Agreement,

provided that the Contracting Authority Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(viii) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Contracting Authority Default Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Contracting Authority Default Termination Sum in accordance with Section 5 of this Schedule 23.

### 3. COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT

#### 3.1 Compensation

- (a) If Contracting Authority terminates the Project Agreement pursuant to Section 34 (*Project Co Default*) of the Project Agreement, Contracting Authority shall pay to Project Co the Project Co Default Termination Sum.
- (b) The “**Project Co Default Termination Sum**” shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of the Project Agreement as of the Termination Date, less the aggregate, without duplication, of each of the following:
  - (i) any amount of the First Milestone Payment, Second Milestone Payment, Third Milestone Payment, Fourth Milestone Payment, Fifth Milestone Payment, Sixth Milestone Payment, Seventh Milestone Payment, Eighth Milestone Payment, Ninth Milestone Payment, Tenth Milestone Payment, Substantial Completion Payment and any other amounts paid by Contracting Authority on or before the Termination Date;
  - (ii) Contracting Authority’s estimate of the cost to complete the Works, including the cost to remedy any defective or deficient Works determined on a reasonable basis in consultation with the Independent Certifier and Contracting Authority’s other consultants and including all reasonable and proper costs incurred by Contracting Authority in re-tendering the Works or any portion thereof;
  - (iii) Contracting Authority’s estimate of the aggregate of all Direct Losses suffered, sustained or incurred by Contracting Authority as a result of, in respect of, or arising out of the event or events which resulted in the termination of the Project Agreement and arising out of the termination together with all costs of entering into a new design and construction contract to complete the Works, including any warranty obligations for the Works in place and to be performed, on substantially the same terms and conditions as the Project Agreement;
  - (iv) the Completion Holdback, in each case as at the time the Project Co Default Termination Sum is required to be made;
  - (v) the Legislative Holdback required to be maintained by Contracting Authority as at the time the Project Co Default Termination Sum is required to be made, which amount will be paid by Contracting Authority in accordance with the *Construction Act* (Ontario); and

- (vi) amounts which Contracting Authority is entitled to set off pursuant to Section 4.11(a)(i) (*Set-Off*) of the Project Agreement.
- (c) To the extent that any amounts that Contracting Authority has estimated or determined pursuant to Sections 3.1(b)(ii), 3.1(b)(iii) or 3.1(b)(iv) of this Schedule 23, are in excess of what is required by Contracting Authority to complete the Work or compensate for Direct Losses, the Completion Holdback or the Legislative Holdback, as applicable, Contracting Authority shall promptly return such excess amounts to Project Co.
- (d) Contracting Authority shall pay the Project Co Default Termination Sum in accordance with Section 5 of this Schedule 23.

#### 4. CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION FOR RELIEF EVENT

##### 4.1 Consequences

- (a) If either Party terminates the Project Agreement pursuant to Section 36.1 (*Termination for Relief Event*) of the Project Agreement or if either Party terminates the Project Agreement pursuant to Section 36.2 (*Termination for Force Majeure*) of the Project Agreement, or if Contracting Authority terminates the Project Agreement pursuant to Section 36.4 (*Termination for Site Condition Event*) or Section 36.6 (*Termination due to Protest Action*) of the Project Agreement, Contracting Authority shall pay to Project Co the Non-Default Termination Sum.
- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate of:
  - (i) the Senior Debt Amount and the Senior Debt Makewhole;
  - (ii) the Junior Debt Amount;
  - (iii) any amount payable by Contracting Authority to Project Co in accordance with Sections 32.2(b) (*Consequences of a Relief Event*) and 33.2(b) (*Consequences of Force Majeure*) of the Project Agreement; and
  - (iv) the Employee Termination Payments and the Subcontractor Losses (but excluding therefrom any claims for loss of profit),

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (v) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of the Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under the Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Works, 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 Works, the Project and the Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims; and

- (vi) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to the Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (vii) amounts which Contracting Authority is entitled to set off pursuant to Section 4.11(a)(i) (*Set-Off*) 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)(vi) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Non-Default Termination Sum in accordance with Section 5 of this Schedule 23.

## 5. GENERAL

### 5.1 Payment and Interest Following Termination

- (a) In respect of the termination payments to be made pursuant to either Section 2 or 4 of this Schedule 23, as soon as practicable after, and, in any event, within thirty (30) days after, the Termination Date, Project Co shall give to Contracting Authority an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to Contracting Authority, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.

- (b) In respect of the termination payments to be made pursuant Section 3 of this Schedule 23, as soon as practicable, and in any event, within one-hundred and twenty (120) days after the Termination Date, Contracting Authority shall calculate and notify Project Co of the Project Co Default Termination Sum under Section 3.1(b) of this Schedule 23, and shall deliver to Project Co sufficient supporting evidence reasonably satisfactory to Project Co.
- (c) Contracting Authority shall:
- (i) pay to Project Co the relevant termination sum within sixty (60) days after the Invoice Date or the date of delivery of the Notice described in Section 5.1(b) of this Schedule 23, as applicable, and so long as all of demobilization of the Works has been completed; and
  - (ii) indemnify Project Co as provided in Section 44.2(d) (*Contracting Authority Indemnities to Project Co*) 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 sixty (60) days after the Invoice Date or the date of delivery of the Notice described in Section 5.1(b) of this Schedule 23, as applicable; and
    - (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (d) In respect of the termination payments to be made pursuant to Section 3 of this Schedule 23, if the applicable termination sum is negative, Contracting Authority shall have no obligation to make any payment to Project Co and Project Co shall also thereafter indemnify Contracting Authority as provided in Section 44.1(e) (*Project Co Indemnities to Contracting Authority*) 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 sixty (60) days after the Invoice Date until the date of payment in an amount equivalent to the Payment Compensation Amount.

## 5.2 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.

## 5.3 Undisputed Amounts

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 5 and the disputed amount shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure.

## 5.4 Outstanding Debt Amounts

- (a) Contracting Authority shall be entitled to rely on a certificate of the Lenders' Agent as conclusive as to the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, outstanding or payable at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge Contracting Authority's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.



## SCHEDULE 24

## FORM OF PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

THIS GUARANTEE is made as of the 8<sup>th</sup> day of November, 2022

## BETWEEN:

**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

(“**Contracting Authority**”)

- AND -

[REDACTED]

- AND -

[REDACTED]

- AND -

[REDACTED]

(each of [REDACTED], [REDACTED] and [REDACTED], a “**Construction Guarantor**” and collectively, the “**Construction Guarantors**”)

## WHEREAS:

- A. Contracting Authority and Ontario Transit Group Inc., a corporation formed under the laws of the Province of Ontario (“**Project Co**”) have entered into a project agreement dated as of date hereof (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Project Agreement**”).
- B. As an inducement to Contracting Authority to enter the Project Agreement with Project Co, each Construction Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to Contracting Authority, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work (as such term is defined in Section 1.1(d) of this Guarantee), and in furtherance thereof has agreed to enter into this Guarantee.

**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

- (a) Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Project Agreement.
- (b) Unless otherwise expressly provided herein, this Guarantee shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Project Agreement.
- (c) For the purpose of this Guarantee, the term “**DB Guarantee**” means the performance guarantee delivered by [REDACTED], [REDACTED] and [REDACTED] (collectively, the “**DB Guarantors**”) in favour of Project Co and assigned to the Lenders’ Agent pursuant to the Lending Agreements.
- (d) For the purpose of this Guarantee, the term “**Design and Construction Work**” means:
- (i) subject to Section 1.1(d)(ii) below, all of Project Co’s covenants, obligations and activities with respect to the Works pursuant to the Project Agreement, and including, for certainty:
    - (A) all of Project Co’s covenants, obligations and activities pursuant to Sections 11.16 (*Defective Works*), 11.17 (*Warranty Obligations*), and 11.18 (*Warranty Work and Prompt Repair of Warranty Work*) of the Project Agreement; and
    - (B) Project Co’s representations and warranties contained in Section 6.1 (*Project Co Representations and Warranties*) of the Project Agreement, except for:
      - (1) Section 6.1(a)(vii), which for the purposes of this Guarantee shall be amended by replacing “Project Co Event of Default” with “Project Co Construction Event of Default” as such term is defined in Schedule 1 to the Project Agreement, and
      - (2) Section 6.1(a)(xv), which for the purposes of this Guarantee shall be excluded from the definition of “Design and Construction Work” in accordance with Section 1.1(d)(ii)(E) below;
  - (ii) for the purpose of this Section 1.1(d) the term “Design and Construction Work” shall be deemed not to include any of the following covenants, obligations or activities of Project Co under the Project Agreement (including the delivery of any executed originals of the documents referred to below):
    - (A) any covenant, agreement, undertaking or obligation related to the Financing or the Cost of the Financing;
    - (B) the recitals to the Project Agreement;
    - (C) Section 2 (*Commercial Close and Financial Close*);

- (D) Sections 4.2 (*Acknowledgement by Project Co*), 4.3 (*Lump Sum Payments*), 4.4 (*Directions on Payments*) and 4.8 (*Compensation on Termination*);
  - (E) Section 6.1(a)(xv) (*Project Co Representations and Warranties*);
  - (F) Sections 8.3 (*Changes to Lending Agreements and Refinancing*) and 8.4 (*Compliance with Lending Agreements*);
  - (G) Section 34.1(a)(iv) (*Project Co Events of Default*);
  - (H) Sections 47.3(c) and (d) (*Subcontracting*);
  - (I) Section 49 (*Notices*);
  - (J) Schedule 2 – Completion Documents;
  - (K) Schedule 4 – Lenders’ Direct Agreement;
  - (L) any of Project Co’s obligations under Schedule 5 – Construction Contractor’s Direct Agreement;
  - (M) Schedule 3 – Subcontractor’s Direct Agreement;
  - (N) Schedule 24 – Form of Performance Guarantee of Construction Guarantor;
  - (O) Schedule 23 – Compensation on Termination;
  - (P) Schedule 32 – Financial Model; or
  - (Q) Schedule 31 – Project Co Information.
- (e) For the purpose of this Guarantee, the term “**Guarantee Period**” means the period commencing as of the date hereof and expiring upon the earlier of (A) the date on which all Guaranteed Obligations have been satisfied and (B) the date that is sixteen (16) years after the Substantial Completion Date.
- (f) For the purpose of this Guarantee, the term “**Guaranteed Obligations**” has the meaning given in Section 2.1(a).
- (g) For the purpose of this Guarantee, the term “**Notice**” has the meaning given in Section 4.1.

## 1.2 Survival and Expiry

- (a) This Guarantee shall survive the termination or other expiry of the Project Agreement.
- (b) Notwithstanding anything contained in this Guarantee, the Construction Guarantors shall cease to have any further obligations under this Guarantee upon the expiry of the Guarantee Period except in respect of any claim or cause of action that arose prior to the expiry of the Guarantee Period whether or not any demand was made by Contracting Authority under this Guarantee.

## 2. GUARANTEE

### 2.1 Guarantee

- (a) Each Construction Guarantor, for the duration of the Guarantee Period, does hereby absolutely, unconditionally and irrevocably guarantee to Contracting Authority, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work (collectively, the “**Guaranteed Obligations**”), and for greater certainty the Guaranteed Obligations do not include any covenants, agreements, undertakings and obligations of Project Co under the Project Agreement which are not expressly defined in this Section 2.1(a).
- (b) Notwithstanding any other provision of this Guarantee:
- (i) each Construction Guarantor’s undertakings and obligations are derivative of and not in excess of Project Co’s obligations under the Project Agreement and each Construction Guarantor retains all rights, claims, defences and limitations of liability possessed by Project Co under the terms of the Project Agreement or arising from the Parties’ performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to Project Co, including, for greater certainty, that the alleged non-performance or non-observance by Project Co of the Guaranteed Obligations arises out of or is a result of a Contracting Authority Event of Default as set out in Section 35.1(a) (*Contracting Authority Events of Default*) of the Project Agreement; and
  - (ii) in no event shall the aggregate liability of the Construction Guarantors under this Guarantee and the DB Guarantors under the DB Guarantee exceed the maximum liability of the DB Guarantors under the DB Guarantee, but this limit of liability shall not extend to interest and enforcement costs payable under this Guarantee.

### 2.2 General Provisions Relating to the Guarantee

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations by Project Co shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.
- (b) The Guarantee herein provided for shall be a continuing, absolute and unconditional guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect for the duration of the Guarantee Period.
- (c) The liability of each Construction Guarantor hereunder shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no Notice to the Construction Guarantors shall be required in respect of):
- (i) any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit or bond) for or in respect of any of the Guaranteed Obligations;

- (ii) any amalgamation, merger or consolidation of Project Co or a Construction Guarantor or any sale, lease or transfer of any of the assets of Project Co or a Construction Guarantor;
  - (iii) any Change in Ownership of Project Co or a Construction Guarantor;
  - (iv) the termination or other expiry of the Project Agreement;
  - (v) any Delay Event (it being acknowledged, however, that the performance of the Guaranteed Obligations shall be extended accordingly);
  - (vi) any change in the financial condition of Project Co or a Construction Guarantor;
  - (vii) any Project Co Event of Default described in Section 34.1(a)(i) (*Project Co Events of Default*) of the Project Agreement, or any resulting release, stay or discharge of any Guaranteed Obligation;
  - (viii) any lack or limitation of power, incapacity or disability on the part of Project Co or any other irregularity, defect or informality on the part of Project Co with respect to the Guaranteed Obligations;
  - (ix) any provision of any laws, statutes, rules or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, a Construction Guarantor in respect of the Guaranteed Obligations or this Guarantee;
  - (x) the exercise of any rights under the Lending Agreements, including the right of Lenders to cure any Project Co Event of Default by or on behalf of Project Co hereunder and/or to assume the obligations of Project Co and complete the Design and Construction Work in the manner provided in the Project Agreement;
  - (xi) the assignment by Contracting Authority in accordance with the provisions of Section 47.2 (*Contracting Authority Assignment*) of the Project Agreement; or
  - (xii) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against a Construction Guarantor.
- (d) The obligations and liabilities of each Construction Guarantor hereunder shall not be impaired, diminished, abated or otherwise affected by the commencement by or against Project Co or a Construction Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws.
- (e) Contracting Authority shall not be bound to exhaust their recourse against Project Co or others or any securities (including the security described in Schedule 25 – Insurance and Performance Security Requirements of the Project Agreement) or other guarantees it may at any time hold before being entitled to performance of the Guaranteed Obligations by the Construction Guarantors and each Construction Guarantor renounces all benefits of discussion and division.

- (f) If Contracting Authority elects to draw down on the Warranty Security in accordance with Section 11.19 (*Warranty Security*) of the Project Agreement, Contracting Authority shall not be entitled to exercise its rights pursuant to this Guarantee to fund or as reimbursement for the costs and expenses Contracting Authority has already been compensated for pursuant to Section 11.19 (*Warranty Security*) of the Project Agreement.
- (g) It is the intent and purpose hereof that no Construction Guarantor shall be entitled to and does hereby waive any and all defences which are, under law generally applicable to suretyship, available to a guarantor, sureties and other secondary parties at law or in equity. Without limiting the generality of the foregoing, each Construction Guarantor hereby waives Notice of acceptance of this Guarantee and of the non-performance by Project Co, diligence, presentment, protest, dishonour, demand for performance from Contracting Authority and Notice of non-performance or failure to perform on the part of Project Co and all other Notices whatsoever. The Guarantee hereunder is a guarantee of performance and compliance. In order to hold each Construction Guarantor liable hereunder, there shall be no obligation on the part of Contracting Authority at any time to demand or resort for performance to Project Co, its properties or assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that Project Co be joined as a party to any proceeding for the enforcement of any provision of this Guarantee and Contracting Authority shall have the right to enforce the provisions of this Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against Project Co are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, Project Co shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery hereunder for or in respect of any such default, the Guarantee herein shall remain in full force and effect unamended and shall apply to each and every subsequent default.
- (h) Without prejudice to and without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of each Construction Guarantor under this Guarantee and without in any way requiring the consent of or giving Notice to Construction Guarantors, Contracting Authority may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with Project Co and/or Construction Guarantors or others, including any other guarantor, as Contracting Authority may see fit and Contracting Authority may take, abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on or otherwise deal with security and guarantees in such manner as Contracting Authority may see fit.
- (i) Neither an action or proceeding brought under this Guarantee regarding the Guaranteed Obligations nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence action or defence to any further action that may be brought under this Guarantee. Each Construction Guarantor acknowledges that, if judgment is granted on an action or proceeding commenced under this Guarantee, the obligations of each Construction Guarantor to Contracting Authority do not merge with or end each Construction Guarantor's obligations hereunder.
- (j) The liability of each Construction Guarantor under this Guarantee shall arise forthwith after demand has been made in writing on Construction Guarantors.

- (k) Each Construction Guarantor agrees to pay to Contracting Authority any and all reasonable and direct out-of-pocket costs and expenses, including reasonable legal fees (on a substantial indemnity basis) incurred by it in connection with enforcing any of its rights hereunder.

### 3. REPRESENTATIONS AND WARRANTIES

#### 3.1 Construction Guarantors Representations and Warranties

- (a) Each Construction Guarantor represents and warrants to Contracting Authority that as of the date of this Guarantee:
- (i) such is a [REDACTED] and validly existing under the laws of the jurisdiction of its organization (other than in respect of [REDACTED] where it is existing under the laws of the jurisdiction of its continuance), and has all the requisite [REDACTED] power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, to enter into this Guarantee and the Ancillary Documents to which it is a party and to perform its obligations hereunder and thereunder;
  - (ii) such Construction Guarantor has the requisite power, authority and capacity to execute and deliver and perform this Guarantee and the Ancillary Documents to which it is a party, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Guarantee and the Ancillary Documents to which it is a party to be done, executed, delivered or performed;
  - (iii) no steps or proceedings have been taken or are pending to supersede, repeal or amend its respective constating documents, articles or by-laws or any shareholders agreement in a manner that would materially impair or limit its respective ability to perform its obligations under this Guarantee or any of the Ancillary Documents to which it is party and such documents and agreements are in full force and effect as of the date hereof;
  - (iv) this Guarantee and the Ancillary Documents (when executed and delivered) to which such Construction Guarantor is a party, have been duly authorized, executed, and delivered by such Construction Guarantor and constitute legal, valid, and binding obligations of such Construction Guarantor, enforceable against such Construction Guarantor in accordance with their respective terms, subject only to:
    - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
    - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
  - (v) the authorization, execution, delivery and performance by such Construction Guarantor of this Guarantee and the Ancillary Documents to which it is a party do not violate or conflict with, or constitute a default under:

- (A) its respective constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on such Construction Guarantor;
  - (B) any Applicable Law; or
  - (C) any covenant, contract, instrument, agreement or understanding to which it is a party or by which it or any of its respective properties or assets is bound or affected;
- (vi) [REDACTED].
  - (vii) [REDACTED].
  - (viii) [REDACTED].
  - (ix) there are, to the knowledge of its respective senior management, no actions, suits, proceedings, or investigations pending or threatened against such Construction Guarantor, 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 respective business, properties, or assets, or the condition, financial or otherwise, of such Construction Guarantor or in any impairment of its ability to perform its obligations under this Guarantee or any Ancillary Documents to which it is a party, and no such Construction Guarantor has knowledge of any violation or default with respect to any order, writ, injunction or decree of any Governmental Authority or arbitral body that would result in any such material adverse effect or impairment; and
  - (x) such Construction Guarantor is able to meet its obligations as they generally become due.

#### 4. NOTICES

##### 4.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Guarantee shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Guarantee) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority or Contracting Authority Representative:

Metrolinx  
2 Queen Street East, 11th Floor  
Toronto, ON M5C 3G7

Attn.: [REDACTED]  
Email: [REDACTED]



If to Construction Guarantors:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

[REDACTED]

Attn: [REDACTED]  
Email: [REDACTED]

with a copy to:

Attn: [REDACTED]  
Email: [REDACTED]

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

#### 4.2 Electronic Submission

Where any Notice is provided or submitted to a party via electronic submission, an original of the Notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via electronic submission shall not be invalid by reason only of a party's failure to comply with this Section 4.2.

#### 4.3 Change of Address

Either party to this Guarantee may, from time to time, change any of its contact information set forth in Section 4.1 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.

#### 4.4 Deemed Receipt of Notices

- (a) Subject to Sections 4.4(b), 4.4(c) and 4.4(d):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.

- (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 electronic submission in accordance with this Section 4.
- (c) If any Notice delivered by hand or transmitted by electronic submission 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 electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such Notice was successful.

#### **4.5 Service on Contracting Authority**

Where any Notice is required to be served on Contracting Authority, the obligation to serve such Notice shall be fulfilled by serving it on Contracting Authority in accordance with the provisions of this Section 4.

### **5. GENERAL**

#### **5.1 Amendments**

This Guarantee 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 Guarantee.

#### **5.2 Waiver**

- (a) No waiver made or given by a party under or in connection with this Guarantee 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.

#### **5.3 Entire Agreement**

Except where provided otherwise in this Guarantee, this Guarantee, together with the Project Agreement and the Ancillary Documents, constitute 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 Guarantee, including the Request for Proposals.

#### 5.4 Severability

Each provision of this Guarantee shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Guarantee 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 Guarantee. If any such provision of this Guarantee 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 Guarantee as near as possible to its original intent and effect.

#### 5.5 Enurement

This Guarantee shall enure to the benefit of, and be binding on, Contracting Authority and each Construction Guarantor and their respective permitted successors and assigns. This Guarantee may not be assigned by any Construction Guarantor.

#### 5.6 Governing Law and Jurisdiction

- (a) This Guarantee 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) Both parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Guarantee affects the rights, protections and immunities of the Crown under the *Crown Liability and Proceedings Act* (Ontario).

#### 5.7 Contracting Authority Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Guarantee 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 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 the Construction Guarantors in writing of any designation hereunder. The rights and obligations of the parties to this Guarantee shall be in no way affected by reason of any such designation. Each Construction Guarantor acknowledges the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 5.7.

## 5.8 Cumulative Remedies

Except as otherwise set forth in this Guarantee, the rights, powers and remedies of each party set forth in this Guarantee 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 Guarantee or the Project Agreement or Ancillary Documents.

## 5.9 Further Assurance

Each party shall do all reasonable things, from time to time, and execute all reasonable further documents necessary to give full effect to this Guarantee.

## 5.10 Costs

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 Guarantee.

## 5.11 Language of Agreement

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

## 5.12 Proof of Authority

Contracting Authority and Construction Guarantors each reserve the right to require any person executing this Guarantee on behalf of the other party to provide proof, in a form acceptable to Contracting Authority or Construction Guarantors, as applicable, that they have the requisite authority to execute this Guarantee on behalf of and to bind Contracting Authority or Construction Guarantors, as applicable.

## 5.13 Counterparts

This Guarantee may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

## 5.14 Liability

- (a) If any Construction Guarantor is comprised of more than one person, then each such person shall be jointly and severally liable for the obligations and liabilities of the applicable Construction

Guarantor hereunder. Each Construction Guarantor shall be jointly and severally liable for the Guaranteed Obligations hereunder.

- (b) Metrolinx, as Crown agency shall be liable for all of the obligations of Contracting Authority under this Guarantee.

### 5.15 Copyright Notice

The parties acknowledge that the King’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 Guarantee as of the date first above written.

**METROLINX**

By:

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

Title: [REDACTED]

I have authority to bind the corporation

[REDACTED]

By:

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

Title:

Per:

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

Title:

I/We have authority to bind the corporation

[REDACTED]

By:

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

Title:

By:

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

Title:

I/We have authority to bind the corporation

[REDACTED]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation

**SCHEDULE 25****INSURANCE AND PERFORMANCE SECURITY REQUIREMENTS****1. WORKS PHASE INSURANCE COVERAGE**

1.1 Subject to Section 6, from and after execution of this 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 IO Construction Insurance Program (“**IOCIIP**”) 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; and
- (c) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).

1.2 Subject to Section 6, from and after execution of this 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, the following insurances as further described in Appendix A to this Schedule 25:

- (a) Project Specific Professional Liability;
- (b) Automobile Liability;
- (c) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Works) with respect to off-Site/Lands operations and activities;
- (d) Aircraft and Watercraft Liability (if any exposure);
- (e) “All Risks” Marine Cargo (if any exposure);
- (f) “All Risks” Contractors’ Equipment;
- (g) Comprehensive Crime; and
- (h) WSIB.

**2. NO LIMIT ON RECOVERY**

2.1 Notwithstanding any other provision of this 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 Contracting Authority or by Project Co, shall in no way limit Project Co’s liability or obligations to Contracting Authority or Contracting Authority’s liability or obligations to Project Co, as applicable.



**3. ADDITIONAL COVER**

- 3.1 Without prejudice to the other provisions of this Schedule 25, Contracting Authority 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.
- 3.2 Contracting Authority reserves the right to require Project Co to purchase such additional insurance coverage as Contracting Authority may reasonably require. Contracting Authority 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 Works, contract value, industry standards and availability of insurance) as Contracting Authority may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by Contracting Authority and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of Contracting Authority.

**4. RESPONSIBILITY FOR DEDUCTIBLES**

- 4.1 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.

**5. COOPERATION WITH INSURER'S CONSULTANT**

- 5.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then Contracting Authority and Project Co shall, and shall require the Contracting Authority Parties and the 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 Contracting Authority (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

**6. UNINSURABLE RISKS**

- 6.1 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 this 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 insurance be licenced in the Province of Ontario to insure such a risk, by insurers licenced in the Province of Ontario; or
  - (ii) where Applicable Laws do not require that the insurance be licenced 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 Contracting Authority's reasonable satisfaction that the foregoing definition applies to a particular risk.

- 6.2 Project Co shall notify Contracting Authority as soon as possible and, in any event, within fifteen (15) Business Days after becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide Contracting Authority with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 6.3 Project Co and Contracting Authority shall, as soon as possible following the provision of the notice referred to in Section 6.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and Contracting Authority are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- 6.4 In the event that Project Co and Contracting Authority, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within fifteen (15) Business Days following the expiry of the period referred to in Section 6.2, Contracting Authority 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 this Project Agreement shall continue in full force and effect; or
  - (b) terminate this Project Agreement in accordance with Section 36.2 (*Termination for Force Majeure*) 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 36.2 (*Termination for Force Majeure*) 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.
- 6.5 On the occurrence of an Uninsurable Risk, Contracting Authority 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 this Project Agreement shall continue in full force and effect; or

- (b) terminate this Project Agreement in accordance with Section 36.2 (*Termination for Force Majeure*) 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 36.2 (*Termination for Force Majeure*) 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.

6.6 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 one-hundred and eighty (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 6.6(a), Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.

6.7 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 6 shall no longer apply to such risk.

## 7. TOTAL OR SUBSTANTIAL DESTRUCTION

7.1 In the event of damage to, or destruction of, all or substantially all of the Works 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 this Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Works, or any other assets, materials or goods necessary or desirable for the carrying out of the Works, all in accordance with the terms of the Insurance Trust Agreement.

## 8. SUBCONTRACTORS

8.1 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 Contracting Authority may suffer as a direct result of Project Co's failure to comply with the foregoing.

8.2 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 cause 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 Works 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 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.

## **9. RENEWAL**

9.1 Project Co shall provide to Contracting Authority, at least five (5) Business Days prior to the expiry date of any policy of insurance required to be obtained (or cause to be obtained) by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to Contracting Authority, acting reasonably.

## **10. NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION**

10.1 All insurance provided by Project Co, shall:

- (a) include Project Co, Project Co Parties, Contracting Authority, Contracting Authority Parties, IO and City of Toronto as Named Insureds to the extent specified in Appendix A of this Schedule 25;
- (b) include Contracting Authority, Contracting Authority Parties, IO, City of Toronto, Utility Companies, Railway Companies, TTC, the Lenders and the Lenders' Agent or His Majesty the King in right of Ontario, Her Ministers, agents, appointees and employees, as the case may be, as Additional Insureds, or loss payees to the extent of their respective insurable interests to the extent specified in Appendix A of this Schedule 25;
- (c) except with respect to the Project Specific Professional Liability, Automobile Liability, Comprehensive Crime and WSIB specified in Appendix A to this Schedule 25, contain a waiver of subrogation as against Contracting Authority, Contracting Authority Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than design consultants) and agents, the Lenders and the Lenders' Agent;
- (d) contain a breach of warranty provision whereby a breach of a condition by Project Co or Project Co Parties will not eliminate or reduce coverage for any other insured; and
- (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to Contracting Authority or the Lenders without any right of contribution of any insurance carried by Contracting Authority or the Lenders.

## **11. CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES**

11.1 Prior to the execution of the Project Agreement, Project Co will provide Contracting Authority with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.

- 11.2 Prior to the execution of the Project Agreement, Project Co will provide Contracting Authority 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 Contracting Authority no later than ninety (90) days after execution of this Project Agreement.

## **12. FAILURE TO MEET INSURANCE REQUIREMENTS**

- 12.1 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority's option, be payable by Project Co to Contracting Authority on demand or be deducted by Contracting Authority from the next payment or payments otherwise due to Project Co.
- 12.2 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 Contracting Authority, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

## **13. MODIFICATION OR CANCELLATION OF POLICIES**

- 13.1 Except as noted in Appendix A to this Schedule 25, 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 address specified, to Contracting Authority, the Lenders' Agent and IO. 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.
- 13.2 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 address specified, to Contracting Authority, the Lenders' Agent and IO.
- 13.3 With respect to insurances described in Sections 1.1(a), (b) and (c), and Section 1.2(e), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to Contracting Authority, IO, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

**14. INSURERS**

- 14.1 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 Contracting Authority and Lenders, acting reasonably, and, where required by statute, be licenced to insure such risk in the Province of Ontario.
- 14.2 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 (5) years but not lower than “B” at any time during those five (5) 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 (5) years but not less than “BBB” at any time during those five (5) years, a Short-Term Financial Strength Rating of not lower than “A-3” for three out of the previous five (5) years and a Financial Enhancement Rating of not lower than “A-” for three out of the previous five (5) years but not less than “BB+” at any time during those five (5) 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 Contracting Authority and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

**15. POLICY TERMS AND CONDITIONS**

- 15.1 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 Contracting Authority, its insurance advisors and Lenders, acting reasonably.
- 15.2 To achieve the minimum limits for any type of insurance required under Appendix A to this Schedule 25, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

**16. FAILURE TO COMPLY**

- 16.1 Neither failure to comply nor full compliance by Project Co with the insurance provisions of this Schedule 25 shall relieve Project Co of its liabilities and obligations under this Project Agreement.

**17. PERFORMANCE SECURITY REQUIREMENTS**

[REDACTED]

**18. INSURANCE TRUST AGREEMENT**

- 18.1 All losses under the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion which relate to

equipment purchased or owned by Contracting Authority shall be payable solely to Contracting Authority and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

## 19. INCIDENT REPORTING AND CLAIM STATEMENT

### 19.1 Project Co shall:

- (a) maintain a written register of all damages, events, losses, circumstances, situations, claims or occurrences, including incidents which might result in a claim under any of the policies of insurance required under this Schedule 25 and of all claims made by third parties involving bodily injury, illness, death, personal injury or property damage in respect of the Project (each such incident, an “**Incident**”). Such register shall indicate the date of the Incident, the date reported to Project Co, the type of Incident, and the circumstances giving rise to the Incident. Such register shall indicate the date of the Incident, and monthly and/or quarterly updates reflecting developments in such Incident until each such Incident is resolved, completed and designated as closed;
- (b) allow Contracting Authority to inspect such register at any time and provide a copy of such register to Contracting Authority monthly and/or quarterly and on Contracting Authority’s reasonable request;
- (c) participate in monthly and/or quarterly update meetings to review developments in such Incidents as may be requested by Contracting Authority;
- (d) in collaboration with Contracting Authority, appoint a claims adjuster (“**Control Adjuster**”) to investigate and adjudicate Incidents falling or likely to fall within the insurance deductibles. Control Adjuster’s fees to be paid by Project Co;
- (e) arrange and attend quarterly claims meetings with Contracting Authority representatives, Control Adjuster, the Insurance Claims Adjuster and insurers’ representatives to review the status of all such Incidents, including any disputed or denied Incidents or claims arising therefrom;
- (f) meet with Contracting Authority at Contracting Authority’s reasonable request to discuss any such Incident;
- (g) promptly upon becoming aware of an Incident, but in any event no later than five (5) days after Project Co becomes aware of such Incident, notify Contracting Authority’s claims and insurance group, Control Adjuster and the insurers’ claim representatives assigned to the Project of the full particulars of such Incident. Project Co shall be solely responsible and liable for any claims denied by insurers, or any deductibles and self-insured retentions which Contracting Authority may suffer or become responsible for as a direct result of Project Co’s failure to comply with the incident reporting requirements;
- (h) for all claims below the deductible involving third parties and reported to Project Co (either directly or via Contracting Authority), acknowledge the claim within ten (10) days to the claimant and provide contact details for claimants to follow up on claim status with Project Co;

- (i) provide reasonable access, support, documents and information to Contracting Authority representatives, including Contracting Authority claims and insurance personnel, and Control Adjuster in respect of any Incident;
  - (j) as soon as practicable but no later than seven (7) days after becoming aware of the Incident, provide reasonable access, support, documents and information to the Control Adjuster and any adjuster assigned by the insurer(s) (“**Insurance Claims Adjuster**”) to investigate any Incident;
  - (k) comply with Contracting Authority’s reasonable requests regarding the investigation, negotiation and settlement of any such Incident or claim arising therefrom;
  - (l) without prejudice to the provisions of the Project Agreement, including Schedule 18 – Communications and Public Engagement Protocol, comply with Contracting Authority’s reasonable requests regarding communication, including communication with claimant(s) and members of the public, in respect of any such Incident and claim arising therefrom;
  - (m) upon receiving recommendations on liability and quantum from the Control Adjuster or Insurance Claims Adjuster, settle any claims (subject to Contracting Authority’s consent, not to be unreasonably withheld) falling within the deductibles, self-insured retentions or waiting periods of the policies of insurance required under the Project Agreement, using a release on terms reasonably required by Contracting Authority, and including Project Co, Contracting Authority and any parties reasonably required by Contracting Authority, as releases thereunder; and
  - (n) ensure that the Insurance Claims Adjuster or Control Adjuster, as applicable, shall provide recommendations on liability and quantum in respect of such Incidents to Project Co, the insurers (for losses in excess of the policy deductible) and to the Contracting Authority Representatives assigned in accordance with this Section 19. For clarity, Contracting Authority shall have no responsibility for the costs of any such adjuster, which shall be borne by Project Co or the insurer(s).
- 19.2 Wherever the requirements of this Section 19 are at variance with the terms and conditions of the actual insurance policy(ies), the terms and conditions of the actual insurance policy(ies) will prevail.
- 19.3 The address for provision of notice of Incidents to Contracting Authority’s claims and insurance group is as follows:

[REDACTED]

## 20. USE OF INFORMATION

- 20.1 Project Co acknowledges and agrees that (i) notwithstanding any other provision of this Project Agreement, including Section 40 (*Confidentiality*) of the Project Agreement, the cost of construction value for any Project Co Infrastructure Section and (ii) the estimated and actual Section Substantial Completion Dates, provided to the IOCIP Broker of Record or Contracting Authority in order to establish insured limits and coverage under Project Co’s “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance, may be



disclosed to RSSOM Project Co for the purposes of establishing requirements for and obtaining RSSOM Project Co's "All Risks" Course of Construction Property Insurance policy, including Boiler & Machinery Insurance, in respect of any Project Co Infrastructure Section to be handed over to RSSOM Project Co.

**APPENDIX A TO SCHEDULE 25**

**INSURANCE REQUIREMENTS**

[REDACTED]

APPENDIX B TO SCHEDULE 25

PERFORMANCE BOND

[REDACTED]

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Confidential

APPENDIX C TO SCHEDULE 25  
LABOUR AND MATERIAL PAYMENT BOND

[REDACTED]

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Confidential

## 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 and the Construction Contractor's normal business practices;
  - (f) in accordance with Canadian GAAP;
  - (g) in chronological order;
  - (h) in electronic format in accordance with Contracting Authority's designated record keeping system;
  - (i) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 26 (*Records, Information, Audit and Claims Management*) 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 Infrastructure or otherwise on the Metrolinx Lands, in addition to retaining and maintaining records referred to in Section 2.1 in electronic format on Contracting Authority's designated record keeping system.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy and electronic form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including the As-Built Drawings and the Record Drawings) required to be made or supplied pursuant to the Project Agreement shall be on the most updated version of the applicable software and editable in updated base software format, and when printed, be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to Contracting Authority, and shall conform to the Output Specifications, Good Industry Practice, and the Canadian and Industry Standards. All drawings are to be submitted via Contracting Authority's electronic control management system,

- with one hard copy provided to Contracting Authority. Project Co shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities. Contracting Authority shall provide Project Co access to Contracting Authority's electronic control management system.
- 1.5 Records shall be stored in electronic format within Contracting Authority's electronic control management system where Project Co shall have access thereto and will continue to have access thereto, such that Contracting Authority will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 for a minimum period of at least seven (7) years or such longer period as required by Applicable Law.
- 1.7 Project Co shall provide Notice to Contracting Authority if Project Co wishes to destroy any records referred to in this Schedule 26, or in respect of which the required period under Section 1.6 or under Applicable Law for their retention has expired. The Parties agree that:
- (a) within sixty (60) days following such Notice, Contracting Authority may elect to require Project Co to deliver such records to Contracting Authority, in which case Project Co shall, at the expense of Contracting Authority, deliver such records (with the exception of Sensitive Information) to Contracting Authority in the manner and to the location as Contracting Authority shall specify; or
  - (b) if Contracting Authority fails to notify Project Co of its election pursuant to Section 1.7(a) within such sixty (60) day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of termination of the Project Agreement in accordance with its terms, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to Contracting Authority in the manner and to the location that Contracting Authority shall reasonably specify. Contracting Authority shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 subject to prior reasonable Notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co;
  - (b) Project Co in connection with its fulfilment of any outstanding obligations under the Project Agreement; or
  - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.9 Where the termination of the Project Agreement arises:
- (a) as a result of a Contracting Authority Event of Default or pursuant to Section 36.3 (*Termination for Convenience*) of the Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by Contracting Authority; or

- (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six (6) years following the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.
- 1.10 Within thirty (30) days after the end of each year or partial year of the Project Term, Project Co shall deliver to Contracting Authority a report, as reasonably requested by Contracting Authority in connection with Contracting Authority's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against Contracting Authority or that may be owing by Contracting Authority to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by the Project Agreement.
- 1.11 Project Co shall provide to Contracting Authority:
- (a) not later than forty-five (45) days after the end of the first three fiscal quarters of Project Co in each fiscal year, part or all of which falls in a year of the Project Term, a copy of Project Co's unaudited management financial statements prepared in accordance with Approved Accounting Principles (as defined in the Lending Agreement), and
  - (b) not later than one-hundred and twenty (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 Lending Agreement), together with a certificate of the auditors of Project Co setting forth that they have examined such statements and have conducted a general review of accounting procedures and such tests of accounting records and other supporting evidence as they consider necessary or advisable and confirming that in their opinion such statements present fairly the financial position of Project Co and the results of its operations for the fiscal year reported on and have been defined in accordance with Approved Accounting Principles (as defined in the Lending Agreement),

all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 40 (*Confidentiality*) of the Project Agreement, shall be treated by Contracting Authority 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 Contracting Authority Representative and the Project Co Representative;
  - (c) any documents, drawings (including the As-Built Drawings and 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, Approvals and Agreements, including any refusals and appeals relating to any applications;
- (e) a complete record of construction, recorded as geospatially accurate data, linked to specific components within the BIM model where appropriate, including:
  - (i) all records generated by the Geotechnical Instrumentation and Monitoring Plan (as described in the Output Specifications), instrument locations, baseline readings, routine monitoring records, and Tunnel construction monitoring records;
  - (ii) records of all Tunnel Boring Machine data and its integration with movement monitoring data in real time (as described in the Output Specifications);
  - (iii) all records of precast Tunnel liner manufacturing and installation;
  - (iv) all records of Tunnel alignment periodic surveys (as described in the Output Specifications);
  - (v) as-built locational surveys of the Tunnel alignment, Facilities, Civil Structures, Tunnel Ventilation System, Substations and Emergency Exit Buildings;
  - (vi) records of all Support of Excavation performed by Project Co (as described in the Output Specifications), including (but not limited to) records pertaining to the strength of the structural elements and verticality control during installation;
  - (vii) records of water ingress testing;
  - (viii) records of all dewatering pumped volumes and timing;
  - (ix) records of all pre-construction condition surveys and post-construction condition surveys (as described in the Output Specifications), including a log identifying corrective actions;
  - (x) records of all geotechnical and environmental investigations performed by Project Co (as described in the Output Specifications), including records pertaining to the decommissioning of any monitoring wells and the location of any well casings;
  - (xi) records in connection with the Stations, Substations and the Emergency Exit Buildings;
  - (xii) Works progress photography;
  - (xiii) construction notices or other communications with adjacent businesses, property owners or tenants;
  - (xiv) planned and unplanned interruptions of Utility Infrastructure;



- (xv) a complaints log including responses and any corrective action; and
- (xvi) any other items as requested by Contracting Authority from time to time.
- (f) all records relating to any statutory inspections of the Project Co Infrastructure, the New Third Party Infrastructure, or the Metrolinx Lands, including any roadways and tracks, recorded as data referenced within the BIM model;
- (g) any notices, reports, results and certificates relating to any Milestone Payment Completion, Substantial Completion, Final Completion and Project Co Commissioning;
- (h) all operation and maintenance manuals, recorded as data referenced within the BIM model;
- (i) any documents relating to events of Force Majeure, Delay Events, Compensation Events and Relief Events;
- (j) all documents submitted in accordance with Schedule 22 – Variation Procedure;
- (k) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (l) any documents related to a Project Co Change in Ownership or Change in Control;
- (m) any documents relating to any Refinancing;
- (n) 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;
- (o) the financial accounts of Project Co referred to in Section 1.11;
- (p) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Works;
- (q) any documents relating to insurance and insurance claims;
- (r) all Jointly Developed Materials; and

- (s) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to the Project Agreement recorded as data referenced within the BIM model.
- 2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1.

## SCHEDULE 27

## DISPUTE RESOLUTION PROCEDURE

## 1. General

## 1.1 Definitions

- (a) In this Schedule 27, unless the context otherwise requires:
- (i) “**Adjudication**” has the meaning given in Section 3.1(a).
  - (ii) “**Adjudication Dispute**” has the meaning given in Section 3.1(a)(ii).
  - (iii) “**Adjudicator**” has the meaning given in Section 3.1(a).
  - (iv) “**Arbitration Act, 1991**” means the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended from time to time.
  - (v) “**Arbitration Referral Period**” has the meaning given in Section 4.13(a).
  - (vi) “**CDB**” has the meaning given in Section 4.1(a).
  - (vii) “**CDB Chair**” has the meaning given in Section 4.1(c).
  - (viii) “**CDB Expiry Date**” means the later of the Final Completion Date and the date that is three years following the Substantial Completion Date, as may be extended pursuant to Section 4.1(b).
  - (ix) “**CDB Member Agreement**” has the meaning given in Section 4.1(a).
  - (x) “**CDB Member Statement**” has the meaning given in Section 4.3(a).
  - (xi) “**Claimant**” has the meaning given in Section 4.6(a).
  - (xii) “**Date of Commencement**” has the meaning given in Section 4.6(b).
  - (xiii) “**Dispute**” means all disagreements, disputes, or controversies arising during or following the Project Term in relation to or arising out of the interpretation, enforceability, performance, breach, or validity of the Project Agreement or any provision of the Project Agreement, the rights or obligations of the Parties under the Project Agreement, or the exercise or failure to exercise a discretion or power given to a Party under the Project Agreement.
  - (xiv) “**Dispute Notice Supporting Documents**” has the meaning given in Section 1.6(b)(v).
  - (xv) “**Event of Default Dispute**” has the meaning given in Section 1.2(b).
  - (xvi) “**Member**” has the meaning given in Section 4.1(a).

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- (xvii) “**Notice of Adjudication**” has the meaning given in Section 3.1(c).
- (xviii) “**Notice of Dispute**” has the meaning given in Section 1.6(a).
- (xix) “**Notice of Request to Arbitrate**” has the meaning given in Section 5(c).
- (xx) “**Party Executive DRP Termination Notice**” has the meaning given in Section 2(e).
- (xxi) “**Party Executive**” has the meaning given in Section 2(a).
- (xxii) “**Party Representative**” means the Contracting Authority Representative or the Project Co Representative, as the context requires.
- (xxiii) “**Project Agreement Arbitration**” has the meaning given in Section 7(a).
- (xxiv) “**Public Safety Dispute**” means any Dispute which Contracting Authority or Project Co, acting reasonably, determines involves an alleged breach of the Project Agreement by the other Party or any act or omission on the part of the other Party or any person with whom the other Party is legally affiliated or for whom the other Party is legally responsible (including a Project Co Party or a Contracting Authority Party, as applicable), which creates or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any user of any part of or the whole of the Project or the Lands, or to the environment.
- (xxv) “**Reply**” has the meaning given in Section 4.7.
- (xxvi) “**Reply Period**” has the meaning given in Section 4.7(a).
- (xxvii) “**Respondent**” has the meaning given in Section 4.6(a).
- (xxviii) “**Rules of Civil Procedure**” means R.R.O. 1990, Reg. 194: Rules of Civil Procedure under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended from time to time.
- (xxix) “**Schedule 27 Procedural Dispute**” means a procedural Dispute regarding the interpretation of, or compliance with, this Schedule 27 (including any Dispute in respect of whether or not a Notice of Dispute complies with the requirements of Section 1.6(b)), other than with respect to any Dispute that has been or must be referred for resolution to Adjudication, arbitration or litigation in accordance with this Schedule 27, which shall be resolved as part of the underlying Adjudication, arbitration or litigation proceedings.
- (xxx) “**Statement of Case**” has the meaning given in Section 4.6(a).
- (xxxi) “**Statement of Reply**” has the meaning given in Section 4.7.
- (xxxii) “**Technical Member**” has the meaning given in Section 4.1(c).
- (xxxiii) “**Third Party Arbitration**” has the meaning given in Section 7(a).

(xxxiv) “**Third Party Litigation**” has the meaning given in Section 7(b).

## 1.2 Applicability of this Schedule 27

- (a) Except as otherwise provided in the Project Agreement, all Disputes shall be resolved in accordance with this Schedule 27.
- (b) Notwithstanding anything set forth in this Schedule 27, and without limiting or prejudice to a Party’s rights pursuant to Section 6 or Contracting Authority’s right to terminate the Project Agreement pursuant to Section 34.3(b) (*Right to Termination*) of the Project Agreement, either Party may, by the delivery of Notice to the other Party, require that any Dispute in respect of whether a Project Co Event of Default or a Contracting Authority Event of Default has occurred under the Project Agreement or any Dispute in respect of or related to Contracting Authority’s right to terminate the Project Agreement pursuant to Section 34.3(a) (*Right to Termination*) or Section 34.4 (*Remedy Provisions*) of the Project Agreement, or Project Co’s right to terminate the Project Agreement pursuant to Section 35.2 (*Project Co’s Options*) of the Project Agreement that arises at any time during the Project Term (an “**Event of Default Dispute**”) be resolved in accordance with Section 5. Sections 1.7, 2 and 4 shall not apply to any such Event of Default Dispute.

## 1.3 Independent Certifier Determinations and Decisions

- (a) Save and except as set out in Section 23.3(k) (*Section Substantial Completion Certificates and Substantial Completion Certificate*) of the Project Agreement and Section 3, (i) no determination or decision of the Independent Certifier made pursuant to the Project Agreement shall be binding upon the Parties, and (ii) any Party may refer a Dispute in respect of any such determination or decision of the Independent Certifier for resolution pursuant to this Schedule 27.
- (b) If a Party refers a Dispute in respect of a determination or decision of the Independent Certifier made pursuant to the Project Agreement for resolution by:
  - (i) Adjudication pursuant to Section 3, the Independent Certifier shall not be permitted to be the Adjudicator in such Adjudication; or
  - (ii) the CDB pursuant to Section 4, the Independent Certifier shall not be permitted to provide its opinion as an expert to the CDB pursuant to Section 4.9(c).

## 1.4 Continued Performance During Disputes

- (a) Project Co and Contracting Authority shall diligently carry out their respective obligations under the Project Agreement during the pendency of any Dispute. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of a matter that is in Dispute, then subject to Section 1.4(b), either Party may proceed without prejudice to either Party’s rights under the Project Agreement in respect of the Dispute (including in respect of any entitlement of Project Co to a Delay Event, Compensation Event and/or Variation).
- (b) While a Dispute is pending (including any Schedule 27 Procedural Dispute), Contracting Authority may give such written instructions as in Contracting Authority’s opinion are

necessary in respect of the matter that is in Dispute, including for Project Co to proceed with the Works which are the subject of the Dispute in accordance with the position of Contracting Authority, and Project Co shall comply with such written instructions forthwith.

- (c) Project Co acknowledges and agrees that (i) a pending Dispute will not justify Project Co's failure or refusal to comply with any written instructions given by Contracting Authority pursuant to Section 1.4(b), including in the event that complying with such written instructions would prevent Project Co from achieving Substantial Completion by the Scheduled Substantial Completion Date, and (ii) Project Co has no right to require a determination pursuant to this Schedule 27 of whether or not Contracting Authority is entitled to give such written instructions or whether or not Project Co is required to comply with such written instructions, before complying with such written instructions. Only concurrently with or after complying with Contracting Authority's written instructions shall Project Co be entitled to refer any such Dispute for resolution in accordance with this Schedule 27. For clarity, no Schedule 27 Procedural Dispute may be initiated in respect of any of the written instructions given by Contracting Authority issued pursuant to Section 1.4(b).
- (d) Any claims for time and/or cost consequences of complying with this Section 1.4(d) shall be addressed as part of the resolution of the applicable Dispute, provided that, in the event the matter in Dispute is determined in favour of Project Co, proceeding in accordance with Contracting Authority's written instructions pursuant to Section 1.4(b) shall (i) subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event; and (iii) subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

## 1.5 Mutual Resolution Efforts

- (a) The Parties agree that at all times each of them will make reasonable and *bona fide* efforts to resolve any Dispute arising between them:
  - (i) in the ordinary course in accordance with the Project Agreement starting with the Project teams of the Parties; and
  - (ii) if and to the extent the Project teams cannot resolve the Dispute in the ordinary course in accordance with the Project Agreement, by amicable negotiations on a without prejudice basis between the Party Representatives.
- (b) Each Party shall provide full, frank, candid and timely disclosure of relevant facts, information and documents (subject to legal privilege) as may be required by the Project Agreement or reasonably requested by the other Party to facilitate the resolution of any Dispute.
- (c) The communication of facts, documents, or information by a Party on a without prejudice basis does not relieve that Party of any obligation to deliver any facts, documents or information required under the Project Agreement.

## 1.6 Notice of Dispute

- (a) If the Parties are unable to resolve a Dispute pursuant to Section 1.5(a), either Party may deliver to the Party Representative of the other Party a written notice of dispute (the “**Notice of Dispute**”) in accordance with Section 1.6(b).
- (b) The Notice of Dispute must:
- (i) expressly state that it is a “Notice of Dispute” pursuant to this Section 1.6;
  - (ii) to the extent available at the time the Notice of Dispute is delivered and following reasonable due diligence, provide particulars of the matters in Dispute sufficient to allow the Party who will receive the Notice of Dispute to understand and meaningfully respond to the Notice of Dispute;
  - (iii) describe any relief sought, including:
    - 1. the amount claimed, if any, or, if the amount claimed is not available, the approximate value of the claim; and
    - 2. any extension of time sought, or if that is not available, any anticipated extension of time sought;
  - (iv) identify whether the Dispute is a Public Safety Dispute;
  - (v) to the extent available at the time the Notice of Dispute is delivered, attach all key documents relevant to the Dispute on which the Party intends to rely for the purposes of resolving the Dispute pursuant to this Schedule 27 in the possession or control of such Party following reasonable due diligence (collectively, the “**Dispute Notice Supporting Documents**”); and
  - (vi) be signed by the Party Representative for the Party delivering the Notice of Dispute.
- (c) A Notice of Dispute must be delivered as a precondition to the Parties proceeding with any further steps contemplated in Sections 1.7 or 2 to 5.
- (d) The requirements of this Section 1.6 cannot be waived or amended except as expressly agreed by the Parties pursuant to Section 9(a).

## 1.7 Schedule 27 Procedural Disputes

- (a) Prior to the CDB Expiry Date, either Party may refer a Schedule 27 Procedural Dispute to the CDB for resolution in accordance with this Section 1.7 following the delivery of a Notice of Dispute in respect of the subject matter of the Schedule 27 Procedural Dispute pursuant to Section 1.6(a).
- (b) Notwithstanding anything to the contrary in this Schedule 27, no Schedule 27 Procedural Dispute shall be required to be escalated for amicable resolution by the Party Executives pursuant to Section 2,

- (c) Except as otherwise expressly set out in this Section 1.7, Sections 4.5 to 4.13 shall not apply to any Schedule 27 Procedural Dispute.
- (d) Subject to Sections 1.7(e), 1.7(f) and 4.12, the CDB shall establish the process for the resolution of any Schedule 27 Procedural Dispute, and may make such orders or give such directions as the CDB considers appropriate.
- (e) Each Party shall provide the CDB with a brief submission in writing in support of its case with regards to each Schedule 27 Procedural Dispute. The responding Party shall provide the CDB with its brief submission within five (5) Business Days of the delivery of the referring Party's brief submission or such longer period as agreed by the Parties in writing or ordered by the CDB.
- (f) The CDB shall render its decision as soon as possible and within five (5) Business Days after receiving the Parties' brief submissions with regards to a Schedule 27 Procedural Dispute, unless the CDB considers an oral hearing to be necessary, in which case the provisions of Sections 4.10(b) to 4.10(d) shall apply and the CDB shall render its decision as soon as possible and within five (5) Business Days after the conduct of the oral hearing.
- (g) The CDB may, acting reasonably and taking into account the complexity of and the prevailing circumstances related to the Schedule 27 Procedural Dispute, extend any such period by delivering written notice to the Parties.
- (h) The CDB's decision on a Schedule 27 Procedural Dispute shall be:
  - (i) made in accordance with the provisions of Sections 4.11(a) to 4.11(c) and 4.11(e); and
  - (ii) final and binding.
- (i) The Parties agree that no decision of the CDB on a Schedule 27 Procedural Dispute shall be subject to appeal, arbitration, litigation or any other dispute resolution process, and expressly waive any and all such rights in respect of each Schedule 27 Procedural Dispute resolved by the CDB.

## 2. Amicable Resolution by Party Executives

- (a) Upon a Party's receipt of a Notice of Dispute, the Dispute shall be escalated for amicable resolution by an executive of each Party (each a "**Party Executive**").
- (b) The selected Party Executive for each Party shall be:
  - (i) in a position of authority above that of the Party Representative; and
  - (ii) shall have or be delegated full authority to resolve the Dispute subject only to approval of the Chief Executive Officer and board of directors or similar governing or regulatory body of the Party (as applicable).
- (c) The Party Executives shall promptly, and by no later than fifteen (15) Business Days (or such longer period agreed by the Parties in writing) from the date of the receiving Party's



receipt of the applicable Notice of Dispute, meet and make reasonable and *bona fide* efforts to resolve the Dispute.

- (d) All discussions and negotiations held, and all communications exchanged, between the Parties in connection with the Party Executive negotiations shall be on a without prejudice basis to facilitate the resolution of the Dispute.
- (e) Either Party may terminate the process of amicable resolution by the Party Executives by providing Notice of termination of such process (each a “**Party Executive DRP Termination Notice**”) at any time:
  - (i) if the initial Party Executive meeting does not occur by the expiry of the period set out in Section 2(c); or
  - (ii) ten (10) Business Days after the initial Party Executive meeting described in Section 2(c).
- (f) The requirements of this Section 2 cannot be waived or amended except as expressly agreed by the Parties pursuant to Section 9(a).

### 3. Adjudication

#### 3.1 Referral to Adjudication

- (a) Subject to Section 1.3(b), either Party may refer a Dispute to a qualified and independent representative of the Independent Certifier for determination by adjudication, or otherwise to a qualified and independent adjudicator listed by the “Authorized Nominating Authority” designated pursuant to the *Construction Act*, (in either case, the “**Adjudicator**”) in accordance with this Section 3 (“**Adjudication**”) and the *Construction Act* (Ontario), provided that the Dispute:
  - (i) relates to the Works and arises prior to Final Completion; and
  - (ii) is a matter pursuant to which there is a statutory right to submit such matter to adjudication in accordance with and to the extent set out in the *Construction Act* (Ontario) (each an “**Adjudication Dispute**”).
- (b) The Parties confirm that they have reviewed sections 13.5(1)1. to 13.5(1)6. (inclusive) of the *Construction Act* (Ontario), and agree that:
  - (i) their interpretation of such provisions is that such provisions do not apply to any claim for delay, disruption or acceleration, or any claim for:
    1. a Delay Event;
    2. determination of any entitlement under the Project Agreement to a Compensation Event, a Relief Event, or an event of Force Majeure; or
    3. determination as to whether:

- a. a Party is obligated pursuant to the Project Agreement to proceed with a Variation; or
  - b. any works subject to a Dispute are Works under the Project Agreement or whether Project Co is entitled to a Variation in respect of such works; and
- (ii) they shall not refer to Adjudication, and do not agree to Adjudicate pursuant to section 13.5(1)7. of the *Construction Act* (Ontario), any matter described in Section 3.1(b)(i).
- (c) The Party referring an Adjudication Dispute for Adjudication by the Adjudicator shall deliver to the Adjudicator and the other Party a written notice of Adjudication (each, a “**Notice of Adjudication**”) in accordance with the requirements of the *Construction Act* (Ontario).
- (d) The responding Party may deliver to the Adjudicator and the other Party a response to the Notice of Adjudication. The Parties agree that the responding Party shall have at least twenty-one (21) days within which to deliver its response, or such further time specified by the Adjudicator, giving consideration to the Notice of Adjudication, the amount in dispute, and the principles of fairness, including ensuring that the responding Party has a reasonable amount of time to review and respond to any documents the referring Party intends to rely on during the Adjudication included in the Notice of Adjudication (including any Dispute Notice Supporting Document that was not previously disclosed in the Notice(s) of Dispute (if available)).
- (e) The Parties shall consent to any request by the Adjudicator to extend the deadline for the Adjudicator’s determination in accordance with Section 13.13(2)(a) of the *Construction Act* (Ontario), and shall agree to any extension reasonably requested by a Party to extend the deadline for the Adjudicator’s determination pursuant to Section 13.13(2)(b) of the *Construction Act* (Ontario).

### 3.2 Powers of the Adjudicator During Adjudication

- (a) In conducting an Adjudication, the Adjudicator shall have the powers granted to adjudicators by the *Construction Act* (Ontario), and:
- (i) shall act impartially;
  - (ii) may conduct the Adjudication in the manner the Adjudicator determines appropriate in the circumstances, subject to the obligation to conduct the Adjudication in an impartial manner and subject to any joint procedural directions delivered jointly by Project Co and Contracting Authority;
  - (iii) may issue directions respecting the disclosure of documents which a party intends to rely on or that a party has requested from another party in the Adjudication in a manner that ensures that each party to the Adjudication has an opportunity to review such documents, and with regard to principles of proportionality and the desire of the parties for a cost-effective process;

- (iv) may refuse to hear the Adjudication if the preconditions to bringing an Adjudication Dispute to Adjudication have not yet been met; and
- (v) shall make a determination of the matter that is the subject of an Adjudication on the basis of applicable laws and the Project Agreement.

### 3.3 Review of Adjudicator's Determination

- (a) Any Party that is dissatisfied with a determination of the Adjudicator may, within thirty (30) days of the release of the Adjudicator's determination (or such longer period agreed by the Parties, acting reasonably), deliver a Notice of Request to Arbitrate the Dispute pursuant to Section 5(c). In such an event, the determination of the Adjudicator shall be reviewed *de novo* by an arbitration tribunal in accordance with Section 5. If neither Party delivers a Notice of Request to Arbitrate the Dispute pursuant to Section 5(c) before the expiry of such period, or if any arbitration that is commenced pursuant to Section 5 is subsequently abandoned in writing by the Parties before an arbitral award is made pursuant to Section 5, then the determination of the Adjudicator shall be final and binding on the Parties.
- (b) The Parties agree that any determination of the Adjudicator that becomes final and binding on the Parties in accordance with Section 3.3(a) shall not be subject to appeal, arbitration, litigation or any other dispute resolution process and expressly waive any and all such rights in respect of the Dispute resolved by the Adjudicator.

## 4. Combined Dispute Board

### 4.1 Appointment of the CDB

- (a) The Combined Dispute Board (“**CDB**”) shall be a standing body composed of three members appointed in accordance with this Schedule 27 (each a “**Member**”). On or before Financial Close, the CDB shall be constituted by a written agreement between the Parties and each of the Members substantially in the form set out in Appendix B to this Schedule 27 and executed and delivered in accordance with Schedule 2 – Completion Documents (each a “**CDB Member Agreement**”).
- (b) The CDB shall remain constituted until the CDB Expiry Date. The Parties may agree in writing to extend the term of the CDB, and shall agree in writing to any extensions necessary in order to obtain CDB decisions in relation to Disputes referred to that form of CDB (i.e. one member or three member) which remain outstanding upon the scheduled reduction of the number of CDB members or the end of the CDB term, as applicable.
- (c) Unless otherwise agreed by the Parties in writing:
  - (i) two Members shall have technical and/or senior managerial expertise relevant to the Project (each a “**Technical Member**”); and
  - (ii) the third Member, who shall be the chair of the CDB, shall have significant experience in construction law and shall be either: (A) a lawyer who is licensed to practice law in Ontario or another province of Canada other than Quebec; or (B) an ex-judge or master of a superior court in Ontario or another province of

Canada other than Quebec providing adjudication, arbitration and/or mediation services in Ontario or another province of Canada (the “**CDB Chair**”).

- (d) Each Member shall be independent, impartial and, unless otherwise agreed by the Parties in writing, experienced in resolving and deciding disputes of a type, complexity and value commensurate with the potential Disputes that could be referred to the CDB.
- (e) Each Party shall appoint a Technical Member of its choice on or prior to Financial Close, and shall deliver to the other Party a CDB Member Statement for that Member upon appointment in accordance with Schedule 2 – Completion Documents.
- (f) The Parties shall jointly appoint the CDB Chair on or prior to Financial Close, and deliver a CDB Member Statement for the CDB Chair upon appointment in accordance with Schedule 2 – Completion Documents.
- (g) Before commencing CDB activities, each Member shall sign with the Parties a CDB Member Agreement. The CDB Member Agreement may be terminated in accordance with the CDB Member Agreement.

#### **4.2 Replacement of a Member**

- (a) When a Member must be replaced due to death, incapacity, resignation, termination or removal, a new Member shall be appointed within thirty (30) days of the need for replacement arising, in the same manner as the Member being replaced was originally selected in accordance with this Schedule 27, unless otherwise agreed by the Parties in writing. All actions taken by the CDB prior to the replacement of a Member shall remain valid. When one Member is to be replaced, the other Members shall continue to be Members, but shall not hold hearings or issue CDB decisions without the agreement of the Parties in writing prior to the replacement of the Member.
- (b) If a Party fails to appoint a replacement Technical Member and the Parties cannot agree on an alternative Technical Member within the period of time set out in Section 4.2(a), either Party may refer the appointment of that Technical Member or the alternative Technical Member for a court determination pursuant to Section 6(b).
- (c) If the Parties are unable to appoint a replacement CDB Chair within the period of time set out in Section 4.2(a), either Party may refer the appointment of the replacement CDB Chair for a court determination pursuant to Section 6(b).

#### **4.3 Impartiality of the Members**

- (a) Every prospective Member shall sign a statement of acceptance, availability, impartiality and independence and disclose in writing to the Parties and the other Members, any facts or circumstances which might call into question the Member’s independence in the eyes of the Parties or give rise to reasonable doubts as to the prospective Member’s impartiality, substantially in the form set out in Appendix A to this Schedule 27 (the “**CDB Member Statement**”).

- (b) A Member shall immediately disclose in writing to the Parties any facts or circumstances concerning the Member's impartiality or independence which may arise in the course of such Member's tenure.
- (c) Should any Party wish to challenge a prospective or current Member on the basis of an alleged lack of impartiality, independence or qualifications, it may, as soon as practicable after learning of the facts upon which the challenge is based, submit to the CDB and the other Party a request for a decision upon the challenge including a written statement of such facts.
- (d) If the challenged prospective or current Member does not withdraw, and the other Party does not agree to the challenge, either Party may refer the matter for a court determination pursuant to Section 6(b).
- (e) No Party shall challenge a current Member on the basis of an alleged lack of impartiality or independence as a result of the Member carrying out its duties under the CDB Member Agreement, including the provision of without prejudice dispute resolution assistance.
- (f) If a prospective or current Member is successfully challenged, the prospective Member shall not be appointed, or the current Member shall be removed forthwith from the CDB and the CDB Member Agreement, if any, between that Member and the Parties shall be automatically terminated.

#### 4.4 Ongoing Project Monitoring by the CDB

- (a) The Parties shall fully cooperate with the CDB and communicate information to it in a timely manner.
- (b) The Parties shall ensure that the CDB is kept informed of the performance of the Parties' obligations under the Project Agreement and of any Disputes arising in the course thereof by such means as reports or Notices issued by the Parties in respect of the Works, and meetings and participation in site visits. In particular, the CDB shall receive copies of any and all:
  - (i) amendments to the Project Agreement and Variation Confirmations;
  - (ii) Notices of Dispute;
  - (iii) Works Reports;
  - (iv) IC Monthly Reports and IC Quarterly Reports (as such terms are defined in the Independent Certifier Agreement);
  - (v) Proceeding at Risk Notices;
  - (vi) Notices delivered to Project Co by Contracting Authority pursuant to Section 14.1(a) (*Failure to Maintain Schedule for the Works*) of Schedule 12 – Works Schedule Requirements;
  - (vii) Notices of, and responses to Notices of, Delay Events, Compensation Events, Relief Events, and events of Force Majeure;

- (viii) the Substantial Completion Certificate, the Final Completion Certificate, and the other Notices and documents provided by each of the Parties and the Independent Certifier pursuant to Sections 23.3 (*Section Substantial Completion Certificates and Substantial Completion Certificate*), 23.5 (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*), 23.6(e) (*Section Minor Deficiencies and Minor Deficiencies*), 23.8(a) (*Failure to Rectify Section Minor Deficiencies and Minor Deficiencies*), 23.9 (*Final Completion Countdown Notice*) and 23.10 (*Final Completion Certificate*) of the Project Agreement; and
- (ix) such other Project documentation, Notices, and communications that either Party reasonably believes will assist to keep the CDB informed of the performance of the Project Agreement and of any Disputes arising in the course thereof,

at the same time they are delivered in accordance with the Project Agreement, from the Party that is delivering the document.

- (c) The CDB shall, in consultation with the Parties, establish a schedule of meetings and site visits (which may be conducted via teleconference or videoconference). The frequency of scheduled meetings and site visits shall be sufficient to keep the CDB informed of the performance of the Project Agreement and of any Disputes, but shall be at least monthly beginning as of [REDACTED] unless otherwise agreed by the Parties and the CDB in writing. The Parties and the CDB shall attend all such meetings and site visits. In the event that a Party fails to attend, the CDB and the other Party may nevertheless decide to proceed, provided that the CDB and the other Party shall not be permitted to discuss any Dispute referred to the CDB for resolution pursuant to Section 4.5(a) at such meeting or site visit.
- (d) The CDB shall, after consultation with the Parties, inform them in writing of the nature, format and frequency of any further documents delivered pursuant to the Project Agreement that shall be sent by the Parties to the CDB.
- (e) During scheduled meetings and site visits, the CDB shall review the performance of the Parties' obligations under the Project Agreement with the Parties. The Parties may at any time by agreement in writing request that the CDB (i) provide informal assistance to the Parties with regards to avoiding or addressing Disputes; or (ii) mediate any Dispute. All such reviews by the CDB and any informal assistance or mediation provided by the CDB pursuant to this Section 4.4(e) is provided on a without prejudice basis and shall not be considered or referred to if a Dispute is submitted for resolution in any subsequent dispute resolution processes or proceedings.
- (f) Each Party is required to copy the other Party in all written communications in respect of the Project it provides to a Member. Unless otherwise agreed by the Parties in writing or as provided in Sections 4.4(c) and 4.10(d), no Party shall have any conversation or any meeting with any Member in respect of the Project without the other Party being included in such conversation or being present at such meeting.

#### 4.5 CDB to Resolve Disputes

- (a) If the Parties are unable to resolve a Dispute other than a Schedule 27 Procedural Dispute prior to the CDB Expiry Date through amicable resolution by the Party Executives pursuant to Section 2 and a Party delivers a Party Executive DRP Termination Notice to the other Party, then subject to Section 3, either Party may in writing refer the Dispute to the CDB for resolution.

#### 4.6 Statement of Case

- (a) The Party referring a Dispute to the CDB pursuant to Section 4.5(a) (the “**Claimant**”) shall submit a concise written statement of its case (the “**Statement of Case**”) to the responding Party (the “**Respondent**”) and the CDB within thirty (30) days (or such longer period agreed by the Parties in writing, acting reasonably) of a Party’s referral of the Dispute to the CDB for resolution. The Statement of Case shall only include:
- (i) the Notice of Dispute, including the Dispute Notice Supporting Documents;
  - (ii) the issues submitted to the CDB for decision;
  - (iii) a statement of the Claimant’s position, including a statement of relevant facts and law; and
  - (iv) any amendments, updates, additions to, or deletions from the Notice of Dispute or the Dispute Notice Supporting Documents.
- (b) The date on which the Statement of Case is received by the CDB Chair shall be deemed to be the date of the commencement of the CDB proceeding (the “**Date of Commencement**”).
- (c) If the Claimant provides any material amendment, update, addition to, or deletion from the Notice of Dispute or the Dispute Notice Supporting Documents pursuant to Section 4.6(a)(iv), then the CDB shall permit the Respondent a reasonable amount of time to review and respond to such material amendment, update, addition to, or deletion from the Notice of Dispute or the Dispute Notice Supporting Documents, and shall extend the Reply Period accordingly pursuant to Section 4.7(b)(i).
- (d) Unless the CDB orders otherwise, the Claimant shall not be entitled to rely upon any documents other than the documents contained in its Statement of Case. In the event that the CDB permits the Claimant to rely on any additional documents, the CDB shall permit the Respondent a reasonable amount of time to review and respond to such additional documents.

#### 4.7 Statement of Reply

- (a) Subject to Section 4.7(b), within thirty (30) days of the Date of Commencement (the “**Reply Period**”), the Respondent shall deliver to the Claimant and the CDB a concise written statement of its reply to the Statement of Case (the “**Statement of Reply**”). The Statement of Reply shall only include:

- (i) a statement of the Respondent's position, including a statement of relevant facts and law;
  - (ii) the issues submitted to the CDB for a decision; and
  - (iii) any documents not contained in the Statement of Case on which the Respondent intends to rely.
- (b) The Reply Period may be extended to permit the Respondent additional time to provide its Statement of Case by:
- (i) order of the CDB (including pursuant to Section 4.6(c) or Section 4.6(d)); or
  - (ii) agreement of the Parties, acting reasonably.

#### **4.8 Additional Documents Required by the CDB**

- (a) The CDB may at any time request a Party to submit additional written statements or documentation within a reasonable amount of time to assist the CDB in preparing its decision. Each such request shall be communicated in writing by the CDB to the Parties, and any additional written statements or documentation submitted in response to the CDB's request shall be submitted to the CDB and the other Party. The CDB shall permit the other Party a reasonable amount of time to review and respond to such additional written statements or documentation.

#### **4.9 Evidence and Powers of the CDB**

- (a) Subject to Section 4.9(b), the CDB shall decide Disputes based on the Parties' Statement of Case and Statement of Reply and any additional documents and responses delivered pursuant to any of Sections 4.6(c), 4.6(d) or 4.8(a).
- (b) If there are any material factual disputes between the Parties or other issues arising from the Parties' Statement of Case or Statement of Reply, the CDB may order such additional procedural steps or give such directions as the CDB considers appropriate to address such disputes or other issues, with a view to proportionality and the Parties' desire to resolve Disputes in a cost-effective and expeditious manner.
- (c) Without limiting Section 4.9(b), the CDB may, if necessary, appoint one or more experts after considering the positions of the Parties or, subject to Section 1.3(b), obtain and consider the opinion of the Independent Certifier, as an expert.

#### **4.10 Hearings**

- (a) The CDB shall order that a hearing in respect of the Dispute take place unless the Parties and CDB agree in writing that a hearing is not required.
- (b) The hearing shall be conducted in Toronto, Ontario or by teleconference or videoconference on written agreement of the Parties and the CDB.
- (c) The Parties shall appear through duly authorized representatives. In addition, the Parties may be assisted or represented by advisers and legal counsel.



- (d) If any Party refuses or fails to take part in the CDB hearing or in any preceding steps, the CDB may proceed notwithstanding such refusal or failure.
- (e) The CDB may request that the Parties provide and exchange summaries of their argument in advance of the hearing.
- (f) Subject to the discretion of the CDB, the hearing shall proceed as follows:
  - (i) the Claimant shall present its case;
  - (ii) the Respondent shall present its case; and
  - (iii) the Claimant shall have an opportunity to reply.

#### 4.11 Basis for Decision

- (a) The CDB shall make decisions based on the Project Agreement and the law applicable to the Dispute.
- (b) The CDB may take into account:
  - (i) any failure of a Party to comply with the Project Agreement, including any of its mitigation obligations or its procedural obligations under this Schedule 27; and
  - (ii) any unreasonable delay of the Claimant in bringing its claim, including any unreasonable delay that prevented or prejudiced the Respondent's proper investigation of, opportunity for mitigation of, or ability to respond to the claim.
- (c) A decision of the CDB shall be in writing and state the findings, reasons, and determination of the CDB and include:
  - (i) a summary of the Dispute, the positions of the Parties and the decision requested; and
  - (ii) a summary of the relevant provisions of the Project Agreement and the relevant facts and law considered by the CDB.
- (d) The CDB shall issue its decision promptly and, in any event, within thirty (30) days after the hearing unless the Parties consent in writing to an extension, which consent shall not be unreasonably withheld. Failure to issue a decision of the CDB within the time allowed does not invalidate the decision.
- (e) The CDB shall make its decision by a majority of the Members. Any Member who disagrees with the decision shall give the reasons for such disagreement in a separate written document that shall form part of the decision but which shall not be binding on the Parties.

#### 4.12 Costs

- (a) All Member fees and expenses and any other costs associated with the establishment and activities of the CDB (including in relation to obtaining CDB decisions and the cost of any experts appointed pursuant to Section 4.9(c)) shall be [REDACTED] and paid by the Parties in accordance with each CDB Member Agreement, unless otherwise agreed by the Parties in writing or ordered by the CDB.
- (b) Each Party shall bear its own costs associated with Disputes referred to the CDB for a decision.

#### 4.13 Subsequent Dispute Resolution Procedure to the CDB

- (a) Any Party that is dissatisfied with a decision of the CDB other than a decision on a Schedule 27 Procedural Dispute may, within thirty (30) days of the release of the CDB's decision (or such longer period agreed by the Parties, acting reasonably) (the "**Arbitration Referral Period**"), deliver a Notice of Request to Arbitrate the Dispute pursuant to Section 5(c). The decision of the CDB shall be stayed during the Arbitration Referral Period. If the Dispute is arbitrated pursuant to Section 5, the arbitration tribunal shall conduct the arbitration *de novo* and the decision of the CDB shall not, subject to the following sentence, be binding on the Parties. If neither Party delivers a Notice of Request to Arbitrate the Dispute pursuant to Section 5(c) before the expiry of the Arbitration Referral Period, or if any arbitration that is commenced pursuant to Section 5 is subsequently abandoned by the Parties in writing before an arbitral award is made pursuant to Section 5, then the decision of the CDB shall be final and binding on the Parties.
- (b) The Parties agree that any decision of the CDB that becomes final and binding on the Parties in accordance with Section 4.13(a) shall not be subject to appeal, arbitration, litigation or any other dispute resolution process and expressly waive any and all such rights in respect of the Dispute resolved by the CDB.

### 5. Arbitration

- (a) Prior to the CDB Expiry Date, if the Parties fail to resolve a Dispute through the processes set out in Sections 2 and 3 or Sections 2 and 4 (if and as applicable) and where no final and binding Adjudication determination or final and binding CDB decision exists in respect of the Dispute, then, subject to Section 1.2(b), the Dispute shall be resolved by *de novo* arbitration in accordance with this Section 5.
- (b) At any time during the Project Term, if either Party delivers a Notice to the other Party pursuant to Section 1.2(b), then such Dispute shall be resolved by arbitration in accordance with this Section 5, and pursuant to an expedited process and timetable to be agreed to by the Parties in writing, or as ordered by the arbitral tribunal with regard to the prevailing circumstances.
- (c) Either Party may deliver a Notice of request to arbitrate a Dispute eligible to be referred to arbitration in accordance with this Schedule 27 (each a "**Notice of Request to Arbitrate**").
- (d) A Notice of Request to Arbitrate will not be effective unless it:

- (i) is signed by the Party Representative;
  - (ii) if applicable, is delivered to the other Party Representative within the period of time set out in Section 3.3(a) or Section 4.13(a) following the release of any applicable Adjudication decision or CDB decision;
  - (iii) indicates it is a Notice of Request to Arbitrate pursuant to Section 5(c); and
  - (iv) expressly identifies the Dispute to be arbitrated.
- (e) The *Arbitration Act, 1991* shall apply to an arbitration pursuant to this Section 5.
- (f) A Dispute referred to arbitration shall be resolved by a single arbitrator unless:
- (i) the Parties otherwise agree in writing; or
  - (ii) one of the Parties, by Notice delivered to the other Party within seven (7) days after delivery of a Notice of Request to Arbitrate, requires the Dispute to be resolved by a three person arbitral tribunal, in which case the Dispute shall be resolved by a three person arbitral tribunal.
- (g) If the arbitral tribunal is comprised of a single arbitrator:
- (i) the Parties shall jointly appoint the arbitrator; and
  - (ii) if the Parties are unable to agree on the arbitrator within thirty (30) days after delivery of the Notice of Request to Arbitrate, either Party may apply to the Ontario Superior Court of Justice to appoint the arbitrator pursuant to the *Arbitration Act, 1991*.
- (h) If the arbitral tribunal is comprised of three arbitrators:
- (i) each Party shall appoint one arbitrator and the first two arbitrators shall jointly appoint the third arbitrator, who shall act as the chair; and
  - (ii) if the Parties have not appointed an arbitrator or arbitrators pursuant to Section 5(h)(i) or if the Parties or the arbitrators are unable to agree on the third arbitrator within thirty (30) days after delivery of the Notice of Request to Arbitrate, either Party may apply to the Ontario Superior Court of Justice to appoint the remaining arbitrator(s) pursuant to the *Arbitration Act, 1991*.
- (i) All arbitrators must have qualifications and experience relevant to the issues in the Dispute commensurate with the nature, complexity and value of the Dispute(s) to be arbitrated.
- (j) No one shall be nominated or appointed to act as an arbitrator who is or was within the past five years in any way interested, financially or otherwise, in the conduct of the Works or in the business affairs of Contracting Authority, Project Co, or any consultant, subconsultant or subcontractor of any of them who may be involved or implicated in the Dispute.

- (k) Unless otherwise agreed by the Parties, the seat and venue of the arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- (l) The arbitral tribunal shall render its award as soon as possible and no later than sixty (60) days after the date of the closure of the hearing, or such other period of time as agreed to by the Parties in writing and accepted by the arbitral tribunal.
- (m) The costs of the arbitration are within the discretion of the arbitral tribunal. In exercising discretion to award costs, 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.
- (n) The award of the arbitral tribunal shall be final and binding upon the Parties and not subject to appeal.

## 6. Litigation

- (a) If necessary to prevent irreparable harm to a Party, including in connection with a Public Safety Dispute, nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the Ontario Superior Court of Justice, including seeking an interlocutory injunction. However, the Parties agree that no irreparable harm shall occur if the Project Agreement is terminated by Contracting Authority pursuant to Section 34.3(b) (*Right to Termination*) of the Project Agreement and that any such termination by Contracting Authority, would be adequately compensated for by an award of damages to Project Co if it is subsequently determined in accordance with this Schedule 27 that Contracting Authority was not entitled to do so in accordance with the Project Agreement.
- (b) Either Party may bring an application or motion directly to the Ontario Superior Court of Justice for a determination regarding appointment of the challenged or a proposed alternative Member or arbitrator.
- (c) All litigation permitted pursuant this Schedule 27 shall be resolved in the Ontario Superior Court of Justice. Both Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of any Disputes or matters which arise under the Project Agreement or in connection with the Project and which are to be resolved by litigation.

## 7. Stay and Consolidation with Third Party Disputes

- (a) Subject to Section 7(c), 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 each of Contracting Authority, Project Co, and the other parties all agree in writing.
- (b) Subject to Section 7(c), if either Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:

- (i) 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
- (ii) the other Party 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 the Third Party Litigation.

- (c) Sections 7(a) and 7(b) only apply:
  - (i) 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
  - (ii) 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.

## 8. Confidentiality

- (a) Unless otherwise agreed by the Parties in writing or required by law, no Party shall rely on or introduce as evidence in any subsequent proceeding or investigation, and shall treat as confidential and inadmissible in any arbitration or litigation proceeding or other investigation or proceeding, any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered:
  - (i) on a without prejudice basis, including through the process for the amicable resolution of the Dispute by the Party Executives set out in Section 2;
  - (ii) through the Adjudication process by any party or the Adjudicator, except in relation to the determination and reasons of the Adjudicator, which may be introduced in any subsequent dispute resolution processes or proceedings regarding the same Dispute(s); or
  - (iii) through the decision process by any Party or the CDB or any Member, except for a decision and reasons of the CDB, which may be introduced in any subsequent dispute resolution processes or proceedings regarding the same Dispute(s).

- (b) Any Member or arbitrator appointed pursuant this Schedule 27 shall keep all information about any Dispute(s) referred to the CDB or for arbitration confidential and shall not disclose such information to anyone other than the Parties.
- (c) Any Adjudicator or arbitrator shall execute non-disclosure agreements in a form satisfactory to the Parties, providing that, among other things, material delivered by a Party in connection with Adjudication or arbitration shall not be disclosed to any person or used for any other purpose, in accordance with this Section 8, and all such material shall remain the property of the Party disclosing or delivering same.
- (d) An Adjudicator, Member of the CDB or arbitrator shall not be compelled to give evidence in any proceeding in respect of a Dispute that was referred to the Adjudicator, CDB or arbitrator for a decision.

## 9. Miscellaneous

- (a) The Parties can, by written agreement on a Dispute by Dispute basis:
  - (i) extend any or all timelines set out in this Schedule 27;
  - (ii) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 1.7, 2, 3 and 4 (to the extent permitted by law) and, instead, proceed directly to resolution of the Dispute by arbitration pursuant to Sections 5;
  - (iii) agree to a different process for arbitration than the one contemplated in this Schedule 27; or
  - (iv) agree to refer any Dispute to mediation by a neutral third party mediator.
- (b) The provisions of this Schedule 27 are subject to the provisions of the Integration Dispute Resolution Procedure in the form attached as Appendix A to Schedule 39 – Form of RSSOM Interface Agreement, which apply and shall govern in respect of all Integration Disputes.

## APPENDIX A

**FORM OF CDB MEMBER STATEMENT OF ACCEPTANCE, AVAILABILITY,  
IMPARTIALITY AND INDEPENDENCE**

**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*  
 (“Contracting Authority”)

**AND TO:** THE MINISTER OF INFRASTRUCTURE

**AND TO:** ONTARIO TRANSIT GROUP INC. (“Project Co”)

**RE:** Project agreement (as amended, supplemented or modified from time to time, the “Project Agreement”) dated the 8<sup>th</sup> day of November, 2022 between Contracting Authority and Project Co in respect of the Ontario Line – Southern Civil, Stations and Tunnel Project

**1. GENERAL****1.1 Name and Position**

- (a) **Family Name(s):**
- (b) **Given Name(s):**
- (c) **Member Position (circle one):** **Technical Chair**
- (d) Please attach a current copy of your CV.

**1.2 Definitions, Interpretation and Governing Law**

- (a) This statement (the “Statement”) shall be interpreted in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement, and governed by the laws of Ontario, without regard to conflict of laws provisions. Please initial below all relevant statements.

**1.3 Acceptance**

- (a) I accept to serve as a Member in accordance with the Project Agreement.

**Initial:** \_\_\_\_\_

- (b) I decline to serve as a Member in accordance with the Project Agreement. *(If you tick here, simply date and sign the form without completing any other sections).*

**Initial:** \_\_\_\_\_

**1.4 Availability**

- (a) I confirm, on the basis of the information presently available to me that I have received and reviewed a copy of Schedule 27 – Dispute Resolution Procedure to the Project Agreement and can devote the time necessary to discharge the duties of a Member throughout the entire duration of the CDB’s anticipated activities as diligently, efficiently and expeditiously as possible in accordance with the timelines and procedures set out in Schedule 27 – Dispute Resolution Procedure to the Project Agreement.

**Initial:** \_\_\_\_\_

- (b) I understand that it is important to discharge the duties of a Member set out in Schedule 27 – Dispute Resolution Procedure to the Project Agreement as promptly as reasonably practicable. My current and anticipated professional roles and significant engagements are set out below for the information of the Parties (anonymized as necessary to remain compliant with my professional obligations).

**Initial:** \_\_\_\_\_

Number of currently pending matters or roles in which I am involved (*i.e. arbitrations and dispute board activities pending now, not previous experience; additional details you wish to make known to the Parties in relation to these matters can be provided on a separate sheet*):

	<b>As tribunal or dispute board chair / sole arbitrator / sole DB member</b>	<b>As co-arbitrator / co-dispute board member</b>	<b>As counsel</b>	<b>As other</b>
Standing dispute boards				
Ad-hoc dispute boards				
Arbitrations				
Court litigation (e.g. international commercial courts)				
Other (attach separate sheet if necessary)				

I have attached a calendar showing for the next twenty-four (24) months all currently scheduled hearings and other existing commitments (anonymized as necessary) that would prevent me from attending meetings or sitting in a hearing on this Project.

I have further marked in the box below or on a separate sheet any other relevant information regarding my availability.



- (c) I shall make best efforts to maintain the availability necessary to discharge the duties of a Member throughout the entire duration of the CDB’s anticipated activities which require my involvement, and shall immediately disclose in writing to the Parties and the other Members any additional significant matters that I may become involved in and any other relevant information regarding my availability which may arise in the course of my tenure as a Member and which may materially affect my ability to discharge my duties as a Member.

**Initial:** \_\_\_\_\_

**1.5 Independence and Impartiality**

- (a) In deciding which disclosure method applies to you, you should take into account, whether there exists any past, present or future, anticipated or planned relationship, direct or indirect, whether financial, professional or of any other kind, between you and any of the Parties, their lawyers or other representatives, or related entities and individuals. You are also required to disclose all recent, professional or personal, relationships with all key members of all Parties. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying inter alia relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

- (i) **Nothing to disclose:** I am impartial and independent of the Parties and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the Parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

**Initial:** \_\_\_\_\_

- (ii) **Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

I confirm that the matters disclosed above represent full and complete disclosure with respect to any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality.

**Initial:** \_\_\_\_\_

(b) I shall make best efforts to maintain the independence and impartiality necessary to discharge the duties of a Member throughout the entire duration of the CDB’s anticipated activities, but shall immediately disclose in writing to the Parties and the other Members any facts or circumstances concerning my impartiality or independence which may arise in the course of my tenure as a Member.

**Initial:** \_\_\_\_\_

(c) In accordance with Schedule 27 – Dispute Resolution Procedure of the Project Agreement, I understand that the Parties may exercise their right to challenge me on the basis of an alleged lack of impartiality, independence or qualifications. In the event that I do not withdraw and the other Party does not agree to the challenge, I understand that the challenge shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure of the Project Agreement.

**Initial:** \_\_\_\_\_

(d) In the event that I am successfully challenged, I understand that I will be removed from the CDB forthwith and that my CDB Member Agreement shall be terminated.

**Initial:** \_\_\_\_\_

**1.6 Delivery**

(a) This Statement may be delivered by sending a fully executed copy by electronic mail or other electronic transmission to the Parties, and such delivery shall be as effective as the manual delivery of this executed Statement.

***[SIGNATURE PAGE FOLLOWS IMMEDIATELY]***

Date:

Signature:

## APPENDIX B

**FORM OF CDB MEMBER AGREEMENT**

This CDB Member Agreement (this “**Agreement**”) is entered into between:

- (a) **CDB Member: [●]** [*Note: Full name and title (sole Member, Technical Member or CDB Chair).*] (the “**Member**”);
- (b) **Party 1: METROLINX** (“**Contracting Authority**”); and
- (c) **Party 2: ONTARIO TRANSIT GROUP INC.** (“**Project Co**”)

(collectively, the “**Undersigned Parties**”).

**WHEREAS:**

- A. Contracting Authority and Project Co have entered into an agreement dated November 8, 2022 (the “**Project Agreement**”) for the Ontario Line – Southern Civil, Stations and Tunnel Project (the “**Project**”);
- B. Schedule 27 – Dispute Resolution Procedure of the Project Agreement provides for the appointment of a Combined Dispute Board (the “**CDB**”), and that the CDB shall, *inter alia*, establish a schedule of meetings and site visits, issue decisions, review the performance of Project Co and Contracting Authority under the Project Agreement, and perform other tasks in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement (the “**CDB Services**”);
- C. Certain Disputes may be referred to the CDB for determination in accordance with Schedule 27 – Dispute Resolution Procedure of the Project Agreement; and
- D. The undersigned individual has been appointed to serve on the CDB as a Member.

The Member and the Parties therefore agree as follows:

**1.1 Definitions and Interpretation**

- (a) This Agreement shall be interpreted in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement and defined terms shall have the same meaning as in the Project Agreement, unless otherwise specified here.
- (b) If there is any conflict between this Agreement and Schedule 27 – Dispute Resolution Procedure to the Project Agreement, this Agreement will take precedence to the extent of the conflict.

**1.2 Undertaking**

- (a) The Member shall act as [**a sole Member/Technical Member/the CDB Chair**] and hereby agrees to perform the duties of a Member and provide the CDB Services in accordance with the terms of the Project Agreement and the terms of this Agreement.
- (b) The Member confirms that he or she is and shall remain impartial and independent of the Parties.

- (c) The Member further confirms that he or she has executed and will comply with the terms of the CDB Member Statement.

### 1.3 Composition of the CDB and Contact Details

- (a) Subject to Section 4 of Schedule 27 – Dispute Resolution Procedure to the Project Agreement, the CDB shall be composed of three independent and impartial Members.

- (b) The Member can be contacted as follows:

**Member:** *[Note: Include name, address, telephone, email and any other contact details.]*

- (c) The [CDB Chair] (if applicable) is listed below and can be contacted as follows:

**CDB Chair:** *[Note: Include name, address, telephone, email and any other contact details.]*

- (d) The [other Technical Member] (if applicable) is listed below and can be contacted as follows:

**Technical Member:** *[Note: Include name, address, telephone, email and any other contact details.]*

- (e) The Parties to the Project Agreement are those indicated above with the following contact details:

- (i) **Party 1:**

Metrolinx  
2 Queen Street East, 11<sup>th</sup> Floor  
Toronto, Ontario  
M5C 3G7

Attn.: [REDACTED]  
Email: [REDACTED]

- (ii) **Party 2:**

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

- (f) Any changes in these contact details shall be immediately communicated to all other Undersigned Parties.

#### 1.4 Qualifications

- (a) The Parties recognise that the Member is a [●], in accordance with Section 4.1(c) of Schedule 27 – Dispute Resolution Procedure to the Project Agreement.
- (b) The Parties recognise that the Member is independent, impartial and skilled in resolving and deciding disputes of a type, complexity and value commensurate with the Dispute(s) likely to be referred to the CDB, in accordance with Section 4.1(d) of Schedule 27 – Dispute Resolution Procedure to the Project Agreement.

#### 1.5 Fees and Disbursements

- (a) In consideration of the Member performing the CDB activities in accordance with this Agreement and Schedule 27 – Dispute Resolution Procedure of the Project Agreement, the Member shall be entitled to be paid the monthly management fee (the “**Monthly Management Fee**”) and the ad-hoc hourly fee (the “**Ad-hoc Hourly Fee**”) described in this Section 1.5.
- (b) The Monthly Management Fee shall be [CAD \$[●]] per month and shall be payable beginning as of [REDACTED] until the end of the Member’s involvement on the CDB.
- (c) The Member’s Monthly Management Fee shall cover:
  - (i) reviewing and becoming and remaining familiar with the Project Agreement, including without limitation, the Output Specifications and Schedule 27 – Dispute Resolution Procedure to the Project Agreement;
  - (ii) reviewing any amendments to the Project Agreement and Variation Confirmations;
  - (iii) reviewing progress reports, correspondence from the Parties, and other documents which the CDB is required to review pursuant to Schedule 27 – Dispute Resolution Procedure to the Project Agreement;
  - (iv) reviewing specific documents which the CDB requests for its review;
  - (v) attending internal CDB meetings;
  - (vi) attending ordinary course scheduled meetings and/or site visits (monthly unless otherwise agreed by the Parties in writing);
  - (vii) providing informal assistance with Disputes or potential Disputes;
  - (viii) managing and coordinating the operation of the CDB; and
  - (ix) any overhead and office expenses.
- (d) The Member’s Ad-hoc Hourly Fee shall be [CAD \$[●] per hour], and shall be billed in hourly increments for certain work performed. The Ad-hoc Hourly Fee shall cover:
  - (i) preparation for and attendance at ad-hoc meetings/site visits with the Parties (excluding the ordinary course scheduled meetings and/or site visits described in Section 1.5(c)(vi)); and

- (ii) any work carried out in connection with referrals for a CDB decision, including preparation, attendance at hearings, review of the Parties' submissions, delivery of the CDB decision, and revisions to same.
- (e) Intentionally deleted.
- (f) Reasonable Member expenses and disbursements relating to (i) flights (at economy class rates), (ii) hotel (to a maximum of CAD\$[REDACTED] per night), and (iii) the cost of retaining any experts shall be reimbursed at cost, with the prior approval of the Parties. All other costs and disbursements are and shall be deemed to be included in the Monthly Management Fee and the Ad-hoc Hourly Fee. The Member shall retain all receipts and proof of payment of claimed disbursements and expenses, and shall provide them to the Parties or either Party upon request. The Parties shall have no obligation to reimburse the Member if the Member fails to produce receipts and proof of payment upon request.

### 1.6 Payment of Fees and Expenses

- (a) Unless otherwise agreed by the Parties and the Member in writing, all fees, expenses and disbursements payable under this Agreement shall be invoiced by the Member to the Parties on a monthly basis beginning as of [REDACTED], which invoice shall reflect the performance of the CDB activities performed in the previous month and be in form and substance reasonably satisfactory to the Parties.
- (b) Project Co and Contracting Authority shall each pay one half of such fees, expenses and disbursements to the Member. While each Party is responsible for paying one half of the Member's fees, expenses and disbursements, this obligation is several and not joint. If one Party fails to make payment, the other Party may make payment of the amounts owed by the non-paying Party and recover the costs of doing so from the non-paying Party, but has no obligation to do so.
- (c) All payments to the Member shall be made to the following account: [name of bank, account number, SWIFT code, etc.].
- (d) All payments to the Member under this Agreement shall be payable by the Parties monthly in arrears, and by no later than the date that is thirty (30) days of the receipt by the Parties of an invoice provided by the Member in accordance with this Agreement.
- (e) The Monthly Management Fee payable to the Member under this Agreement shall accrue from day to day, and if for any reason it shall become necessary to calculate any Monthly Management Fee for a period of less than one calendar month, an appropriate pro-rata adjustment shall be made on a daily basis.

### 1.7 Duration and Termination of this Agreement

- (a) Subject to Section 4 of Schedule 27 – Dispute Resolution Procedure to the Project Agreement, the Member agrees to serve for the duration of the CDB to the extent reasonably possible.
- (b) The Parties may at any time, without cause and with immediate effect, jointly terminate this Agreement but shall pay the Monthly Management Fee to the Member for a period of one month following the termination, unless otherwise agreed by the Parties and the Member in writing.

- (c) The Member may terminate this Agreement at any time by giving a minimum of three months' written notice to the Parties, unless otherwise agreed by the Parties and the Member in writing.
- (d) If the Member is successfully challenged in accordance with Section 4.3 of Schedule 27 – Dispute Resolution Procedure to the Project Agreement, the Member shall be removed forthwith from the CDB and this Agreement shall be terminated.
- (e) The Member shall be entitled to claim payment for work performed to the date of termination of this Agreement in accordance with this Agreement, but shall not be entitled to claim any further payment.

### **1.8 Indemnity**

- (a) The Parties shall jointly and severally indemnify and hold harmless the Member from any claims of third parties for anything done or omitted to be done in the discharge of the Member's activities under this Agreement.
- (b) The indemnity provided in Section 1.8(a) shall not extend to:
  - (i) any act or omission of the Member that is shown to have been in bad faith;
  - (ii) any breach of this Agreement by the Member,
  - (iii) any negligent or unlawful act or omission or willful misconduct of the Member;
  - (iv) any action taken by the Member outside the scope of authority set forth in this Agreement; or
  - (v) any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Member.
- (c) The indemnity provided in Section 1.8(a) shall survive the termination of this Agreement.

### **1.9 Confidentiality**

- (a) The Member and all of the member's affiliates, employees, servants and agents shall keep all information about the Project, the Member's involvement on the Project, any CDB Services performed by the CDB, and any Dispute(s) referred for a CDB decision strictly confidential and shall not disclose such information to anyone other than the Parties.
- (b) The Member shall treat as confidential any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered on a without prejudice basis or through the CDB decision process by any other Party or the CDB or any Member, except as set out in Section 8(a)(iii) of Schedule 27 – Dispute Resolution Procedure to the Project Agreement.
- (c) Material delivered by a Party in connection with a CDB decision shall not be disclosed to any person or used, copied, supplied or reproduced for any other purpose other than for the performance

of the CDB Services, and all such material shall remain the property of the Party disclosing or delivering same.

- (d) The Member shall be bound by and shall comply with the confidentiality and communication provisions set out in Section 40 (*Confidentiality*) of the Project Agreement.
- (e) The Parties may at any time require the Member to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the CDB Services to give written undertakings, in the form of confidentiality agreements on terms required by the Parties, relating to the non disclosure of confidential information, in which case the Member must promptly arrange for such agreements to be made.

#### **1.10 Disputes and Applicable Law**

- (a) All disputes arising out of this Agreement which are not subject to resolution pursuant to Section 6(b) of Schedule 27 – Dispute Resolution Procedure to the Project Agreement shall be finally settled by arbitration by one arbitrator agreed by the Undersigned Parties in writing or appointed in accordance with the *Arbitration Act, 1991*. This Agreement shall be governed by the laws of Ontario, without regard to conflict of laws provisions. The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.

#### **1.11 Counterparts**

- (a) This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

*[Remainder of page intentionally left blank]*



This Agreement is entered into on [specify date] at [specify place].

**METROLINX**

By:

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

Title: **[REDACTED]**

I have authority to bind the corporation.

**[CDB MEMBER]**

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

Name:

Title:

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

Name:

Title:

I/We have the authority to bind the corporation.

**ONTARIO TRANSIT GROUP INC.**

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

Name: **[REDACTED]**

Title: **[REDACTED]**

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

Name: **[REDACTED]**

Title: **[REDACTED]**

We have authority to bind the corporation

## SCHEDULE 28

## REFINANCING

## 1. DEFINITIONS

1.1 In this Schedule 28, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 28) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

(a) “**Exempt Refinancing**” means:

- (i) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
- (ii) 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;
- (iii) any Qualifying Bank Transaction;
- (iv) any Rescue Refinancing;
- (v) any Refinancing that was approved by Contracting Authority prior to the execution of the Project Agreement and occurs during the first six (6) months following the date of the Project Agreement;
- (vi) any amendment, variation or supplement of any Lending Agreement approved by Contracting Authority as part of any Variation under the Project Agreement; or
- (vii) any Permitted Borrowing.

(b) “**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, in each case, controls, either directly or through its affiliates, funds in excess of \$[REDACTED],

provided such institution is not a Restricted Person.

(c) “**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.
- (d) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (e) **“Refinancing”** means:
  - (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
  - (ii) entering into any new Lending Agreement;
  - (iii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
  - (iv) 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
  - (v) 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.
- (f) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to Contracting Authority, acting reasonably, prepared for the purpose of Section 2 of this Schedule 28, 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 Works to the date of the Refinancing;
  - (iv) macroeconomic assumptions; and
  - (v) all other relevant factors.
- (g) **“Refinancing Gain”** means an amount equal to the greater of zero and  $(A - B)$ , where:  
  
A = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the

Refinancing Financial Model but without taking into account the effect of the Refinancing); and

B = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing).

- (h) “**Rescue Refinancing**” means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of Contracting Authority, whether actual or potential.

## 2. REFINANCING

2.1 Project Co shall not carry out:

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of Contracting Authority, subject to Section 2.2; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered Notice of such Refinancing to Contracting Authority at least ten (10) Business Days before 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 under a book-based system of a depository and pursuant to a trust indenture that comprises a portion of the Financing.

2.2 Contracting Authority may withhold its consent to any Qualifying Refinancing, in its sole discretion:

- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;
- (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or the Project Agreement; or
- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of Contracting Authority, whether actual or contingent, present or future, known or unknown.

2.3 Contracting Authority shall be entitled to receive:

- (a) a [REDACTED]% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED];
- (b) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of \$[REDACTED] and up to

(when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED]; and

- (c) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing.
- 2.4 Project Co shall promptly provide Contracting Authority with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. Contracting Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within five (5) Business Days after receiving a written request from Contracting Authority, provide any information in relation to a proposed Refinancing as Contracting Authority may reasonably require. Project Co shall keep Contracting Authority informed as to any changes to the terms of the Refinancing. Both Contracting Authority and Project Co shall at all times act in good faith with respect to any Refinancing.
- 2.5 Contracting Authority's share of the Refinancing Gain shall be received as a reduction in the amount of the Substantial Completion Payment.
- 2.6 Contracting Authority and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain. If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of Contracting Authority's share, the Dispute shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure. Both Contracting Authority and Project Co shall work collaboratively to establish the rate setting process required to complete the 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 fifteen (15) Business Days following any Qualifying Refinancing, Project Co will reimburse Contracting Authority for all such reasonable out-of-pocket costs incurred by Contracting Authority.

**SCHEDULE 29****SAFETY, SYSTEM ASSURANCE AND SECURITY****1. DOCUMENTS COMPRISING SCHEDULE 29**

- (a) This Schedule 29 is comprised of the following:
- (i) the general provisions of this Schedule 29;
  - (ii) Appendix A – Schedule of Safety Deliverables for System Assurance Submissions;
  - (iii) Appendix B – System Assurance Deliverable Requirements;
  - (iv) Appendix C – Construction Safety and Contractor Site Specific Safety Manual Requirements; and
  - (v) Appendix D – Technical Specifications for Project Co SMS Software Solution.

**2. DEFINITIONS**

- (a) In this Schedule 29, unless the context indicates a contrary intention, terms that are defined in the Project Agreement including in Schedule 1 – Definitions and Interpretation (and not otherwise defined in this Schedule 29) shall have meanings given to them elsewhere in the Project Agreement, and the following terms shall have the following meaning:
- (1) “**Acceptable Products Register**” has the meaning given in Section 6.9(a);
  - (2) “**Additional Safety Performance Indicators**” has the meaning given in Section 5.9.4(a);
  - (3) “**Adjacent Railway Systems**” means those railways that are directly impacted by the development, or operation, of the Works;
  - (4) “**Annual Safety Culture Survey**” has the meaning given in Section 5.14.1(b);
  - (5) “**Annual Safety Culture Survey Report**” has the meaning given in Section 5.14.1(f);
  - (6) “**Approval in Principle Safety Submission**” has the meaning given in Section 6.5.2(a)(i);
  - (7) “**Approval in Principle Security Submission**” has the meaning given in Section 8.5.2(a)(i);
  - (8) “**Baseline Safety Culture Survey**” has the meaning given in Section 5.14.1(c);
  - (9) “**Canadian Methods for Risk Evaluation and Assessment Standard for Railway Systems**” or “**CMREA**” means *CSA EXP11:20 – Canadian Method for Risk Evaluation and Assessment for Railway Systems* by the Canadian Standards Association, as amended from time to time;

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- (10) “**Canadian Rail Operating Rules**” or “**CROR**” means the Transport Canada Canadian Rail Operating Rules, as amended from time to time;
  - (11) “**Certified Health and Safety Inspector**” means an individual who has the necessary credentials recognized by ISO 45001 for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 7.4(a);
  - (12) “**Chief Safety Officer**” means the RSSOM Project Co individual who shall be responsible for the overall safety of the Ontario Line Subway System and be responsible for the delivery of all aspects of safety management and system assurance, including safety assessment, RAMS and SIL;
  - (13) “**Chief Security Officer**” means the RSSOM Project Co individual who shall be responsible for the overall security of the Ontario Line Subway System and be responsible for the delivery of all aspects of security management for the Ontario Line Subway System, including Security Risk Assessment;
  - (14) “**Close Call**” means anything that has the potential to cause harm or damage that is not a Near Miss;
  - (15) “**Commercial-off-the-Shelf Software**” means software that is purchased from a third party vendor available for purchase in the commercial market with limited customization required;
  - (16) “**Common Safety Indicators**” has the meaning given in Section 5.9.1(a);
  - (17) “**Consent to Construct Safety Submission**” has the meaning given in Section 6.5.2(a)(iii);
  - (18) “**Consent to Construct Security Submission**” has the meaning given in Section 8.5.2(a)(iii);
  - (19) “**Consent to Operate Revenue Service**” has the meaning given in Section 4.4(a)(iv)(G);
  - (20) “**Consent to Operate System Safety Submission**” has the meaning given in Section 6.5.2(a)(v);
  - (21) “**Consent to Operate System Security Submission**” has the meaning given in Section 8.5.2(a)(v);
  - (22) “**Consent to Test Safety Submission**” has the meaning given in Section 6.5.2(a)(iv);
  - (23) “**Consent to Test Security Submission**” has the meaning given in Section 8.5.2(a)(iv);
  - (24) “**Constructor**” has the meaning given in the OHSA;

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- (25) “**Contracting Authority ISA**” means an Independent Safety Assessor retained by the Contracting Authority;
- (26) “**Contracting Authority ISA ESAC Verification Report**” has the meaning given in Section 6.8(j);
- (27) “**Contracting Authority ISA Security Submission Verification Report**” has the meaning given in Section 8.5.2(d);
- (28) “**Contractor Site Specific Safety Manual**” has the meaning given in Section 7.2(a);
- (29) “**CPTED**” means Crime Prevention Through Environmental Design;
- (30) “**CPP**” means Certified Protection Professional;
- (31) “**Critically Injured**” has the meaning given under R.R.O. 1990, Regulation 834 to the OHS Act, as amended from time to time, and “**Critical Injury**” shall have the corresponding meaning;
- (32) “**Design Build Director**” means the Project Co Party listed in Schedule 9 – Key Individuals;
- (33) “**EN 50126-1**” has the meaning given in Section 6.3(b)(i);
- (34) “**EN 50126-2**” has the meaning given in Section 6.3(b)(ii);
- (35) “**EN 50128**” has the meaning given in Section 6.3(b)(iii);
- (36) “**EN 50129**” has the meaning given in Section 6.3(b)(iv);
- (37) “**EN 50155**” has the meaning given in Section 6.3(b)(vi);
- (38) “**EN 50657**” has the meaning given in Section 6.3(b)(v);
- (39) “**Engineering Safety and Assurance Case**” or “**ESAC**” has the meaning given in Section 6.8(a);
- (40) “**Facility Fire Safety Plan**” has the meaning given in Section 6.10(f);
- (41) “**Failure Reporting and Corrective Action System**” or “**FRACAS**” means the system of reporting faults and corresponding Corrective Actions as set out in EN 50126-1;
- (42) “**Final Incident Report**” has the meaning given in Section 7.9(b)(iii);
- (43) “**Final Rail Transportation Occurrence Incident Report**” has the meaning given in Section 5.5.2(d);
- (44) “**Fire/Life Safety Committee**” has the meaning given in Section 3.4(e);
- (45) “**Fire/Life Safety Management Plan**” has the meaning given in Section 6.10(a);



- (46) “**Fire/Life Safety Standards**” has the meaning given in Section 6.3(d);
- (47) “**FRACAS Report**” has the meaning given in Section 6.8(g)(iii)(D);
- (48) “**Guideway and Tunnel Security Plan**” has the meaning given in Section B.1.5 of Appendix B to this Schedule 29;
- (49) “**Hazard**” has the meaning given in the EN 50126-1;
- (50) “**Hazard Analysis**” has the meaning given in EN 50126-1;
- (51) “**Hazard Analysis Report**” has the meaning given in Section 6.8(c)(iv);
- (52) “**Hazard Identification**” has the meaning given in the CMREA;
- (53) “**Hazard Record/Log**” has the meaning given in the CMREA for “Hazard Record” and the meaning given in EN 50126 for “Hazard Log”;
- (54) “**IEC 15288**” has the meaning given in Section 8.4(b);
- (55) “**Independent Safety Assessment Plan**” has the meaning given in Section 6.8(c)(vii);
- (56) “**Independent Safety Assessor**” or “**ISA**” means an Independent Safety Assessor accredited by the Standards Council of Canada, pursuant to the Independent Safety Assessor for Railway Systems Accreditation Program developed and administered by the Standards Council of Canada;
- (57) “**Independent SMS Audit**” has the meaning given in Section 5.13.1(c);
- (58) “**Initial Rail Transportation Occurrence Incident Report**” has the meaning given in Section 5.5.2(b);
- (59) “**Interim Rail Transportation Occurrence Incident Report**” has the meaning given in Section 5.5.2(c);
- (60) “**Internal Safety Reporting Procedure**” has the meaning given in Section 5.10(a);
- (61) “**ISO 22341**” has the meaning given in Section 8.4(a);
- (62) “**ISO 31000**” has the meaning given in Section 8.4(a);
- (63) “**ISO 45001**” has the meaning given in Section 7.1(b)(v);
- (64) “**ISO 45001 Certification**” has the meaning given in Section 7.3(a);
- (65) “**Life Saving Rules**” means a set of mandatory rules applicable to individuals to prevent serious injuries and fatalities, covering the most critical safety hazards that are known to cause loss of life or Serious Injury;
- (66) “**Maintenance Vehicles**” has the meaning given in the Output Specifications;

- (67) “**Mental Health First Aid**” means the mental health first aid program established by the Mental Health Commission of Canada and its successors, as at the Technical Reference Date, unless instructed by Contracting Authority;
- (68) “**Metrolinx Beacon Safety Performance Standard**” means the Metrolinx Vehicle Beacon Safety Standard, Document ID EHS-TP001-02, as at the Technical Reference Date, unless instructed by Contracting Authority;
- (69) “**Metrolinx Construction Safety Management Program**” means the Metrolinx Construction Safety Management Program, Document ID CSMP-05, as at the Technical Reference Date, unless instructed by Contracting Authority;
- (70) “**Metrolinx Emergency Management Plan**” means the Metrolinx Emergency Management Plan document prepared by the Emergency Management Unit Security Division, as at the Technical Reference Date, unless instructed by Contracting Authority;
- (71) “**Metrolinx Fitness for Duty Policy**” means the Metrolinx Corporate Human Resources, Employee Relations Fitness for Duty Policy, as at the Technical Reference Date, unless instructed by Contracting Authority;
- (72) “**Metrolinx Personal Protective Equipment Standard**” means the Metrolinx Personal Protective Equipment Standard, Document ID EHS-PPE-2020, as at the Technical Reference Date, unless instructed by Contracting Authority;
- (73) “**Metrolinx Personal Track Safety Program**” means the Metrolinx training program covering the hazards and risks of working in a rail environment that all individuals working on the Metrolinx owned rail network must complete before they begin work;
- (74) “**Metrolinx Risk Assessment Guidance Document**” means the Metrolinx Safety Department Risk Assessment Guide, Document ID MX-SMS-G001, as at the Technical Reference Date, unless instructed by Contracting Authority;
- (75) “**Metrolinx Territory**” means Metrolinx owned rail corridors and yards, including the Ontario Line Subway;
- (76) “**Monthly Construction Safety Report**” has the meaning given in Section 7.10(a);
- (77) “**Monthly Safety and Security Report**” has the meaning given in Section 3.4(d);
- (78) “**Near Miss**” means a condition, unsafe act or unplanned event that did not result in injury to personnel or damage to equipment or property but had the potential to do so;
- (79) “**North Civil Project Co System Safety Officer**” means the North Civil Project Co individual who shall be responsible for the overall safety of the North Civil Project Infrastructure and be responsible for the delivery of all aspects of safety

- management and system assurance for the North Civil Project Infrastructure, including safety assessment, RAMS and SIL;
- (80) “**North Civil Project Co System Security Officer**” means the North Civil Project Co individual who shall be responsible for the overall security of the North Civil Project Infrastructure and be responsible for the delivery of all aspects of security management for the North Civil Project Infrastructure, including Security Risk Assessment;
- (81) “**Occupational Health and Safety Risk**” means a combination of the likelihood of occurrence of a work-related hazardous event(s) or exposure(s) and the severity of injury and ill health that can be caused by the event(s) or exposure(s);
- (82) “**Occupational Health and Safety Standards**” has the meaning given in Section 7.1(b);
- (83) “**Operational Readiness Report**” has the meaning given in Section 6.8(f)(ii);
- (84) “**Passenger**” has the meaning given in the Output Specifications;
- (85) “**Passenger Interface Provider**” means an Additional Contractor providing customer facing services and fare enforcement related to the Ontario Line Subway System. The TTC will fulfil this function for the operations and maintenance period of the Ontario Line Subway System.
- (86) “**Passenger Station Security Plan**” has the meaning given in Section B.1.4 of Appendix B to this Schedule 29;
- (87) “**Person In Charge**” means in respect of a Rail Transportation Occurrence, the person designated by Project Co to manage the on-site response to the occurrence, including liaising with Contracting Authority, Adjacent Railway Systems and the emergency services;
- (88) “**Platform**” has the meaning given in the Output Specifications;
- (89) “**Product**” means,
- (a) an individual element that forms part of a System, a Subsystem or an equipment; or
  - (b) a collection of elements that is interconnected to form a System, a Subsystem or an equipment;
- (90) “**Product Acceptance Process**” has the meaning given in Section 6.9(b);
- (91) “**Project Co Declaration**” means a written declaration produced by Project Co in accordance with section 9 of the CMREA;
- (92) “**Project Co Fatigue Management Plan**” has the meaning given in Section 5.12(b);

- (93) “**Project Co Fitness for Duty Policy**” has the meaning given in Section 7.7(b);
- (94) “**Project Co Independent Safety Assessor**” or “**Project Co ISA**” means an Independent Safety Assessor retained by RSSOM Project Co;
- (95) “**Project Co Internal Audit**” has the meaning given in Section 5.13.1(b);
- (96) “**Project Co Internal Audit Report**” has the meaning given in Section 5.13.1(b);
- (97) “**Project Co Investigator**” means a person appointed by Project Co as an investigator of Safety Incidents;
- (98) “**Project Co ISA ESAC Report**” has the meaning given in Section 6.8(h);
- (99) “**Project Co ISA Security Submission Report**” has the meaning given in Section 8.5.2(b);
- (100) “**Project Co Personal Protective Equipment Standard**” has the meaning given in Section 7.5(a);
- (101) “**Project Co Safety Incident Management and Investigation Plan**” has the meaning given in Section 5.5.1(b);
- (102) “**Project Co Safety Management System**” or “**Project Co SMS**” has the meaning given in Section 5.1.1(a);
- (103) “**Project Co Safety Management System Component**” has the meaning given in Section 5.1.1(a)(ii);
- (104) “**Project Co Safety Training Program**” has the meaning given in Section 5.11.3(f);
- (105) “**Project Co SMS Software Solution**” has the meaning given in Section 5.1.2(a);
- (106) “**Project Safety Requirements**” has the meaning given in Section 4.1(a);
- (107) “**Project Security Requirements**” has the meaning given in Section 4.2(a);
- (108) “**Rail Transportation Occurrence**” has the meaning given in Section 5.5.1(a);
- (109) “**Rail Transportation Occurrence Summary**” has the meaning given in Section 5.5.2(a);
- (110) “**Railway System**” has the meaning given in the CMREA;
- (111) “**RAM Plan**” has the meaning given in Section 6.8(c)(x);
- (112) “**RAM Policy**” has the meaning given in Section 6.8(c)(ix);

- (113) “**RAM Subsystem Requirements**” has the meaning given in Section 6.8(d)(v)(G);
- (114) “**RAM Test Specification**” has the meaning given in Section 6.8(f)(iv);
- (115) “**RAM Validation Plan**” has the meaning given in Section 6.8(d)(v)(H);
- (116) “**RAM Validation Report**” has the meaning given in Section 6.8(g)(iii)(C);
- (117) “**RAMS**” has the meaning given in Section 6.3(f);
- (118) “**Register of Project Safety Requirements**” has the meaning given in Section 5.4.1(a);
- (119) “**Remedial Action**” means action to eliminate the cause(s) of a nonconformity or a Safety Incident and to prevent recurrence;
- (120) “**Remedial Action Plan**” has the meaning given in Section B.8 of Appendix B to this Schedule 29;
- (121) “**Revenue Service**” has the meaning given in the Output Specifications;
- (122) “**Risk**” means the likelihood or frequency of occurrence of an event, including Accidents as defined in the CMREA, resulting in an adverse consequence and the degree of severity of that consequence;
- (123) “**Risk Acceptance Criteria**” has the meaning given in the CMREA;
- (124) “**Risk Analysis**” has the meaning given in the CMREA;
- (125) “**Risk Assessment**” means the overall process comprising a Risk Analysis and a Risk Evaluation, including application of a Risk ranking matrix;
- (126) “**Risk Evaluation**” has the meaning given in the CMREA;
- (127) “**Risk Management**” has the meaning given in the CMREA;
- (128) “**S&TCS**” has the meaning given in the Output Specifications;
- (129) “**Safety and Security Coordination Meeting**” or “**SSCM**” has the meaning given in Section 3.3(c);
- (130) “**Safety and Security Critical Items List**” has the meaning given in Section 6.7(h);
- (131) “**Safety and Security Interface Framework**” or “**SSIF**” has the meaning given in Section 3.4(b);
- (132) “**Safety and System Assurance Standards**” has the meaning given in Section 6.3(b);
- (133) “**Safety Confirmation**” has the meaning given in Section 6.8(k);

- (134) “**Safety Culture Survey Remedial Plan**” has the meaning given in Section 5.14.1(g);
- (135) “**Safety Function**” has the meaning given in EN 50126-1;
- (136) “**Safety Governing Body**” has the meaning given in Section 3.2(a);
- (137) “**Safety Improvement Plan**” has the meaning given in Section 3.3(l);
- (138) “**Safety Incident**” means an occurrence arising out of or in the course of work that could or does result in adverse effect (including occupational disease, illness and death) on the physical, mental or cognitive condition of a person;
- (139) “**Safety Induction Briefing**” has the meaning given in Section 5.11.4(a);
- (140) “**Safety Integrity**” has the meaning given in EN 51026-1;
- (141) “**Safety Integrity Level**” has the meaning given in EN 51026-1;
- (142) “**Safety Measures**” has the meaning given in the CMREA;
- (143) “**Safety Performance Review Body**” has the meaning given in Section 3.3(a);
- (144) “**Safety Policy**” has the meaning given in Section 5.3.1(a);
- (145) “**Safety Requirements**” has the meaning given in the CMREA;
- (146) “**Safety Requirements Specification**” has the meaning given in Section 6.8(c)(vi);
- (147) “**Safety Stand Down Meeting**” has the meaning given in Section 7.12(a);
- (148) “**Safety Validation Report**” has the meaning given in Section 6.8(g)(iii)(B);
- (149) “**Safety Work Plan**” has the meaning given in Section 7.11(a);
- (150) “**Security Confirmation**” has the meaning given in Section 8.5.2(e)(i);
- (151) “**Security Log**” has the meaning given in Section B.2 of Appendix B to this Schedule 29;
- (152) “**Security Plan**” has the meaning given in Section 8.6(a);
- (153) “**Security Provider**” means an Additional Contractor providing security services for the Ontario Line Subway System. The TTC will fulfil this function for the operations and maintenance period of the Ontario Line Subway System.
- (154) “**Security Risk Assessment**” has the meaning given in Section B.5 of Appendix B to this Schedule 29;
- (155) “**Security Risk Assessment Report**” has the meaning given in Section B.6 of Appendix B to this Schedule 29;

- (156) “**Security Risk Assessment Review Report**” has the meaning given in Section B.7 of Appendix B to this Schedule 29;
- (157) “**Serious Injury**” has the meaning given in the Transportation Safety Board Regulations;
- (158) “**Shared Infrastructure Security Plan**” has the meaning given in Section B.1.6 of Appendix B to this Schedule 29;
- (159) “**Significant Change**” means a change to the existing Ontario Line Subway System found to be significant under the CMREA;
- (160) “**SIL**” means the safety integrity level;
- (161) “**SIL Apportionment Report**” has the meaning given in Section 6.7(g);
- (162) “**SMS Action Plan Report**” has the meaning given in Section 5.13.2(d);
- (163) “**SMS Audit**” has the meaning given in Section 5.13.2(a);
- (164) “**SMS Audit Plan**” has the meaning given in Section 5.13.1(a);
- (165) “**SMS Audit Report**” has the meaning given in Section 5.13.2(a);
- (166) “**SMS Contracting Authority Audit**” has the meaning given in Section 5.13.1(e);
- (167) “**SMS Independent Audit Report**” has the meaning given in Section 5.13.1(d);
- (168) “**SOR/2020-222**” has the meaning given in Section 8.4(a);
- (169) “**SSDM Summary Report**” has the meaning given in Section 7.12(g);
- (170) “**Standards Council of Canada**” means the Standards Council of Canada and its successors;
- (171) “**Subsystem**” has the meaning given in EN 50126-1 and further defined in the CMREA;
- (172) “**Supporting Standards**” has the meaning given in Section 6.3(e);
- (173) “**System**” has the meaning given in EN 50126-1 and further refined in the CMREA;
- (174) “**System Assurance Submission**” has the meaning given in Section 6.5.2(a);
- (175) “**System Assurance Submissions Plan**” has the meaning given in Section 6.5.1(a);
- (176) “**System Definition**” means the establishment of boundaries and functions of the System under consideration as set out in EN 50126-1;

- (177) “**System Definition Document**” has the meaning given in Section A.2 of Appendix B to this Schedule 29;
- (178) “**System Design Safety Submission**” has the meaning given in Section 6.5.2(a)(ii);
- (179) “**System Design Security Submission**” has the meaning given in Section 8.5.2(a)(ii);
- (180) “**System Performance Status Report**” has the meaning given in Section 6.8(g)(ii);
- (181) “**System RAM Status Report**” has the meaning given in Section 6.8(d)(iv);
- (182) “**System Safety and Security Interface Committee**” or “**SSSIC**” has the meaning given in Section 3.4(a);
- (183) “**System Safety Case**” has the meaning given in Section 6.8(d)(iii);
- (184) “**System Safety Officer**” means the Project Co individual who shall be responsible for the overall safety of the Project Co Infrastructure and be responsible for the delivery of all aspects of safety management and system assurance for the Project Co Infrastructure, including safety assessment, RAMS and SIL;
- (185) “**System Safety Plan**” has the meaning given in Section A.1 of Appendix B to this Schedule 29;
- (186) “**System Safety Review Panel**” has the meaning given in Section 3.7(a);
- (187) “**System Security Officer**” means the Project Co individual who shall be responsible for the overall security of the Project Co Infrastructure and be responsible for the delivery of all aspects of security management for the Project Co Infrastructure, including Security Risk Assessment;
- (188) “**System Security Plan**” has the meaning given in Section B.1.3 of Appendix B to this Schedule 29;
- (189) “**System Security Submission**” has the meaning given in Section 8.5.2(a);
- (190) “**System Security Submissions Plan**” has the meaning given in Section 8.5.1(a);
- (191) “**Tolerable Functional Failure Rate**” has the meaning given in EN 50126-2;
- (192) “**Tolerable Hazard Rate**” has the meaning given in EN 50126-1;
- (193) “**Transportation Safety Board Regulations**” means the *Transportation Safety Board Regulations (SOR/2014-34)*, as amended from time to time; and
- (194) “**Tunnel Ventilation System**” has the meaning given in the Output Specifications.



### 3. SAFETY AND SECURITY GOVERNANCE

#### 3.1 Contracting Authority

- (a) Contracting Authority shall rely on the following Metrolinx bodies;
  - (i) Safety Certification Committee as the overall Safety Governing Body for the Ontario Line Subway System, and
  - (ii) Safety Performance Review Committee as the Safety Performance Review Body for the Ontario Line Subway System.

#### 3.2 Safety Governing Body

- (a) Contracting Authority shall establish a safety governing board that shall have oversight on the following matters for the Ontario Line Subway System:
  - (i) matters related to the Risk Evaluation and Risk Assessments as set out in this Schedule 29;
  - (ii) matters related to system assurance, and Engineering Safety and Assurance Cases as set out in this Schedule 29 for all elements of the Project;
  - (iii) matters related to Product Acceptance Process, as set out in this Schedule 29, for all elements of the Project affecting existing railways;
  - (iv) matters related to security assurance and System Security Submissions as set out in Schedule 29 of the Project;
  - (v) matters related to the acceptance of the Ontario Line Subway System as safe and secure for entry into, and remaining in, Revenue Service;
  - (vi) all other safety, system assurance and security matters as they relate to the Ontario Line Subway, including the development of new infrastructure and equipment and the modification of existing infrastructure and equipment; and
  - (vii) any other matters with respect to safety, system assurance and security as may be set out in the terms of reference that are developed from time to time by the board.(the “**Safety Governing Body**”).
- (b) The composition of the membership of the Safety Governing Body shall be determined by Contracting Authority in its sole discretion.
- (c) The Safety Governing Body shall receive and review submissions related to the items set out in Section 3.2(a) including:
  - (i) the Ontario Line Subway System Safety Plan, the Ontario Line Subway System Definition Document, and the RAM Plan produced by RSSOM Project Co in accordance with Section 6.4;

- (ii) with respect to any Risk Evaluation or Risk Assessment performed in accordance with Section 6.5 and the Project Co Declaration;
  - (iii) the System Assurance Submissions Plan in accordance with Section 6.5.1;
  - (iv) the System Assurance Submissions in accordance with Section 6.5.2, including all Engineering Safety and Assurance Cases and Project Co ISA ESAC Reports in accordance with Section 6.8;
  - (v) the Product Acceptance Process and new or modified Project applications in accordance with Section 6.9;
  - (vi) the System Security Submissions Plan in accordance with Section 8.5.1;
  - (vii) the System Security Submission in accordance with Section 8.5.2;
  - (viii) the submissions from the System Safety Review Panels over which the Safety Governing Body has authority; and
  - (ix) the submissions from the Contracting Authority ISA with respect to matters over which the Safety Governing Body has authority.
- (d) Unless otherwise determined by the Contracting Authority, in its sole discretion, the Safety Governing Body shall operate throughout the Project Term.
- (e) The Safety Governing Body shall, in its sole discretion,
- (i) approve or reject any submission, plan or report received pursuant to Section 3.2(c) or
  - (ii) provide comments or revisions to any submission, plan or report.
- (f) If instructed by Contracting Authority, and subject to Schedule 22 – Variation Procedure, Project Co shall incorporate and implement any comments provided by the Safety Governing Body pursuant to Section 3.2(e) into Project Co’s submissions, plans and reports.
- (g) Decisions of the Safety Governing Body shall be made in its sole discretion and shall be final and binding on Project Co.
- (h) The Safety Governing Body may, in its sole discretion:
- (i) adopt such procedures and practices for the conduct of the activities of the Safety Governing Body as it considers appropriate from time to time;
  - (ii) invite to any meeting of the Safety Governing Body such other persons as the Safety Governing Body, with reason, determines;
  - (iii) exclude from any meeting of the Safety Governing Body such persons as the Safety Governing Body, with reason, determines; and

- (iv) receive and review any person or organization agreed to by the Safety Governing Body.
- (i) The Safety Governing Body shall, in its sole discretion:
  - (i) issue the Consent to Operate Revenue Service for the Ontario Line Subway System to RSSOM Project Co following full review of RSSOM Project Co’s system safety certificate, system security certificate, and supporting documents.

### 3.3 Safety Performance Review Body

- (a) Contracting Authority shall establish a safety performance governing board that shall have oversight on the following matters for the Ontario Line Subway System:
  - (i) the Project Co Safety Management System, including:
    - (A) Project Safety Requirements, excluding those covered by the Safety Governing Body but including all other matters related to safety Risks or Hazards, and any non-conformances with the Project Safety Requirements;
    - (B) Common Safety Indicators; and
    - (C) the audits conducted in accordance with this Schedule 29;
  - (ii) safety-related performance requirements; and
  - (iii) any other matters with respect to safety, other than undertaken by the Safety Governing Body, as may be set out in the terms of reference that are developed from time to time by the board,  
  
(the “**Safety Performance Review Body**”).
- (b) The composition of the Safety Performance Review Body shall be determined by the Contracting Authority in its sole discretion.
- (c) The Safety Performance Review Body shall meet with Project Co, along with RSSOM Project Co and North Civil Project Co, each month (the “**Safety and Security Coordination Meeting**” or “**SSCM**”) to discuss and agree on the following:
  - (i) statistics and trend analysis of hazards and risks;
  - (ii) statistics and trend analysis of safety accidents, security incidents, and their precursors (near misses);
  - (iii) tests, simulations, and exercises of emergency preparedness;
  - (iv) training, communication, and promotion of an appropriate safety and security culture;
  - (v) investigation of safety accidents and security incidents, if any;

- (vi) joint investigation of safety accidents and security incidents, if any; and
- (vii) report on Remedial Actions, if any.
- (d) The Safety Performance Review Body shall receive and review the Monthly Safety and Security Report (see Section 3.4(d)) prior to the Safety and Security Coordination Meeting.
- (e) The Safety Performance Review Body shall receive and review the submissions related to the items set out in Section 3.3(a) including the following:
  - (i) Safety Improvement Plans, as set out in Sections 3.5;
  - (ii) The Project Co Safety Management System, and any changes thereto, as set out in Section 5.1;
  - (iii) Additional and new Project Safety Requirements identified by Project Co and the associated reports, as set out in Section 5.4.1(c);
  - (iv) Initial Rail Transportation Occurrence Incident Reports, Interim Rail Transportation Occurrence Incident Reports and Final Rail Transportation Occurrence Incident Reports, as set out in Section 5.5.2;
  - (v) monthly reports on Common Safety Indicators, as set out in Section 5.9;
  - (vi) reports relating to Risks, Hazards, opportunities for safety improvements and any non-conformances with the Project Safety Requirements, as set out in Section 5.10;
  - (vii) the Project Co Fatigue Management Plan, as set out in section 5.12(b);
  - (viii) Project Co Internal Audit Reports, SMS Independent Audit Reports, and SMS Action Plan Reports, as set out in Sections 5.13.1(a) and 5.13.1(b)
  - (ix) the methodology, format and questions in the Baseline Safety Culture Survey and each Annual Safety Culture Survey, the Annual Safety Culture Survey Reports and the Safety Culture Survey Remedial Plans, as set out in Section 5.14.1;
  - (x) Contractor Site Specific Safety Manual, as set out in Section 7.2;
  - (xi) the health and safety inspection and re-inspection reports, as set out in Section 7.4;
  - (xii) the Project Co Personal Protective Equipment Standard, as set out in Section 7.5;
  - (xiii) the Project Co Fitness for Duty Policy, as set out in Section 7.7;
  - (xiv) submissions from the Contracting Authority ISA with respect to matters over which the Safety Performance Review Body has authority in accordance with its terms of reference and this Schedule 29; and
  - (xv) such other reports as the Safety Performance Review Body requires in its sole discretion.
- (f) The Safety Performance Review Body may, in its sole discretion,

- (i) approve or reject any submission, plan or report;
  - (ii) provide comments or suggested revisions to any submission, plan or report.
- (g) If instructed by Contracting Authority, Project Co shall incorporate and implement any comments provided by the Safety Performance Review Body into Project Co's submissions, plans and reports.
- (h) Decisions of the Safety Performance Review Body shall be made in its sole discretion and shall be final and binding on Project Co.
- (i) The Safety Performance Review Body may, in its sole discretion:
- (i) adopt such procedures and practices for the conduct of the activities of the Safety Performance Review Body as it considers appropriate from time to time;
  - (ii) invite to any meeting of the Safety Performance Review Body such other persons as the Safety Performance Review Body determines;
  - (iii) exclude from any meeting of the Safety Performance Review Body such persons as the Safety Performance Review Body determines; and
  - (iv) receive and review reports from any person or organization agreed to by the Safety Performance Review Body.
- (j) The Safety Performance Review Body may, in its sole discretion conduct one or more audits through Contracting Authority ISA or a third party, of the Works or the Project Co Safety Management System to assess whether:
- (i) Project Co is complying with the Project Safety Requirements; and
  - (ii) an acceptable level of safety, as determined by the Safety Performance Review Body in its sole discretion, is being maintained by Project Co.
- (k) The Safety Performance Review Body may, acting reasonably, deem Project Co to be performing at an “unacceptable level of safety”, if an audit conducted in accordance with Section 3.3(j) determines that:
- (i) ongoing non-compliance with the Project Co Safety Management System or the Project Safety Requirements has occurred or is occurring;
  - (ii) severe Safety Incidents or accidents have occurred; or
  - (iii) that Safety Incidents or accidents are occurring at a high frequency.
- (l) If the Safety Performance Review Body makes a determination of “unacceptable level of safety” pursuant to Section 3.3(k), Contracting Authority, on the basis of a recommendation of the Safety Performance Review Body may require Project Co to develop a safety improvement plan (the “**Safety Improvement Plan**”).

### 3.4 Project Co Obligations for Governance and Committees

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- (a) Within sixty (60) days of Financial Close, RSSOM Project Co shall establish, chair, maintain, and support a committee through which RSSOM Project Co shall coordinate all aspects of safety and security management and certification with Project Co and North Civil Project Co (“**System Safety and Security Interface Committee**” or “**SSSIC**”). The SSSIC shall:
- (i) exist for the duration of the Project Term;
  - (ii) include Project Co, North Civil Project Co, the Project Co ISA, and Contracting Authority (by standing invitation);
  - (iii) develop a safety and security interface framework.
- (b) Within thirty (30) days of its establishment, the SSSIC shall develop a framework, agreed amongst Project Co, RSSOM Project Co and North Civil Project Co that identifies the goals of the SSSIC, the procedures, key deliverables, and milestone dates (the “**Safety and Security Interface Framework**” or “**SSIF**”).
- (i) The Safety and Security Interface Framework shall detail the mechanisms that allow Project Co, RSSOM Project Co and North Civil Project Co to work collaboratively on all safety and security matters and to resolve any scope or contractual issues.
  - (ii) The SSIF shall detail how documentation is shared between Project Co, RSSOM Project Co and North Civil Project Co.
  - (iii) The SSIF shall detail how safety and security documentation is developed by Project Co, RSSOM Project Co and North Civil Project Co and incorporated into the safety and security submission to Contracting Authority to meet the requirements of this Schedule 29.
  - (iv) The SSIF shall be reviewed by the SSSIC on a monthly basis for the duration of the Project Term.
- (c) Project Co shall take part in the Safety and Security Coordination Meeting pursuant to Section 3.3(c).
- (d) RSSOM Project Co shall prepare and submit a monthly report to Contracting Authority, three (3) days in advance of each Safety and Security Coordination Meeting, containing data, trends, analysis, and commentary on the topics to be discussed at a Safety and Security Coordination Meeting (the “**Monthly Safety and Security Report**”).
- (i) Two (2) days prior to RSSOM Project Co’s submission to Contracting Authority, as outlined in Section 3.4(d), Project Co shall provide, to RSSOM Project Co, a monthly report containing data, trends, analysis, and commentary on their topics to be discussed at a Safety and Security Coordination Meeting for inclusion in the overall Monthly Safety and Security Report.
- (e) Within sixty (60) days of Financial Close, RSSOM Project Co shall establish, chair, maintain and support a committee to coordinate fire/life safety activities (the “**Fire/Life Safety Committee**”)

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- (i) The Fire/Life Safety Committee shall:
    - (A) review fire/life safety risks;
    - (B) provide a forum for Emergency Service Providers to raise issues related to emergency protocols;
    - (C) provide a forum for participants to raise issues of compliance to fire/life safety requirement; and
    - (D) reach consensus on the implementation of fire/life safety issues that are not explicitly covered by code.
  - (ii) Project Co shall attend all Fire/Life Safety Committee meetings to address:
    - (A) relevant matters arising in delivery of the Works; and
    - (B) relevant matters related to the delivery of the Ontario Line Subway.
  - (iii) The Fire/Life Safety Committee shall be comprised of representatives from:
    - (A) Project Co (during the Project Term only);
    - (B) RSSOM Project Co;
    - (C) North Civil Project Co (during their project term only);
    - (D) the Project Co ISA;
    - (E) the Contracting Authority's Safety Governing Body;
    - (F) Emergency Service Providers;
    - (G) Governmental Authorities;
    - (H) Ontario Fire Marshal (by invitation);
    - (I) representatives of TTC; and
    - (J) representatives of GO Transit.
  - (f) The Fire/Life Safety Committee shall be the first level of resolution on matters of fire/life safety that are not dealt with at the SSCM.
  - (g) The Fire/Life Safety Committee participants shall reach a consensus within the Fire/Life Safety Committee and implement the result of their mutual agreement to support ESAC development. If consensus is not achieved the dispute resolution will follow the requirements as set out in the Project Agreement.

- (h) Project Co, RSSOM Project Co and North Civil Project Co shall incorporate requirements and decisions arising from the Fire/Life Safety Committee into the Ontario Line Subway System and obtain all necessary permits accordingly.
- (i) During the Project Term, the Fire/Life Safety Committee shall:
- (i) ensure Project Co, RSSOM Project Co and North Civil Project Co meet the fire/life safety requirements of the Ontario Line Subway System through execution of their Fire/Life Safety Management Plan;
  - (ii) ensure each party has coordinated with the other parties as necessary to identify and mitigate interface risks between themselves;
  - (iii) monitor fire/life safety performance; and
  - (iv) monitor implementation of any corrective actions.
- (j) Where no other Governmental Authority exists, the Fire/Life Safety Committee shall be the Governmental Authority for compliance with NFPA Codes and Standards, the Canadian National Fire Code, and the Ontario Fire Code.
- (k) Project Co shall attend the following meetings and committees during the Project Term:

Meeting Name	Schedule 29 Reference	Schedule
Safety Governing Body	Section 3.2(a)	Monthly
Safety Performance Review Body	Section 3.3(a)	Monthly
Systems Safety & Security Interface Committee	Section 3.4(a)	Monthly
Safety and Security Coordination Meeting	Section 3.4(c)	Monthly
Fire/Life Safety Committee	Section 3.4(e)	Monthly
Safety Stand Down	Section 7.12	Quarterly

### 3.5 Project Co Safety Improvement Plan

- (a) The Safety Improvement Plan shall include a detailed description of,
- (i) the Remedial Actions that Project Co intends to implement to rectify the issues uncovered by the audit to ensure compliance with the Project Co Safety Management System and the Project Safety Requirements;



- (ii) the Project Co individuals who shall be responsible for the implementation of each Remedial Action;
  - (iii) the timeline for Project Co's implementation of each Remedial Action;
  - (iv) the mechanism by which Project Co shall monitor the successful implementation of a Remedial Action; and
  - (v) the timeline for Project Co's submission of reports to the Safety Performance Review Body on the implementation of Remedial Action.
- (b) Project Co shall submit each Safety Improvement Plan to the Safety Performance Review Body, for review and approval, no later than twenty (20) Business Days following the request by the Safety Performance Review Body for the Safety Improvement Plan (or such longer period of time as the Parties may agree).

### 3.6 Submissions to Contracting Authority

- (a) For the purposes of this Schedule 29, any submission, plan, report or other deliverable that Project Co is required to provide to Contracting Authority's Safety Governing Body or the Safety Performance Review Body pursuant to this Schedule 29 shall be,
- (i) transmitted by Project Co to Contracting Authority for transmission to RSSOM Project Co for review and comment by the Project Co ISA prior to formal submission to Contracting Authority,
    - (A) comments arising from the Project Co ISA's review of Project Co's submission shall be transmitted back to Project Co via Contracting Authority; and
  - (ii) updated by Project Co in line with Project Co ISA's comments, as agreed amongst the Project Co ISA, RSSOM Project Co and the Contracting Authority at the SSSIC, before being submitted to Contracting Authority for transmission to the Contracting Authority ISA;
    - (A) the Contracting Authority ISA shall review and action in accordance with Sections 6.8(i) and 6.8(j) prior to review by the Safety Governing Body or the Safety Performance Review Body.
- (b) Project Co shall submit each System Assurance Submission for approval in accordance with the requirements of Section 6.5.
- (c) Project Co shall submit each System Security Submission for approval in accordance with the requirements of Section 8.5.1.
- (d) All other submissions required within this Schedule 29 shall be submitted to Contracting Authority in accordance with the requirements of Schedule 10 – Review Procedure.
- (e) Project Co shall implement each submission, plan or other deliverable that Project Co is required to submit to the Contracting Authority's Safety Governing Body or the Safety

Performance Review Body pursuant to this Schedule 29 following receipt of an approval by the Safety Governing Body or the Safety Performance Review Body, as applicable.

### 3.7 System Safety Review Panels

- (a) No later than thirty (30) days following Commercial Close, Contracting Authority shall establish one or more separate and distinct system safety review panels (each, a “**System Safety Review Panel**”) comprised of technical representatives of the Contracting Authority.
  - (i) For clarity, the role of these panels is only to review the safety aspect of a distinct system, or integrated system design.
- (b) Contracting Authority shall assign subject matters to each System Safety Review Panel based on the Systems set out in RSSOM Project Co’s Ontario Line Subway System Definition Document.
- (c) Project Co shall meet with each System Safety Review Panel related to the Project Co Infrastructure on a monthly basis, and each meeting shall include:
  - (i) an update by Project Co on the status of the System Assurance Submissions related to the System being discussed;
  - (ii) an update from the Project Co ISA on the progress of the System Assurance Submissions, and any general observations or concerns that the Project Co ISA may have with respect to safety or system assurance related to the System being discussed;
  - (iii) discussion, including any feedback or clarification by the System Safety Review Panel on the draft versions of System Assurance Submissions, provided that the drafts have been submitted by Project Co to the applicable System Safety Review Panel no later than ten (10) Business Days in advance of the meeting; and
  - (iv) any matter related to System Assurance Submissions for the applicable System that Project Co or Contracting Authority may elect to discuss.
- (d) Contracting Authority shall document minutes from each meeting set out in Section 3.7(c), and such minutes shall be distributed to Project Co no later than five (5) Business Days after the applicable meeting.
- (e) The Safety Governing Body and the Safety Performance Review Body may, each in its sole discretion, delegate tasks to any System Safety Review Panel or require that information or submissions be reviewed by any System Safety Review Panel prior to such submissions being made to the Safety Governing Body or the Safety Performance Review Body, as applicable.

#### 4. PROJECT CO OBLIGATIONS FOR SAFETY, SYSTEM ASSURANCE AND SECURITY

##### 4.1 Safety Requirements

- (a) Project Co shall carry out the Works in accordance with the following, each as may be amended from time to time:
  - (i) Applicable Law;
  - (ii) Good Industry Practice as it relates to passenger rail transportation safety and system assurance; and
  - (iii) the Safety and System Assurance Standards,  
(collectively, the “**Project Safety Requirements**”).
- (b) Project Co and all Project Co Parties shall comply with the Project Safety Requirements at all times during the Project Term.
- (c) Project Co shall comply with the standards set out in this Schedule 29, as such standards are amended from time to time.

##### 4.2 Security Requirements

- (a) Project Co shall carry out the Works in accordance with the following, each as may be amended from time to time:
  - (i) Applicable Law;
  - (ii) Good Industry Practice as it relates to passenger rail transportation security; and
  - (iii) the System Security Standards,  
(collectively, the “**Project Security Requirements**”).
- (b) Project Co and all Project Co Parties shall comply with the Project Security Requirements at all times during the Project Term.
- (c) Project Co shall comply with the standards set out in this Schedule 29, as such standards are amended from time to time.

##### 4.3 Project Co Independent Safety Assessor

- (a) RSSOM Project Co shall appoint the Project Co ISA to independently assess the safety and security work being delivered by Project Co, RSSOM Project Co and North Civil Project Co.
- (b) The terms of reference of the Project Co ISA shall be based upon, and include, the requirements provided in the Standard Council of Canada’s Requirements and Guidance – Independent Safety Assessor for Railway Systems Accreditation Program.

- (c) The Project Co ISA shall evaluate the compliance of Project Co's, RSSOM Project Co's and North Civil Project Co's work with the System Safety Plan, System Security Plan and RAM Plan during the Project Term through review and comment of the releases of the System Assurance Submission and the System Security Submissions.
- (d) The scope of the work performed by the Project Co ISA shall be as provided in this Schedule 29.
- (e) The Project Co ISA shall present the status of its assessment, findings, and any safety conditions at SSCM meetings.

#### 4.4 General Project Co Obligations for Ontario Line Subway Safety and Security

- (a) Project Co acknowledges and agrees that during the Project Term,
  - (i) the management of construction and personnel health and safety for the Ontario Line Subway is a shared responsibility amongst Project Co, RSSOM Project Co, North Civil Project Co, Early Works Contractors, and Additional Contractors;
  - (ii) notwithstanding the shared responsibility as described in Section 4.4(a)(i), RSSOM Project Co shall be responsible for achieving Consent to Operate Revenue Service in accordance with the requirements of this Schedule 29 for the Ontario Line Subway System, which includes the Ontario Line Subway.
    - (A) RSSOM Project Co shall provide evidence of safe system integration for all Systems and Subsystems comprising the Ontario Line Subway System in accordance with the requirements of the Safety and System Assurance Standards;
    - (B) RSSOM Project Co shall provide evidence of secure integration for all Systems and Subsystems comprising the Ontario Line Subway System in accordance with the requirements of the System Security Standards; and
    - (C) Project Co shall be responsible for all aspects of the Works that are impacted by, or that impact, safety and security of Ontario Line Subway as agreed at the SSSIC;
  - (iii) Project Co shall be responsible and accountable for:
    - (A) ESAC development and submission, together with demonstration of reliability, availability and maintainability of the Tunnel Ventilation System electrical and mechanical systems, including 1-D and 3-D model and airflow validation for the Ontario Line Subway System in accordance with Project Co's obligations under the Project Agreement, whilst recognising and acknowledging that the final Tunnel Ventilation System solution is a product of the work of both Project Co and RSSOM Project Co;
    - (B) obtaining approvals alongside RSSOM Project Co, from Contracting Authority for the System Assurance Submissions for the Tunnel

Ventilation System in accordance with the requirements of this Schedule 29 and in accordance with Project Co's obligations under the Project Agreement, whilst recognising and agreeing that the final systems assurance is a product of the work of both Project Co and RSSOM Project Co; and

- (C) obtaining approvals alongside RSSOM Project Co, from Contracting Authority for the System Security Submissions for the Project Co Infrastructure in accordance with the requirements of this Schedule 29 and in accordance with Project Co's obligations under the Project Agreement, whilst recognising and agreeing that the final security solution is a product of the work of both Project Co and RSSOM Project Co.
- (iv) Project Co shall provide input to safety and security matters, as required and agreed at the SSSIC, to RSSOM Project Co who is responsible and accountable for:
- (A) ESAC development and submission, together with demonstration of reliability, availability and maintainability of Trains, other rail-borne equipment;
  - (B) ESAC development and submission, together with demonstration of reliability, availability, and maintainability of the signaling and train control system; and
  - (C) ESAC development and submission, together with demonstration of reliability, availability and maintainability of the other RSSOM Project Co rail systems for the Ontario Line Subway System, including:
    - (I) Traction Power System (as defined in the Output Specifications);
    - (II) Overhead Contact System (as defined in the Output Specifications);
    - (III) Supervisory Control and Data Acquisition (as defined in the Output Specifications);
    - (IV) Communications System (as defined in the Output Specifications);
    - (V) Platform Screen Doors (as defined in the Output Specifications);
    - (VI) guideway intrusion detection system; and
    - (VII) Tunnel Ventilation Control System (as defined in the Output Specifications);
  - (D) providing input to Project Co in ESAC development;

- (E) obtaining approvals, from Contracting Authority, for the System Assurance Submissions for the overall Ontario Line Subway System and all Systems and Subsystems in RSSOM Project Co’s scope of work in accordance with the requirements of this Schedule 29;
  - (F) obtaining approvals, from the Contracting Authority, for the System Security Submissions for the overall Ontario Line Subway System in accordance with the requirements of this Schedule 29; and
  - (G) obtaining approvals for carrying passengers on, and the Revenue Service of, the Ontario Line Subway System (the “**Consent to Operate Revenue Service**”).
- (b) Project Co acknowledges and agrees that if Contracting Authority believes, in its sole discretion, that a suspension of the Works is required for any Emergency, Contracting Authority may, without limiting Section 25 (*Contracting Authority’s Remedial Rights*) of the Project Agreement, order Project Co to suspend all or any part of the Works and Project Co shall immediately comply with such an order.
- (i) Project Co shall comply, and shall ensure that all Project Co Parties comply, with all safety-related directives or instructions that may be issued by Contracting Authority from time to time.
- (c) If instructed by Contracting Authority, Project Co shall comply, incorporate and implement any changes to standards, codes and regulations used or referenced in this Schedule 29, subject to and in accordance with Section 11.23 (*Change in Standards*) of the Project Agreement.

## 5. SAFETY MANAGEMENT SYSTEM

### 5.1 Project Co Safety Management System

#### 5.1.1 Project Co Safety Management System

- (a) Project Co shall develop and implement a safety management system for the Works (the “**Project Co Safety Management System**” or “**Project Co SMS**”) that,
  - (i) complies with requirements set out in this Schedule 29; and
  - (ii) includes the following:
    - (A) a process for ensuring accountability within Project Co and among Project Co Parties that meets the requirements set out in Section 5.2;
    - (B) a Safety Policy that meets the requirements of Section 5.3;
    - (C) a process for ensuring compliance with the Project Safety Requirements in accordance with Section 5.4;
    - (D) a process for managing Safety Incidents that includes,

- (I) a means of recording meaningful data regarding Safety Incidents such that the data informs the determination of the root cause of Safety Incidents; and
- (II) the requirements of Section 5.5;
- (E) a process for identifying safety concerns and safety improvements, as set out in Section 5.6;
- (F) a Risk Assessment process that meets the requirements of Section 5.7 and that is compliant with the CMREA;
- (G) a process that meets the requirements of Section 5.8 for selecting, implementing and evaluating remedial action for Risks identified during the Risk Assessment process as requiring remedial action;
- (H) a process that meets the requirements of Section 5.9 for establishing targets to manage and continuously improve the safety of the Works and for developing initiatives to achieve each target;
- (I) a process for reporting Rail Transportation Occurrences, Safety Incidents, Risks, Hazards, opportunities for safety improvements, and any non-conformances with the Project Safety Requirements, that meets the requirements of Section 5.10;
- (J) a process for managing knowledge that meets the requirements of Section 5.11;
- (K) a process with respect to scheduling that meets the requirements of Section 5.12;
- (L) a process for continual improvement of the Project Co Safety Management System that meets the requirements of Section 5.13; and
- (M) a process for meeting the safety and systems assurance requirements that are set out in Section 6,

(each, a “**Project Co Safety Management System Component**”).

- (b) Project Co shall ensure that the Project Co Safety Management System as a whole, and each Project Co Safety Management System Component, applies to the Works and to all activities of Project Co and the Project Co Parties.
- (c) Project Co shall ensure that the Project Co Safety Management System includes a requirement to acquire and maintain ISO 45001 certification in accordance with Section 7.3.
- (d) Project Co shall submit updated versions of the Project Co Safety Management System to the Contracting Authority for approval during the Project Term no later than thirty (30)

days following Commercial Close and on or before a number of key milestones in accordance with the following:

- (i) As part of the process for safety and system assurance set out in Section 6, Project Co shall submit an updated version of the Project Co Safety Management System to the Contracting Authority no later than each of the following:
  - (A) the date of Project Co’s submission of each Approval in Principle Safety Submission to the Safety Governing Body;
  - (B) the date of Project Co’s submission of each System Design Safety Submission to the Contracting Authority;
  - (C) the date of Project Co’s submission of each Consent to Construct Safety Submission to the Contracting Authority;
  - (D) the date of Project Co’s submission of each Consent to Test Safety Submission to the Contracting Authority; and
  - (E) the date of Project Co’s submission of each Consent to Operate System Safety Submission to the Contracting Authority.
- (ii) Each updated version of the Project Co Safety Management System submitted in accordance with Section 5.1.1(d)(i) shall, for each Project Co Safety Management System Component, reflect the progression of the Works based on what is included in the applicable System Assurance Submission.
- (iii) In addition to the submissions set out in Section 5.1.1(d)(i), Project Co shall submit an updated version of the Project Co Safety Management System no later than six months following each of the following changes in circumstance:
  - (A) a change in the System Safety Officer; and
  - (B) an amendment to any one component of the Project Safety Requirements.
- (e) Until such time as an updated Project Co Safety Management System is approved by the Contracting Authority, in its sole discretion, the then current Project Co Safety Management System shall continue in force.
- (f) Once the updated Project Co Safety Management System is approved by the Contracting Authority, in its sole discretion, the updated Project Co Safety Management System (subject to any revisions implemented as a result of comments from the Contracting Authority) shall replace the then current Project Co Safety Management System (and become the finalized Project Co Safety Management System that is in force).
- (g) The first finalized Project Co Safety Management System that is approved by the Contracting Authority shall be the “Project Co Safety Management System – Version 1 – [Date]”. Thereafter each updated Project Co Safety Management System that is approved by the Contracting Authority shall become the next version number and shall be dated as



of the applicable date of completion of the review procedure and shall replace the then current Project Co Safety Management System.

- (h) Project Co may propose changes to the Project Co Safety Management System by submitting an updated Project Co Safety Management System to the Contracting Authority for review and approval. Sections 5.1.1(e), 5.1.1(f) and 5.1.1(g) shall apply to each updated Project Co Safety Management System submitted by Project Co in accordance with this Section 5.1.1(h).

#### 5.1.2 Project Co SMS Software Solution

- (a) No later than sixty (60) days following Commercial Close, Project Co shall provide a software solution for the administration of the Project Co Safety Management System (the “**Project Co SMS Software Solution**”). The Project Co SMS Software Solution shall meet the minimum requirements set out in Appendix D to this Schedule 29.

### 5.2 Safety Accountability

#### 5.2.1 System of Safety Accountability

- (a) As part of the Project Co Safety Management System, Project Co shall establish a system of accountability that meets the following requirements:
  - (i) The System Safety Officer shall ensure that the Project Co Safety Management System provides safety governance for all Project Co responsibilities and that Project Co is at all times in compliance with the Project Co Safety Management System;
  - (ii) For clarity, the Construction Health and Safety Manager shall be responsible for all activities required to satisfy Project Co’s obligation to construction safety in this Schedule 29.
  - (iii) The System Safety Officer may designate one or more staff members of Project Co to develop and implement one or more of the processes required as part of the Project Co Safety Management System, provided that formal records of designation are maintained by Project Co. However, the System Safety Officer shall at all times be accountable for the extent to which the Project Safety Requirements are met;
  - (iv) Project Co shall ensure that all safety-related responsibilities, accountabilities and authorities of each Project Co Party that has a safety-related role (including management of other staff involved in safety-related tasks) are,
    - (A) clearly defined and documented at all levels of Project Co and the Project Co Parties;
    - (B) clearly delegated, assigned and communicated to the applicable Project Co Parties; and
    - (C) understood and accepted by the applicable Project Co Parties; and

- (v) The System Safety Officer shall establish Project Co's own internal safety governance structure, processes and committees and shall document such structures, processes, and committees in the Project Co Safety Management System.

### 5.3 Safety Policy

#### 5.3.1 Safety Policy

- (a) As part of the Project Co Safety Management System, Project Co shall establish, implement and maintain a safety policy for the Works (the “**Safety Policy**”) that:
  - (i) includes a commitment to provide a positive health and safety culture and environment for the prevention of injuries and ill health;
  - (ii) is appropriate to the purpose, size and context of the Project Co Infrastructure, and the specific nature of the Risks, Hazards and opportunities for safety performance improvements;
  - (iii) provides a framework for setting safety objectives and evaluating Project Co's performance against these safety objectives;
  - (iv) includes a commitment to fulfill legal and regulatory requirements and to comply with Project Safety Requirements;
  - (v) includes a commitment to identify Hazards and to seek to eliminate, isolate, contain or reduce the Risk of such Hazards;
  - (vi) includes a commitment to continual improvement of the Project Co Safety Management System and of safety performance;
  - (vii) includes a commitment to provide mechanisms for identifying, reporting and resolving safety concerns;
  - (viii) includes a commitment to consult with and enable participation of the public and Project Co Parties;
  - (ix) includes protection from reprisals for reporting of safety concerns as set out in Section 5.10(c) and a mechanism for confidential reporting of safety concerns as described in Section 5.10(d); and
  - (x) is approved and signed by the System Safety Officer.
- (b) Project Co shall ensure that the Safety Policy is reviewed annually as part of the Independent SMS Audit.

#### 5.3.2 Communication of Safety Policy

- (a) Project Co shall ensure that the Safety Policy is,
  - (i) available to Contracting Authority as documented information;

- (ii) communicated to RSSOM Project Co;
- (iii) communicated to all Project Co Parties;
- (iv) communicated to all key stakeholders; and
- (v) available to interested parties:
  - (A) any release to a party external to Project Co shall be subject to sensitive information protocols and securely protected.
- (b) Project Co shall ensure that any change to the Safety Policy is communicated to all Project Co Parties no later than seven (7) days after a change is made.
- (c) Project Co shall require that the Construction Contractor and each Project Co Party that is a subcontractor of any tier provide written confirmation that is signed by such organization's safety director (or an equivalent role), that states that such Project Co Party has received and reviewed the Safety Policy and accepts the Safety Policy.
- (d) Project Co shall ensure that copies of the signed confirmations are forwarded to Contracting Authority upon request and that originals are available during any audit by Contracting Authority.

## 5.4 Compliance with Safety Requirements

### 5.4.1 Process for Ensuring Compliance

- (a) Project Co shall include, in the Project Co Safety Management System, a list of the regulations, rules, and other instruments comprising the Project Safety Requirements that are applicable to the Project (the “**Register of Project Safety Requirements**”).
- (b) Project Co shall ensure that the Register of Project Safety Requirements is kept up to date and includes, for each regulation, rule and other instrument, the date upon which the regulation, rule or other instrument was approved or established, and the date of its last revision.
- (c) Project Co shall, at all times during the Project Term,
  - (i) identify all additional and new Project Safety Requirements and incorporate them into the Project Co Safety Management System to ensure continued compliance with the Project Safety Requirements at all times;
  - (ii) notify the Contracting Authority of all additional and new Project Safety Requirements; and
  - (iii) report to the Contracting Authority what changes Project Co will implement in response to the additional and new Project Safety Requirements and how such changes will satisfy the Project Safety Requirements.

- (d) Project Co shall include in the Project Co Safety Management System a procedure for verifying compliance with the requirements of this Schedule 29 and the associated Project Safety Requirements.

## 5.5 Rail Transportation Occurrences and Safety Incidents

### 5.5.1 Rail Transportation Occurrences and Safety Incident Management and Investigation Plan

- (a) Project Co shall comply with all investigation and reporting requirements set out in this Section 5.5 for any occurrence on, or with, the Project Co Infrastructure or the Site in which:
- (i) a person is killed or sustains a serious injury as a result of coming into contact with live electrical traction power distribution equipment or system;
  - (ii) a Train,
    - (A) is involved in a collision or derailment,
    - (B) sustains damage that affects the safe operation of the Train, or
    - (C) causes or sustains a fire or explosion,
- (a “**Rail Transportation Occurrence**”).
- (b) The Project Co Safety Management System shall include a Safety Incident management and investigation plan (the “**Project Co Safety Incident Management and Investigation Plan**”). The Project Co Safety Incident Management and Investigation Plan shall:
- (i) require that all Rail Transportation Occurrences be reported to the System Safety Officer, the Chief Safety Officer, and formally recorded, including the information set out in Section 5.5.2(a), by Project Co;
  - (ii) require that all Rail Transportation Occurrences be reported to the Contracting Authority in accordance with Section 5.5.2;
  - (iii) facilitate the involvement of TTC with respect to Rail Transportation Occurrences in accordance with Section 5.5.3;
  - (iv) set out a process for how each category of Rail Transportation Occurrence shall be investigated and reviewed;
  - (v) set out the process for how each type of Safety Incident other than a Rail Transportation Occurrence shall be investigated and reviewed;
  - (vi) identify how the outcome of the investigations or reviews of Rail Transportation Occurrences and Safety Incidents shall be communicated to all Project Co Parties;
  - (vii) identify if a different approach to any of the items set out in Sections 5.5.1(b)(i) to 5.5.1(b)(vi) is required for any Safety Incidents occurring on Adjacent Railway

Systems territories as compared to Safety Incidents occurring on the Metrolinx Territory.

### 5.5.2 Reporting of Rail Transportation Occurrences

- (a) No later than four hours following each Rail Transportation Occurrence, Project Co shall submit to the Contracting Authority a high level written description of the immediate facts of the Rail Transportation Occurrence (each, a “**Rail Transportation Occurrence Summary**”), including,
- (i) the date, the exact time and the location of the Rail Transportation Occurrence;
  - (ii) a description of the sequence of events and the accident site, including the efforts and involvement of Emergency Service Providers;
  - (iii) the name and contact details of the Person In Charge of the site of the Rail Transportation Occurrence; and
  - (iv) the plan for the establishment of an investigation, the composition of the team of investigators, and the conduct of the investigation.
- (b) No later than 24 hours following each Rail Transportation Occurrence, Project Co shall submit to the Contracting Authority an initial written report describing the Rail Transportation Occurrence in a form that is prescribed by the Contracting Authority, in its sole discretion (each, an “**Initial Rail Transportation Occurrence Incident Report**”). Each Initial Rail Transportation Occurrence Incident Report shall include, at a minimum,
- (i) an up-to-date version of the information set out in the Rail Transportation Occurrence Summary;
  - (ii) a detailed summary and analysis of the Rail Transportation Occurrence, including,
    - (A) an estimate of the number of Project Co staff, and the number of other persons on board any Train involved in the Rail Transportation Occurrence;
    - (B) the names and roles of Project Co Parties involved and, to the extent ascertainable by Project Co, of other persons involved and witnesses;
    - (C) a description of the Trains or Maintenance Vehicles involved in the Rail Transportation Occurrence, identified by type and identification numbers;
    - (D) a description of the fixed infrastructure involved in the Rail Transportation Occurrence, including track types, switches, and guideway type
    - (E) a description of the means of communication that was used before, during and after the Rail Transportation Occurrence by Project Co and other persons involved in the Rail Transportation Occurrence;

- (F) a description of the Works being carried out at or in the vicinity of the site, if applicable;
  - (G) a description of the trigger of the Emergency Response Plan and the chain of events following the trigger; and
  - (H) a description of the trigger of the involvement of the Emergency Service Providers and a description of the involvement and actions taken by the Emergency Service Providers;
- (iii) the estimated number of fatalities, Serious Injuries, and injuries other than Serious Injuries to Project Co Parties, Contracting Authority Parties and third parties;
- (iv) a description of the estimated material damage, including to vehicles, fixed infrastructure, and the environment;
- (v) external circumstances relevant to the Rail Transportation Occurrence, including,
- (A) weather conditions at the time of the Rail Transportation Occurrence and any climatic conditions, including snow, ice, wind, fog, dust and severe heat; and
  - (B) geographical references, including chainages and proximity to Adjacent Railway Systems;
- (vi) a record of evidence collected and investigations and inquiries initiated or completed by Project Co and Project Co Parties with respect to the Rail Transportation Occurrence, including,
- (A) summary of testimonies (subject to the protection of the identity of persons) of Project Co Parties and any other witnesses to the Rail Transportation Occurrence;
  - (B) electronic, photographic, audio, video, or other records or documentation related to the Rail Transportation Occurrence;
  - (C) medical records and/or toxicology results in accordance with the Project Co Fitness for Duty Policy of any employees or contractors of Contracting Authority, Project Co, or Project Co Parties involved in the Rail Transportation Occurrence; and
  - (D) any other evidence that the Project Co Investigator, or Contracting Authority safety personnel, identifies as being relevant to the investigation;
- (vii) an initial analysis and conclusions with respect to the Rail Transportation Occurrence, including,
- (A) initial conclusions regarding all known direct and immediate causes of the Rail Transportation Occurrence, including contributory factors

- relating to actions taken by persons involved or the condition of Trains or Maintenance Vehicles or technical installations;
- (B) initial conclusions regarding all known direct, immediate and/or root causes relating to the Project Safety Requirements and the Project Co Safety Management System;
  - (C) initial conclusions and observations on safety issues (for example, deficiencies, Risks, or Hazards) that were present, but may not necessarily have contributed to the Rail Transportation Occurrence; and
  - (D) measures that have already been taken or that are being initiated as a consequence of the Rail Transportation Occurrence in order to mitigate Risk; and
- (viii) any other information relating to the Rail Transportation Occurrence that Contracting Authority safety personnel requests or any other information that may be reportable under the Transportation Safety Board Regulations.
- (c) No later than 72 hours following each Rail Transportation Occurrence, Project Co shall submit to the Contracting Authority an updated version of the Initial Rail Transportation Occurrence Incident Report that includes the up-to-date version of all information set out in Sections 5.5.2(b)(i) to 5.5.2(b)(viii) (each, an “**Interim Rail Transportation Occurrence Incident Report**”).
  - (d) No later than forty-five (45) days following each Rail Transportation Occurrence, Project Co shall submit to the Contracting Authority an updated version of the Interim Rail Transportation Occurrence Incident Report that includes the current, up-to-date version of all information set out in Sections 5.5.2(b)(i) to 5.5.2(b)(viii) and, in addition, the following information (each, a “**Final Rail Transportation Occurrence Incident Report**”):
    - (i) a detailed estimate of material damage, including to property, Trains, Maintenance Vehicles, fixed infrastructure and the environment, including a dollar amount that represents the estimate of total material damage, and a dollar amount breakdown by type of damage;
    - (ii) the record of evidence collected and investigations and inquiries completed on the following:
      - (A) the Project Co Safety Management System, including,
        - (I) the framework organization and how orders are given and carried out;
        - (II) requirements on Project Co Parties and how they are enforced;
        - (III) routines for internal checks and audits and their results; and
        - (IV) the interface between different actors involved with the infrastructure;

- (B) the Applicable Law, rules, regulations and standards applicable to the Rail Transportation Occurrence, including,
    - (I) federal and provincial rules and regulations; and
    - (II) Project Safety Requirements;
  - (C) the functioning of Trains and Maintenance Vehicles and technical installations as a result of the Rail Transportation Occurrence, including,
    - (I) infrastructure;
    - (II) communications equipment; and
    - (III) Trains and Maintenance Vehicles, including information from automatic data recorders;
  - (D) documentation on the operating systems involved in the Rail Transportation Occurrence, including,
    - (I) measures taken by staff for traffic control and signalling;
    - (II) exchange of verbal messages in connection with the occurrence, including documentation from recordings; and
    - (III) measures taken to protect and safeguard the site of the Rail Transportation Occurrence;
  - (E) human-machine-organization interface, including,
    - (I) working time applied to the staff involved;
    - (II) medical and personal circumstances with influence on the Rail Transportation Occurrence including existence of physical or psychological stress; and
    - (III) design of equipment with impact on human-machine interface; and
  - (F) previous Rail Transportation Occurrences of a similar character; and
- (iii) analysis and conclusions, including,
- (A) final accounting of the event chain of the Rail Transportation Occurrence, establishing the conclusions on the Rail Transportation Occurrence based on the facts;
  - (B) discussion, including analysis of the facts, with the aim of drawing conclusions as to the direct, immediate and/or root causes including



contributing factors of the Rail Transportation Occurrence and the performance of the rescue services;

- (C) conclusions, including,
  - (I) direct and immediate causes of the Rail Transportation Occurrence including contributory factors relating to actions taken by persons involved or the condition of Trains and Maintenance Vehicles or technical installations;
  - (II) underlying causes and contributing factors relating to skills, procedures and maintenance; and
  - (III) direct, immediate and/or root causes relating to the Project Safety Requirements and the Project Co Safety Management System; and
  - (IV) any additional observations including deficiencies and shortcomings established during the investigation, but without relevance to the conclusions on causes; and

(iv) measures that have already been taken or adopted, or that have been planned or initiated, as a consequence of the Rail Transportation Occurrence.

- (e) All Safety Incident evidence must be preserved by Project Co in accordance with the Metrolinx Emergency Management Plan, the Project Co Safety Incident Management and Investigation Plan and Applicable Law.

### 5.5.3 Rail Transportation Occurrence Incident Management and Investigation – Contracting Authority Role

- (a) Contracting Authority may, in its sole discretion, exercise oversight with respect to all Project Co investigations of Rail Transportation Occurrences and the identification and implementation of associated remedial actions. Contracting Authority oversight of investigations of Rail Transportation Occurrences may include:
  - (i) a review of whether any changes are needed to the Project Co investigation;
  - (ii) a review of whether any changes are needed to the Project Co Safety Management System, Project Co Safety Incident Management and Investigation Plan, or Project Safety Requirements; and
  - (iii) the identification of new or emerging Hazards or Risks and necessary amendments to the Project Co Safety Management System.
- (b) With respect to a Rail Transportation Occurrence, Contracting Authority may, in its sole discretion,
  - (i) require a joint investigation by Project Co and the Contracting Authority;
  - (ii) conduct its own investigation in parallel with Project Co's investigation; or

- (iii) invite a third party to participate in the investigation or to conduct an independent investigation.
- (c) Other than investigations led by another Governmental Authority, Contracting Authority shall lead and be the primary point of contact for all investigations related to all Rail Transportation Occurrences involving:
  - (i) the Transportation Safety Board;
  - (ii) the Adjacent Railway Systems; or
  - (iii) an allegation of criminal activity.
- (d) Project Co acknowledges and agrees that Contracting Authority may, in its sole discretion subject only to Section 40.4 (*Certain Voluntary Disclosures*) of the Project Agreement, share information, of any kind whatsoever, with respect to any Rail Transportation Occurrence, whether compiled by Project Co, or Contracting Authority, with the Transportation Safety Board or any Third Party Operator.

## 5.6 Process for Identifying Safety Concerns

- (a) Project Co shall, on an ongoing and regular basis throughout the Project Term, conduct analyses of the Works to identify safety concerns, including any trends, emerging trends regarding Hazards or Risks, or repetitive situations that result in Hazards or Risks.
- (b) The Project Co SMS Software Solution shall serve as a central repository for all information and analyses related to all Rail Transportation Occurrences, safety concerns and any data from safety monitoring technologies.

## 5.7 Risk Assessment Process

- (a) As part of the Project Co Safety Management System, with respect to the safety concerns identified by Project Co in Section 5.6, Project Co shall identify all Hazards, and analyze and evaluate, through a Risk Assessment process, all technical, operational, and organizational Risks related to the Works, including those arising from human and organizational factors, including workload, job design, fatigue, suitability of procedures, and the activities of third parties.
- (b) The Risk Assessment process shall conform to the CMREA and shall include the following considerations:
  - (i) past similar Safety Incidents, including Emergencies and their causes;
  - (ii) potential Emergency situations;
  - (iii) people, including consideration of the activities of Project Co Parties and members of the public; and
  - (iv) changes in the knowledge of, and information about, Hazards.
- (c) The Project Co Safety Management System shall,

- (i) identify the conditions and work activities that trigger a Risk Evaluation and Risk Assessment process;
  - (ii) identify and evaluate the potential Hazards, Risks, causes and consequences, supported by a consistent Risk ranking matrix;
  - (iii) apply intervention actions (i.e. elimination, reduction, isolation, or containment) to remove the cause of each Hazard and apply controls to minimise the consequence of the Hazard;
  - (iv) establish a suite of generic job safety Risk Evaluation and Risk Assessment forms to support the day to day safe undertaking of routine activities in the Works; and
  - (v) identify all tasks and activity-specific Hazards and Risks that require specialist training, certification or personal protective equipment.
- (d) Project Co shall ensure that all Project Co Parties, Third Party Operators and Contracting Authority Parties are provided with access to all Hazard Records/Logs developed in accordance with the CMREA in order to:
- (i) facilitate awareness of Hazards associated with the new or modified assets;
  - (ii) inform relevant personnel of any changes required to worker competency requirements; and
  - (iii) enable review of safe working practices.
- (e) Project Co shall ensure that the Hazard Record/Logs are kept up to date and reflect any changes associated with the Works.

## 5.8 Process for Remedial Actions

- (a) The Project Co Safety Management System shall include a process for selecting, implementing and evaluating any remedial action to be implemented with respect to Risks and Hazards that are identified as part of the Risk Assessment process undertaken in accordance with Section 5.7.
- (b) Project Co shall follow the hierarchy of controls described in ISO 45001, depending on the type of work requiring remedial action, when selecting and implementing remedial actions in accordance with Section 5.8(a).
- (c) The Project Co Safety Management System shall include a plan for consultation with Project Co Parties and Contracting Authority Parties, in the event that such parties are affected by the Risks and Hazards for which the remedial action is being implemented. The consultation plan shall include the following:
  - (i) the mechanisms, time, training and resources necessary for consultation and participation;
  - (ii) identification of obstacles or barriers to participation, and the steps that Project Co and Project Co Parties shall take to remove such obstacles or barriers to participation

and to minimize the effect of those obstacles and barriers that cannot be removed;  
and

- (iii) the way in which Project Co Parties, Third Party Operators and Contracting Authority Parties can participate in selecting and evaluating remedial actions with respect to Risks and Hazards and participate in determining their effective implementation and use.

## 5.9 Process for Establishing Targets and Developing Initiatives

### 5.9.1 Common Safety Indicators Reporting

- (a) As part of the Project Co Safety Management System, Project Co shall, no later than sixty (60) days following Substantial Completion and thereafter throughout the Project Term on a monthly basis, prepare and submit to the Contracting Authority a monthly report on the common safety indicators described in Sections 5.9.1(a) to 5.9.3 Common Safety Indicators relating to accidents (collectively, the “**Common Safety Indicators**”)
- (b) Project Co shall report on the following types of incidents when related to the Works, or involving the Project Co Infrastructure, in accordance with this Section 5.9.1(a):
  - (i) incidents involving fixed and mobile plant;
  - (ii) collisions of Trains and Maintenance Vehicles with Project Co Infrastructure;
  - (iii) hot work;
  - (iv) incidents involving material or equipment being moved into, through, or off of the Site;
  - (v) incidents involving people working at heights; and
  - (vi) any other type of incident not covered by Sections 5.9.1(b)(i) to 5.9.1(b)(iv), including any Rail Transportation Occurrence.
- (c) For the incidents set out in Section 5.9.1(b), Project Co shall report on,
  - (i) the total number of incidents;
  - (ii) the total number of incidents relative to appropriate normalization statistics, including the total number of staff hours worked; and
  - (iii) the trend in incidents over time.
- (d) Each significant incident listed in Section 5.9.1(b) shall be reported under the type of the incident that occurs first in time, even if the consequences of a subsequent incident(s) are more severe (for example, a derailment followed by a fire).
- (e) Project Co shall organize the incident report set out in Section 5.9.1(b) into the following categories:
  - (i) employee or contractor;

- (ii) trespasser;
- (iii) other person at a Platform;
- (iv) other person not at a Platform;
- (v) vehicle at a Platform; and
- (vi) vehicle not at a Platform.

#### 5.9.2 Common Safety Indicators Relating to Precursors of Accidents

- (a) Project Co shall report on the number of precursors to accidents in accordance with this Section 5.9.2, as organized into the following categories:
  - (i) trespassing;
  - (ii) vandalism; and
  - (iii) other precursors to accidents.
- (b) Project Co shall report on all precursors set out in Section 5.9.2(a), whether or not they actually result in accidents.
- (c) For the precursors set out in Section 5.9.2(a), Project Co shall report on the total number of incidents.

#### 5.9.3 Common Safety Indicators Relating to Fatalities and Serious Injuries

- (a) Project Co shall report on total fatalities and Serious Injuries, as organized in the following categories:
  - (i) Fatalities,
    - (A) caused by,
      - (I) contact with object or person;
      - (II) slips, trips and falls;
      - (III) electric shocks;
      - (IV) natural causes; and
    - (B) occurring,
      - (I) on the guideway;
      - (II) in Station;
      - (III) in any other location on one of the Project Co sites;

- (ii) Serious Injuries.
  - (A) With the same breakdown as in 5.9.3(a)(i).
- (iii) other assaults and abuses;
- (iv) slips, trips and falls occurring on,
  - (A) escalators;
  - (B) stairs;
  - (C) flat surfaces;
- (v) electric shocks; and
- (b) For the fatalities and Serious Injuries set out in Section 5.9.3(a), Project Co shall report on the total number of accidents.

#### 5.9.4 Additional Safety Performance Reporting

- (a) In addition to the Common Safety Indicators, Project Co shall develop and record, in the Project Co Safety Management System, additional safety performance indicators as required to meet RSSOM Project Co's own objectives and requirements and to demonstrate improvements to items tracked in RSSOM Project Co's annual safety performance plan (the "**Additional Safety Performance Indicators**").
- (b) Project Co shall ensure that the Additional Safety Performance Indicators take into account Applicable Law and the Project Safety Requirements and are,
  - (i) consistent with the Safety Policy;
  - (ii) consistent with Good Industry Practice;
  - (iii) linked to priority Risks that influence Project Co's safety performance;
  - (iv) measurable;
  - (v) reviewed with respect to their achievement and revised as appropriate; and
  - (vi) communicated across Project Co including to employees and contractors of Project Co and Project Co Parties.

#### 5.9.5 Establishing Targets and Continuous Improvement Initiatives

- (a) Project Co shall report on and establish safety targets for the Common Safety Indicators, taking into account the results of previous years' analyses of Common Safety Indicators.
- (b) Project Co shall develop initiatives to achieve each safety target and shall include in the Project Co Safety Management System a detailed description of each initiative to be implemented to achieve each safety target.

- (c) Project Co shall ensure that the safety targets for the Common Safety Indicators and the initiatives to achieve them are communicated to all Project Co Parties.

#### **5.10 Process for Reporting Contraventions and Hazards**

- (a) Project Co shall include in the Project Co Safety Management System a procedure for enabling Project Co and Project Co Parties to report to the Contracting Authority any Rail Transportation Occurrences, Risks, Hazards, opportunities for safety improvements, or any non-conformances with the Project Safety Requirements (the “**Internal Safety Reporting Procedure**”).
- (b) Project Co shall ensure that the Internal Safety Reporting Procedure has been developed in consultation with Project Co Parties, meets or exceeds Good Industry Practice, and has been communicated to all Project Co Parties.
- (c) Project Co shall ensure that the Safety Policy includes provisions to protect Project Co and Project Co Parties from reprisals when reporting any Rail Transportation Occurrences, Risks, Hazards, opportunities for safety improvements, or any non-conformance with the Project Safety Requirements.
- (d) The Safety Policy shall include provisions to allow for confidential reporting of safety concerns including Hazards, Risks, opportunities for safety improvements, or any non-conformance with Project Safety Requirements.

#### **5.11 Process for Managing Knowledge**

##### **5.11.1 List of Duties, Positions, Skills and Qualifications**

- (a) Project Co and Project Co Parties shall establish a list of duties, positions and competencies setting out the following:
- (i) the duties that are essential to the safe performance of the Works;
  - (ii) the positions that have responsibility for the performance of each duty; and
  - (iii) the mandatory competencies, including the training, skills, accreditations and certifications, qualifications, and experience required to perform each duty safely.

##### **5.11.2 Competencies, Skills, Qualifications and Experience**

- (a) Project Co shall establish processes to demonstrate that all Project Co and Project Co Parties have the mandatory competencies, including the training, skills, accreditations and certifications, qualifications and experience to perform the duties set out in Section 5.11.1(a) safely.
- (b) Project Co shall provide job descriptions to each Project Co Party fulfilling a duty set out in Section 5.11.1(a)(i), which shall as a minimum,
- (i) define the role, responsibilities, and accountabilities for the position; and
  - (ii) define the mandatory competencies for the position.

**5.11.3 Plan and Methods for Ensuring Competencies, Skills, Qualifications and Experience**

- (a) Project Co shall include in the Project Co Safety Management System a plan for ensuring that each Project Co Party performing a duty set out in Section 5.11.1(a) has the requisite competencies, including skills, qualifications and experience to perform the duties, including the method by which Project Co will verify that Project Co Parties have the adequate competencies, including knowledge, skills, qualifications and experience, to fulfill their duties safely and the supervisory or oversight roles for each such duty in accordance with this Section 5.11.3.
- (b) If applicable, Project Co shall take actions to acquire and maintain the necessary competence for the duties set out in Section 5.11.1(a), including provision of training, mentoring, reassignment of personnel, or the hiring or contracting of competent persons, and Project Co shall evaluate the effectiveness of any such actions taken.
- (c) Project Co shall ensure that the competence of each Project Co Party performing a duty set out in Section 5.11.1(a) is maintained by ensuring that each such Project Co Party has sufficient practice in the field, knowledge and skill required to safely perform their duties. Project Co shall arrange for specific training for individual workers fulfilling the duties set out in Section 5.11.1(a) in circumstances where there has been a long absence from work.
- (d) Project Co shall retain reasonable documented information as evidence of competence for each worker performing any of the duties set out in Section 5.11.1(a) for the Project Term.
- (e) The processes set out in Section 5.11.2(a) shall include the control of visitors on the Project Co infrastructure and sites to ensure that all safety procedures for the areas being visited are understood and followed.
- (f) Project Co shall develop and implement a safety training program as part of the Project Co Safety Management System for individuals involved in the performance of any of the duties set out in Section 5.11.1(a)(i) (the “**Project Co Safety Training Program**”). The Project Co Safety Training Program shall,
- (i) take into account,
    - (A) the requisite skills and knowledge required for an individual to be able to safely perform his or her duties; and
    - (B) the requirement for experiential learning to ensure that an individual is able to safely perform his or her duties;
  - (ii) provide ongoing training and periodic update of existing competencies throughout the Project Term;
  - (iii) provide specific training in parts of the Project Co Safety Management System that are relevant to the individual(s) receiving the training throughout the Project Term; and
  - (iv) incorporate the Metrolinx Personal Track Safety Program, as amended from time to time, for all Project Co Parties working on or adjacent to Metrolinx Territory.



- (g) Project Co shall ensure that the Project Co Safety Training Program,
  - (i) is delivered according to the identified competency requirements and individual needs of the staff;
  - (ii) ensures that staff can operate under all working conditions (normal, and emergency) as applicable;
  - (iii) is of a duration and includes refresher training at a frequency that is appropriate for the Project Co Safety Training Program objectives; and
  - (iv) is regularly reviewed, audited and updated as required to reflect changes in duties, Project Safety Requirements, or recommendations resulting from reviews and audits and to meet or exceed Good Industry Practice.
- (h) Project Co shall keep individual worker training records of worker training that is completed under the Project Co Safety Training Program.

#### 5.11.4 Knowledge Communication

- (a) Project Co shall provide all Project Co Party staff and safety management personnel on the Site with an induction briefing to the Project Co Safety Management System (each a “**Safety Induction Briefing**”).
- (b) The Safety Induction Briefing shall be carried out prior to the commencement of work, and a written confirmation shall be signed by the participant in the Safety Induction Briefing to acknowledge receipt of the Safety Induction Briefing and the content therein. The Safety Induction Briefing shall include the following topics:
  - (i) the Safety Policy;
  - (ii) the Project Co Safety Management System, the Project Safety Requirements and any other standards or documents that may affect railway safety and that Project Co Parties need to know in order to carry out their duties safely;
  - (iii) the contribution of Project Co Parties to the effectiveness of the Project Co Safety Management System, including,
    - (A) the relevance, importance and consequences of their activities;
    - (B) how the Project Co Parties contribute to the correct application and effectiveness of the Project Co Safety Management System; and
    - (C) the benefits of improved safety performance;
  - (iv) the implications and potential consequences of not conforming to the Project Co Safety Management System requirements;
  - (v) Rail Transportation Occurrences and Safety Incidents and the outcomes of investigations that are relevant to the participants;

- (vi) Hazards, Risks and actions that are relevant to the participants;
  - (vii) the process for reporting Hazards and Safety Incidents;
  - (viii) the importance of and processes for maintaining and replacing safety equipment and personal protective equipment where required; and
  - (ix) the right of Project Co Parties to be informed of and remove themselves from work situations that they consider present an imminent and serious danger to their life or health, as well as the Project Co arrangements for protecting them from undue consequences for doing so.
- (c) Project Co shall provide all Project Co Parties with the investigation findings of Rail Transportation Occurrences that could impact on the competency and training requirements of any Project Co Party.

## 5.12 Process with Respect to Scheduling

- (a) The Project Co Safety Management System shall include a process for scheduling work of Project Co Parties that includes the requirement to consider principles of fatigue science, except when scheduling work of Project Co Parties during an Emergency related to the safe execution of the Works.
- (b) Project Co shall develop a fatigue management plan that meets or exceed Good Industry Practice (the “**Project Co Fatigue Management Plan**”).

## 5.13 Process for Continual Improvement of Project Co Safety Management System

### 5.13.1 Project Co Safety Management System Audit Requirements

- (a) The Project Co Safety Management System shall include an audit plan that details all audits that shall be undertaken by Project Co and the Independent Safety Assessor to monitor and continuously improve the Project Co Safety Management System (the “**SMS Audit Plan**”). The SMS Audit Plan shall include a description that defines the types of audits to be undertaken, and for each type of audit,
  - (i) the frequency of the audit;
  - (ii) the method to be followed for carrying out the audit;
  - (iii) the responsibilities of Project Co and Project Co Parties for the audit;
  - (iv) the consultation processes that will be used as part of the audit process;
  - (v) planning requirements for the audit;
  - (vi) reporting requirements for the audit;
  - (vii) how the results of previous audits shall be considered in the audit process;

- (viii) the audit criteria and scope, which shall include auditing of compliance with the CMREA;
  - (ix) the selection process for auditors to ensure objectivity and the impartiality of the audit process;
  - (x) the communication process to ensure that results of the audit are reported to relevant managers, workers, and other relevant interested persons as required;
  - (xi) the process to verify the implementation of any Corrective Action or improvement measures taken as a result of the audit process; and
  - (xii) the process to verify the effectiveness of any Corrective Action or improvement measures taken as a result of the audit process.
- (b) Project Co shall audit at least one Project Co Safety Management System Component each month and shall audit the entire Project Co Safety Management System annually throughout the Project Term (each, a “**Project Co Internal Audit**”). Project Co shall submit the results of each Project Co Internal Audit (the “**Project Co Internal Audit Report**”), including any Corrective Actions taken or planned in respect to a Project Co Internal Audit, to the Contracting Authority no later than thirty (30) days following completion of the Project Co Internal Audit.
- (c) Project Co shall engage an Independent Safety Assessor to undertake an independent audit of the Project Co Safety Management System annually throughout the Project Term (each, an “**Independent SMS Audit**”). The Independent SMS Audit shall, at a minimum:
- (i) assess the extent to which the processes and procedures in the Project Co Safety Management System are being correctly applied;
  - (ii) evaluate the effectiveness of the processes and procedures in the Project Co Safety Management System;
  - (iii) evaluate the extent to which the Project Co Safety Management System conforms to the requirements of this Schedule 29; and
  - (iv) identify any corrective measures, as appropriate, to address non-conformance or issues identified in the application or effectiveness of the Project Co Safety Management System.
- (d) The results of the Independent SMS Audit shall be submitted to the Contracting Authority no later than thirty (30) days following completion of the Independent SMS Audit in the form of an audit report (each, an “**SMS Independent Audit Report**”). The System Safety Officer shall sign each SMS Independent Audit Report to attest to his or her acceptance of the SMS Independent Audit Report prior to its submission to the Contracting Authority.
- (e) Project Co acknowledges and agrees that Contracting Authority may, from time to time and in its sole discretion, carry out audits of the Project Co Safety Management System itself or through a third party at any time and without Notice (each, an “**SMS Contracting Authority Audit**”). In the event that Contracting Authority undertakes a SMS Contracting Authority Audit, Project Co shall, in good faith, provide all information and assistance as

may be requested by Contracting Authority or by the third party undertaking the SMS Contracting Authority Audit.

#### 5.13.2 Action Plan Following SMS Audits

- (a) Subject to a determination made by the Contracting Authority with respect to an Independent SMS Audit in accordance with Section 5.13.1(c), Project Co shall,
- (i) rectify all deficiencies identified in any of the audits set out in Section 5.13.1 (each, an “**SMS Audit**”) or in any audit report set out in Section 5.13.1 (each, an “**SMS Audit Report**”);
  - (ii) address and comply with all results and recommendations arising out of any SMS Audit and any SMS Audit Report; and
  - (iii) update the Project Co Safety Management System to ensure that Project Co complies with this Section 5.13.2(a).
- (b) Project Co may submit a request to the Contracting Authority that,
- (i) identifies a deficiency, result or recommendation arising out of an Independent SMS Audit or SMS Independent Audit Report that Project Co has determined is not necessary for Project Co to address in order for Project Co to comply with its obligations under the Project Agreement; and
  - (ii) sets out a detailed reason for the Project Co determination set out in Section 5.13.2(b)(i).
- (c) The Contracting Authority shall review the request submitted by Project Co in accordance with Section 5.13.2(b) and shall, in its sole discretion, make a determination as to whether or not Project Co is required to address the Project Co identified deficiency, result or recommendation arising out of an Independent SMS Audit or SMS Independent Audit Report. Project Co shall comply with any determination made by the Contracting Authority in accordance with this Section 5.13.2(c).
- (d) Project Co shall prepare a report (the “**SMS Action Plan Report**”) that sets out, in detail, the actions to be taken by Project Co to comply with its obligations as set out in Sections 5.13.2(a) and 5.13.2(c). The SMS Action Plan Report shall be signed by the System Safety Officer to acknowledge approval of the SMS Action Plan Report. The SMS Action Plan Report shall be submitted to the Contracting Authority no later than thirty (30) days after submission of an SMS Audit Report.

### 5.14 Continual Improvement of Safety Culture

#### 5.14.1 Continual Improvement of Safety Culture

- (a) Project Co shall ensure a positive safety culture across Project Co and all Project Co Parties, including through proactive measures to achieve the following:
- (i) a shared awareness among Project Co and Project Co Parties of the most important Occupational Health and Safety Risks;

- (ii) development of a suite of Life Saving Rules to define the safety culture approach for Project Co and Project Co Parties;
- (iii) an interrogative approach to safety with a shared awareness that Occupational Health and Safety Risk is never completely under control;
- (iv) an integrated approach to safety that ensures that all Project Co and Project Co Parties are involved;
- (v) a balanced approach to safety that balances “safety by the rules” and “safety by taking initiative”;
- (vi) a holistic approach to safety that always considers technical factors, human factors, and organizational factors;
- (vii) a highly-visible and proactive approach to safety leadership; and
- (viii) an explicitly transparent, fair and non-retaliatory approach to:
  - (A) enforcing compliance with safety-related principles and requirements;
  - (B) reporting of unsafe situations and all Rail Transportation Occurrences;
  - (C) investigating unsafe situations and all Rail Transportation Occurrences; and
  - (D) auditing of the Project Co Safety Management System.
- (b) Project Co shall engage a third party approved by the Contracting Authority to conduct a survey of its safety culture on an annual basis throughout the Project Term (each, an “**Annual Safety Culture Survey**”). Each Annual Safety Culture Survey shall be administered to all employees and contractors of Project Co and Project Co Parties.
- (c) Project Co shall conduct the first Annual Safety Culture Survey (the “**Baseline Safety Culture Survey**”) no later than six months following Commercial Close. Project Co shall develop and submit the proposed methodology, format, and questions of the Baseline Safety Culture Survey and the plan for communicating the survey and the results of the survey with employees and contractors of Project Co and Project Co Parties to the Contracting Authority for approval, in its sole discretion, no later than two months in advance of the Baseline Safety Culture Survey being administered.
- (d) Each subsequent Annual Safety Culture Survey shall be conducted annually unless otherwise directed by Contracting Authority to conduct such survey less frequently. The content of the Annual Safety Culture Survey shall be submitted to the Contracting Authority no later than thirty (30) days prior to the Annual Safety Culture Survey being administered. Project Co shall adjust the methodology and questions of the Annual Safety Culture Survey based on the comments provided by the Contracting Authority and to align with Good Industry Practice.

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- (e) The methodology, format, and questions of the Annual Safety Culture Survey shall not change in years subsequent to the Baseline Safety Culture Survey without prior approval from the Contracting Authority, acting reasonably.
  - (f) Project Co shall submit the results of the Annual Safety Culture Survey and Project Co's analysis of the results (each, an "**Annual Safety Culture Survey Report**") to the Contracting Authority. Project Co shall develop and submit the Annual Safety Culture Survey Report to the Contracting Authority no later than thirty (30) days following the completion of the applicable Annual Safety Culture Survey.
  - (g) Project Co shall provide a remedial action plan (each, a "**Safety Culture Survey Remedial Plan**") to the Contracting Authority. The Safety Culture Survey Remedial Plan shall identify and describe all remedial actions that are required in order to address all areas in which the results of the Annual Safety Culture Survey are:
    - (i) below the endorsed acceptable level as defined in the Annual Safety Culture Survey methodology;
    - (ii) below the average of the Baseline Safety Culture Survey, for all surveys following the Baseline Safety Culture Survey;
    - (iii) below the average of the immediately previous Annual Safety Culture Survey; or
    - (iv) determined by the Contracting Authority, acting reasonably, to be of concern.
  - (h) Project Co shall develop and submit each Safety Culture Survey Remedial Plan to the Contracting Authority no later than forty-five (45) days following the completion of the applicable Annual Safety Culture Survey Report.

## 6. SAFETY AND SYSTEM ASSURANCE

### 6.1 General

- (a) Project Co shall carry out its safety assurance obligations as set out in this Section 6 to demonstrate that,
- (i) the Works have been thoroughly reviewed, demonstrated, safely inspected and tested at all system levels throughout the lifecycle, and are capable of being operated and maintained safely as a fully integrated system;
  - (ii) the Works has achieved an acceptable level of safety and the Works, as an aggregate, function safely on an integrated basis; and
  - (iii) all elements are able to support vital, safety critical and safety related functions in normal, degraded, abnormal and emergency modes.
- (b) For the purposes of complying with its safety assurance obligations set out in this Section 6 and as an initial matter, RSSOM Project Co, in coordination with Project Co and North Civil Project Co, shall establish a System Definition that shall be used by Project Co for the purposes of applying the CMREA (for modifications of existing railways, subways and LRTs) and EN 50126-1 and EN 50126-2 (for the Ontario Line Subway System), and for developing RSSOM Project Co's System Assurance Submissions as set out in Section 6.5.
- (c) Project Co shall provide input as required by RSSOM Project Co, in accordance with the System Assurance Submissions Plan and Section 6.5.1(a), to enable RSSOM Project Co to submit to the Contracting Authority a series of System Assurance Submissions for each System that comprises the Works. As further detailed in Section 6.5, the System Assurance Submissions are,
- (i) comprised of the following submission stages that collectively represent the lifecycle of the Project and include the design stage, construction stage, testing and commission stage, and operations stage of the Project:
    - (A) "Approval in Principle Safety Submissions";
    - (B) "System Design Safety Submissions";
    - (C) "Consent to Construct Safety Submissions";
    - (D) "Consent to Test Safety Submissions"; and
    - (E) "Consent to Operate System Safety Submissions"; and
  - (ii) for the purpose of demonstrating to Contracting Authority and RSSOM Project Co that Project Co has met the safety assurance obligations and has achieved RAMS in accordance with the requirements of EN 50126-1.
- (d) As part of each System Assurance Submission, Project Co shall provide input to RSSOM Project Co, as required and agreed in the SSSIC, to submit an Engineering Safety and

Assurance Case and a Project Co ISA ESAC Report for approval by the Contracting Authority, in accordance with Section 6.8.

- (e) Project Co must receive approval from Contracting Authority for all items pertaining to the Works in each System Assurance Submission (including its corresponding Engineering Safety and Assurance Case) before Project Co is permitted to commence the work contemplated in that System Assurance Submission.
- (f) Project Co shall not,
  - (i) commence detailed design work for any “System” until the Contracting Authority has received and approved all Approval in Principle Safety Submissions and System Design Safety Submissions related to that “System” as set out in the System Assurance Submissions Plan unless the Contracting Authority has issued a written derogation to the requirements of this Section 6.1(f)(i) setting out alternative arrangements for commencement of detailed design at Project Co’s risk, in parallel with an Approval in Principle Safety Submission or a System Design Safety Submission to the Contracting Authority;
  - (ii) commence construction of any “System” until the Contracting Authority has received and approved all Consent to Construct Safety Submissions related to that “System” as set out in the System Assurance Submissions Plan;
  - (iii) commence commissioning or testing of any “System” until the Contracting Authority has received and approved all Consent to Test Safety Submissions related to that “System” as set out in the System Assurance Submissions Plan; or
  - (iv) commence operations of any “System” until the Contracting Authority has received and approved all Consent to Operate System Safety Submissions related to that “System” as set out in the System Assurance Submissions Plan.
- (g) For clarity,
  - (i) Project Co shall not implement any proposed change to Adjacent Railway Systems infrastructure unless and until Project Co has applied the CMREA, in accordance with Section 6.6, to the proposed change and has complied with all other Project Co obligations as set out in Section 6 with respect to the proposed change; and
  - (ii) Project Co shall apply the CMREA in accordance with Section 6.6 to any proposed change that is embedded in any “System” described in a System Assurance Submission prior to making a System Assurance Submission for that System.

## 6.2 System Safety Officer and Safety Officers

- (a) Project Co shall appoint the System Safety Officer who shall be responsible for the overall safety of the Works and who will be Project Co’s contact for all communications with the Chief Safety Officer, Contracting Authority, the North Civil Project Co System Safety Officer, Project Co ISA and Contracting Authority ISA, and others on safety matters related to the Works.



- (b) The System Safety Officer shall,
  - (i) have extensive experience in the field of system safety applied in a metro type rail transit environment, in an equivalent position in Canada;
  - (ii) be responsible for supporting the Chief Safety Officer in the overall safety certification of the Ontario Line Subway, and
  - (iii) be responsible for the delivery of all aspects of the Project Co a safety management function including safety assessment and RAMS.
- (c) RSSOM Project Co shall appoint the Chief Safety Officer who shall be responsible for the overall safety of the Ontario Line Subway System and who will be RSSOM Project Co's contact for all communications with Contracting Authority, the Safety Officers, Project Co ISA and Contracting Authority ISA, and others on safety matters related to the Ontario Line Subway System.
- (d) North Civil Project Co will appoint the North Civil Project Co System Safety Officer who shall be responsible for the safety of the systems and infrastructure within their project delivery and shall be the point of contact for the Project Co System Safety Officer, the Chief Safety Officer, Contracting Authority and others as necessary in respect of the safety and security certification activities.
- (e) The System Safety Officer shall be responsible for the delivery of all aspects of safety management and system assurance, including safety assessment, RAMS and SIL.
- (f) The System Safety Officer will have experience in the delivery of system safety and assurance in a metro type environment and in the development of a Project Co Safety Management System following all parts of EN 50126, including EN 50126-1 and EN 50126-2.
- (g) Project Co shall provide Contracting Authority with the 24-hour contact information for the System Safety Officer or, in the event that the System Safety Officer is unavailable for reasons for which Contracting Authority has been provided advance in notice, the 24-hour contact information of the individual acting in the stead of the System Safety Officer.

### 6.3 Safety and System Assurance Standards

- (a) For the purpose of applying the Safety and Systems Assurance Standards, the Contracting Authority shall be the "Safety Authority", and RSSOM Project Co shall be the "Railway Duty Holder", as defined in EN 50126-1,
  - (i) except that RSSOM Project Co shall not be entitled to issue or withhold any "safety approvals" within the meaning of EN 50126-1;
  - (ii) except Contracting Authority shall establish:
    - (A) the initial Tolerable Functional Failure Rate or SIL within the meaning of EN 50126-2 (see the Output Specifications for each "System"), and

- (B) the initial RAM targets (see the Output Specifications for each “System”); and
- (iii) except Contracting Authority shall review final RAM figures from RSSOM Project Co.
- (b) Project Co shall provide input to RSSOM Project Co, as required and agreed at the SSSIC, to carry out its safety and system assurance obligations as set out in this Section 6 and in accordance with the following standards:
  - (i) EN 50126-1 Railway Applications - The Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS) Part 1: Generic RAMS process (“EN 50126-1”);
  - (ii) EN 50126-2 Railway Applications - The Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS) Part 2: Systems Approach to Safety (“EN 50126-2”);
  - (iii) EN 50128 Railway applications – Communication, signalling and processing systems – Software for railway control and protection systems (“EN 50128”)
  - (iv) EN 50129 Railway applications – Communication, signalling and processing systems – Safety related electronic systems for signalling (“EN 50129”);
  - (v) EN 50657 Railways Applications. Rolling stock applications. Software on Board Rolling Stock (“EN 50657”); and
  - (vi) EN 50155 Railway applications. Rolling stock. Electronic equipment (“EN 50155”), (collectively, the “**Safety and System Assurance Standards**”).
- (c) Project Co shall carry out its safety and system assurance obligations as set out in this Section 6 and in accordance with the following express document:
  - (i) CMREA.
- (d) Project Co shall comply with most current version of the following standards (collectively, the “**Fire/Life Safety Standards**”) in the development and management of Project Co Infrastructure safety:
  - (i) CAN/ULC-S524 Standard for Installation of Fire Alarm Systems;
  - (ii) CAN/ULC-S561 Standard for Installation and Services for Fire Signal Receiving Centres and Systems;
  - (iii) CSA 22.1 Canadian Electrical Code, Part 1, Safety Standard for Electrical Installations;
  - (iv) NFPA 13 Standard for the Installation of Sprinkler Systems;
  - (v) NFPA-14 Standard for the Installation of Standpipe and Hose Systems;

- (vi) NFPA-130 Standard for Fixed Guideway Transit and Passenger Rail Systems;
  - (vii) NFPA-204 Standard for Smoke and Heat Venting;
  - (viii) NFPA-502 Standard for Road Tunnels, Bridges, and Other Limited Access Highways; and
  - (ix) NFPA-1221 Standard for the Installation, Maintenance and Use of Emergency Services Communications Systems.
- (e) Project Co shall use the following additional standards only in the absence of coverage by the Safety and System Assurance Standards and the Fire/Life Safety Standards (collectively, the “**Supporting Standards**”):
- (i) IEC 61508 Electronic Functional Safety Package;
  - (ii) CLC/TR 50126-3 Railway Applications – The Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS) – Part 3: Guide to the Application of EN 50126-1 for Rolling Stock RAM; and
  - (iii) EN 50121: Railway applications. Electromagnetic compatibility.
- (f) Project Co shall comply with EN 50126-1 and EN 50126-2, each as amended from time to time, for the specification and demonstration of reliability, availability, maintainability and safety (“**RAMS**”) for the purpose of assisting RSSOM Project Co, as required and agreed at the SSSIC, in preparing the System Assurance Submissions and carrying out Project Co’s safety assurance obligations pursuant to this Section 6,
- (i) Project Co shall provide input to RSSOM Project Co, as required and agreed at the SSSIC, to address each lifecycle stage and all requirements associated with such lifecycle stage as set out in EN 50126-1; and
  - (ii) for System Assurance Submissions and safety assurance obligations related to software, Project Co acknowledges and agrees that EN 50128 does not have the same defined lifecycle stages as EN 50126-1, and that Project Co shall comply with all requirements with all lifecycle stages set out in EN 50128 in an equivalent manner to the stages defined in EN 50126-1.
- (g) Project Co shall comply with EN 50128, as amended from time to time, for the specification and demonstration of RAMS for communications, and protection software unless otherwise directed by the Contracting Authority, this shall include tunnel ventilation systems intended for use in tunnel emergency evacuation.
- (h) When applying explicit Risk estimation in accordance with any of the Safety and System Assurance Standards, Project Co shall reduce Risks to as low as reasonably practicable (ALARP), such that the costs of implementing additional Risk reduction measures would be grossly disproportionate to the benefits of Risk reduction that would be achieved.
- (i) Project Co shall reduce all risks to no worse than “Tolerable”, as defined in Table C8 of EN 50126-1, when in accordance with this Section 6.3(h).

- (i) Notwithstanding the Risk estimation required by the Safety and System Assurance Standards, for Construction Activities and Systems and equipment installed at GO Transit facilities, bordering on, or with potential to encroach onto, any GO Transit infrastructure, Project Co shall conduct an additional Risk estimation in accordance with the Metrolinx Risk Assessment Guidance Document.
- (j) The System Safety Officer shall be responsible and accountable for the correct application of and compliance with the Safety and Systems Assurance Standards and the CMREA.
- (k) Project Co acknowledges and agrees that, while the CMREA and the Safety and System Assurance Standards may overlap in some respects, Project Co shall comply with each of the CMREA and Safety and Systems Assurance Standards on a stand-alone basis, and shall produce evidence as may be required by the standards and the requirements of this Section 6 to demonstrate compliance with each of the CMREA and Safety and System Assurance Standards on a stand-alone basis.
- (l) Project Co acknowledges and agrees that the definition of Products as set out in this Schedule 29 is different from and broader than the definition of “Products” as set out in EN 50126-1.
  - (i) Project Co shall comply with the requirements and standards for “Products” set out in EN 50126-1 for all Products as defined in this Schedule 29.
- (m) In case of any conflicts, the Safety and System Assurance Standards and the Fire/Life Safety Standards shall take precedence over the Supporting Standards.

#### **6.4 Finalization of System Safety Plan, System Definition Document and RAM Plan**

- (a) Project Co shall review and provide input to RSSOM Project Co on the finalising and updating of each of the Ontario Line Subway System Safety Plan, Ontario Line Subway System Definition Document, and the Ontario Line Subway System RAM Plan produced by RSSOM Project Co as part of their RFP submission no later than each of the following:
  - (i) the date of Project Co’s submission of each Approval in Principle Safety Submission to the Contracting Authority;
  - (ii) the date of Project Co’s submission of each System Design Safety Submission to the Contracting Authority
  - (iii) the date of Project Co’s submission of each Consent to Construct Safety Submission to the Contracting Authority;
  - (iv) the date of Project Co’s submission of each Consent to Test Safety Submission to the Contracting Authority; and
  - (v) the date of Project Co’s submission of each Consent to Operate System Safety Submission to the Contracting Authority.
- (b) RSSOM Project Co shall ensure that each updated version of the System Safety Plan, System Definition Document, and RAM Plan submitted in accordance with Appendix A

to this Schedule 29 shall reflect the progression of the Works based on what is included in the applicable System Assurance Submission.

- (c) In addition to the submissions set out in Appendix A to this Schedule 29, Project Co shall review and provide input to RSSOM Project Co to submit an updated version of each the System Safety Plan, System Definition Document, and RAM Plan no later than six months following each of the following changes in circumstance:
  - (A) a change in the System Safety Officer, or
  - (B) an amendment to any one component of the Project Safety Requirements.
- (d) Until such time as an updated Ontario Line Subway System Safety Plan, Ontario Line Subway System Definition Document or RAM Plan is approved by the Contracting Authority, in its sole discretion, the then current Ontario Line Subway System Safety Plan, Ontario Line Subway System Definition Document or RAM Plan, as applicable shall continue in force.
- (e) Once the updated Ontario Line Subway System Safety Plan, Ontario Line Subway System Definition Document or RAM Plan, as applicable is approved by the Contracting Authority, in its sole discretion, the updated System Safety Plan, System Definition Document or RAM Plan, as applicable, (subject to any revisions implemented as a result of comments from the Safety Governing Body) shall replace the then current System Safety Plan, System Definition Document or RAM Plan, as applicable (and become the finalized System Safety Plan, System Definition Document or RAM Plan, as applicable, that is in force).
- (f) RSSOM Project Co may propose a revision to the System Safety Plan, System Definition Document or RAM Plan by submitting an updated System Safety Plan, System Definition Document or RAM Plan, as applicable, to the Contracting Authority for review and approval, and Sections 6.4(d) and 6.4(e), shall apply to each updated Project Co Safety Management System submitted by RSSOM Project Co, in accordance with this Section 6.4.

## 6.5 System Assurance Submissions Plan and System Assurance Submissions

### 6.5.1 System Assurance Submissions

- (a) No later than thirty (30) days following Commercial Close, Project Co shall provide technical support and schedule development input to RSSOM Project Co to enable the submission to Contracting Authority for approval of a detailed plan for System Assurance Submissions to be made by RSSOM Project Co that shall include all safety submission documents from Project Co (the “**System Assurance Submissions Plan**”). The System Assurance Submissions Plan shall include, at a minimum,
  - (i) a detailed description of how RSSOM Project Co intends to divide the Works in accordance with the requirements of EN 50126-1 and a detailed description of what each “System” includes and the components of each “System”, all of which shall be consistent with the System Definition Document;

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- (ii) a detailed explanation of how RSSOM Project Co intends to meet its obligations as set out in Sections 6.5.1(b) and 6.5.1(c).
  - (iii) a detailed conformance check against the requirements of EN 50126-1, EN 50126-2, EN 50128 and EN 50129 that demonstrates how RSSOM Project Co has met or intends to meet the requirements of these standards and how Project Co has performed the reconciliation exercise set out in Section 6.3(f)(ii);
  - (iv) a detailed explanation of any interfaces with other safety-related activities, including activities associated with the application of the CMREA;
  - (v) a table setting out,
    - (A) how many of each type of System Assurance Submissions (including the Approval in Principle Safety Submissions, the System Design Safety Submissions, the Consent to Construct Safety Submissions, the Consent to Test Safety Submissions and the Consent to Operate System Safety Submissions as described in Section 6.5.2(a) Project Co intends to submit during the Project Term;
    - (B) the date on which RSSOM Project Co intends to submit each System Assurance Submission, taking into account the requirements of 6.5.1(b) and
    - (C) a summary of the content of each System Assurance Submission, with references to the “Systems” established by RSSOM Project Co; and
  - (vi) an updated version of Table A- 1 of Appendix A to this Schedule 29 that is extrapolated in accordance with the “Systems” established by RSSOM Project Co, and that is consistent with RSSOM Project Co’s planned organization, number and sequence of System Assurance Submissions.
- (b) RSSOM Project Co shall ensure that its planned organization, number and sequencing of System Assurance Submissions, as reflected in the System Assurance Submissions Plan, is consistent with the progression of the Project and takes into account the lifecycle stages described in EN 50126-1, the stages of infrastructure configuration for the Project, and RSSOM Project Co’s progressive assumption of responsibility.
- (i) Project Co shall provide input to the planning of the System Assurance Submissions to ensure that all matters impacting Project Co, or to be delivered by Project Co, are correctly captured and planned.
- (c) RSSOM Project Co shall ensure that,
- (i) the totality of the planned Approval in Principle Safety Submissions, as set out in its System Assurance Submissions Plan, covers each component of the Works;
  - (ii) the totality of the planned System Design Safety Submissions, as set out in its System Assurance Submissions Plan, covers each component of the Works;

- (iii) the totality of the planned Consent to Construct Safety Submissions, as set out in its System Assurance Submissions Plan, covers each component of the Works;
- (iv) the totality of the planned Consent to Test Safety Submissions, as set out in its System Assurance Submissions Plan, covers each component of the Works; and
- (v) the totality of the planned Consent to Operate System Safety Submissions, as set out in its System Assurance Submissions Plan, covers each component of the Works.
- (vi) Project Co shall provide input to the planning of the System Assurance Submissions to ensure that all matters impacting Project Co, or to be delivered by Project Co, are correctly captured and planned.

#### 6.5.2 System Assurance Submissions

- (a) Project Co shall provide input, as required and agreed at the SSSIC to RSSOM Project Co, in accordance with the System Assurance Submissions Plan set out in Section 6.5.1(a), provide the following submissions (each, a “**System Assurance Submission**”) to Contracting Authority for review and approval:
  - (i) one or more submissions for approval in principle, which shall cover all the concept design elements defined in the EN 50126-1 stages 1-3 undertaken by RSSOM Project Co and include, at minimum, the deliverables noted as Approval in Principle Safety Submissions in Table A- 1 of Appendix A to this Schedule 29, including an Engineering Safety and Assurance Case (each, an “**Approval in Principle Safety Submission**”);
  - (ii) one or more submissions for approval to finalize detailed designs, which shall cover system design elements defined in the EN 50126-1 stages 3-5 undertaken by RSSOM Project Co and include, at minimum, the deliverables noted as System Design Safety Submissions in Table A- 1 of Appendix A to this Schedule 29, including an Engineering Safety and Assurance Case (each, a “**System Design Safety Submission**”);
  - (iii) one or more submissions for consent to construct, which shall cover all the detailed design elements in the EN 50126-1 stages 4-6 undertaken by RSSOM Project Co and include, at minimum, the deliverables noted as Consent to Construct Safety Submissions in Table A- 1 of Appendix A to this Schedule 29, including an Engineering Safety and Assurance Case (each, a “**Consent to Construct Safety Submission**”);
  - (iv) one or more submissions for consent to test, which shall cover all the manufacturer and construction elements in the EN 50126-1 stages 6-8 undertaken by RSSOM Project Co and include, at minimum, the deliverables noted as Consent to Test Safety Submissions in Table A- 1 of Appendix A to this Schedule 29, including an Engineering Safety and Assurance Case (each, a “**Consent to Test Safety Submission**”); and
  - (v) one or more submissions for consent to operate systems, which shall cover all testing and commissioning elements in the EN 50126-1 stages 8-10 undertaken by RSSOM

Project Co and include, at minimum, the deliverables noted as Consent to Operate System Safety Submissions in Table A- 1 of Appendix A to this Schedule 29, including an Engineering Safety and Assurance Case (each, a “**Consent to Operate System Safety Submission**”).

- (b) Each System Assurance Submission shall demonstrate RAMS in accordance with the requirements of EN 50126-1.
- (c) Each System Assurance Submission shall be reviewed by the Contracting Authority ISA prior to being submitted to the Contracting Authority for review and approval. The Contracting Authority ISA shall, for each System Assurance Submission, make a recommendation to the Contracting Authority as to whether to approve or reject the System Assurance Submission.
- (d) If the Contracting Authority elects, in its sole discretion, to reject a System Assurance Submission, Project Co shall revise the System Assurance Submission to address the comments and concerns of the Contracting Authority and shall resubmit the System Assurance Submission and any other documentation as may be required by the Contracting Authority in its sole discretion.
- (e) RSSOM Project Co shall report on performance for activities associated with phase 11 of EN 50126-1 in accordance with the requirements of the Project Co Safety Management System and the requirements of Section 6.8.

## 6.6 Application of CMREA

- (a) For the purpose of applying the CMREA to the Works, Project Co shall be the proponent.
- (b) Project Co shall apply the CMREA to development of the Project Co Infrastructure where it impacts, or is impacted by, Adjacent Railway Systems, including:
  - (i) technical changes, including:
    - (A) new or modified assets including fixed infrastructure; and
    - (B) introduction, elimination, or a change of technology; and
  - (ii) organizational changes that could impact the Works or that have the potential to affect safety either directly or indirectly, including:
    - (A) changes to the Project Co Safety Management System; and
    - (B) reorganization affecting Project Co Parties in safety critical roles.
- (c) When applying explicit Risk estimation in accordance with the CMREA, Project Co, working together with RSSOM Project Co, shall reduce Risks to as low as reasonably practicable (ALARP), such that the costs of implementing additional Risk reduction measures would be grossly disproportionate to the benefits of Risk reduction that would be achieved, following the Metrolinx Risk Assessment Guidance Document.



- (d) Project Co may implement a change that is not considered to be a Significant Change in accordance with the CMREA, but that has an impact on safety, provided that Project Co manages the Risk associated with the change in accordance with the Project Co Safety Management System and the Metrolinx Risk Assessment Guidance Document. Project Co shall retain, and share with RSSOM Project Co, documentation of the Risk Management measures taken for changes that are not Significant Changes but that may have an impact on safety.
- (e) The Contracting Authority may at any time require a deliverable under this Section 6 or under the CMREA or any Safety and Systems Assurance Standard to be reviewed by the Project Co ISA or the Contracting Authority ISA, in its sole discretion.
- (f) Project Co shall not implement a Significant Change without a Safety Confirmation issued by the Contracting Authority.
- (g) Project Co acknowledges and agrees that the issuance of a Safety Confirmation by the Contracting Authority does not transfer responsibility or accountability for the change from Project Co to the Contracting Authority.
  - (i) For clarity, Project Co at all times shall remain responsible for such a change.
- (h) RSSOM Project Co, working together with Project Co, shall maintain Hazard Records/Logs during the Project Term in accordance with its Project Co Safety Management System obligations.

## 6.7 Functional Safety

- (a) Project Co shall identify all electrical/electronic/programmable electronic systems that provide Functional Safety as part of the hazard mitigation and risk acceptance process.
- (b) The Contracting Authority has provided a minimum Tolerable Functional Failure Rate (TFFR) or SIL requirement for Safety Functions performed by Systems identified in the Output Specifications.
- (c) Project Co, working together with RSSOM Project Co, shall assess electrical/electronic/programmable electronic systems identified by Project Co, to identify the safety function they perform or are part of performing.
- (d) Tolerable Hazard Rate
  - (i) Project Co shall perform an analysis of Risk Acceptance and Functional Safety to determine the Tolerable Hazard Rate for each system that performs a Safety Function as identified in the hazard mitigation and risk acceptance process.
  - (ii) Project Co shall calculate and determine the final Tolerable Hazard Rate to support their own safety management activities.
- (e) Tolerable Functional Failure Rate
  - (i) Project Co shall perform their own analysis to determine the final Tolerable Functional Failure Rate.

- (ii) Project Co's final Tolerable Functional Failure Rate shall be at least equal to the Tolerable Hazard Rate associated with the occurrence of the hazard.
- (f) Safety Integrity Level
  - (i) Project Co shall derive the SIL from the requirements of the Safety Function along with the Tolerable Hazard Rate determined for the hazard addressed by the Safety Function.
  - (ii) Project Co shall use the Tolerable Functional Failure Rate to directly address the calculation for SIL for each Safety Function.
  - (iii) Project Co's SIL for each Safety Function shall be at least equal to the SIL prescribed by Contracting Authority in the Output Specifications.
- (g) SIL Apportionment Report
  - (i) RSSOM Project Co, working together with Project Co, shall produce a SIL apportionment report covering all functional Systems of the Project Co Infrastructure (the "**SIL Apportionment Report**") as described in Section A.13 of Appendix B to this Schedule 29.
  - (ii) RSSOM Project Co shall use the SSSIC to ensure that:
    - (A) all program participants are providing required analyses in a timely manner; and
    - (B) SIL allocations for Ontario Line Subway, including integration with Project Co and North Civil Project Co, are handled correctly.
  - (iii) RSSOM Project Co shall also produce a SIL Apportionment Report for the Ontario Line Subway.
- (h) Safety and Security Critical Items List
  - (i) Project Co shall jointly develop and maintain with RSSOM Project Co and the North Civil Project Co, a safety and security critical items list (the "**Safety and Security Critical Items List**") as described in Section A.14 of Appendix B to this Schedule 29.
  - (ii) The Safety and Security Critical Items List will feed into the Acceptable Products Register as described in Section 6.9(a).

## 6.8 Engineering Safety and Assurance Cases

- (a) As part of each System Assurance Submission, Project Co shall submit to the Contracting Authority an engineering safety and assurance case (each, an "**Engineering Safety and Assurance Case** or "**ESAC**") for each System in the Project Co infrastructure, that integrates all safety activities, system engineering lifecycle stage activities including RAMS analyses, CMREA activities, operational readiness and performance outcomes.

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- (b) Notwithstanding Section 6.8(a) and the requirements set out in Appendix B to this Schedule 29, Project Co shall complete all activities and produce all deliverables required in accordance with the CMREA and the Safety and Systems Assurance Standards, irrespective of whether such activities or deliverables are formally submitted to Contracting Authority as part of an Engineering Safety and Assurance Case or any other submission set out in this Schedule 29.
- (i) Contracting Authority shall have the right to audit Project Co for, or request evidence from Project Co of, the completion of such activities or deliverables.
- (c) The Engineering Safety and Assurance Case for the Approval in Principle Safety Submissions shall confirm that the proposed concept design for each System conforms to the applicable Safety and Systems Assurance Standards and with the Project Safety Requirements, and shall include:
- (i) an executive summary;
- (ii) the System Definition Document produced by RSSOM Project Co;
- (iii) the System Safety Plan;
- (iv) the report of Hazard Analysis activity produced in accordance with the requirements of Section A.7 of Appendix B to this Schedule 29 (the “**Hazard Analysis Report**”);
- (v) the Hazard Record/Log, produced in accordance with the requirements of Section A.4 of Appendix B to this Schedule 29 (the “**Hazard Record/Log**”);
- (vi) the safety requirements specification, produced by RSSOM Project Co in accordance with the requirements of Section A.5 of Appendix B to this Schedule 29 (the “**Safety Requirements Specification**”);
- (vii) the independent safety assessment plan produced by RSSOM Project Co in accordance with the requirements of EN 50126-1 and Section A.6 of Appendix B to this Schedule 29 (the “**Independent Safety Assessment Plan**”);
- (viii) the report of RAM analysis activity produced in accordance with the requirements of Section A.9 of Appendix B to this Schedule 29 (“**RAM Analysis Report**”);
- (ix) the RAM policy produced by RSSOM Project Co in accordance with the requirements of EN 50126-1 (the “**RAM Policy**”); and
- (x) the RAM Plan produced by RSSOM Project Co in accordance with the requirements of EN 50126-1 (the “**RAM Plan**”).
- (d) Each Engineering Safety and Assurance Case for the System Design Safety Submission, shall include:
- (i) an executive summary;

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- (ii) an updated version of all components comprising the Approval in Principle Safety Submissions required for the System Design Safety Submission as outlined in Table A1 of Appendix A to this Schedule 29;
  - (iii) the System safety case and, where necessary, any relevant safety justification reports in accordance with EN 50126-1, EN 50126-2, EN 50128 and EN 50129 and reports that evidence compliance with the CMREA (the “**System Safety Case**”);
  - (iv) the System RAM status report detailing:
    - (A) Project Co’s quantified RAM targets together with reference to the RAM Plan,
    - (B) the report of the RAM analysis activity;
    - (C) the report of RAM analysis investigation activity; and
    - (D) details of RAM activities completed to date,(collectively, the “**System RAM Status Report**”);
  - (v) an appendix comprised of supporting documents, including:
    - (A) the System Definition Document;
    - (B) the System Safety Plan;
    - (C) the Safety Requirements Specification;
    - (D) the Safety and Security Critical Items List;
    - (E) the Reliability Critical Items List, as outlined in Section A.15 of Appendix B to this Schedule 29;
    - (F) the RAM Plan;
    - (G) the RAM subsystem requirements which apportions the overall RAM specifications to individual subsystems and sets out,
      - (I) reliability requirements (for example, failure rates and mean time between failure);
      - (II) maintainability requirements (for example, mean time to repair); and
      - (III) requirements for fault detection and diagnostics and requirements related to the build process (for example, environmental stress screening),(collectively, the “**RAM Subsystem Requirements**”); and

- (H) the RAM validation plan produced in accordance with the requirements of EN 50126-1 and the requirements of Section A.10 of Appendix B to this Schedule 29 (the “**RAM Validation Plan**”).
- (e) Each Engineering Safety and Assurance Case for the Consent to Construct Safety Submission shall include:
- (i) an updated version of all components comprising the Engineering Safety and Assurance Case for the System Design Safety Submission required for the Consent to Construct Safety Submission as outlined in Table A1 of Appendix A to this Schedule 29; and
  - (ii) an appendix comprised of supporting documents, including the Hazard Analysis Report as outlined in Section A.7 of Appendix B to this Schedule 29.
- (f) Each Engineering Safety and Assurance Case for the Consent to Test Safety Submission shall include:
- (i) an updated version of all components comprising the Engineering Safety and Assurance Case for the Consent to Construct Safety Submission required for the Consent to Test Safety Submission as outlined in Table A1 of Appendix A to this Schedule 29;
  - (ii) an operational readiness report (the “**Operational Readiness Report**”) that includes a summary of,
    - (A) the future operations-related stages associated to the System and commissioning planned; and
    - (B) the status of activities required to ensure operational readiness, including activities related to personnel, training, and equipment; and
  - (iii) an appendix comprised of supporting documents, including the Hazard Record/Log produced in accordance with the requirements of Section A.4 of Appendix B to this Schedule 29; and
  - (iv) the RAM test specification describing the testing that will be carried out to demonstrate system fault detection and diagnosis capabilities, fault injection and testing to eliminate early failures (for example, environmental stress screening, goods inwards inspections and soak testing), maintainability demonstrations, and reliability growth programs (the “**RAM Test Specification**”);
- (g) Each Engineering Safety and Assurance Case for the Consent to Operate System Safety Submission shall include:
- (i) an updated version of all components comprising the Engineering Safety and Assurance Case for the Consent to Test Safety Submission required for the Consent to Operate System Safety Submission as outlined in Table A1 of Appendix A to this Schedule 29;

- (ii) the system performance status report which shall provide a summary of the evidence that the System will meet its performance requirements, including evidence from simulations and system testing (the “**System Performance Status Report**”); and
- (iii) an appendix comprised of supporting documents, including:
  - (A) the Hazard Record/Log produced in accordance with the requirements of Section A.4 of Appendix B to this Schedule 29;
  - (B) the safety validation report produced in accordance with the requirements of EN 50126-1 and the requirements of Section A.8 of Appendix B to this Schedule 29 (the “**Safety Validation Report**”);
  - (C) the RAM validation report produced in accordance with the requirement of EN 50126-1 and the requirements of Section A.11 of Appendix B to this Schedule 29 (the “**RAM Validation Report**”); and
  - (D) the FRACAS report produced in accordance with the requirement of Section A.12 of Appendix B to this Schedule 29 (the “**FRACAS Report**”).
- (h) Each Engineering Safety and Assurance Case shall be reviewed by the Project Co ISA, and the Project Co ISA shall produce an independent safety assessment report for each Engineering Safety and Assurance Case documenting its review of the Engineering Safety and Assurance Case (the “**Project Co ISA ESAC Report**”).
- (i) Project Co shall submit the Project Co ISA ESAC Report with each Engineering Safety and Assurance Case to Contracting Authority.
- (i) Upon receipt by Contracting Authority of the Engineering Safety and Assurance Case and the Project Co ISA ESAC Report, the Contracting Authority ISA shall conduct a review of the Engineering Safety and Assurance Case and the Project Co ISA ESAC Report, and shall submit any requests for clarification to the Project Co ISA no later than five (5) Business Days following the date that the Contracting Authority received the Engineering Safety and Assurance Case and the Project Co ISA ESAC Report.
  - (i) The Project Co ISA shall respond to requests for clarification within five (5) Business Days of receiving a clarification request from the Contracting Authority ISA.
- (j) The Contracting Authority ISA shall, after reviewing the Engineering Safety and Assurance Case and the Project Co ISA ESAC Report and within fifteen (15) Business Days of receiving the Project Co ISA’s responses to its requests for clarification as set out Section 6.8(i), recommend to the Contracting Authority, with documented rationale in the form of a report, whether to approve or refuse to approve the Engineering Safety and Assurance Case (the “**Contracting Authority ISA ESAC Verification Report**”).
- (k) No later than five (5) Business Days after receiving the Contracting Authority ISA ESAC Verification Report, the Contracting Authority shall determine whether to approve or reject the Engineering Safety and Assurance Case.

- (i) Upon approving the Engineering Safety and Assurance Case, the Contracting Authority shall issue a safety confirmation (“**Safety Confirmation**”) to Project Co.
  - (ii) Contracting Authority shall submit the Contracting Authority ISA ESAC Verification Report(s) to the Independent Certifier for their review in determination as to whether Project Co has satisfied the conditions of the applicable Section Substantial Completion, as described in Section 3.1(e) (*Role of The Independent Certifier – Engagement*) of Schedule 6 – Independent Certifier Agreement.
- (l) If the Contracting Authority elects, in its sole discretion, to reject an Engineering Safety and Assurance Case, Project Co shall revise the Engineering Safety and Assurance Case to include changes or additional Safety Measures and shall resubmit the Engineering Safety and Assurance Case and an accompanying Project Co ISA ESAC Report and any other documentation as may be required by the Contracting Authority in its sole discretion.

## 6.9 Product Assurance and Product Acceptance

- (a) No later than ninety (90) days prior to the commencement of Revenue Service, RSSOM Project Co shall build a register of all products that are deployed on Ontario Line Subway that fulfil a vital, safety critical or safety related function (the “**Acceptable Products Register**”) which shall be maintained by RSSOM Project Co throughout the Project Term.
- (i) Project Co shall work together with RSSOM Project Co to build this register and provide input on all products that are deployed in Project Co Infrastructure that fulfil a vital, safety critical or safety related function.
- (b) No later than sixty (60) days prior to the commencement of Revenue Service, RSSOM Project Co shall develop and submit to the Contracting Authority for approval RSSOM Project Co’s proposed process (the “**Product Acceptance Process**”) for introducing new and modified Products to the Ontario Line Subway System during the Project Term.
- (i) Project Co shall work together with RSSOM Project Co to develop this process for all products that are deployed in Project Co Infrastructure that fulfil a vital, safety critical or safety related function.
- (c) The Product Acceptance Process shall be for the purpose of demonstrating to the Contracting Authority that the Products that Project Co, RSSOM Project Co and North Civil Project Co use for the Project are safe, compatible, reliable and fit for purpose.

## 6.10 Fire/Life Safety

- (a) Project Co shall work together with RSSOM Project Co, as required and agreed at the SSSIC, to develop a fire/life safety management plan (the “**Fire/Life Safety Management Plan**”), which shall describe in detail how fire/life safety activities will be coordinated and carried out. The Fire/Life Safety Management Plan shall include:
- (i) management and organisation of the Fire/Life Safety Committee pursuant Section 3.4(e);
  - (ii) review and analysis of codes and standards including the Fire/Life Safety Standards;

- (iii) approach to fire protection;
  - (iv) inter-connection with Interchange Stations (as defined in the Output Specifications); and
  - (v) fire/life safety protocols.
- (b) Project Co shall work together with RSSOM Project Co and North Civil Project Co, as agreed at the SSSIC, in the development of the Fire/Life Safety Management Plan.
- (i) Project Co shall be obliged to adhere to the Fire/Life Safety Management Plan for execution of their Works.
- (c) RSSOM Project Co shall be responsible for:
- (i) Supporting Project Co as required and agreed at the SSSIC in the obtaining of all permits and approvals required for fire detection, alarm and suppression systems for rooms accommodating RSSOM Project Co Infrastructure installed in the Project Co Infrastructure.
    - (A) For clarity, Project Co shall remain responsible for the achieving of all occupancy permits for their Works.
  - (ii) Obtaining all permits and approvals required to operate a Central Fire Alarm Monitoring System (CFAMS) as described in Section 3.1.21.2(h) (*Central Fire Alarm Monitoring System*) of the Output Specifications.
- (d) Project Co shall be responsible for obtaining of all permits and approvals required for fire detection, alarm and suppression systems installed in the Project Co Infrastructure.
- (e) Project Co shall provide input to RSSOM Project Co, as required and agreed at the SSSIC, to document the implementation and execution of the Fire/Life Safety Management Plan in a report (the “**Fire/Life Safety Management Report**”), which shall also document the implementation and execution of the Fire/Life Safety Management Report as it relates to works undertaken by Project Co.
- (f) Project Co shall be responsible for the preparation of the facility fire safety plan for each Facility in accordance with section 2.8 of the Canadian National Fire Code, including:
- (i) assembly of the overall documents;
  - (ii) provision of all drawings and documents showing the type, location and operation of the Facility fire and emergency systems;
  - (iii) provision of section on control of fire hazards;
  - (iv) provision of maintenance of Facilities for the safety of occupants; and
  - (v) provision of section covering alternative methods for the safety of occupants,
- (the “**Facility Fire Safety Plan**”).



- (g) Project Co acknowledges that RSSOM Project Co will provide input, as required and agreed at the SSSIC, which Project Co shall include in the preparation of the Facility Fire Safety Plan, including:
- (i) provision of emergency procedures section;
  - (ii) provision of sections on the training and organisation of supervisory staff, and their duties;
  - (iii) provision of fire drill section;
  - (iv) input to the development of control of fire hazards section;
  - (v) input to the development of the section for maintenance of Facilities for the safety of occupants; and
  - (vi) input to the development of the section covering alternative methods for the safety of occupants.

## **7. OCCUPATIONAL HEALTH AND SAFETY AND CONSTRUCTION SAFETY REQUIREMENTS**

### **7.1 General**

- (a) Project Co shall:
- (i) with respect to the Works, perform and cause one or more Project Co Parties to perform, all of the obligations of the “Constructor”, and indemnify Contracting Authority and “Province Persons” against any and all of the liabilities of the “Constructor”, under the OHSA and all regulations thereto;
  - (ii) provide Contracting Authority with a clearance certificate from the WSIB, or any successor thereto, once every ninety (90) days from Commercial Close until Final Completion, at the request of the Contracting Authority; and
  - (iii) cause the Project to be registered with the MOL by way of Notice of Project, pursuant to Applicable Law, with the purpose of designating Project Co or the Construction Contractor (or a member of the joint venture, if the Construction Contractor is a joint venture, or partner of the partnership, if the Construction Contractor is a partnership) as the “Constructor” for all Works on the Site.
- (b) Project Co shall comply with the following occupational health and safety standards, as amended from time to time:
- (i) ISO Series 6385:2004 Ergonomic principles in the design of work systems;
  - (ii) ISO Series 11064 Ergonomic design of control centres;
  - (iii) ISO Series 9241 Ergonomics of human-system interaction;
  - (iv) ISO Series 10075 Ergonomic principles related to mental work-load;

- (v) ISO 45001:2018 Occupational health and safety management systems – Requirements with guidance for use (“**ISO 45001**”);
  - (vi) all requirements as outlined in the Metrolinx Health and Safety Department Guidance Advice document, dated March 2021, with subject Construction/Public Interface; and
  - (vii) all requirements related to an Emergency Safety Plan as outlined in the Metrolinx MX-STC-STD-001 Temporary Construction and Customer Experience Requirements for GO Facilities,
- (collectively, the “**Occupational Health and Safety Standards**”).

## 7.2 Contractor Site Specific Safety Manual

- (a) As “Constructor” of the Works and the Site under the OHSA and the Project Agreement, Project Co shall prepare a site-specific safety manual (the “**Contractor Site Specific Safety Manual**”) for the Works during the pre-construction phase and prior to setting up a Site for the Works, including:
  - (i) each Station;
  - (ii) each other Site.
- (b) Project Co shall ensure that each Contractor Site Specific Safety Manual complies, at a minimum, with:
  - (i) all applicable requirements of the OHSA, including all regulations thereto;
  - (ii) Good Industry Practice;
  - (iii) all health and safety requirements of the Project Agreement;
  - (iv) the Project Co Safety Management System;
  - (v) the requirements of this Schedule 29, including Appendix C to this Schedule 29;
  - (vi) subject to Section 7.2(c), the Metrolinx Construction Safety Management Program, as at the Technical Reference Date, unless instructed by Contracting Authority.
- (c) Project Co acknowledges and agrees that,
  - (i) the Metrolinx Construction Safety Management Program is provided to Project Co solely to allow Project Co to incorporate any relevant requirements into its Contractor Site Specific Safety Manual given Project Co’s role as “Constructor” of the Works and the Site under the OHSA and the Project Agreement;
  - (ii) provision of the Metrolinx Construction Safety Management Program to Project Co does not constitute provision of a “safety manual” for the Site or control or direction of safety in respect of the Works or at the Site by Contracting Authority;

- (iii) the terms of the Metrolinx Construction Safety Management Program that are applicable to work for which Metrolinx or a third party is responsible for control and direction of safety are not applicable to Project Co under the Project Agreement; and
  - (iv) Project Co shall consider, in the preparation of the Contractor Site Specific Safety Manual, the applicability of the requirements of the Metrolinx Construction Safety Management Program, including those that apply to access control methods, hazardous operations, health and safety enforcement, and internal incident reporting.
- (d) Project Co shall submit each Contractor Site Specific Safety Manual to the Contracting Authority for approval no later than forty-five (45) days prior to the establishment of a Site.
  - (e) The Design Build Director shall assist in preparing each Contractor Site Specific Safety Manual by providing all information that the Design Build Director holds that is relevant to the Contractor Site Specific Safety Manual including pre-construction information obtained from Contracting Authority.
  - (f) Throughout the Project Term, Project Co shall ensure that each Contractor Site Specific Safety Manual is appropriately reviewed, updated and revised from time to time, and at a minimum every twelve (12) months or with each material change in Construction Activity, so that it continues to be sufficient to ensure that Works are carried out, so far as is reasonably practicable, without Risks to health or safety. Project Co shall ensure that the updated and revised Contractor Site Specific Safety Manual is consistent with Good Industry Practice at the time that the revisions and updates are made and that the revisions reflect any changes to practices and processes to prevent recurrence of any historic incidents or identified trends in incidents.
  - (g) Project Co shall:
    - (i) comply with the Contractor Site Specific Safety Manual;
    - (ii) take such measures as are reasonable in accordance with Good Industry Practice to maintain and secure the Site and Lands to prevent access of any persons or creatures not entitled to be there once Project Co has been granted access to the Site and Lands, or has commenced Works; and
    - (iii) maintain Sites in accordance with requirements of Schedule 17 – Environmental Obligations.

### 7.3 Occupational Health and Safety Certification

- (a) Project Co shall obtain and maintain ISO 45001 certification through a body accredited by the Standards Council of Canada or through a body that is a signatory to the International Accreditation Forum Multilateral Recognition Arrangement (“**ISO 45001 Certification**”) in accordance with the requirements in Section 11.25(a) (*COR Certification*) of the Project Agreement.
- (b) Project Co shall obtain and maintain a Certificate of Recognition through the Infrastructure Health and Safety Association in the Province of Ontario in accordance with the requirements in Section 11.25(a) (*COR Certification*) of the Project Agreement.

#### 7.4 Health and Safety Inspections

- (a) Project Co shall perform all health and safety inspections of their facilities, health and safety management systems, and construction vehicles in accordance with the requirements in Section 15 (*Quality Management*) of the Project Agreement.

#### 7.5 Personal Protective Equipment

- (a) Project Co shall prepare and submit to the Contracting Authority, a Project Co personal protective equipment standard (the “**Project Co Personal Protective Equipment Standard**”). The Project Co Personal Protective Equipment Standard shall, at a minimum, comply with the Metrolinx Personal Protective Equipment Standard. Project Co acknowledges and agrees that the Metrolinx Personal Protective Equipment Standard is provided solely for the purpose of incorporating any relevant matters into Project Co’s Contractor Site Specific Safety Manual, and that provision of the Metrolinx Personal Protective Equipment Standard to Project Co does not constitute control or direction of safety of the Works or at the Site by Contracting Authority.
- (b) Project Co shall ensure that any additional requirements for personal protective equipment in the Project Co Personal Protective Equipment Standard is determined by a task-based Risk Assessment.

#### 7.6 Beacons

- (a) With respect to Works performed at a Site within Metrolinx Territory, Project Co shall ensure that all Project Co Parties’ vehicles and equipment meet or exceed the requirements of the Metrolinx Beacon Safety Performance Standard. Project Co Parties’ vehicles and equipment shall be identifiable with company logo(s). Project Co acknowledges and agrees that the Metrolinx Beacon Safety Performance Standard is provided solely for the purpose of incorporating any relevant matters into its Contractor Site Specific Safety Manual and that provision of the Metrolinx Beacon Safety Performance Standard to Project Co does not constitute control or direction of safety of the Works or at the Site by Contracting Authority.

#### 7.7 Fitness for Duty Policy

- (a) Project Co shall comply with the Metrolinx Fitness for Duty Policy, as at the Technical Reference Date, unless instructed by the Contracting Authority. Obligations and requirements applicable to employees in the Metrolinx Fitness for Duty Policy shall be applicable to employees and contractors of Project Co and Project Co Parties.
- (b) No later than thirty (30) days following Commercial Close, Project Co shall prepare and submit to the Contracting Authority for approval, a policy regarding fitness for duty that is consistent with the Metrolinx Fitness for Duty Policy and that shall be applicable to all Project Co Parties (the “**Project Co Fitness for Duty Policy**”).
- (c) Once approved by the Contracting Authority, the Project Co Fitness for Duty Policy shall be included in the Project Co Safety Management System. The Project Co Fitness for Duty Policy shall be reviewed annually and revised as required to be consistent with the Metrolinx Fitness for Duty Policy, pursuant to Section 7.7(a), and Good Industry Practice.

- (d) The Project Co Fitness for Duty Policy shall define appropriate measures to be undertaken for workers following accidents and incidents to ensure physical and psychological fitness for duty.
- (e) Project Co shall provide, for Project Co employees and employees of Project Co Parties, a medical testing program and medical health services including Mental Health First Aid support in accordance with the Metrolinx Fitness for Duty Policy and access to occupational health services, at Project Co's cost and expense.
- (f) Project Co shall define, within the Project Co Fitness for Duty Policy, a drug and alcohol use control regime consistent with the Metrolinx Fitness for Duty Policy.

### 7.8 Safety Training Requirements

- (a) Project Co shall ensure that all persons employed or engaged by Project Co or any Project Co Party receive training and supervision that is necessary to ensure Project Co's performance of this Project Agreement in accordance with its requirements and in compliance with all Project Safety Requirements.
- (b) Project Co shall ensure that all persons successfully complete and be current in the Project Co Safety Training Program, as amended from time to time, prior to accessing a Site.
- (c) Project Co shall maintain records of personnel who have completed the Project Co Safety Training Program and, upon request by Contracting Authority, Project Co shall produce records and training documents for such personnel.
- (d) Project Co shall maintain an up-to-date list of all persons that have completed the Project Co Safety Training Program at the Site and ensure all such persons wear the prescribed visually recognizable mark (for example, a sticker), issued upon successful completion of the Project Co Safety Training Program on a readily visible location on their hardhats.
- (e) Project Co shall ensure that all persons who operate equipment or undertake inspections or any other activities within Metrolinx Territory must hold current CROR certification and any other applicable Metrolinx training certifications, including site specific training.

### 7.9 Safety Reporting Requirements

- (a) Project Co, as "Constructor" of the Works and the Site, under the OHSA and the Project Agreement shall immediately notify Contracting Authority by telephone if any of the following types of events occurs in respect of the Project:
  - (i) any notification of emergency service providers (for example, when 911 is called);
  - (ii) any injury where medical attention is required;
  - (iii) any Critical Injury or death, notifiable under section 51(1) of the OHSA;
  - (iv) any worker's exposure to a hazardous material or designated substance (defined under the OHSA) at any Site;
  - (v) any notification or report to the MOL, MECP, or the WSIB;

- (vi) any visit to the Site by an inspector or other official from the MOL, MECP, or the WSIB;
  - (vii) any Critical Injury to a member of the public;
  - (viii) any event with the potential to affect, or that actually affects, bus operations or adjacent railway systems;
  - (ix) any property damage (including to Metrolinx's property or to any other existing property, infrastructure, adjacent property, motor vehicles, and/or mobile equipment);
  - (x) any Near Miss with high potential for Critical Injury; and
  - (xi) any tunneling related incidents, including collapse of overburden and structural failure irrespective of whether injury actually occurs.
- (b) Subject to Section 7.9(e), Project Co shall submit reports for incidents listed in Section 7.9(a) (including the identification of all root cause(s) and Corrective Action(s)) to the Contracting Authority Representative as follows:
- (i) no later than one hour following any incident, Project Co shall make an initial phone call to the Contracting Authority Representative advising that an incident has occurred and providing an initial situation report;
  - (ii) no later than 24 hours following the incident, Project Co shall provide a written status update to the Contracting Authority Representative that includes a description of,
    - (A) all details of the incident, including immediate causes, that are known by Project Co;
    - (B) all implemented corrective actions that Project Co has taken or plans to take; and
    - (C) all other relevant and time sensitive information which Project Co can reasonably provide at such time, including names of all persons identified as involved in the incident, witness statements from all persons involved in the incident, video and photographic evidence and toxicology results for employees involved in the incident, as available;
  - (iii) no later than 72 hours following the incident (or such longer period of time as the Parties may agree), Project Co shall provide a written Final Incident Report that includes,
    - (A) all investigative information, including root causes;
    - (B) a corrective action plan;
    - (C) training records;

- (D) applicable drawings;
- (E) all applicable field level risk assessments and work plans;
- (F) regulatory body documentation;
- (G) inspection reports;
- (H) maintenance records;
- (I) third party reports;
- (J) equipment testing reports; and
- (K) any other relevant documentation or evidence related to the incident (such as witness statements),

(the “**Final Incident Report**”);

- (iv) no later than five (5) Business Days following receipt of the Final Incident Report (or such other time frame as the Parties may agree), Contracting Authority shall provide comments to Project Co;
  - (v) Project Co shall respond to Contracting Authority’s comments on the Final Incident Report no later than five (5) Business Days after receipt of Contracting Authority’s comments (or such other time frame as the Parties may agree); and
  - (vi) following resolution of any comments on the Final Incident Report provided by Contracting Authority, to Contracting Authority’s reasonable satisfaction, the Project Co Representative shall sign-off on the Final Incident Report and provide a final copy to Contracting Authority.
- (c) Each Final Incident Report shall either be in a form satisfactory to Contracting Authority, in its sole discretion, or in a form provided by Contracting Authority to Project Co from time to time.
  - (d) Project Co, as “Constructor” of the Works and the Site under the OHS Act and the Project Agreement, shall at all times remain responsible for the ways and means of any remedial actions in respect of incidents set out in Section 7.9(a) and reports set out in Section 7.9(b), including remedial actions that arise in response to, or resolve, any comments provided by Contracting Authority in accordance with Sections 7.9(b)(v) and 7.9(b)(vi).
  - (e) Unless otherwise directed by Contracting Authority, Section 7.9(b)(iii) to Section 7.9(b)(vi) shall not apply to the visits set out in Section 7.9(a)(vi).

#### **7.10 Monthly Safety Performance Reporting Requirements**

- (a) Project Co shall provide a written monthly summary to Contracting Authority no later than eight (8) Business Days after the last day of each month containing the information described in this Section 7.10 (each, a “**Monthly Construction Safety Report**”). Each

Monthly Construction Safety Report shall be in a form satisfactory to the Contracting Authority, in its sole discretion, or in a form provided by Contracting Authority to Project Co from time to time. Project Co, as “Constructor” of the Works and the Site under the OHS Act and Project Agreement, shall at times remain responsible for any ways and means of any remedial actions included in any such summaries.

(b) Each Monthly Construction Safety Report shall include the following safety-related performance indicators:

(i) The Lost Time Injury Frequency Rate, which shall be calculated as follows:

$$LTFIR = \frac{LTI}{Hours\ Worked} \times [REDACTED]$$

where:

LTI = number of lost time injuries amongst Project Co staff in the reporting period;

Hours Worked = total hours worked in the reporting period by all Project Co workers;

(ii) The Total Recordable Injury Frequency (TRIF), which shall be calculated as follows:

$$TRIF = \frac{LTS}{Hours\ Worked} \times [REDACTED]$$

where:

LTS = number of recordable injuries or illnesses amongst Project Co staff in the reporting period

Hours Worked = total hours worked in the reporting period by all Project Co, Project Co Parties and Project Co Subcontractors staff;

(iii) The Severity Rate (SR), which shall be calculated as follows:

$$SR = \frac{Total\ numbr\ lot\ work\ days}{Total\ number\ of\ recordable\ incidents}$$

(iv) Ministry of Labour infractions, if any, for the month.

(c) Notwithstanding Section 7.10(b), Project Co shall be required to report on safety performance indicators as prescribed by the Contracting Authority in its sole discretion from time to time.

## 7.11 Safety Work Plans

(a) If Project Co plans to carry out one or more of the following activities with respect to the Works, then Project Co, as “Constructor” of the Works and the Site under the OHS Act and the Project Agreement, shall prepare and submit separate safety work plan(s) to



Contracting Authority in accordance with this Section 7.11, setting out Project Co's plan for management and safety of the Works and the Site for each of the following categories of activities:

- (i) mobilization, demobilization or travel through active and in-service operational facilities or spaces available for public use or access;
- (ii) activities that take place outside of Project Co's enclosed (i.e. hoarded or fenced) space, phase or stage of construction; or
- (iii) activities that occur in the area immediately adjacent to Existing Metrolinx Infrastructure, or any area where the public may use to access, or pass by, Existing Metrolinx Infrastructure or a Metrolinx project site,

(each, a "**Safety Work Plan**"). For clarity, Project Co shall submit a separate Safety Work Plan for each category of activities set out in Sections 7.11(a)(i), 7.11(a)(ii), and 7.11(a)(iii).

- (b) Project Co shall submit each Safety Work Plan to Contracting Authority in accordance with Schedule 10 – Review Procedure no later than fifteen (15) Business Days prior to the commencement of any activity set out in Section 7.11(a).
- (c) All Safety Work Plans shall be submitted using the Work Plan Methodology Template as provided to Project Co by Contracting Authority and shall include all details, attachments and other documents contemplated in the Work Plan Methodology Template. A Safety Work Plan shall be returned Project Co with the comment "RE-SUBMIT" if Contracting Authority determines that it is missing any such details, attachments or other documents.
- (d) For clarity, Project Co shall not be entitled to any Delay Event or Compensation Event with respect to the review of the Safety Work Plan if the Safety Work Plan does not comply with any of the requirements set out in this Section 7.11.

#### 7.12 Safety Stand Down Meeting

- (a) No later than ninety (90) days after Financial Close, and once every ninety (90) days thereafter until Final Completion, or on a date or at a frequency otherwise agreed between Project Co and Contracting Authority until Final Completion, Project Co shall convene a safety meeting (the "**Safety Stand Down Meeting**") with Contracting Authority that will be up to two hours in length and based on an agenda jointly developed by the Parties in accordance with this Section 7.12. Contracting Authority may, acting reasonably, invite additional participants to any Safety Stand Down Meeting.
- (b) Project Co, as "Constructor" of the Works and the Site under the OHS Act and the Project Agreement, shall convene each Safety Stand Down Meeting at a location on the Metrolinx Lands, or at an alternate location approved by Contracting Authority, in its sole discretion.
- (c) Project Co, as "Constructor" of the Works and the Site under the OHS Act and the Project Agreement, shall provide at least thirty (30) days' Notice to the Contracting Authority Representative for each Safety Stand Down Meeting, which shall include the particulars for such meeting, including its location, date, time and number of attendees. Upon

receiving Notice of any such Safety Stand Down Meeting, Contracting Authority shall have the right to:

- (i) request that one or more safety topics be presented at the Safety Stand Down Meeting and may, in its sole discretion, choose to provide certain presentation materials to be used by Project Co in connection therewith; and
  - (ii) request the attendance of specific representatives of Project Co and any Project Co Party working at the Lands at such meeting and, if requested, Project Co shall use reasonable commercial efforts to ensure all such individuals attend.
- (d) Project Co, as “Constructor” of the Works and the Site under the OHSA and the Project Agreement, shall prepare for and participate in, and shall cause all relevant Project Co Parties working at the Site to prepare for and participate in, each Safety Stand Down Meeting, including:
- (i) if such preparation for and participation in the Safety Stand Down Meeting requires Project Co or any Project Co Party to demobilize any part of the Construction Activities, delays the starting of any Works or causes or contributes to any other interruption or stoppage of the Works;
  - (ii) preparing and delivering presentations on any safety topics requested by Contracting Authority and, if and as applicable, delivering any presentation materials provided by Contracting Authority in connection therewith; and
  - (iii) preparing and delivering presentations on one or more safety topics if Contracting Authority has not requested that a particular safety topic be presented.
- (e) Project Co shall provide all labour and materials required for each Safety Stand Down Meeting, including all equipment, furnishings and presentation materials.
- (f) Project Co acknowledges that it could experience a delay, interruption or stoppage of the Works as a result of each Safety Stand Down Meeting, and Project Co agrees that it shall not be eligible for a Delay Event, Compensation Event or any other relief or additional compensation under the Project Agreement as a result of any such meeting.
- (g) No later than five (5) Business Days after the Safety Stand Down Meeting, Project Co, as “constructor” of the Works and the Site under the OHSA and the Project Agreement, shall provide the written minutes and a summary of the meeting (the “**SSDM Summary Report**”) to Contracting Authority for review in accordance with Schedule 10 – Review Procedure. The SSDM Summary Report shall include:
- (i) the date of the meeting;
  - (ii) a list of all attendees at the meeting;
  - (iii) topics discussed at the meeting;
  - (iv) a copy of any presentations delivered at, or materials distributed as part of, the Safety Stand Down Meeting in both native file formats and .pdf format; and

- (v) a copy of evaluation forms provided by Contracting Authority to Project Co as part of the Safety Stand Down Meeting materials that have been filled out by the meeting participants.

### 7.13 Right of Contracting Authority to Inspect Site

- (a) The Contracting Authority or its designate may perform inspections of the Site on a weekly basis or at such other frequency as the Contracting Authority may, in its sole discretion, elect. Such inspections are solely for the purpose of the Contracting Authority ensuring that Project Co is meeting its health and safety obligations under the Project Agreement, and its role as “Constructor” of the Works and the Site under the OHS Act and the Project Agreement, and shall not be for purposes of Contracting Authority controlling the Site, the Works, or health and safety at the Site.

## 8. SECURITY REQUIREMENTS

### 8.1 General

- (a) Project Co shall carry out its security obligations as set out in this Section 8 in order to demonstrate that:
  - (i) the Works have been thoroughly reviewed, demonstrated, inspected and tested at all system levels throughout the lifecycle, and are capable of being operated and maintained as a fully integrated, secure system;
  - (ii) the Works has achieved an acceptable level of security and the Works, as an aggregate, deliver a secure integrated system; and
  - (iii) all elements are able to support security critical and security related functions in normal, degraded and emergency modes.
- (b) Project Co acknowledges and agrees that:
  - (i) the security of System Users is critical and a shared responsibility amongst Project Co, RSSOM Project Co, North Civil Project Co, the Security Provider, the Passenger Interface Provider, and other third parties through their respective responsibilities and activities. For clarity, Project Co is only responsible in respect of the Works;
  - (ii) Project Co is obliged to cooperate with all such parties at all times throughout the Project Term to ensure the security and emergency preparedness of the Ontario Subway Line System and System Users; and
  - (iii) Project Co shall be responsible for security matters related to the Project Co Infrastructure.
- (c) Project Co shall, in accordance with the System Security Submissions Plan and Section 8.5.1, submit to the Contracting Authority a series of System Security Submissions for each System that comprises the Works. As further detailed in Section 8.5, the System Security Submissions are,

- (i) comprised of the following submission stages that collectively represent the lifecycle of the Project and include the design stage, construction stage, testing and commission stage of the Project:
    - (A) “Approval in Principle Security Submissions”;
    - (B) “System Design Security Submissions”;
    - (C) “Consent to Construct Security Submissions”;
    - (D) “Consent to Test Security Submissions”; and
    - (E) “Consent to Operate System Security Submissions”; and
  - (ii) for the purpose of demonstrating to the Contracting Authority that Project Co has met its security assurance obligations.
- (d) Project Co must receive approval from the Contracting Authority for each System Security Submission before Project Co is permitted to commence the work contemplated in that System Security Submission.
- (e) Project Co shall not,
- (i) commence detailed design work for any “System” or “Infrastructure” until the Contracting Authority has received and approved all Approval in Principle Security Submissions and System Design Security Submissions related to that “System” or “Infrastructure” as set out in the System Security Submissions Plan unless the Contracting Authority has issued a written derogation to the requirements of this Section 8.1(e)(i) setting out alternative arrangements for commencement of detailed design at Project Co’s risk, in parallel with an Approval in Principle Security Submission or a System Design Security Submission to the Contracting Authority;
  - (ii) commence construction of any “System” or “Infrastructure” until the Contracting Authority has received and approved all Consent to Construct Security Submissions related to that “System” or “Infrastructure” as set out in the System Security Submissions Plan; or
  - (iii) commence commissioning or testing of any “System” or “Infrastructure” until the Contracting Authority has received and approved all Consent to Test Security Submissions related to that “System” or “Infrastructure” as set out in the System Security Submissions Plan.

## 8.2 System Security Officer and Chief Security Officer

- (a) Project Co shall appoint a System Security Officer who shall be responsible for the overall security of the Works and who will be Project Co’s contact for all communications with the Contracting Authority, the Chief Security Officers, North Civil Project Co System Security Officer, law enforcement and emergency response agencies, and others on security matters related to the Works.

- (b) The System Security Officer shall be responsible for the delivery of all aspects of security management for the Works, including Security Risk Assessment, CPTED and other threat and vulnerability assessments.
- (c) Project Co shall provide Contracting Authority with the 24-hour contact information for the System Security Officer or, in the event that the System Security Officer is unavailable for reasons for which Contracting Authority has been provided advance in notice, the 24-hour contact information of the individual acting in the stead of the System Security Officer.
- (d) RSSOM Project Co shall appoint the Chief Security Officer who shall be responsible for the overall security of the Ontario Line Subway and who will be RSSOM Project Co's contact for all communications with the Contracting Authority, the Systems Security Officers, law enforcement and emergency response agencies, and others on security matters related to the Ontario Line Subway System.
- (e) North Civil Project Co will appoint the North Civil Project Co System Security Officer who shall be responsible for the security of the systems and infrastructure within their Project delivery and shall be the point of contact for the Chief Security Officer, the Contracting Authority, the other security officer, and others as necessary in respect of the safety and security certification activities.
- (f) The System Security Officer shall,
  - (i) be a CPP, or equivalent applicable alternative acceptable to the Contracting Authority, who shall have extensive experience in the field of system security applied in a metro type rail transit environment, in an equivalent position in North America;
  - (ii) be responsible for the delivery of all aspects of the Project Co security management function (as applicable to the System Security Officer), including Security Risk Assessment and CPTED; and
  - (iii) be responsible for supporting the Chief Security Officer in the overall security certification of the Ontario Line Subway System as agreed in the SSSIC.

### 8.3 Provision of Training To Prescribed Persons

- (a) Project Co shall ensure that any person employed by, or any person acting on behalf of, Project Co or Project Co Parties and who have any of the following duties, as well as the direct supervisors of those persons, undergo security awareness training:
  - (i) operating, maintaining or inspecting equipment or works on the Project Co Infrastructure;
  - (ii) controlling the dispatch or movement of equipment for the Project Co Infrastructure;
  - (iii) ensuring the security of equipment and Works for the Project Co Infrastructure;
  - (iv) loading or unloading goods to or from Project Co Infrastructure equipment;
  - (v) interacting with the public for the purposes of completing the Works; and

- (vi) ensuring compliance with its security processes, including those set out in their security plan.
- (b) Pursuant to Section 8.2(a), Project Co shall ensure that security awareness training is provided to the person,
  - (i) within ninety (90) days after the day on which the person initially assumed any of the duties referred to in Section 8.2; and
  - (ii) on a recurrent basis at least once every three years after the day on which the person completed their previous training.
- (c) Project Co shall ensure that until a person responsible for any of the duties referred to in Section 8.2(a) has undergone security awareness training, the person performs their duties under the supervision of a person who has undergone security awareness training.
- (d) Project Co shall ensure that training records are kept for each person who has undergone security awareness training and that the record,
  - (i) is kept up to date;
  - (ii) includes the person's name and details of their most recent training, including the date, duration and the title of the training, the delivery method and the name of the provider of the training;
  - (iii) includes the title and the date of any previous security awareness training taken by the person;
  - (iv) is retained for at least two years after the day on which the person ceases to be employed by, or ceases to act on behalf of, Project Co; and
  - (v) is available for audit by the Contracting Authority at any time.
- (e) Project Co shall ensure that a copy of the most recent awareness training materials is kept.

#### 8.4 Security Standards

- (a) Project Co shall carry out its security obligations as set out in this Section 8 and in accordance with the following standards and regulations:
  - (i) APTA SS-SIS-S-017-21:2021 Security Risk Assessment Methodology for Public Transit (apart from requirements for response to Terrorist Threats);
  - (ii) ISO 31000 Risk Management – Principles and Guidelines (“ISO 31000”);
  - (iii) SOR/2020-222: Passenger Rail Transportation Security Regulations (“SOR/2020-222”); and
  - (iv) ISO 22341 Security And Resilience – Protective Security – Guidelines For Crime Prevention Through Environmental Design (“ISO 22341”).

- (b) Project Co shall use the following standards for reference in their executing their security obligations as set out in this Section 8:
  - (i) IEC 15288: Systems and software engineering — System life cycle processes (“**IEC 15288**”)
- (c) Project Co shall use the following documents as guidance where no other Canadian code or standard exists covering the topics of each of these documents:
  - (i) NL/L2/OPS/291:2019 Railway Crime Risk Management; and
  - (ii) NR/L3/OPS/045/4.18:2018 National Operating Procedure (NOP) 4.18: Management of Station Security and Crime.

## 8.5 System Security Submissions Plan and System Security Submissions

### 8.5.1 System Security Submissions Plan

- (a) No later than thirty (30) days following Commercial Close, Project Co shall provide input to RSSOM Project Co to enable submission to the Contracting Authority, for approval, of a detailed plan for System Security Submissions to be made by RSSOM Project Co (the “**System Security Submissions Plan**”). The System Security Submissions Plan shall include, at a minimum,
  - (i) a detailed description of how Project Co intends to divide the security of the Works into Infrastructure and Systems, a detailed description of what each “System” (fixed infrastructure and rail systems) includes and the components of each piece of Infrastructure item and System, all of which shall be consistent with RSSOM Project Co’s System Definition Document;
  - (ii) a detailed explanation of how Project Co intends to meet its obligations as set out in Sections 8.5.1(b) and 8.5.1(c);
  - (iii) a detailed conformance check against the requirements of SOR/2020-222 and ISO 22341 that demonstrates how Project Co has met or intends to meet the requirements of these standards and how Project Co has performed the reconciliation exercise set out in Section 6.3(f)(ii);
  - (iv) a table setting out,
    - (A) how many of each type of System Security Submissions (including the Approval in Principle Security Submissions, the System Design Security Submissions, the Consent to Construct Security Submissions, the Consent to Test Security Submissions, and the Consent to Operate System Security Submission as described in Section 8.5.2(a) Project Co intends to submit during the Project Term;
    - (B) the date on which Project Co intends to submit each System Security Submission, taking into account the requirements of Section 8.5.1(b); and

- (C) a summary of the content of each System Security Submission, with references to the “Systems” established by Project Co; and
- (v) an updated version of Table A- 2 of Appendix A to this Schedule 29 that is extrapolated in accordance with the “Systems” established by Project Co, and that is consistent with Project Co’s planned organization, number and sequence of System Security Submissions.
- (b) Project Co shall ensure that its planned organization, number and sequencing of System Security Submissions, as reflected in the System Security Submissions Plan, is consistent with the progression of the Project and takes into account the lifecycle processes described in IEC 15288, the stages of infrastructure configuration for the Project, and Project Co’s progressive assumption of responsibility.
- (c) Project Co shall ensure that,
  - (i) the totality of the planned Approval in Principle Security Submissions, as set out in its System Security Submissions Plan, covers each security, or security impacting component of the Works;
  - (ii) the totality of the planned System Design Security Submissions, as set out in its System Security Submissions Plan, covers each security, or security impacting component of the Works;
  - (iii) the totality of the planned Consent to Construct Security Submissions, as set out in its System Security Submissions Plan, covers each security, or security impacting component of the Works;
  - (iv) the totality of the planned Consent to Test Security Submissions, as set out in its System Security Submissions Plan, covers each security, or security impacting component of the Works; and
  - (v) the totality of the planned Consent to Operate System Security Submissions, as set out in its System Security Submissions Plan, covers each security, or security impacting component of the Works.

#### 8.5.2 System Security Submissions

- (a) Project Co shall, in accordance with the System Security Submissions Plan set out in Section 8.5.1(a), provide the following submissions (each, a “**System Security Submission**”) to Contracting Authority for review and approval:
  - (i) one or more submissions for approval in principle, which shall cover all the system and infrastructure definition phases of Project Co Works as laid out in Clause 6.4.2 of IEC 15288 and undertaken by Project Co and include, at minimum, the deliverables noted as Approval in Principle Safety Submissions in Table A- 2 of Appendix A to this Schedule 29, (each, an “**Approval in Principle Security Submission**”);



- (A) the requirements developed in this process shall form the Security Requirements Specification submission as described in Section B.3 of Appendix B to this Schedule 29.
- (ii) one or more submissions for approval to finalize detailed designs, which shall cover system and infrastructure design activities of Project Co Works as laid out in Clauses 6.4.3, 6.4.4, 6.4.5 and 6.4.6 of IEC 15288 and undertaken by Project Co and include, at minimum, the deliverables noted as System Design Safety Submissions in Table A- 2 of Appendix A to this Schedule 29, (each, a “**System Design Security Submission**”);
  - (A) the requirements developed in this process shall form the Security Subsystem Requirements Specification submission as described in Section B.4 of Appendix B to this Schedule 29.
- (iii) one or more submissions for consent to construct, which shall cover system and infrastructure requirements activities of Project Co Works as laid out in Clauses 6.4.7 and 6.4.8 of IEC 15288 and undertaken by Project Co and include, at minimum, the deliverables noted as Consent to Construct Security Submissions in Table A- 2 of Appendix A to this Schedule 29 (each, a “**Consent to Construct Security Submission**”);
- (iv) one or more submissions for consent to test, which shall cover system and infrastructure requirements activities of Project Co Works as laid out in Clauses 6.4.7 and 6.4.8 of IEC 15288 and undertaken by Project Co and include, at minimum, the deliverables noted as Consent to Test Security Submissions in Table A- 2 of Appendix A to this Schedule 29 (each, a “**Consent to Test Security Submission**”); and
- (v) one or more submissions for consent to operate systems, which shall cover system and infrastructure activities of Project Co Works as laid out in Clauses 6.4.9, 6.4.10 and 6.4.11 of IEC 15288 and undertaken by Project Co and include, at minimum, the deliverables noted as Consent to Operate System Security Submissions in Table A- 2 of Appendix A to this Schedule 29 (each, a “**Consent to Operate System Security Submission**”).
- (b) Each System Security Submission shall be reviewed by the Project Co ISA, and the Project Co ISA shall produce an independent assessment report for each System Security Submission documenting its review of the System Security Submission (the “**Project Co ISA Security Submission Report**”).
  - (i) Project Co shall submit the Project Co ISA Security Submission Report with each System Security Submission to Contracting Authority.
- (c) Upon receipt by Contracting Authority of the System Security Submission and the Project Co ISA Security Submission Report, the Contracting Authority ISA shall conduct a review of the System Security Submission and the Project Co ISA Security Submission Report, and shall submit any requests for clarification to the Project Co ISA no later than five (5)

Business Days following the date that Contracting Authority received the System Security Submission and the Project Co ISA Security Submission Report.

- (i) The Project Co ISA shall respond to requests for clarification within five (5) Business Days of receiving a clarification request from the Contracting Authority ISA.
- (d) The Contracting Authority ISA shall, after reviewing the System Security Submission and the Project Co ISA Security Submission Report, and within fifteen (15) Business Days of receiving the Project Co ISA's responses to its requests for clarification as set out Section 8.5.2(c), recommend to Contracting Authority, with documented rationale in the form of a report, whether to approve or refuse to approve the System Security Submission (the "**Contracting Authority ISA Security Submission Verification Report**").
- (e) No later than five (5) Business Days after receiving the Contracting Authority ISA Security Submission Verification Report, Contracting Authority shall determine whether to approve or reject the System Security Submission.
  - (i) Upon approving the System Security Submission, Contracting Authority shall issue a security confirmation to Project Co ("**Security Confirmation**").
  - (ii) Contracting Authority shall submit the Contracting Authority ISA Security Submission Verification Report(s) to the Independent Certifier for their review in determination as to whether Project Co has satisfied the conditions of the applicable Section Substantial Completion, as described in Section 3.1(e) (*Role of The Independent Certifier – Engagement*) of Schedule 6 – Independent Certifier Agreement.
- (f) If Contracting Authority elects, in its sole discretion, to reject a System Security Submission, Project Co shall revise the System Security Submission to include changes or additional security measures and shall resubmit the System Security Submission and an accompanying Project Co ISA Security Submission Report and any other documentation as may be required by Contracting Authority, acting reasonably.

## 8.6 Security Plan

- (a) Project Co shall, no later than sixty (60) days following Financial Close, submit to Contracting Authority a security plan (the "**Security Plan**") that contains measures to be taken to detect, identify, prevent, mitigate, respond to and recover from acts, or attempted acts, of unlawful interference with the Works.
- (b) The Security Plan shall include a risk management strategy that addresses the risks, prioritized as medium or higher in the most recent Security Risk Assessment, and all other risks that require remedial action and additional safeguards that are intended to mitigate heightened risk conditions in a graduated manner.
- (c) The Security Plan shall be comprised of three (3) parts as described in Appendix B to this Schedule 29:
  - (i) the Passenger Station Security Plan;

- (ii) the Guideway and Tunnel Security Plan; and
  - (iii) the Shared Infrastructure Security Plan.
- (d) Project Co shall:
- (i) make available to each person who is responsible for implementing the Security Plan the portions of the Security Plan that are relevant to the duties of that person;
  - (ii) review the Security Plan at least once every six months;
  - (iii) amend the Security Plan if it does not reflect the most recent Security Risk Assessment;
  - (iv) amend the Security Plan if deficiencies that could adversely impact the security of the Works are identified in the Security Plan;
  - (v) conduct a comprehensive review of the Security Plan within one year after the day on which the current Security Plan was approved by Contracting Authority;
  - (vi) notify the persons referred to in Section 8.6(d)(i) of any amendments to the relevant portions of the Security Plan; and
  - (vii) provide a copy of the updated Security Plan following its review and amendment within fourteen (14) calendar days of completion of a review.
- (e) Project Co shall ensure that persons employed by or acting on behalf of Project Co and who are responsible for the development and implementation of the Security Plan or any portion of it and any other person with security-related duties for whom the training is considered necessary to ensure the effective implementation of the Security Plan is provided with training on the Security Plan,
- (i) within ninety (90) days after the day on which those persons assume their duties; and
  - (ii) on a recurrent basis at least once every three years after the day on which those persons completed their previous training.
- (f) Project Co shall ensure that on completion of the Security Plan training, participants in the Security Plan training have the knowledge and skills required to carry out their duties.
- (g) Project Co shall ensure that if the Security Plan is amended in such a way that significantly affects the security duties of a person referred to in Section 8.6(d)(i), within thirty (30) days after the day on which the amendments are implemented, the person is provided with training on the amendments to the Security Plan.
- (h) Project Co shall keep a training record for each person who has undergone the Security Plan training, and must ensure that the record:
- (i) is kept up to date;

- (ii) contains the person's name and details of the most recent Security Plan training they received, including the date, duration and title of the training and the components of the Security Plan that were covered;
  - (iii) contains the title and the date of any previous Security Plan training taken by the person; and
  - (iv) is retained for at least two years after the day on which the person ceases to be employed by, or ceases to act on behalf of Project Co.
- (i) Project Co shall ensure that a copy of the most recent training materials is provided to Contracting Authority within seven calendar days of such training materials being revised.

### 8.7 Reporting of threats and security concerns

- (a) Project Co shall report to Contracting Authority by any direct means of communication any threat or security concern that results or may result in interference with the Works. The report shall be made immediately, but not later than five (5) minutes after the occurrence of the threat or other security concern. Threats and security concerns include:
- (i) any interference with Project Co or Project Co Parties personnel;
  - (ii) any bomb threats, either specific or non-specific;
  - (iii) any report or discovery of a suspicious item;
  - (iv) any suspicious activity observed on, inside or near the Project Co Infrastructure or sites;
  - (v) the discovery, seizure or discharge of a weapon, explosive substance (not explicitly used for maintenance of the Ontario Line Subway) or incendiary device (not explicitly used for maintenance of the Ontario Line Subway) on, inside or near the Project Co Infrastructure or equipment used in the performance of the Works;
  - (vi) any sign of tampering with equipment or Works on, inside or near the Project Co Infrastructure;
  - (vii) any information relating to the possible surveillance of equipment or Works related to the Project Co Infrastructure; and
  - (viii) any suspicious person, circumstance or object that Project Co considers to be a threat or other security concern.
- (b) When reporting a threat or a security concern pursuant to Section 8.4(a), Project Co shall provide the following information to the extent that such information is known:
- (i) the name of the person making the report on behalf of Project Co and the person's title and contact information, including their telephone number and e-mail address;
  - (ii) any information that identifies any Project Co equipment or works that is affected by the threat or other security concern;

- (iii) a description of the threat or other security concern, including the date and time that Project Co became aware of it;
  - (iv) the names of the persons involved in the threat or other security concern, and any other information related to those persons, if the disclosure of those names and that information is permitted under Applicable Law; and
  - (v) the source of any threat information or other security concern, if its disclosure is permitted under Applicable Law.
- (c) In the event that any information referred to in Section 8.4(b) is not known at the time of initial reporting, Project Co shall ensure that the information is reported to Contracting Authority as soon as it becomes known.
- (d) The Contracting Authority shall, by any direct means of communication, notify Project Co of any threat or security concern that results or may result in interference with the Works.

## APPENDIX A TO SCHEDULE 29

**SCHEDULE OF SAFETY DELIVERABLES FOR SYSTEM ASSURANCE SUBMISSIONS**

Table A- 1 Safety Deliverables for System Assurance Submissions

<b>Deliverable</b>	<b>Approval in Principal Safety Submission</b>	<b>System Design Safety Submission</b>	<b>Consent to Construct Safety Submission</b>	<b>Consent to Test Safety Submission</b>	<b>Consent to Operate System Safety Submission</b>
System Definition Document	X	X	X	X	X
System Safety Plan	X	X	X	X	X
Hazard Record/Log	X	X	X	X	X
Hazard Analysis Report	X		X	X	X
Safety Requirements Specification	X	X	X	X	X
Safety Validation Report					X
Independent Safety Assessment Plan	X				
RAM Policy	X				
RAM Plan	X	X	X	X	X
RAM Analysis Report	X	X	X	X	X
RAM Subsystem Requirements		X	X	X	X
RAM Validation Plan		X	X	X	X
RAM Test Specification				X	X
RAM Validation Report					X

Deliverable	Approval in Principal Safety Submission	System Design Safety Submission	Consent to Construct Safety Submission	Consent to Test Safety Submission	Consent to Operate System Safety Submission
FRACAS Report					X
System Safety Case		X	X	X	X
Operational Readiness Report				X	X
System RAM Status Report		X	X	X	X
System Performance Status Report					X
Project Co ISA ESAC Report	X	X	X	X	X
Safety and Security Critical Items List		X	X	X	X
Reliability Critical Items List		X	X	X	X

Table A- 2– Security Deliverables for System Security Submissions

Deliverable	Approval in Principle Security Submission	System Design Security Submission	Consent to Construct Security Submission	Consent to Test Security Submission	Consent to Operate System Security Submission
Security Plan	X	X	X	X	X
Passenger Station Security Plan	X	X	X	X	X
Guideway and Tunnel Security Plan	X	X	X	X	X
Shared Infrastructure Security Plan	X	X	X	X	X
Security Log	X	X	X	X	X
Security Risk Assessment Report	X	X	X	X	X
Security Requirements Specification	X	X	X	X	X
Security Subsystem Requirements		X	X	X	X
Remedial Action Plan		X	X	X	X



**APPENDIX B TO SCHEDULE 29****SYSTEM ASSURANCE DELIVERABLE REQUIREMENTS****A.1 System Safety Plan Requirements**

- (a) RSSOM Project Co shall produce the System Safety Plan which shall comply with the requirements of all parts of EN 50126 and shall, notwithstanding any other provision of this Schedule 29 include the following minimum requirements:
- (i) a description of the policy and strategy for achieving safety;
  - (ii) a description of the scope the plan applies to (note that reference can be made to the System Definition Document), including all Works;
  - (iii) a description of the proposed organization roles with responsibility for safety management, with summary evidence of the competence of persons holding such roles;
  - (iv) an overview of the planned lifecycle for projects and the related safety activities;
  - (v) a description of the process for the safety approval of Systems being placed into service, including the interface to the Contracting Authority;
  - (vi) a description of the process for the maintenance of safety-related documentation (i.e. document control);
  - (vii) a description of the process for management of the Hazard Record/Log;
  - (viii) a description of arrangements for tracking Hazards and Safety Requirements transferred between Systems or to other entities;
  - (ix) a description of the constraints and assumptions made in the Ontario Line Subway System Safety Plan;
  - (x) a description of Subcontractor management arrangements; and
  - (xi) a description of the process for periodic safety audit, safety assessment, and safety review throughout the lifecycle.

**A.2 System Definition Document Requirements**

- (a) RSSOM Project Co shall produce the System Definition Document which shall include the following content, organized into distinct sections:
- (i) an executive summary, which includes the intended purpose of the Project;
  - (ii) an overview of the Ontario Line Subway System, including:

- (A) geographical scope;
  - (B) technology; and
  - (C) key features;
- (iii) an overview of the interfaces to the Adjacent Railway Systems, including:
- (A) geographical scope;
  - (B) technology; and
  - (C) key features;
- (iv) a description of the scope of the Works of the Ontario Line Subway System;
- (v) a description of the scope and significance of the Works which summarizes the major changes planned to Adjacent Railway Systems;
- (vi) a description of the scope of the services provided by third party agencies;
- (vii) a description of the function and constituent Subsystems, including a description of,
- (A) the Subsystem and Subsystem functions;
  - (B) long-term operating and maintenance strategies and conditions;
  - (C) Subsystem life-time considerations; and
  - (D) any logistic considerations;
- (viii) a description of the System boundaries for the Systems for which individual System Assurance Submissions shall be made, including:
- (A) geographical boundaries;
  - (B) technological Subsystems;
  - (C) interfaces and interactions with the physical environment;
  - (D) interfaces and interactions with other duty-holders; and
  - (E) the alignment of the System to the Works Submittals, as applicable;
- (ix) operational requirements, including:
- (A) modes of operation including external requirements;
  - (B) system operating conditions and constraints;

- (C) system maintenance conditions; and
- (D) logistic support conditions;
- (x) a description of how Safety Measures and requirements will be managed by the Project, including:
  - (A) influences on operations and maintenance personnel; and
  - (B) influences on Passengers and the public;
- (xi) for each System described by Project Co in accordance with Section A.2(a)(viii) that impacts existing Adjacent Railway Systems, a summary of the significance of the change under the CMREA and a description of the application of the six CMREA significance criteria, including:
  - (A) additionality, including a description of whether the change is related (for example, functionally or geographically) to any other change such that they should be considered as a single change;
  - (B) failure consequences, specifically the credible worst-case scenario in the event of a failure of the change introduced to the System (taking into account the existence of safety barriers or controls outside the System);
  - (C) novelty and complexity, specifically what features of the changes to the System would be considered novel and/or complex in the context of the subway infrastructure (including any innovative products, novel product applications, standards deviations, or anything else that affects the System safety risk profile);
  - (D) monitoring and reversibility, specifically if the System can be monitored to give early warning failure and if the System can be practically reverted to the state of the System before the changes (note that most changes on the subway are not reversible); and
  - (E) a conclusion as to whether the change is significant and a summary of the rationale for the conclusion.

### A.3 RAM Plan

- (a) RSSOM Project Co shall produce the RAM Plan which shall include the following minimum requirements:
  - (i) the management of the following:
    - (A) the system lifecycle and RAM tasks and processes to be undertaken within the lifecycle;

- (B) a Failure Reporting and Corrective Action System (FRACAS) to be applied to the various Systems, with records including technical data, maintenance action, and reporting and Corrective Action;
  - (C) all RAM related deliverables from the lifecycle;
  - (D) all RAM acceptance tasks;
  - (E) the constraints and assumptions made in the RAM Plan; and
  - (F) Subcontractor management arrangements;
- (ii) the management of reliability, including:
    - (A) reliability analysis and prediction;
    - (B) reliability planning;
    - (C) reliability testing; and
    - (D) reliability data acquisition and assessment;
  - (iii) the management of availability, including:
    - (A) availability analysis and prediction;
    - (B) availability planning; and
    - (C) availability data acquisition and assessment; and
  - (iv) the management of maintainability, including:
    - (A) maintainability analysis and prediction;
    - (B) maintainability planning;
    - (C) maintainability data acquisition and assessment; and
    - (D) logistic support evaluation.

#### **A.4 Hazard Record/Log**

- (a) The Hazard Record/Log shall be structured such that:
  - (i) all causes are mapped to Hazards;
  - (ii) all Hazards are mapped to consequences;
  - (iii) all mitigation measures are mapped to:

- (A) causes, if the measure is acting to prevent causes from happening or to minimize the probability of occurrence of causes;
  - (B) Hazards, if acting to prevent Hazards from giving rise to consequences or minimizing the frequency of occurrence of the Hazards; and/or
  - (C) consequence, if acting after the consequences happen to reduce the severity of the consequence;
- (iv) mitigations measures are recorded in the Hazard Record/Log as part of the analysis; and
- (v) mitigations measures become Safety Requirements for Project Co to implement.
- (b) The Hazard Record/Log should include information about the System it relates to and any assumptions or limitations about scope.
- (c) Each entry in the Hazard Record/Log in respect of Hazards shall include the following:
- (i) unique reference number;
  - (ii) name or description of the Hazard;
  - (iii) related system elements, interfaces, and/or functions;
  - (iv) location or area of the Hazard;
  - (v) discipline and Hazard owner;
  - (vi) source of identification;
  - (vii) related lifecycle phase;
  - (viii) status for each project lifecycle stage from the following options:
    - (A) “Open” – a newly identified Hazard;
    - (B) “Resolved” – Safety Requirements have been identified for the Hazard;
    - (C) “Managed” – the Safety Requirements have been accepted by the responsible parties;
    - (D) “Transferred” – the responsibility for the Hazard has been transferred to another System or party; or
    - (E) “Cancelled” – the Hazard is no longer applicable;
  - (ix) related consequence(s)
  - (x) related cause(s);

- (xi) related mitigation measures;
  - (xii) related Safety Requirements;
  - (xiii) related closure assurance evidence; and
  - (xiv) related assumptions.
- (d) Each entry in the Hazard Record/Log in respect of causes shall include the following information:
- (i) unique reference number;
  - (ii) name or description of the cause;
  - (iii) related system elements or interfaces;
  - (iv) location or area of the cause;
  - (v) related Hazard(s);
  - (vi) related mitigation measures;
  - (vii) related Safety Requirements;
  - (viii) related closure assurance evidence; and
  - (ix) related assumptions.
- (e) Each entry in the Hazard Record/Log in respect of consequences shall include the following information:
- (i) unique reference number;
  - (ii) name or description of the consequence;
  - (iii) exposed parties;
  - (iv) where explicit Risk estimation has been used as the Risk Assessment principle, the outcomes of the qualitative or quantitative assessment, including initial and residual Risk for each related consequence;
  - (v) related Hazards;
  - (vi) related mitigation measures;
  - (vii) related Safety Requirements;
  - (viii) related closure assurance evidence; and
  - (ix) related assumptions.

- 
- (f) Each entry in the Hazard Record/Log in respect of mitigation measures shall include the following information:
- (i) which of the three Risk Assessment principles, in accordance with the CMREA, is being used;
  - (ii) any related Safety Measures;
  - (iii) any related actions to be implemented;
  - (iv) any related Safety Requirements;
  - (v) any related Hazards, causes, or consequences;
  - (vi) any related assumptions; and
  - (vii) any related assurance evidence.
- (g) Each entry in the Hazard Record/Log in respect of safety measures to be addressed as part of a different System shall include the following information:
- (i) unique reference number;
  - (ii) description of the exported safety constraints;
  - (iii) persons at risk;
  - (iv) possible control measures;
  - (v) constraints;
  - (vi) owner(s); and
  - (vii) Risk transmission.
- (h) Where actions in the Hazard Record/Log are allocated to individuals instructing them to undertake work to either better understand or provide mitigation for the Risk arising from Hazards, each action entry shall include the following information:
- (i) unique reference number;
  - (ii) actionee name;
  - (iii) description of the action required;
  - (iv) deadline date;
  - (v) completion date;
  - (vi) status of the action, from among the following:
    - (A) “Open” – if the action has not yet been implemented;

- (B) “Conditionally Closed” – if it is certain that the action will be implemented;
  - (C) “Closed” – if the action has been implemented;
  - (D) “Transferred” if the responsibility for the action has been transferred and accepted by Contracting Authority, Adjacent Railway Systems, Passenger Interface Providers, Security Provider, Third Party Contractors or Additional Contractors; or
  - (E) “Cancelled” if the action is no longer applicable; and
- (vii) details of the actionee responses and any other supporting information to justify closure of the actions.
- (i) The Hazard Record/Log shall be continually reviewed and updated throughout the project and any changes to the Hazard Record/Log shall be recorded, and include the following information:
- (i) date;
  - (ii) Hazard Record/Log version number;
  - (iii) author of the change;
  - (iv) the type of review undertaken;
  - (v) reference to any associated minutes from meetings related to the Hazard Record/Log review activity; and
  - (vi) a summary of the nature of the changes made to the Hazard Record/Log.

#### **A.5 Safety Requirements Specification Requirements**

- (a) RSSOM Project Co shall produce the Safety Requirements Specification which shall comply with the requirements of all parts of EN 50126 and include the following:
- (i) description of functional requirements (i.e. what the System must do to be safe and how effective the System needs to be), including:
    - (A) safety-related function;
    - (B) tolerable Hazard rates or tolerable functional failure rates (for quantitative requirements), considering:
    - (C) definition of safe states;
    - (D) definition of maximum permitted time to enter a safe state; and
    - (E) failure detection measures of facilities or devices;



- (ii) contextual requirements, including:
  - (A) safety-related assumptions such as effectiveness (for example, probability of failure on demand, per hour, etc.) of mitigation barriers (for example, protection systems and redundancies);
  - (B) environmental conditions;
  - (C) organizational rules;
  - (D) operational rules; and
  - (E) maintenance rules; and
- (iii) technical requirements, including:
  - (A) requirements resulting from the Hazard analysis;
  - (B) any legal Safety Requirements; and
  - (C) adaptation requirements for System interfaces.

#### **A.6 Independent Safety Assessment Plan Requirements**

- (a) RSSOM Project Co shall produce the Independent Safety Assessment Plan which shall comply with the requirements of EN 50126-2 and include the following:
  - (i) the remit, including the objective and scope, of the independent safety assessment activities;
  - (ii) detail of the activities throughout the independent safety assessment process and their link to engineering or operational activities, including activities that,
    - (A) ensure the Independent Safety Assessor has a thorough understanding of the Project, the Works and Project Co deliverables based on the documentation provided by Project Co;
    - (B) involve an assessment of the processes to be used by Project Co for managing safety and quality during the design and implementation of any significance change; and
    - (C) involve an assessment of the application of those safety quality processes during the design and implementation of the Significant Change;
  - (iii) statements on pass / fail criteria and how to deal with non-conformance cases;
  - (iv) requirements with regard to content and form of the independent safety assessment documentation, with observations categorized as follows:

- (A) “Category 1” – must be addressed before the System enters service or before a document is used further;
  - (B) “Category 2” – must be addressed within a reasonable time, but the System can enter service in the meantime (possibly with mitigating measures); or
  - (C) “Category 3” – minor comments such as typographical errors; and
- (v) arrangements for tracking closure of observations.
- (b) The Independent Safety Assessment Plan shall include the following minimum documents to be assessed:
    - (i) System Safety Plan;
    - (ii) documentation related to Hazard Identification;
    - (iii) Hazard Record/Log;
    - (iv) Safety Requirements Specification;
    - (v) System Safety Case; and
    - (vi) Engineering Safety and Assurance Case.
  - (c) Notwithstanding Section A.6(b) of this Appendix B to this Schedule 29, the Independent Safety Assessor shall include additional activities (for example, witnessing project activity and performing independent analysis) and document reviews where such activities and document reviews would be beneficial to arriving at a conclusion regarding safety and system assurance.

#### **A.7 Hazard Analysis Report**

- (a) The Hazard Analysis Report shall document the outcomes of the Risk Assessment activity that has been undertaken and the results of the various techniques used to assess Hazards, including,
  - (i) Hazard identification workshops;
  - (ii) historical event analysis;
  - (iii) Hazard and operability studies;
  - (iv) failure modes effects and criticality analysis (FMECA);
  - (v) interface Hazard analysis;
  - (vi) zonal analysis;
  - (vii) operating and support Hazard analysis; and

- (viii) common cause failure analysis.
- (b) The Hazard Analysis Report shall include the following minimum requirements:
  - (i) an introduction that includes the purpose of the Hazard analysis activities, their scope, and details about the participants of such activities and the authors of the report to demonstrate suitable competence;
  - (ii) a summary comprised of an overview of the Hazards and the responsible actors;
  - (iii) the methods used for the Hazard analysis, including:
    - (A) Hazard Identification;
    - (B) Hazard classification;
    - (C) Risk Acceptance Criteria; and
    - (D) Safety Requirements identified; and
  - (iv) any further actions required to ensure closure of all identified Hazards.

#### **A.8 Safety Validation Report**

- (a) The Safety Validation Report shall comply with the requirement of EN 50126-1 and include the following minimum content:
  - (i) identification and name of:
    - (A) the System under consideration;
    - (B) the documents and other items used for the validation;
    - (C) the processes, technical support tools, and equipment used, along with calibration data; and
    - (D) the simulation models used, if any;
  - (ii) confirmation that the process and activities defined in the Safety Validation Report have been met, with any deviations from the Safety Validation Report recorded and justified;
  - (iii) evaluation of the performance and coverage of requirements tracing in development and verification;
  - (iv) confirmation that the development and verification have handled Corrective Actions in accordance with the change management process and procedures with clearly identified deviations;
  - (v) evaluation of the coverage of the Safety Requirements for the system under consideration by the tests and/or analyses;

- (vi) identification of the tests defined and executed by the validator, if any;
- (vii) evaluation of the correctness, consistency and adequacy of the qualification according to the required technology-related standards; and
- (viii) conclusion of the validation results and whether the System under consideration fulfills the Safety Requirements for its intended use in the defined environment.

#### **A.9 RAM Analysis Report**

- (a) The RAM Analysis Report shall document the outcomes of the RAM assessment activity that has been undertaken and the results of the various techniques used to assess reliability, availability and maintainability, including:
  - (i) an outline of the planning of the specific RAM analysis tasks for each phase of the lifecycle as required in section 7 of EN 50126-1;
  - (ii) reliability analysis activity per system;
  - (iii) availability analysis activity per system;
  - (iv) maintainability analysis per system; and
  - (v) failure modes effects and criticality analysis per system.

#### **A.10 RAM Validation Plan**

- (a) The RAM Validation Plan shall:
  - (i) outline the specific validation tasks and deliverables for each phase of the system lifecycle.
  - (ii) provide justification of the validation strategy chosen. The justification should be prepared in conjunction with the business unit and must include the following:
    - (A) Testing strategy;
    - (B) Acceptance of the test strategies by the one(s) conducting the testing;
    - (C) Witness (including extent) of the test strategy.
  - (iii) outline the steps necessary to demonstrate the adequacy of the specification of the system in fulfilling the requirements.
  - (iv) define the following for each subsystem and piece of equipment:
    - (A) The techniques and measures to be used.
    - (B) The test and analysis to be used and the reporting required.

- (C) Management of the deviations between expected and actual results of the analysis.
  - (D) Management of non-compliances and safety constraints arising from any deviations.
  - (E) Management of conditions and constraints that arise from the deviations, and how they will be considered in the next lifecycle tasks.
- (v) ensure the steps necessary for the analysis are both adequate and complete in order to fulfil the RAM requirements.

#### **A.11 RAM Validation Report**

- (a) The RAM Validation Report shall comply with the requirement of EN 50126-1 and include the following minimum content:
- (i) an outline of the planning of the specific validation tasks for each phase of the lifecycle as required in section 7 of EN 50126-1;
  - (ii) identification and name of:
    - (A) the System under consideration;
    - (B) the documents and other items used for the validation;
    - (C) the processes, technical support tools and equipment used, along with calibration data; and
    - (D) the simulation models used if any;
  - (iii) a summary justification of the validation strategy chose, including consideration of:
    - (A) testing and analysis strategy;
    - (B) acceptance of proposed test strategies by the test entity; and
    - (C) witness and coverage of the test strategy;
  - (iv) confirmation that the processes and activities defined in the RAM Validation Plan have been met, with any deviations from the RAM Validation Plan recorded and justified;
  - (v) evaluation of the performance and overage of requirements tracing in development and verification;
  - (vi) confirmation that the development and verification have handled Corrective Actions in accordance with the change management process and procedures with clearly identified deviations;

- (vii) evaluation of the coverage of the Safety Requirements for the system under consideration by the tests and/or analyses;
- (viii) identification of the tests defined and executed by the validator, if any;
- (ix) evaluation of the correctness, consistency and adequacy of the qualification according to the required technology-related standards;
- (x) conclusion of the validation results and whether the System under consideration fulfills the Safety Requirements for its intended use in the defined environment; and
- (xi) the steps necessary to demonstrate the adequacy of the specification of the System, Subsystem, and equipment to be validated in fulfilling the requirements for the System, Subsystem, and equipment, respectively, including:
  - (A) the techniques and measures used;
  - (B) the test and/or analyses used and how their results will be reported;
  - (C) management of deviations between expected and actual results of the tests and/or analyses;
  - (D) management of non-compliance and safety constraints arising from the deviations;
  - (E) management of conditions and constraints derived from the deviations, and how they will be considered in the next lifecycle tasks in terms of the impact on the future lifecycle tasks and traceable to the deviations; and
  - (F) the steps necessary to demonstrate the adequacy of the tests and/or analysis as a complete set of tests and/or analyses, with which the fulfillment of the requirements related to a System, Subsystem, and/or component can be demonstrated; and
  - (G) the steps for identification and management of non-fulfillment of requirements and deviations.

## A.12 FRACAS Report

- (a) RSSOM Project Co shall produce the FRACAS Report which shall provide information and feedback regarding failures and defects and their causes found during operational service, and shall include the following minimum requirements:
  - (i) time of failure;
  - (ii) cause of failure (this may need to be completed following an investigation);
  - (iii) detailed description of the failure;
  - (iv) Corrective Action taken;

- (v) safety ranking for the failure;
- (vi) when and how the failures and defects have been detected (for example, in operation or during scheduled maintenance);
- (vii) the effects of the failures and defects up to the Ontario Line Subway System level;
- (viii) the effect, if any, on existing subway and railway systems
- (ix) determination of whether any improvement is required, including to the following:
  - (A) operation and maintenance procedures and manuals;
  - (B) System training documentation;
  - (C) operational Hazard Record/Log;
  - (D) System design; or
  - (E) human factors aspects of operation and maintenance.
- (b) The FRACAS Report shall include a categorization of failures and defects for both safety and reliability for varying levels of severity and criticality.

#### **A.13 SIL Apportionment Report**

- (a) Safety requirements shall be expressed in terms of SILs, as described by EN 50126-2 and EN 50129.
- (b) RSSOM Project Co shall produce the SIL Apportionment Report which shall define system safety requirements that will ensure the safe operation of the Ontario Line Subway System by providing a rigorous methodology for SIL apportionment by:
  - (i) assigning the SIL to safety related functions identified by the Hazard Analysis performed for all PHA hazards; and
  - (ii) providing the apportionment of the SIL to the Ontario Line Subway System.
- (c) The Report shall include:
  - (i) the process used to determine the Safety Function;
  - (ii) the calculations to determine the Tolerable Hazard Rate and Tolerable Functional Failure Rate; and
  - (iii) the calculations to apportion the required Safety Integrity Level to each System.

#### **A.14 Safety and Security Critical Items List**

- (a) The Safety Critical Items List shall contain:

- (i) all items that have been identified through analysis as performing a safety function or a safety related function; and
  - (ii) all items that have been identified through analysis as being safety certifiable in their own right.
- (b) The Security Critical Items List shall contain:
- (i) all items that have been identified through analysis as performing a security function or a security related function; and
  - (ii) all items that have been identified through analysis as being security certifiable in their own right.

#### **A.15 Reliability Critical Items List**

- (a) The Reliability Critical Items List shall contain:
- (i) all items that have been identified through analysis as having a significant impact on, or critical to, the reliability of the Ontario Line Subway System;
  - (ii) all items that have been identified through analysis as having a significant impact on, or critical to, the availability of the Ontario Line Subway System; and
  - (iii) all items that have been identified through analysis as having a significant impact on, or critical to, the maintainability of the Ontario Line Subway System.



**B. SYSTEM SECURITY DELIVERABLE REQUIREMENTS****B.1 Security Plan Requirements****B.1.1 The Security Plan shall contain the three (3) sections listed below:**

- (a) the Passenger Station Security Plan;
- (b) the Guideway and Tunnel Security Plan; and
- (c) the Shared Infrastructure Security Plan.

**B.1.2 The requirements for each section of the Security Plan are described in the following sections.****B.1.3 System Security Plan Requirements**

- (a) RSSOM Project Co shall produce the System Security Plan which shall comply with the passenger company requirements of SOR/2020-222 and shall, notwithstanding any other provision of this Schedule 29.
- (b) Project Co shall provide technical support and input to RSSOM Project Co in the development of the System Security Plan.
- (c) The System Security Plan shall:
  - (i) identify, by job title, a senior manager responsible for the plan's overall development, approval and implementation;
  - (ii) be signed by the System Security Officer attesting to their knowledge and endorsement of and accountability for the Security Plan;
  - (iii) describe the organizational structure and human resources responsible for implementing the Security Plan and identify each position whose incumbent is responsible for implementing the plan or any portion of it;
  - (iv) describe the security duties of each identified department and position;
  - (v) set out a process for notifying each person who is responsible for implementing the Security Plan or any portion of it when the Security Plan or that portion of it must be implemented;
  - (vi) set out a program for the security awareness training required pursuant to Section 8.3 and the components of the security plan training referred to in Sections 8.6(d), 8.6(e), 8.6(f), 8.6(g) and 8.6(h) including a method to ensure that persons who undergo the security plan training acquire the knowledge and skills required under Section 8.3;
  - (vii) set out a process with respect to required Security Risk Assessments including:
    - (A) a procedure for conducting Security Risk Assessments; and

- (B) a method for assessing and prioritizing the risk;
- (viii) set out a process with respect to Remedial Actions that are part of the risk management strategy, including:
  - (A) a method for identifying security risks that require remedial action; and
  - (B) a method for implementing remedial actions and for evaluation their effectiveness;
- (ix) set out a process for selecting and implementing additional safeguards required;
- (x) set out a process for responding to threats and other security concerns, including procedures for communicating and coordinating with Contracting Authority
- (xi) set out a process for reporting threats and other security concerns;
- (xii) set out a process for reviewing the Security Plan;
- (xiii) include a report on the most recent Security Risk Assessment; and
- (xiv) set out a policy on:
  - (A) limiting access to security-sensitive information, and
  - (B) measures for the sharing, storing and destruction of that information.
- (xv) describe the security policy and strategy for achieving security;
- (xvi) describe the scope the plan applies to (note that reference can be made to the Ontario Line Subway System Definition Document), including all Works
- (xvii) describe the proposed organization roles with responsibility for security management, with summary evidence of the competence of persons holding such roles;
- (xviii) include an overview of the planned lifecycle for projects and the related security activities;
- (xix) describe process for the security approval of Systems being placed into service, including the interface to the Contracting Authority;
- (xx) describe the process for the maintenance of security-related documentation (i.e. document control), including the restriction of access for sensitive documents
- (xxi) describe the process for management of the Security Log;
- (xxii) describe arrangements for tracking security requirements transferred between Systems, Infrastructure or to other entities;

- (xxiii) describe the constraints and assumptions made in the Ontario Line Subway System Security Plan;
  - (xxiv) describe Subcontractor management arrangements for security and
  - (xxv) a describe the process for security risk assessment, and security review throughout the lifecycle,
- (the “System Security Plan”).

#### **B.1.4 Passenger Station Security Plan**

- (a) The Passenger Station Security Plan shall include the following minimum requirements:
    - (i) a description of Project Co’s approach to passenger and Project Co Parties security within Ontario Line Subway Stations;
    - (ii) a description of Project Co’s approach to using CPTED both within the Stations and within their immediate external environment;
    - (iii) a description of how physical and other security measures, including CCTV, will be deployed and managed both within the Stations and within their immediate external environment; and
    - (iv) a description of Project Co’s use of permanent signage in the delivery of security within the Stations,
- (the “Passenger Station Security Plan”).

#### **B.1.5 Guideway and Tunnel Security Plan**

- (a) The Guideway and Tunnel Security Plan shall include the following minimum requirements:
    - (i) a description of how physical and other security measures, including CCTV and access control will be deployed and managed along the at-grade guideway;
    - (ii) a description of how physical and other security measures, including CCTV and access control will be deployed and managed at tunnel portals;
    - (iii) a description of how physical and other security measures, including CCTV, will be deployed and managed on elevated structures; and
    - (iv) a description of how physical and other security measures, including CCTV, will be deployed and managed for tunnels, including EEBs (as defined in the Output Specifications) and similar points of egress/access,
- (the “Guideway and Tunnel Security Plan”).

#### **B.1.6 Shared Infrastructure Security Plan**

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- (a) The Shared Infrastructure Security Plan shall include the following minimum requirements:
- (i) A description of the approach to managing security at shared infrastructure facilities, including:
- (A) TTC subway interchange stations;
  - (B) GO Transit interchange stations; and
  - (C) all bus loops,
- (the “**Shared Infrastructure Security Plan**”).

## **B.2 Security Log**

- (a) RSSOM Project Co shall produce the Security Log which shall be structured such that:
- (i) all causes are mapped to threats or security concerns;
- (ii) all threats or security concerns are mapped to consequences;
- (iii) all mitigation measures are mapped to:
- (A) causes, if the measure is acting to prevent causes from happening or to minimize the probability of occurrence of causes;
  - (B) threats or security concerns, if acting to reduce or prevent threats or security concerns from giving rise to consequences or minimizing the frequency of occurrence of the threats or security concerns; and/or
  - (C) consequence, if acting after the consequences happen to reduce the severity of the consequence;
- (iv) mitigations measures are recorded in the Security Log as part of the analysis; and
- (v) mitigations measures become Project Security Requirements for Project Co to implement.
- (b) Project Co shall provide input to RSSOM Project Co as required and agreed at the SSSIC in development of the Security Log.
- (c) The Security Log should include information about the System it relates to and any assumptions or limitations about scope.
- (d) Each entry in the Security Log in respect of threats or security concerns shall include the following:
- (i) unique reference number;

- (ii) name or description of the security risk or threat;
  - (iii) related system elements, interfaces, and/or functions;
  - (iv) location or area of the security risk or threat;
  - (v) discipline and security risk or threat owner;
  - (vi) source of identification;
  - (vii) related lifecycle phase;
  - (viii) status for each project lifecycle stage from the following options:
    - (A) “Open” – a newly identified threat or security concern;
    - (B) “Resolved” – Security Requirements have been identified for the threat or security concern;
    - (C) “Managed” – the Security Requirements have been accepted by the responsible parties;
    - (D) “Transferred” – the responsibility for the threat or security risk has been transferred to another System or party; or
    - (E) “Cancelled” – the threat or security is no longer applicable;
  - (ix) related consequence(s)
  - (x) related cause(s);
  - (xi) related mitigation measures;
  - (xii) related Project Security Requirements;
  - (xiii) related closure assurance evidence; and
  - (xiv) related assumptions.
- (e) Each entry in the Security Log in respect of causes shall include the following information:
- (i) unique reference number;
  - (ii) name or description of the cause;
  - (iii) related system elements or interfaces;
  - (iv) location or area of the cause;
  - (v) related threats or security concerns ;
  - (vi) related mitigation measures;

- (vii) related Project Security Requirements;
  - (viii) related closure assurance evidence; and
  - (ix) related assumptions.
- (f) Each entry in the Security Log in respect of consequences shall include the following information:
- (i) unique reference number;
  - (ii) name or description of the consequence;
  - (iii) exposed parties;
  - (iv) where explicit threat estimation has been used as the Security Risk Assessment principle, the outcomes of the qualitative or quantitative assessment, including initial and residual Security Risk for each related consequence;
  - (v) related security risk or threats;
  - (vi) related mitigation measures;
  - (vii) related Project Security Requirements;
  - (viii) related closure assurance evidence; and
  - (ix) related assumptions.
- (g) Each entry in the Security Log in respect of mitigation measures shall include the following information:
- (i) which of the three Risk Assessment principles, in accordance with the CMREA, is being used;
  - (ii) any related security measures;
  - (iii) any related actions to be implemented;
  - (iv) any related Project Security Requirements;
  - (v) any related security risks or threats, causes, or consequences;
  - (vi) any related assumptions; and
  - (vii) any related assurance evidence.
- (h) Each entry in the Security Log in respect of security measures to be addressed as part of a different System shall include the following information:
- (i) unique reference number;

- (ii) description of the exported security constraints;
  - (iii) persons at risk;
  - (iv) possible control measures;
  - (v) constraints;
  - (vi) owner(s); and
  - (vii) risk transmission.
- (i) Where actions in the Security Log are allocated to individuals instructing them to undertake work to either better understand or provide mitigation for the risk arising from security concerns of threats, each action entry shall include the following information:
- (i) unique reference number;
  - (ii) actionee name;
  - (iii) description of the action required;
  - (iv) deadline date;
  - (v) completion date;
  - (vi) status of the action, from among the following:
    - (A) “Open” – if the action has not yet been implemented;
    - (B) “Conditionally Closed” – if it is certain that the action will be implemented;
    - (C) “Closed” – if the action has been implemented;
    - (D) “Transferred” if the responsibility for the action has been transferred and accepted by Contracting Authority, Adjacent Railway Systems, Passenger Interface Providers, Security Provider, Third Party Contractors or Additional Contractors; or
    - (E) “Cancelled” if the action is no longer applicable; and
  - (vii) details of the actionee responses and any other supporting information to justify closure of the actions.
- (j) The Security Log shall be continually reviewed and updated throughout the project and any changes to the Security Log shall be recorded, and include the following information:
- (i) date;
  - (ii) Security Log version number;
  - (iii) author of the change;

- (iv) the type of review undertaken;
- (v) reference to any associated minutes from meetings related to the Security Log review activity; and
- (vi) a summary of the nature of the changes made to the Security Log.

### **B.3 Security Requirements Specification**

- (a) The Security Requirements Specification shall comply with the requirements of and include the following:
  - (i) description of functional requirements (i.e. what the System must do to provide security and how effective the System needs to be), including:
    - (A) security-related function;
    - (B) security risk assessment;
    - (C) definition of secure state;
    - (D) definition of how security capability is maintained at all times; and
    - (E) failure detection measures of facility or security providing devices;
  - (ii) contextual requirements, including:
    - (A) security-related assumptions such as effectiveness (for example, loss of security provision, etc.) of mitigation barriers (for example, protection systems and redundancies);
    - (B) environmental conditions;
    - (C) organizational rules;
    - (D) operational rules; and
    - (E) maintenance rules; and
  - (iii) technical requirements, including:
    - (A) requirements resulting from the Security Risk Assessment;
    - (B) any legal security requirements; and
    - (C) adaptation requirements for System interfaces.



**B.4 Security Subsystem Requirements Specification**

- (a) The Security Subsystem Requirements Specification shall develop the requirements delivered in the Security Requirements Specification to a lower level of elicitation to fully define the technical solution.

**B.5 Security Risk Assessment**

- (a) RSSOM Project Co shall conduct a security risk assessment (the “**Security Risk Assessment**”) of the Ontario Line Subway System that identifies, describes, assesses, and prioritizes security risks and that:
  - (i) is developed using ISO 31000;
  - (ii) is developed using ISO 22341;
  - (iii) is developed using SOR/2020-222;
  - (iv) is based on the following elements:
    - (A) current and emerging security threats, including security threat information received from Contracting Authority, or the Security Provider, or from a municipal, provincial or federal government department or agency;
    - (B) operations, equipment, Works, and other assets that are deemed critical and that require protection from acts and attempted acts of unlawful interference with Passenger transportation;
    - (C) security vulnerabilities, including those identified during daily operations, in security reports made pursuant to Section 8.7; and
    - (D) potential impacts, including a decrease in public safety and security, loss of life, damage to property or the environment, disruption of rail transportation and financial and economic loss.
  - (v) identifies, for each risk, the likelihood that the risk will occur and the severity of the impact that it could have if it occurs; and
  - (vi) identifies potential safeguards intended to mitigate the risks identified.

**B.6 Security Risk Assessment Report**

- (a) RSSOM Project Co shall produce the Security Risk Assessment Report which shall document the outcomes of the Security Risk Assessment activity, including:
  - (i) threat and vulnerability identification workshops;
  - (ii) historical event analysis;
  - (iii) security operability studies;

- (iv) security interface analysis; and
- (v) zonal analysis.
- (b) Project Co shall provide input to RSSOM Project Co in the development of the Security Risk Assessment Report.
- (c) The Security Risk Assessment Report shall include the following minimum requirements:
  - (i) an introduction that includes the purpose of the security assessment activities, their scope, and details about the participants of such activities and the authors of the report to demonstrate suitable competence;
  - (ii) a summary comprised of an overview of the security risks, threats and the responsible actors;
  - (iii) the methods used for the Security Risk Assessment, including:
    - (A) threat identification;
    - (B) threat classification;
    - (C) security risk acceptance criteria; and
    - (D) Project Security Requirements identified;
  - (iv) any further actions required to ensure closure of all identified threats;
  - (v) a description of any updates to the Security Log; and
  - (vi) a description of any updates to the Remedial Action Plan.

#### **B.7 Security Risk Assessment Review Report**

- (a) RSSOM Project Co shall produce the Security Risk Assessment Review Report which shall:
  - (i) identify, describe and assess and prioritize any new security risks; and
  - (ii) document the review of the current Security Risk Assessment, including the date of the review, the reason for the review, and any new risks that have been identified, their priority level and the potential security safeguards, if applicable.

#### **B.8 Remedial Action Plan**

- (a) RSSOM Project Co shall produce the Remedial Action Plan which shall describe the approach to developing and implementing remedial actions in response to identified security risks and threats.
  - (i) The Remedial Action Plan shall include descriptions of:

- (A) the security risk or threat subject to remediation;
  - (B) the effectiveness of actions in reducing or eliminating the risks, and
  - (C) the additional safeguards that are part of the risk management strategy.
- (b) The Remedial Action Plan shall be updated any time a new security risk or threat is identified through the Security Risk Assessment process, or following review of the effectiveness of remediation attempts.

## APPENDIX C TO SCHEDULE 29

**CONSTRUCTION SAFETY AND CONTRACTOR SITE SPECIFIC SAFETY MANUAL  
REQUIREMENTS****A. General Requirements**

- (a) The Contractor Site Specific Safety Manual shall, at a minimum, comply in all respects with:
- (i) the applicable requirements of the OHSA, including all regulations thereto;
  - (ii) industry recognised safe practices;
  - (iii) the health and safety requirements set by Project Co and by the Construction Contractor with respect to the Project and the Site;
  - (iv) the health and safety requirements of the Project Agreement;
  - (v) the Certificate of Recognition requirements.

**B. Minimum Categories**

- (a) The Contractor Site Specific Safety Manual shall, at a minimum, contain narrative addressing the categories and sub-categories as set out below:

<b>0.0</b>	<p><b>Overview and Scope</b></p> <p>The manual shall have an introduction that shall set out an overview and scope of the Project.</p>
<b>1.0</b>	<p><b>Health and Safety Policy and Goals</b></p> <p>The policy shall:</p> <ul style="list-style-type: none"> <li>• state Project Co’s health and safety mandate and occupational health and safety policy;</li> <li>• refer to the safety goals and lifesaving rules of the Project and the culture of safety planned to be implemented by the Construction Contractor;</li> <li>• include a “statement of commitment” by an officer of the Construction Contractor, which must specifically refer to the manual itself and be executed by an officer of the Construction Contractor who has authority to bind the Construction Contractor; and</li> <li>• include a statement of commitment with respect to keeping Subcontractors responsible for matters related to health and safety.</li> </ul>

2.0	<p><b>Safety Leadership</b></p> <p>The manual shall:</p> <ul style="list-style-type: none"> <li>• include Project Co’s and the Construction Contractor’s approach, actions and continuous improvement regarding the safety leadership of each of its employees and subcontracted workforces; and</li> <li>• include examples of proactive measures and efforts taken in maintaining and improving the safety culture of the organization at all levels, including documented safety inspections.</li> </ul>
3.0	<p><b>Project Health and Safety Objectives and Performance Measurement</b></p> <p>The manual shall:</p> <ul style="list-style-type: none"> <li>• describe the methodology for measuring health and safety performance, including key performance indicators to assess whether objectives are being met;</li> <li>• indicate how measures of lagging and leading indicators will be used to track health and safety performance and which entity(ies) will be accountable for its implementation and communication to Contracting Authority; and</li> <li>• provide details on Project Co’s proactive safety awards program that supports outstanding safety performance and the health and safety culture of the Project.</li> </ul>
4.0	<p><b>Roles and Responsibilities</b></p> <p>Describe the specific roles and responsibilities of the following persons in relation to meeting the health and safety objectives and the requirements of the Project Agreement:</p> <ul style="list-style-type: none"> <li>• Project Co;</li> <li>• Project Director;</li> <li>• Construction Health and Safety Manager;</li> <li>• Construction Manager;</li> <li>• Safety Coordinator;</li> <li>• Joint Occupational Health and Safety Committee/Trades Committee;</li> <li>• Subcontractor;</li> <li>• Subcontractor Supervisor;</li> <li>• Workers;</li> <li>• Visitors; and</li> <li>• External Parties.</li> </ul>
5.0	<p><b>Subcontractor Health and Safety Management Plan</b></p> <p>Describe how Subcontractors will be managed and measures that will be implemented to ensure competent Subcontractor supervision related to the Project. Include in the plan Project Co’s approach to reviewing the Subcontractor’s health and safety performance history.</p>

6.0	<p><b>Hazard Assessment, Analysis and Control</b></p> <p>Describe the Construction Contractor’s plan for how work scopes will be assessed and analysed, and how mitigation controls will be put in place to ensure work is performed in a healthy and safe manner. The plan shall include:</p> <ul style="list-style-type: none"> <li>• techniques that focus on scopes of work broken down into steps, identifying potential hazards and potential preventative steps;</li> <li>• daily job and task level Hazard Identification and control;</li> <li>• means to measure workers’ understanding and compliance with safe work practices and safe job procedures through training and correction of unsafe performance; and</li> <li>• how Hazard awareness and mitigation controls are communicated to workers.</li> </ul>
	<p><b>Designated Substances and Hazardous Materials</b></p>
	<p><b>Hazard Identification</b></p>
	<p><b>Risk Assessment</b></p> <p>Describe the Construction Contractor’s risk assessment methodology and provide a Project-specific health and safety risk register that details any unique safety requirements of the Project that will be provided and maintained over the duration of the Project. A risk register is required to be completed prior to any work commencement.</p>
	<p><b>Job Hazard Analysis</b></p> <p>Provide an analysis to detail a technique that focuses on job tasks as a way to identify hazards before they occur. The analysis shall focus on the relationship between the worker, the task, the tools and the work environment. The analysis shall break down the job in smaller steps to examine potential hazards and potential preventative steps.</p>
	<p><b>Daily Hazard Identification and Control</b></p>
	<p><b>Safe Work Practices and Safe Job Procedures</b></p> <p>Describe the process to develop and implement safe work practices/safe job procedures to address the identification, assessment, control, prevention and communication of hazards specific to individual tasks or jobs.</p> <p>Provide means to ensure employees understand and comply with safe work practices and safe job procedures through training, correction of unsafe performance and, if necessary, enforcement through a clearly communicated disciplinary system.</p>
7.0	<p><b>Company Rules – Rules of Conduct and Disciplinary Action</b></p> <p>Describe the company rules and the disciplinary actions to be taken in the case of health and safety infractions or non-compliance with established procedures and policies.</p>

	<p><b>Fitness for Duty Policy</b></p> <p>The policy shall:</p> <ul style="list-style-type: none"> <li>• explain how Project Co will ensure that workers are fit for duty at all times while performing the Works or at the Site; and</li> <li>• meet or exceed the requirements of the Metrolinx Fitness for Duty Policy to ensure that all workers are fit for duty while performing the Works or other activities at the Site.</li> </ul> <p>Project Co acknowledges and agrees that Metrolinx Fitness for Duty Policy is provided solely for the purpose of incorporating any relevant matters into its Contractor Site Specific Safety Manual and that provision of the Metrolinx Fitness for Duty Policy to Project Co does not constitute control or direction of safety of the Works or at the Site by Contracting Authority.</p>
	<p><b>Workplace Violence and Harassment</b></p>
	<p><b>Disciplinary Action</b></p> <p>Describe the company rules and the disciplinary actions to be taken in the case of health and safety infractions or non-compliance with established procedures and policies.</p>
	<p><b>Worker Rights</b></p>
8.0	<p><b>Health and Safety Training and Competency</b></p> <p>Describe the training program to be implemented to ensure that all persons who will be entering and/or working on the Site are appropriately trained. At a minimum, the training program shall include:</p> <ul style="list-style-type: none"> <li>• demonstration of the individual’s competency for the assigned role;</li> <li>• description and associated documentation of safety and security; and</li> <li>• competency training.</li> </ul> <p>The training program should include a description and associated documentation of safety and security competency training programs, either online or in person, for field personnel, including the type of training provided and how it specifically targets health and safety. Training may include task-specific safety training or general awareness training.</p>
	<p><b>Project Specific Orientation</b></p> <p>Describe how the health and safety training program will be facilitated with all individuals before they are given access to any areas within the Site or any portion of the Lands. This will include worker education and training on specific Site hazards and controls including safe work practices and safe job procedures.</p>
	<p><b>Site Specific Orientation</b></p> <p>If work activities are to be performed on multiple Sites under one project scope, provide a narrative of how a site-specific safety orientation will be created and facilitated to all affected parties to address the hazards specific to the Site. This category is in addition to the Project Specific Orientation.</p>

	<p><b>Visitor/Short Duration Work Orientation</b></p> <p>Narrative shall include health and safety training to be provided for all visitors who are not performing work on the Site or any portion of the Lands and will be escorted by a member of Project Co while on the Site or any portion of the Lands before being given authorization to enter the Site or any portion of the Lands.</p>
	<p><b>Delivery Driver/ Supplier Orientation</b></p> <p>Narrative shall include health and safety training to be facilitated with all delivery drivers and suppliers before being given authorization to enter the Site or any portion of the Lands, including those who are not performing Construction Activities on the Site or any portion of the Lands but may be granted access to the Site or any portion of the Lands to perform their job functions.</p>
	<p><b>Worker Training to Specific Site Hazards</b></p> <p>Including safe work practices and safe job procedures.</p>
	<p><b>Personal Protective Equipment (“PPE”)</b></p> <p>Such narrative shall incorporate the requirements of Section 7.5 of this Schedule 29. Identify the minimum PPE that will be required onsite, selection criteria of specialty PPE, and the use and maintenance of PPE.</p>
	<p><b>Worker/Supervisor Competency Evaluation</b></p> <p>Describe how the competency of workers and supervisors will be identified, met and evaluated on an ongoing basis.</p>
9.0	<p><b>Meetings and Communication Plan</b></p> <p>Describe the frequency of meetings relating to health and safety, how meetings will be documented and how agreed outcomes will be communicated to the appropriate parties.</p>
10.0	<p><b>Workplace Inspections</b></p> <p>Describe the Construction Contractor’s strategy for implementing an inspection regime in relation to health and safety on the Site.</p>
	<p><b>Informal Inspections</b></p>
	<p><b>Formal Inspections</b></p>
	<p><b>Audits</b></p>
	<p><b>Inspection and Audit Schedule</b></p>
	<p><b>Inspection Follow-up/Corrective Action Plan</b></p> <p>Describe the development and maintenance of a health and safety issues log, derived from inspections, audits and incidents with follow-up and corrective action plans necessary to mitigate issues.</p>
	<p><b>Maintenance of Records</b></p>



11.0	<p><b>Construction Emergency Response Plan</b></p> <p>Describe the policies and procedures pertaining to incident and emergency planning, response (including the safety of the workforce/public), mitigation and recovery.</p> <p>Project Co shall establish procedures to achieve, at a minimum, the following:</p> <ul style="list-style-type: none"> <li>• maintain communication for the exchange of information between Project Co, Contracting Authority, the City of Toronto and other involved agencies;</li> <li>• develop coordinated support through interaction with local, provincial and federal governmental entities, as well as other entities, for safe and efficient construction;</li> <li>• coordinate emergency response, traffic control, security and operational issues affecting construction of the Project, and associated system feeders and exits; and</li> <li>• update Emergency Service Providers regarding the status of construction of the Project, and associated system feeders and exits, to ensure safe and timely response to Emergency events. At a minimum, this shall include off-site and on-site traffic routing changes, and changes to job site access, fire suppression system modifications and in-service availability of standpipes or fire suppression water supply, and changes in the Works that may create a greater likelihood of occurrence of a particular type of Emergency.</li> </ul>
	<b>Emergency Response Procedure</b>
	<b>Property, Equipment and Environmental Damage Procedure</b>
	<b>Emergency Evacuation Plan</b>
	<b>Emergency Contacts and Roles</b>
	<p><b>First Aid and CPR</b></p> <p>Include documentation that indicates that Subcontractors have a proactive injury management system that supports efficient, effective and timely treatment of their employees who become injured on the Site.</p>
	<b>Drills and Exercises</b>
12.0	<p><b>Incident Reporting and Investigations Procedure</b></p> <p>Describe the procedures for reporting incidents, performing proactive investigations intended to prevent future incidents, identifying root causes and implementing measures to prevent a reoccurrence.</p> <p>The Construction Contractor shall demonstrate that an incident review process has been implemented which involves all levels of management to validate corrective measures to minimize future injuries and incidents on the Site.</p>

13.0	<p><b>Statistics and Records</b></p> <p>Describe how safety records are to be maintained to verify conformity to Project Co’s Contractor Site Specific Safety Manual requirements.</p> <p>Describe how the safety records shall be in electronic format, legible, electronically searchable, readily identifiable and retrievable, and available to Contracting Authority upon request.</p> <p>Project Co shall create and maintain a corrective action database. Project Co shall ensure all Subcontractor incidents are recorded in said database. The database shall be kept up to date and made available to Contracting Authority upon request. The database shall be maintained to verify conformity to the Contractor Site Specific Safety Manual requirements.</p>
14.0	<p><b>Security Plan</b></p> <p>Provide a plan that details guidelines for implementing security on the Site.</p> <p>Provide a methodology for securing the site and restricting trespassers.</p> <p>Describe how Project Co shall comply with its obligation to take every reasonable precaution to protect the public’s health and safety during the execution of the Works.</p>
15.0	<p><b>Traffic Management and Control Plan</b></p> <p>Include how activities performed by Project Co and Project Co Parties will protect workers, the public, passengers, transit infrastructure, transit operations and other parties.</p>
16.0	<p><b>Security Plan</b></p> <p>Provide a plan that details guidelines for implementing security on the Site. The plan shall include:</p> <ul style="list-style-type: none"> <li>• a methodology for securing the Site and restricting trespassers; and</li> <li>• a description of how Project Co shall comply with its obligation to take every reasonable precaution to protect the public’s health and safety during the execution of the Works.</li> </ul>
17.0	<p><b>Site Plot Plan</b></p> <p>Plan shall include an illustration of the overall Site and highlight specific locations where high risk Construction Activities will take place or identify Construction Activities that have the potential to impact transit operations and/or affect members of the public.</p>
18.0	<p><b>Tunneling Safety Plan</b></p> <p>Provide a tunneling safety plan that describes the management of tunnel-specific risks, meets or exceeds the regulatory requirements in O.Reg.213/91, as amended from time to time, and encompasses the following requirements, at a minimum:</p> <ul style="list-style-type: none"> <li>• a risk assessment and mitigation of tunnel-specific hazards;</li> <li>• provisions and instructions for accessing shafts and tunnels (i.e. brass tags, photo ID’s etc.);</li> <li>• procedures for the following: <ul style="list-style-type: none"> <li>(a) safe hoisting into shaft;</li> <li>(b) gas monitoring inside shafts and tunnels;</li> </ul> </li> </ul>

	<p>(c) lock-out, tag-out inside shafts and tunnels;</p> <p>(d) tunnel boring machine (TBM) cutter head entry and service;</p> <p>(e) pipe installation, conveyor belt operation; and</p> <p>(f) other procedures related to safe shaft and tunnel operations;</p> <ul style="list-style-type: none"> <li>• provisions for maintaining optimal air quality inside shafts and tunnels during hot work operations and/or any other work of such nature (i.e., saw cutting, shotcrete, painting, and other such work) that could emit fumes, dust or a noxious gas;</li> <li>• training and orientation specific to shafts and tunnel operation for all personnel entering the shafts and tunnels; and</li> <li>• emergency evacuation plan related to shafts and tunnels (i.e. medical aids, fires, chemical spill, oxygen deficiency, toxic atmospheres, and other emergency circumstances), including, <ul style="list-style-type: none"> <li>(a) use of self-rescuer (such as Draeger Oxy-k or Ocenco systems);</li> <li>(b) use of approved man-basket and/or Davit Arm system (where applicable);</li> <li>(c) notification system for emergencies;</li> <li>(d) use of stretchers inside shafts and tunnels;</li> <li>(e) summoning of the tunnel rescue team (where applicable);</li> <li>(f) provide fire protection plan for shafts and tunnel(s); and</li> <li>(g) provide a communication plan for shafts and tunnel(s).</li> </ul> </li> </ul>
<b>19.0</b>	<b>Continuous Improvement Plan</b>
<b>20.0</b>	<b>Others</b>

**APPENDIX D TO SCHEDULE 29****TECHNICAL SPECIFICATIONS FOR PROJECT CO SMS SOFTWARE SOLUTION****A. The Project Co SMS Software Solution shall:**

- (a) be cloud-based;
- (b) the solution shall be subject to, as a minimum, the cybersecurity policies of the Project.
- (c) allow multiple users to remotely log in and access the solution with single sign-on capability, but with individually set access permissions (i.e. read only, read-write and similar permissions);
- (d) allow users to upload user documents against any individual record contained within the database;
- (e) be equipped with document control capabilities that enable users to track versions and revisions and that ensure that the latest revision of documents is being employed by users;
- (f) allow easy access to data, dashboarding features and business analytics features to enable the monitoring and reporting of the Common Safety Indicators determined in accordance with Section 5.9 of this Schedule 29;
- (g) include a central repository for all historical and current versions of the documents required to be managed in the Project Co SMS, organized in a manner that promotes efficient access to the documents;
- (h) include a database that accurately and effectively records and tracks all data required to be managed in accordance with the Project Co SMS; and
- (i) Throughout the Project Term, Project Co shall ensure that,
  - (i) the Project Co SMS Software Solution is, at all times, the most current vendor-supported version of the cloud-based software selected by Project Co; and
  - (ii) the Project Co SMS Software Solution and all data and documents contained therein are electronically accessible to Contracting Authority, at all times, on a real-time basis through the single sign-on capability, and Project Co shall ensure that all Contracting Authority users' permissions include "read" and "download".
- (j) If, at any time during the Project Term, the Project Co SMS Software Solution vendor is no longer in business or otherwise no longer supports the Project Co SMS Software Solution and the Project Co SMS Software Solution is not supported by another vendor, then Project Co shall, subject to the prior written approval of the Contracting Authority, select and implement an alternative cloud-based software solution for the Project Co SMS that meets the requirements of this Schedule 29.

**SCHEDULE 30**

**INSURANCE TRUST AGREEMENT**

**THIS AGREEMENT** is made as of the 8<sup>th</sup> day of November, 2022

**AMONG:**

**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

(“**Contracting Authority**”)

**AND:**

[REDACTED]

(the “**Lenders’ Agent**”)

**AND:**

**ONTARIO TRANSIT GROUP INC.**, [REDACTED]

(“**Project Co**”)

**AND:**

[REDACTED]

(the “**Account Trustee**”)

**WHEREAS:**

- A. Contracting Authority and Project Co have entered into the Project Agreement.
- B. Contracting Authority, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. Contracting Authority, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

**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**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (b) “**Applicable Law**” has the meaning given in the Project Agreement.
- (c) “**Appointed Representative**” has the meaning given in the Lenders’ Direct Agreement.
- (d) “**Bank**” means [REDACTED].
- (e) “**Bonds**” means [REDACTED].
- (f) “**Business Day**” has the meaning given in the Project Agreement.
- (g) “**Change of Authorization Event**” has the meaning given in Section 9(a) of this Insurance Trust Agreement.
- (h) “**Change of Authorization Notice**” has the meaning given in Section 9(b)(ii) of this Insurance Trust Agreement.
- (i) “**Contracting Authority**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (j) “**Contracting Authority Representative**” has the meaning given in the Project Agreement.
- (k) “**Default Notice**” means a written notice given by the Lenders’ Agent to the Account Trustee and Contracting Authority that an event of default under the Lending Agreements has occurred and is continuing.
- (l) “**Default Period**” means the period commencing on the date upon which the Account Trustee and Contracting Authority receives a Default Notice and ending on the date upon which the Account Trustee and Contracting Authority receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (m) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (n) “**Insurance Policies**” has the meaning given in Section 4(a) of this Insurance Trust Agreement.
- (o) “**Insurance Proceeds**” has the meaning given in Section 6(a) of this Insurance Trust Agreement.
- (p) “**Insurance Trust Account**” means [REDACTED].

- (q) “**Insurance Trust Agreement**” means this Insurance Trust Agreement.
- (r) “**Lenders**” has the meaning given in the Project Agreement.
- (s) “**Lenders’ Agent**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (t) “**Lenders’ Direct Agreement**” means the Lenders’ Direct Agreement made on or about the date hereof among Contracting Authority, Project Co and the Lenders’ Agent.
- (u) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (v) “**Multiple Obligee**” means a multiple obligee under the applicable Bond.
- (w) “**Multiple Obligee Rider(s)**” means the multiple obligee rider(s) applicable to the Bonds pursuant to which Project Co, Contracting Authority and the Lenders’ Agent are multiple obligees under the Bonds.
- (x) “**New Third Party Infrastructure**” has the meaning given in the Project Agreement.
- (y) “**Notice Period**” has the meaning given in the Lenders’ Direct Agreement.
- (z) “**Order**” has the meaning given in Section 8(k) of this Insurance Trust Agreement.
- (aa) “**Party**” means any of Contracting Authority, Project Co, the Lenders’ Agent or the Account Trustee, and “**Parties**” means all of Contracting Authority, Project Co, the Lenders’ Agent and the Account Trustee.
- (bb) “**Project**” has the meaning given in the Project Agreement.
- (cc) “**Project Agreement**” means the project agreement dated as of the date hereof between Contracting Authority and Project Co.
- (dd) “**Project Co**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (ee) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (ff) “**Project Co Infrastructure**” has the meaning given in the Project Agreement.
- (gg) “**Step-In Notice**” has the meaning given in the Lenders’ Direct Agreement.
- (hh) “**Step-In Period**” has the meaning given in the Lenders’ Direct Agreement.
- (ii) “**Suitable Substitute**” has the meaning given in the Lenders’ Direct Agreement.
- (jj) “**Surety**” has the meaning given in the Project Agreement.

- (kk) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including the Bonds, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.
- (ll) “**Works**” has the meaning given in the Project Agreement.

## 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 and 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, 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.
- (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 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 and time shall be of the essence hereof.
- (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. BONDS AND INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Bonds, 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 Bonds, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders’ Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Bonds, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of Contracting Authority.
- (b) The Account Trustee shall not release the Bonds or release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders’ Agent, Contracting Authority, and Project Co agree that (x) if Project Co or the Lenders’ Agent receives the Bonds, then the Bonds will be enforced for the purpose of completion of the Project, and (y) 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 to third parties, such funds shall be directed, used or advanced only for one of the following purposes:

- (i) the repair, reinstatement, restoration or replacement of the Project Co Infrastructure or New Third Party Infrastructure or any other assets, materials or goods necessary or desirable for the carrying out of the Works in respect of which such Insurance Proceeds have been paid;
- (ii) the completion of the Project; or
- (iii) indemnification for any Contracting Authority loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co for delay in start-up, soft costs or business interruption may be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Works.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if Contracting Authority is entitled to indemnification under the Insurance Policies in respect of any loss incurred by Contracting Authority, such related insurance proceeds are to be paid directly to Contracting Authority by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii) of this Insurance Trust Agreement. For greater certainty it is understood and agreed that Contracting Authority shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

#### 4. DELIVERY OF BONDS AND INSURANCE POLICIES

- (a) Project Co shall deliver, or cause to be delivered, the Bonds to the Account Trustee. Project Co is required to obtain under the Project Agreement certified copies or originals of all insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the Bonds and Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.

#### 5. BONDS

- (a) If the Account Trustee and Contracting Authority have received a Default Notice, and if Lenders’ Agent presents to the Account Trustee (and the other Parties to this Insurance Trust Agreement) a declaration that it or any person Lenders’ Agent designates requires possession of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, and the Account Trustee has received written authorization from Contracting Authority confirming Lenders’ Agent’s right to receive the Bonds, the Account Trustee shall provide the Bonds to Lenders’ Agent or such designated party, without the need for further investigation or inquiry by the Account Trustee, provided that, if at any time prior to the release of the Bonds to Lenders’ Agent or a person designated by it, pursuant to the foregoing, the Account Trustee receives a Change of Authorization

Notice and Contracting Authority presents to the Account Trustee a declaration that it or any person designated by it requires possession of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, the Account Trustee shall provide the same to Contracting Authority or such designated party, without the need for further investigation or inquiry by the Account Trustee that Contracting Authority or the designated party presenting the declaration is entitled to receive the Bonds. Contracting Authority shall provide, no later than five (5) Business Days following receipt by Contracting Authority of a request by the Lenders' Agent, either: (i) the written authorization referred to in this Section 5(a); or (ii) written justification detailing Contracting Authority's rationale for refusing to provide such authorization.

- (b) Project Co agrees to obtain or cause to be obtained from the Surety any required amendment to the Bonds to provide for the foregoing provisions by way of amendment or replacement of the Multiple Obligee Rider now attached to and forming part of the Bonds.
- (c) Contracting Authority, Lenders' Agent and Project Co covenant and agree to observe and perform their respective covenants, agreements and obligations under the provisions of the Lenders' Direct Agreement and further covenant and agree as between them, that if there is any conflict or inconsistency between the provisions of Lenders' Direct Agreement and this Insurance Trust Agreement, the provisions of the Lenders' Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.

## 6. INSURANCE PROCEEDS

- (a) Subject to Section 3(d), the Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders' Agent or Contracting Authority (the "**Insurance Proceeds**") as follows:
  - (i) in the case of third party legal liability or employer's liability insurance, to the relevant claimant in satisfaction of the claim, demand, proceeding or liability in respect of which such Insurance Proceeds are payable;
  - (ii) in the case of any property builders' risk "All Risk" insurance, 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 in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, 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 in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is equal to or greater than \$[REDACTED],

to the Lenders' Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or

- (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders' Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as Contracting Authority may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and
- (iii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to Contracting Authority, to be distributed to the parties entitled thereto.
- (b) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 6(a) have been made, including any Insurance Proceeds held in the Insurance Trust Account:
  - (i) if the Account Trustee has not received a Default Notice, to Project Co; and
  - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, Contracting Authority, may at any time or from time to time direct in writing.
- (c) Each of Project Co, the Lenders' Agent and Contracting Authority shall forthwith deliver, or cause to be delivered, to the Account Trustee, any and all Insurance Proceeds it received from time to time and is not otherwise entitled to in accordance with the terms of this Insurance Trust Agreement.
- (d) The Account Trustee shall deposit to the Insurance Trust Account all amounts that are paid over to it pursuant to the Insurance Policies or otherwise by Project Co, Contracting Authority or the Lenders' Agent and shall not transfer, release or distribute any such proceeds other than in accordance with this Insurance Trust Agreement.

## 7. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.

- (b) The Account Trustee hereby agrees to promptly provide to Contracting Authority all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as Contracting Authority may from time to time request in writing.

## 8. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, Contracting Authority or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, Contracting Authority or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).
- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, Contracting Authority, 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 8(c), the Account Trustee will not be subject to any

liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.

- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders or of Contracting Authority or of Project Co, 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 8(b).
- (f) Except as otherwise provided in Sections 8(c), 8(d) and 8(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), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services

hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).

- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or Contracting Authority for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "**Order**"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, Contracting Authority and Project Co.
- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, Contracting Authority, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, Contracting Authority, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, Contracting Authority, to resolve such ambiguity or uncertainty.

- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by Contracting Authority shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from Contracting Authority.
- (o) Each of the Lenders' Agent and Contracting Authority shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or Contracting Authority which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable, pursuant to this Section 8(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 electronic submission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable, pursuant to Section 8(o).
- (q) The Account Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Account Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Account Trustee, in its sole judgment, determine at any time that its acting under this Insurance Trust Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on ten (10) days' written notice to Project Co and Contracting Authority, or any shorter period of time as agreed to by Project Co and Contracting Authority, notwithstanding the provisions of Section 8(a) of this Insurance Trust Agreement, provided that (i) the Account Trustee's written notice shall describe the circumstances of such non-compliance, provided that the Account Trustee shall not be obligated to describe the circumstance of such non-compliance to the extent such disclosure is prohibited by applicable law; and (ii) if such circumstances are rectified to the Account Trustee's satisfaction within such ten (10) day period, then such resignation shall not be effective.



**9. LENDERS' AGENT AND CONTRACTING AUTHORITY'S RIGHTS TO DIRECT**

- (a) Until the first to occur of:
- (i) the expiry of the Notice Period under the Lenders' Direct Agreement where no Step-In Notice has been delivered thereunder;
  - (ii) the expiry of the Step-In Period under the Lenders' Direct Agreement where:
    - (A) there has been no assignment to a Suitable Substitute;
    - (B) no replacement Project Agreement has been entered into in accordance with Section 10(e)(iii)(A) (*Novation to Suitable Substitute*) of the Lenders' Direct Agreement; or
    - (C) the Appointed Representative has not cured the Project Co Event of Default,

(each, a “**Change of Authorization Event**”), the Lenders' Agent shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds.

- (b) Upon the occurrence of a Change of Authorization Event:
- (i) the Lenders' Agent shall cease to be entitled, and Contracting Authority shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds; and
  - (ii) the Lenders' Agent and Contracting Authority shall jointly provide notice to the Account Trustee (a “**Change of Authorization Notice**”) that Contracting Authority shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds.

**10. TERMINATION**

- (a) Subject to the provisions of Section 10(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
- (i) the obligations of Project Co to the Lenders' Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
  - (ii) the obligations of Project Co to Contracting Authority have been paid and performed in full.

- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lenders' Agent, Contracting Authority, and Project Co have entered into a replacement insurance trust agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory to the Lenders' Agent, the Lenders and Contracting Authority.

## 11. ASSIGNMENT

The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders' Agent, Contracting Authority and Project Co.

## 12. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Insurance Trust 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, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority or Contracting Authority Representative:

Metrolinx  
2 Queen Street East, 11th Floor  
Toronto, ON M5C 3G7

Attn.: [REDACTED]  
Email: [REDACTED]

If to the Lenders' Agent:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

If to Project Co:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

If to the Account Trustee:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 12(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 12(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12(e), 12(f) and 12(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third (3<sup>rd</sup>) 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 electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (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 electronic submission in accordance with this Section 12.
- (f) If any notice delivered by hand or transmitted by electronic submission 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 electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

**13. AMENDMENTS**

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.

**14. 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.

**15. RELATIONSHIP BETWEEN THE PARTIES**

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.

**16. ENTIRE AGREEMENT**

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.

**17. SEVERABILITY**

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.

**18. ENUREMENT**

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.

**19. 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 *Crown Liability and Proceedings Act* (Ontario).

**20. CONTRACTING AUTHORITY DESIGNATE**

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Insurance Trust Agreement and Project Co, the Lenders' Agent and the Account Trustee may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Lenders' Agent and the Account Trustee in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Lenders' Agent and the Account Trustee in writing of any designation hereunder. The rights and obligations of the Parties to this Insurance Trust Agreement shall be in no way affected by reason of any such designation. Project Co, the Lenders' Agent and the Account Trustee acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 20.

**21. FURTHER ASSURANCE**

Each Party shall do all things, from time to time, and execute all reasonable further documents necessary to give full effect to this Insurance Trust Agreement.

**22. LANGUAGE OF AGREEMENT**

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.*

**23. COUNTERPARTS**

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 of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

**24. LIABILITY**

Metrolinx, as Crown agency, shall be liable for all of the obligations of Contracting Authority under this Insurance Trust Agreement.

**25. COPYRIGHT NOTICE**

The Parties acknowledge that King's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement and this Insurance Trust Agreement.

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*

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

**METROLINX**

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

I have authority to bind the corporation

[REDACTED]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation

**ONTARIO TRANSIT GROUP INC.**

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

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

We have authority to bind the corporation.

[REDACTED]

By: \_\_\_\_\_  
Name:  
Title:

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

Name:

Title:

I/We have authority to bind the corporation



**SCHEDULE 31**

**PROJECT CO INFORMATION**

[REDACTED]

**SCHEDULE 32**  
**FINANCIAL MODEL**

[REDACTED]

**SCHEDULE 33****WORKS REPORT REQUIREMENTS**

1. The Works Report prepared by Project Co (or the COR-Certified Construction Project Co Party designated by Project Co under Section 11.12(a)(vi) (*Safety*) of the Project Agreement), as “constructor” of the Works and Site, under the *Occupational Health and Safety Act* (Ontario) and this Project Agreement, shall include the following:
  - (a) an executive summary, describing the general status of the Works;
  - (b) a detailed status of the Works, including,
    - (i) a narrative detailing the progress of,
      - (A) the Project Co design;
      - (B) the Project Co Permits, Licences, Approvals and Agreements;
      - (C) Project Co procurement of materials and equipment;
      - (D) construction of the Stations, Tunnel, Facilities, Civil Structures, Tunnel Ventilation System, Substations and Emergency Exit Buildings;
      - (E) Utility Works;
      - (F) demolition and utility relocation;
      - (G) traffic management;
      - (H) pre-construction and post-construction activities;
      - (I) all activities required pursuant to Schedule 45 – Integration with RSSOM Project; and
      - (J) property access and business management plan updates;
    - (ii) a narrative detailing the implementation and status of the Geotechnical Instrumentation and Monitoring Plan, including (but not limited to) any instances when the Review Level and/or the Alert Level (as described in the Output Specifications) may have been reached and all corrective actions implemented in response;
    - (iii) a description of contemplated innovations, where applicable;
    - (iv) a description of progress and issues for communication and public engagement;

- (v) a narrative detailing progress and issues for construction progress related to overall phasing of the Site (including a Site map illustrating progress);
- (vi) a narrative describing health and safety items, including,
  - (A) the total number of hours worked for all persons on Site;
  - (B) the total number of critical injuries (defined under section 1(1) of the *Occupational Health and Safety Act* (Ontario)) or fatalities;
  - (C) the total number of injuries to any member of the public;
  - (D) the total number of incidents involving medical aid or health care (as defined by the *Workplace Safety and Insurance Act* (Ontario));
  - (E) the total number of incidents involving first aid (as defined by the *Workplace Safety and Insurance Act* (Ontario));
  - (F) the total number of incidents involving damage to property, infrastructure and/or mobile equipment owned by Metrolinx, the City of Toronto, the TTC or other third parties, and adjacent property;
  - (G) the total number of near misses (no damage to property or persons);
  - (H) the total number of incidents resulting in lost time;
  - (I) the total number of incidents with no lost time;
  - (J) the total number of Other Critical Injuries (as defined by *Occupational Health and Safety Act* (Ontario));
  - (K) the total number of supervisor (as such term is defined in the *Occupational Health and Safety Act* (Ontario)) weekly jobsite safety inspections;
  - (L) the total number of weekly safety talks;
  - (M) the total number of management field visits;
  - (N) the total number of site safety orientations;
  - (O) all correspondence related to MOL or MECP visits; and
  - (P) details of MOL and MECP enquiries;
- (vii) environmental monitoring and compliance status;
- (viii) all commissioning and completion, including,

- (A) deficiency review/rectification status;
  - (B) handover status;
  - (C) commissioning status; and
  - (D) completion status;
- (c) plans for Works scheduled in the forthcoming reporting period;
  - (d) goals for next reporting period (such as progress on activities, resolution of issues);
  - (e) progress photos;
  - (f) contractual outstanding decisions and description of any Disputes related to the Works and action taken place over the last month to resolve such Disputes;
  - (g) quality assurance and quality control including,
    - (i) status of the Design Quality Management Plan, the Construction Quality Management Plan, other Quality Management Plans, Quality Audit Program Plan and Quality Audit Program Plan updates;
    - (ii) a table setting out and responding to items of Non-Conformance and deficiencies in ongoing Works as identified by Contracting Authority or Project Co or both;
    - (iii) status of Design Certificates and Construction Certificates;
    - (iv) update of quality control and quality assurance activities and personnel responsible;
    - (v) monthly Quality Management System reports, Project Co Quality Audit Reports, Corrective Actions Plans and summary information from the Non-Conformance Tracking System (all as described in Schedule 11 – Quality Management); and
    - (vi) status of Internal Quality Audits, External Quality Audits and Independent Quality Audits;
  - (h) organization and staffing changes, deletions and additions for Project Co and all Project Co Parties;
  - (i) status of all Works Submittals pursuant to the requirements of the Project Agreement;
  - (j) Subcontract status, including,
    - (i) consultants;
    - (ii) Subcontracts awarded; and

- (iii) tenders;
- (k) financial status, including,
  - (i) progress and Variations status;
  - (ii) insurance summary;
  - (iii) Construction Contractor default status;
  - (iv) current cash flow status (capital cost components) for both actual and projected expenditure (capital cost components), from Financial Close represented monthly, quarterly and annually and excluding Variations, to be organized according to a work breakdown structure (WBS) which will be readily relatable to the updates of schedule and progress as described in Schedule 12;
  - (v) 12-month (minimum) financial forecast including all Project Co costs; and
  - (vi) the Construction Period Deduction information (pursuant to Schedule 19 – Liquidated Damages and Construction Enforcement Regime); and
- (l) risk management, including,
  - (i) updated risk register, highlighting any changes or updates from the previous month's report;
  - (ii) risk response plans requiring action from Contracting Authority;
  - (iii) claims;
  - (iv) liens;
  - (v) environmental issues;
  - (vi) labour;
  - (vii) market conditions;
  - (viii) outstanding disputes;
  - (ix) safety and security;
  - (x) operational risks;
  - (xi) Stakeholder risks;
  - (xii) other risks; and

- (xiii) a narrative description of risk impact to the Critical Path and how risks are reflected in the Progress Works Schedule described in Schedule 12 – Works Schedule Requirements.
- 2. Project Co, as “constructor” of the Works and Site, under the *Occupational Health and Safety Act* (Ontario) and this Project Agreement, shall address comments from Contracting Authority on each previous month’s reporting in subsequent reports, and will be required to provide a resolution table to illustrate how Contracting Authority comments have been addressed. Project Co as “constructor” shall remain responsible for determining the way and means of resolution and correction of all matters.

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**SCHEDULE 34****PERMITS, LICENCES, APPROVALS AND AGREEMENTS****1. DEFINITIONS**

In this Schedule 34, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 34) shall have the meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Additional Listed PLAA Requirements”** has the meaning given in Section 9.6(c).
- (b) **“Additional PLAA Completion Requirements”** has the meaning given in Section 8.1(b)(ii).
- (c) **“Additional Project Co PLAA Responsibilities”** means the obligations set out in the column titled “Additional Responsibilities” in Appendix B to this Schedule 34.
- (d) **“Completeness Review Timeline”** means the period of time listed in the column titled “Completeness Review Timeline” in Appendix B to this Schedule 34.
- (e) **“Completion Checklist”** means the application completion checklist for the applicable Listed Project Co PLAA listed in the column titled “Completion Checklist” in Appendix B to this Schedule 34 and further described in Appendix E to this Schedule 34.
- (f) **“Contracting Authority Permits, Licences, Approvals and Agreements”** means those Permits, Licences, Approvals and Agreements set out in the column titled “Issuing Authority and Name of Contracting Authority Permit, Licence, Approval or Agreement” in Appendix A to this Schedule 34.
- (g) **“Contracting Authority PLAA Responsibilities and Requirements”** means the responsibilities and requirements of Contracting Authority set out in the column titled “Contracting Authority Responsibilities and Requirements” in Appendix A to this Schedule 34.
- (h) **“Date for Issuance”** means the date set out in the column titled “Date for Issuance” in Appendix A to this Schedule 34.
- (i) **“Determination Delay Period”** means, in respect of Listed Project Co PLAA, the period of time commencing on the Listed Project Co PLAA Deadline and ending on the earlier of (i) the Listed Project Co PLAA Issuance Date and (ii) the Listed Project Co PLAA Refusal Date.
- (j) **“Listed Project Co PLAA”** means those Project Co Permits, Licences, Approvals and Agreements set out in the column titled “Name of Project Co Permit, Licence, Approval or Agreement” in Appendix B or Appendix C to this Schedule 34, but for certainty excludes:
  - (i) Permits, Licences, Approvals and Agreements that are related to, but not explicitly included as, Listed Project Co PLAAs; and
  - (ii) any Project Co Permits, Licences, Approvals and Agreements that are not listed in Appendix B or Appendix C to this Schedule 34.



- (k) **“Listed Project Co PLAA Application”** means an application for a Listed Project Co PLAA as submitted to the applicable Issuing Authority, including all documents and information contained therein.
- (l) **“Listed Project Co PLAA Completeness Confirmation”** has the meaning given in Section 8.2(a)(ii).
- (m) **“Listed Project Co PLAA Deadline”** means the date that is equal to [REDACTED]% of (i) the time set out in the column titled “Project Co PLAA Timeline” in Appendix B to this Schedule 34, or (ii) the applicable Staged Permits Deadline for a Listed Project Co PLAA set out in Appendix C to this Schedule 34 provided Project Co has satisfied all applicable obligations that are described in the column titled “Project Co Obligations” for such Listed Project Co PLAA in Appendix C to this Schedule 34.
- (n) **“Listed Project Co PLAA Issuance Date”** has the meaning given in 9.6(a)(i).
- (o) **“Listed Project Co PLAA Refusal Date”** has the meaning given in 9.6(a)(ii).
- (p) **“Listed Project Co PLAA Requirements”** means any written requirements, policies, guidelines or rules of the applicable Issuing Authority in respect of the applicable Listed Project Co PLAA that are publicly available, included in or consistent with Applicable Law, including any requirements, policies, guidelines or rules set out in the applicable Completion Checklist and any applicable Additional PLAA Completion Requirements.
- (q) **“Listed Project Co PLAA Submission Date”** means the day that a Listed Project Co PLAA Application is submitted by Project Co to the applicable Issuing Authority as may be modified by this Schedule 34.
- (r) **“Permits, Licences, Approvals and Agreements”** means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations required to perform the Works in accordance with the Project Agreement and as required by Applicable Law, and all necessary consents, approvals, certificates, permits, licences, agreements and authorizations from and with any third parties (including, to the extent applicable, all Development Approvals, Railway Approvals and Utility Agreements, and the approval of the Fire Marshal of Ontario), needed to perform the Works in accordance with the Project Agreement and as required by Applicable Law.
- (s) **“Permits, Licences, Approvals and Agreements Manager”** means the Project Co Party listed in Schedule 9 – Key Individuals.
- (t) **“PLAA Advisory Committee”** has the meaning given in Section 5(a).
- (u) **“PLAA Plan”** has the meaning given in Section 3.3(a).
- (v) **“Pre-Submission Consultation”** has the meaning given in Section 8.1(a).
- (w) **“Pre-Submission Consultation Notice”** has the meaning given in Section 8.1(b).
- (x) **“Project Co CA PLAA Obligations”** means the obligations set out in the column titled “Project Co Obligations” in Appendix A to this Schedule 34.

- (y) “**Project Co Permits, Licences, Approvals and Agreements**” means all Permits Licences, Approvals and Agreements other than the Contracting Authority Permits, Licences, Approvals and Agreements and, for greater certainty, includes the Listed Project Co PLAAs.
- (z) “**Project Co PLAA Timeline**” means the date as set out in the column titled “Project Co PLAA Timeline” in Appendix B to this Schedule 34.
- (aa) “**Project Co PLAA Tracking System**” has the meaning given in Section 6.1(a).
- (bb) “**Project PLAA Tracker**” has the meaning given in Section 6.2(a).
- (cc) “**Staged Permits Deadline**” means the date set out in the column titled “Staged Permits Deadline” in Appendix C to this Schedule 34 and represents the number of Business Days following submittal of all documentation and materials by Project Co to the Issuing Authority required under the column titled “Project Co Obligations” in Appendix C, for the Issuing Authority to make a final determination. The Staged Permits Deadline period begins on the first Business Day following the date of submittal.
- (dd) “**Target Listed Project Co PLAA Submission Date**” has the meaning given in Section 9.1(a).

## 2. GENERAL CONTRACTING AUTHORITY PLAA OBLIGATIONS

### 2.1 Contracting Authority Responsible for Contracting Authority Permits, Licences, Approvals and Agreements

- (a) Contracting Authority shall, at its own cost and risk, obtain (on or before the applicable Date for Issuance), maintain, and, as applicable, renew all Contracting Authority Permits, Licences, Approvals and Agreements, subject to and in accordance with:
  - (i) any applicable Contracting Authority PLAA Responsibilities and Requirements; and
  - (ii) any other provision expressly set out in this Schedule 34 – Permits, Licences, Approvals and Agreements.
- (b) For greater certainty, where a Contracting Authority Permit, Licence, Approval or Agreement cannot be obtained, maintained or renewed by the Contracting Authority, as applicable, as a result of a Project Co CA PLAA Obligation not having been performed, then Contracting Authority shall be under no obligation to obtain the applicable corresponding Contracting Authority Permit, Licence, Approval or Agreement until Project Co has performed the applicable, corresponding Project Co CA PLAA Obligation.
- (c) Contracting Authority shall, at its own cost and risk, perform the obligations and assume the responsibilities under, and otherwise comply with the terms of, the Contracting Authority Permits, Licences, Approvals and Agreements other than:
  - (i) any obligation or responsibility that is expressly set out as a Project Co CA PLAA Obligation; or

- (ii) any obligations or responsibility that is expressly excluded in this Schedule 34 from being a responsibility or obligation by any applicable Contracting Authority PLAA Responsibilities and Requirements.
- (d) Notwithstanding anything to the contrary in the Project Agreement, where Contracting Authority is required to obtain, enter into, maintain or renew a Contracting Authority Permit, Licence, Approval or Agreement described in Appendix A to this Schedule 34, such Contracting Authority Permit, Licence or Approval may be obtained, entered into, maintained or renewed by Contracting Authority, as determined by Contracting Authority, in its sole discretion.

## **2.2 Obligations in Respect of Project Co Permits, Licences, Approvals and Agreements**

- (a) Contracting Authority shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Project Co may request and as Contracting Authority may reasonably be able to provide, and shall execute such applications and documents as are required to be in its name, to enable Project Co or any Project Co Party to obtain, maintain or renew any Project Co Permits, Licences, Approvals and Agreements or to demonstrate compliance with any Permits, Licences, Approvals and Agreements, provided that, nothing in this Section 2.2(a) shall make Contracting Authority responsible, in any way, for obtaining, or for any delay in obtaining, or for the failure of Project Co or any Project Co Party to obtain (other than to the extent caused by a breach of Contracting Authority's obligations under this Section 2.2(a)), any Project Co Permits, Licences, Approvals and Agreements.
- (b) Contracting Authority shall not be obligated to:
  - (i) invoke Crown immunity or exercise any other of its legal rights in order to avoid or eliminate the requirement to obtain any Permits, Licences, Approvals and Agreements;
  - (ii) exercise any right or power or perform any duty, obligation or statutory function it may have under any Applicable Law in order to obtain or issue any Permits, Licences, Approvals and Agreements;
  - (iii) except as otherwise expressly provided in this Schedule 34, automatically grant Project Co Permits, Licences, Approvals and Agreements for which it is the authorizing entity and will apply its usual procedures and criteria in considering applications from Project Co or any Project Co Party for such Project Co Permits, Licences, Approvals and Agreements.

## **2.3 Where Contracting Authority Elects to be Party to Project Co Licences, Permits, Approvals and Agreements**

- (a) In the event that Contracting Authority agrees or elects, in its sole discretion, to obtain, become a party to, or be bound by any Project Co Permits, Licences, Approvals and Agreements following a written request in this regard being made by Project Co to Contracting Authority, then with respect to such Project Co Permits, Licences, Approvals and Agreements, the Parties covenant and agree as follows:

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- (i) Contracting Authority covenants and agrees to provide to Project Co a copy of such Project Co Permits, Licences, Approvals and Agreements within ten (10) days of Contracting Authority's receipt of the same;
  - (ii) Project Co agrees to and in favour of Contracting Authority:
    - (A) to perform and fulfil the liabilities and obligations (including indemnity obligations) of Contracting Authority under such Project Co Permits, Licences, Approvals and Agreements as if Project Co was an original party thereto in the place and stead of Contracting Authority;
    - (B) to pay any amounts paid, payable, or owing by Contracting Authority arising under, pursuant to, in respect of or in connection with such Project Co Permits, Licences, Approvals and Agreements; and
    - (C) to perform, satisfy, discharge and fulfil all obligations (including indemnity obligations), liabilities and indebtedness of or owing by Contracting Authority arising under, pursuant to, in respect of or in connection with such Project Co Permits, Licences, Approvals and Agreements;
  - (iii) Project Co acknowledges and agrees that any amount paid by Contracting Authority under, pursuant to, in respect of or in connection with such Project Co Permits, Licences, Approvals and Agreements shall constitute, and shall be deemed to constitute, a debt of an equivalent amount immediately due and payable by Project Co to Contracting Authority pursuant to the terms of this Project Agreement, and Contracting Authority shall be entitled to exercise its rights under Section 4.11 (*Set-Off*) of the Project Agreement to seek payment of such debt due and payable to Contracting Authority by Project Co; and
  - (iv) Project Co acknowledges and agrees that Contracting Authority's agreement or election to obtain, become a party to, or be bound by such Project Co Permits, Licences, Approvals and Agreements shall not, and shall not be deemed, construed or interpreted to:
    - (A) be an agreement by Contracting Authority that such Project Co Permits, Licences, Approvals and Agreements are, become or constitute Contracting Authority Permits, Licences, Approvals and Agreements;
    - (B) be a waiver by Contracting Authority of full compliance with, or a waiver by Contracting Authority of any breach of, any of the provisions of this Project Agreement;
    - (C) be any form of forbearance of or to Contracting Authority's right to seek or enforce strict compliance with any of the provisions of this Project Agreement, or the exercise by Contracting Authority of any right, power or remedy that may be available to Contracting Authority under this Project Agreement; or
    - (D) restrict, limit, prejudice or in any other way impair the rights and/or remedies of Contracting Authority under this Project Agreement.

**3. GENERAL PROJECT CO PLAA OBLIGATIONS****3.1 Project Co Responsible for Project Co Permits, Licences, Approvals and Agreements**

- (a) Project Co shall, at its own cost and risk obtain, maintain and renew all Project Co Permits, Licences, Approvals and Agreements (as applicable), and perform and comply with any applicable Additional Project Co PLAA Responsibilities (subject to Section 8.1(d)).
- (b) All Project Co requirements and obligations applicable to obtaining Project Co Permits, Licences, Approvals and Agreements, and the relief granted in accordance with Sections 9.2, 9.4, 9.5 and 9.6 shall also apply to the renewal and extension of any Project Co Permits, Licences, Approvals and Agreements, including the Project Co PLAA Timelines identified in Appendix B.
- (c) Project Co shall, at its own cost and risk, perform the obligations and assume the responsibilities under, and otherwise comply with the terms and conditions of, the Project Co Permits, Licences, Approvals and Agreements (including any obligations and responsibilities expressly set out by an applicable Additional Project Co PLAA Responsibility).
- (d) Project Co shall prepare and submit all supporting materials as required by the applicable Governmental Authorities, in connection with all Project Co Permits, Licences, Approvals and Agreements. Project Co shall ensure that all such applications and supporting materials respond to the Governmental Authority's requirements and comments regarding such supporting materials.
- (e) All Permits, Licences, Approvals and Agreements not expressly described in Appendix A, Appendix B or Appendix C to this Schedule 34, are the responsibility of Project Co under the Project Agreement.
- (f) Where any Project Co Permits, Licences, Approvals and Agreements have requirements that may impose any conditions, liabilities or obligations on Contracting Authority or any Province Person, Project Co shall not obtain, amend or renew (other than upon the same terms and conditions) such Project Co Permits, Licences, Approvals and Agreements without the prior written consent of Contracting Authority, provided that neither Contracting Authority nor any Province Person shall be responsible for obtaining, or for the failure of Project Co to obtain, any Project Co Permits, Licences, Approvals and Agreements. Contracting Authority shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on Contracting Authority or any Province Person by the requirements of any Project Co Permits, Licences, Approvals and Agreements obtained with Contracting Authority's consent under this Schedule 34.
- (g) Where any Project Co Permits, Licences, Approvals and Agreements have requirements that may require Contracting Authority to sign or provide information for the completion of the Listed Project Co PLAA Application, Project Co shall notify the Contracting Authority a minimum of ten (10) Business Days in advance of the intended submittal of the Listed Project Co PLAA Application to the applicable Governmental Authorities.
- (h) Project Co shall maintain and submit to Contracting Authority all documents and records relating to the Project Co Permits, Licences, Approvals and Agreements for the Project. When documents or records are submitted to Contracting Authority in a version other than the original version that was submitted, a blackline version of the document or record showing the revisions made from the

previously submitted version shall be provided to Contracting Authority in addition to and concurrently with the revised document or record.

- (i) Unless otherwise specified in this Schedule 34, Project Co shall liaise directly with applicable Governmental Authorities regarding Project Co's Permits, Licences, Approvals and Agreements obligations hereunder.
- (j) In the event that Project Co fails to comply with conditions associated with any Project Co Permits, Licences, Approvals and Agreements, Contracting Authority may, in its sole discretion, exercise its rights to increase monitoring of Project Co in accordance with Section 20.2 (*Increased Monitoring*) of the Project Agreement.

### **3.2 Obligations in Respect of Contracting Authority Permits, Licences, Approvals and Agreements**

- (a) Project Co shall, at its own cost and risk, perform the Project Co CA PLAA Obligations in accordance with their terms and conditions.
- (b) Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Contracting Authority may request and as Project Co may reasonably be able to provide, and shall execute such applications and documents as are required to be in its name, to enable Contracting Authority to obtain, maintain or renew any Contracting Authority Permits, Licences, Approvals and Agreements or to demonstrate compliance with any Permits, Licences, Approvals and Agreements, provided that, other than to the extent caused by a breach of Project Co's obligations under this Section 3.2(b), nothing in this Section 3.2(b) shall make Project Co responsible, in any way, for obtaining, or for any delay in obtaining, or for the failure of Contracting Authority to obtain any Contracting Authority Permits, Licences, Approvals and Agreements.

### **3.3 PLAA Plan**

- (a) Project Co shall prepare and provide to Contracting Authority, a Permits, Licences, Approvals and Agreements plan (the "**PLAA Plan**"), that sets out the schedule and approach to obtain each Permit, Licence, Approval and Agreement for which Project Co is responsible to obtain, provide or perform in accordance with the Project Agreement, including Project Co CA PLAA Obligations, Listed Project Co PLAA, the "Project Co Obligations" set out in the column of the same name in Appendix C alternative approval processes as set out in Section 10 and all other Permits, Licences, Approvals and Agreements not expressly described in Appendix A, Appendix B or Appendix C to this Schedule 34. More specifically, the PLAA Plan shall:
  - (i) Provide information in the format set out in Attachment 1 (*Form of Project PLAA Plan*) of Appendix D to this Schedule 34, or in such other format as the Project Co Representative and Contracting Authority Representative may agree, and which would include:
    - (A) identification of all relevant Permits, Licences, Approvals and Agreements required for the Works, including application requirements and lead times required for Permits, Licences, Approvals and Agreements acquisition, including applicable SPR Submittals (if required in Attachment 1 (*Site Plan Review*

*Checklist*) of Appendix B (*City of Toronto Works Submittals*) to Schedule 10 – Review Procedure), and preparation of the submittals in accordance with the relevant Permits, Licences, Approvals and Agreements Checklists;

- (B) identification of the approach and timing proposed for liaison with Governmental Authorities, third parties and other stakeholders as necessary; and
  - (C) be submitted sixty (60) days after Financial Close.
- (b) The PLAA Plan as submitted shall be subject to review and comment by Contracting Authority and shall be submitted through the PLAA Advisory Committee. Contracting Authority shall provide any comments on the PLAA Plan to Project Co within twenty (20) Business Days of receiving the PLAA Plan. Project Co shall revise the PLAA Plan responding to any commentary received from Contracting Authority and submit a revised PLAA Plan to the PLAA Advisory Committee within ten (10) Business Days of receipt of Contracting Authority's comments.
- (c) Updates to the PLAA Plan shall be submitted through the PLAA Advisory Committee to the Contracting Authority for review and comment. Contracting Authority shall provide any comments on the updated PLAA Plan to Project Co within ten (10) Business Days of receiving the updated PLAA Plan. Project Co shall revise the updated PLAA Plan responding to any commentary received from Contracting Authority and submit a further revised PLAA Plan to the PLAA Advisory Committee within five (5) Business Days of receipt of Contracting Authority's comments.
- (d) The final PLAA Plan shall be submitted to Contracting Authority through the PLAA Advisory Committee.

### **3.4 Additional Obligations**

- (a) Where requested by Contracting Authority, Project Co shall cooperate with and within two (2) Business Days of receipt of Contracting Authority's request, provide Contracting Authority Representative with any written documentation or authorizations required by Contracting Authority for any inquiry of any Governmental Authority relating to Project Co's compliance with this Schedule 34 and any Permits, Licences, Approvals and Agreements relating to the Project. If Contracting Authority requests Project Co to provide any Confidential Information or Sensitive Information, Contracting Authority will, as part of that request, provide Project Co with a copy of relevant portions of the inquiry of the Governmental Authority (to the extent permitted by Applicable Law).
- (b) Project Co shall forward to the Contracting Authority Representative a copy of any report, submission, application or other document relating to Permits, Licences, Approvals and Agreements, concurrent with the filing or submission by Project Co of such report, submission, application or other document to any Governmental Authority. Within five (5) Business Days of receipt of a Governmental Authority's comments on its review of any such report, submission, application or other document, Project Co shall provide to the Contracting Authority Representative a written description and copy of any comments, terms or conditions from the Governmental Authority.

- (c) Project Co shall copy the Contracting Authority Representative on any correspondence with any Governmental Authority.
- (d) Project Co shall provide Contracting Authority with five (5) Business Days advance Notice of all planned meetings with any Governmental Authority and Project Co acknowledges that Contracting Authority may, in its sole discretion, attend such meetings. Project Co shall minute all such meetings held and distribute all meeting minutes to Contracting Authority and the applicable Governmental Authority.

#### **4. PLAA FINANCIAL OBLIGATIONS**

- (a) Project Co shall satisfy and be responsible for all Financial Obligations in connection with the Project Co Permits, Licences, Approvals and Agreements, including all Financial Obligations in respect of Project Co CA PLAA Obligations, provided that, if Contracting Authority is able to obtain an exemption from such Financial Obligations on behalf of Project Co and with respect to the Project, Project Co shall provide to Contracting Authority an accurate accounting of the costs and expenses avoided by Project Co as a result of any such exemption; and notwithstanding any other provision of this Project Agreement, Contracting Authority shall be permitted to deduct an amount equal to all costs and expenses that were avoided by Project Co as a result of any such exemption from the Substantial Completion Payment. Project Co or any of its Affiliates shall not be responsible for payment of any development charges, Toronto parkland dedications or cash-in-lieu relating to the Works, Ontario Line Subway, the New Third Party Infrastructure or the Lands.
- (b) Subject to Section 4(a), Contracting Authority shall be responsible for all Financial Obligations under or in respect of all the Contracting Authority Permits, Licences, Approvals and Agreements (other than to the extent such Financial Obligations are identified as a Project Co CA PLAA Obligations in this Schedule 34).
- (c) The Parties agree that any refund, partial rebate or credit granted by Contracting Authority, the City, any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Sections 4(a) and 4(b) shall be for the benefit of Contracting Authority to the extent such Financial Obligations were paid by Contracting Authority and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co. Without limiting the generality of the foregoing, to the extent that Contracting Authority enters into any cost sharing arrangements with the City, any Governmental Authority or any third party, Project Co acknowledges and agrees that Contracting Authority shall be the sole beneficiary of any such cost sharing arrangements and Project Co shall have no entitlement whatsoever to any benefit arising from any such cost sharing arrangements.

#### **5. PLAA ADVISORY COMMITTEE**

- (a) Project Co shall have qualified representatives, including at a minimum the PLAA Manager(s), PLAA coordinator(s), and the Environmental Manager(s), who shall form a PLAA Advisory Committee for the Project (the “**PLAA Advisory Committee**”). A representative or representatives from the Contracting Authority Permits, Licences, Approvals and Agreements team will also participate in the PLAA Advisory Committee. A representative from any Governmental Authority may attend the PLAA Advisory Committee from time to time. Project Co shall provide ten (10) Business Days advance notice to the Contracting Authority if it requires an Governmental



Authority to attend the PLAA Advisory Committee. The notice should include: the name of the Governmental Authority, the specific division's name if applicable, a detailed description of the item specific to that Governmental Authority that will be discussed by the PLAA Advisory Committee and any supporting documents. The role of the PLAA Advisory Committee is to provide advice to Project Co on PLAA related matters.

- (b) Project Co shall conduct 16 (or more if required by Contracting Authority) PLAA Advisory Committee meetings annually for the first two years following Financial Close and an average of 6 (or more if required by Contracting Authority) meetings annually through the remainder of the Project Term.
- (c) Project Co shall commence the first PLAA Advisory Committee meeting no later than sixty (60) days after Financial Close.
- (d) The PLAA Advisory Committee shall provide teleconference details for those unable to attend in-person.
- (e) At the Contracting Authority Representative's request, the engineer of record, designers or other subject matter experts shall attend PLAA Advisory Committee meetings to discuss Permits, Licences, Approvals and Agreements submissions, content, comments and responses, submittal lookahead established submission dates and other relevant requirements in compliance with the Project Agreement and any Applicable Law.
- (f) At PLAA Advisory Committee meetings, Project Co shall report on:
  - (i) the PLAA Plan in accordance with Section 3.3;
  - (ii) the status of all Permits, Licences, Approvals and Agreements;
  - (iii) key Permits, Licences, Approvals and Agreements issues, design activities and Construction Activities undertaken as part of the preparation and processing of Permits, Licences, Approvals and Agreements submissions;
  - (iv) the status of Permits, Licences, Approval and Agreements conditions and progress to meet conditions;
  - (v) the status of any required Permits, Licences, Approval and Agreements renewals; and
  - (vi) any communications with Governmental Authorities relating to any Permits, Licences, Approvals and Agreements.
- (g) The PLAA Advisory Committee meetings shall be facilitated by Project Co and Project Co shall prepare and distribute an agenda and presentation to the Contracting Authority Representative at least five (5) Business Days in advance of each PLAA Advisory Committee meeting.
- (h) Project Co shall prepare PLAA Advisory Committee meeting minutes and submit such minutes to the Contracting Authority Representative within five (5) Business Days following the PLAA Advisory Committee meeting.

**6. PLAA TRACKING****6.1 Project Co PLAA Tracking System**

- (a) Project Co shall, at its sole cost and expense, provide Contracting Authority with a web-based interface to track the status of (i) each Project Co Permit, Licence, Approval and Agreement, (ii) Project Co CA PLAA Obligations, and (iii) obligations that are described in the column titled “Project Co Obligations” for such Listed Project Co PLAA in Appendix C (including information on each stage of preparation, submission, approval and renewal, as applicable) (the “**Project Co PLAA Tracking System**”).
- (b) The Project Co PLAA Tracking System shall:
- (i) include functionality to provide automated email alerts to a customizable frequency and list of email addresses;
  - (ii) be updated by Project Co each Business Day;
  - (iii) be available to Contracting Authority, and any applicable Governmental Authority in respect of their applicable Project Co Permits, Licences, Approvals and Agreements, in real time each Business Day; and
  - (iv) serve as a permanent repository for all applications, comments from any Governmental Authority, and obtained Permits, Licences, Approvals and Agreements for which Project Co is responsible to obtain, provide or perform in accordance with the Project Agreement. Project Co shall upload, all such applications, comments and materials to the Project Co PLAA Tracking System within ten (10) Business Days of receipt.
- (c) The Project Co PLAA Tracking System shall:
- (i) be operational no later than the date upon which the first Project Co Permits, Licences, Approvals and Agreements application is submitted;
  - (ii) include a feature that highlights to Contracting Authority and each applicable Issuing Authority each outstanding applicable Listed Project Co PLAAs when it reaches the following milestone triggers:
    - (A) **[REDACTED]**% of the number of Business Days designated for a final determination by the applicable Issuing Authority in Appendix B to this Schedule 34 for the applicable Listed Project Co PLAA; and
    - (B) **[REDACTED]**% of the number of Business Days designated for a final determination by the applicable Issuing Authority in Appendix B to this Schedule 34 for the applicable Listed Project Co PLAA;
  - (iii) contain accurate information as to the status of the applicable Project Co Permits, Licences, Approvals and Agreements;

- (iv) in addition to tracking progress on obtaining Project Co Permits, Licences, Approvals and Agreements, also track progress in relation to any required renewals of Project Co Permits, Licences, Approvals and Agreements; and
  - (v) include a feature that tracks conditions of approval and progress to meet conditions of approval for Project Co Permits, Licences, Approvals and Agreements.
- (d) Project Co shall submit documentation on the proposed design, functionality, and usage of the Project Co PLAA Tracking System to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure no later than sixty (60) days after Financial Close.
- (e) In addition to the reporting requirements within the Project Co PLAA Tracking System required by this Section 6, Project Co shall provide separate written notice to the Contracting Authority Representative with respect to any outstanding Project Co Permits, Licences, Approvals and Agreements when it reaches the milestone triggers outlined in Section 6.1(c)(ii).
- (f) Project Co shall ensure at all times that the Project Co PLAA Tracking System:
- (i) is fully functional and available to Contracting Authority and the applicable Governmental Authority;
  - (ii) contains accurate information as to the status of all obligations listed under the column titled “Project Co Obligations” in Appendix A or Appendix C to this Schedule 34; and
  - (iii) contains accurate information as to the status of all Project Co Permits, Licences, Approvals and Agreements.

## 6.2 Form of Project PLAA Tracker

- (a) Project Co shall, at its sole cost and expense, submit to Contracting Authority information in an excel file with the data fields set out in and in the form set out in Attachment 2 (*Form of Project PLAA Tracker*) to Appendix D to this Schedule 34 (the “**Project PLAA Tracker**”).
- (b) The Project PLAA Tracker shall be updated by Project Co each Business Day and submitted to Contracting Authority on a weekly basis and be made available to Contracting Authority and any applicable Governmental Authority in respect of their applicable Project Co Permits, Licences, Approvals and Agreements upon request.
- (c) Project Co shall ensure at all times that the Project PLAA Tracker:
- (i) is fully functional and available to Contracting Authority and the applicable Governmental Authority;
  - (ii) contains accurate information as to the status of all obligations listed under the column titled “Project Co Obligations” in Appendix A or Appendix C to this Schedule 34; and
  - (iii) contains accurate information as to the status of all Project Co Permits, Licences, Approvals and Agreements.

**7. SITE PLAN REVIEW PROCESS**

- (a) Project Co shall submit all site plans related to the site plan review process for the Project Co Infrastructure in accordance with Schedule 10 – Review Procedure and any applicable Additional Project Co PLAA Responsibilities.
- (b) Neither Contracting Authority nor Project Co will be required to sign any site plan agreements in respect of site plan review as it relates to Project Co Infrastructure located on lands identified in Schedule 35 – Lands.
- (c) In the event that Project Co is required to construct any New Third Party Infrastructure that would require site plan approval, Project Co shall obtain such site plan approval on behalf of the applicable owner(s) of such New Third Party Infrastructure, and such site plan approval shall be considered a Project Co Permit, Licence, Approval and Agreement.

**8. LISTED PROJECT CO PLAA REVIEW PROCESS****8.1 Pre-Submission Consultation**

- (a) For each Listed Project Co PLAA for which there is an applicable Completion Checklist, prior to submitting the applicable Listed Project Co PLAA Application, Project Co shall confirm with the applicable Issuing Authority whether or not such Issuing Authority:
  - (i) has modified any of the requirements for the applicable Completion Checklist; or
  - (ii) requires any documentation or information in addition to the documentation and information set out in the applicable Completion Checklist in order to review and make a determination on the applicable Listed Project Co PLAA Application;(the “**Pre-Submission Consultation**”).
- (b) Project Co shall notify Contracting Authority in writing (the “**Pre-Submission Consultation Notice**”), no later than two (2) Business Days following a Pre-Submission Consultation, as to whether the applicable Issuing Authority:
  - (i) has modified any of the requirements for the applicable Completion Checklist; and
  - (ii) requires any documentation or information in addition to the documentation and information set out in the applicable Completion Checklist for the applicable Listed Project Co PLAA in order to review and make a determination on the applicable Listed Project Co PLAA Application (together with (i), the “**Additional PLAA Completion Requirements**”);and Project Co shall set out in such Pre-Submission Consultation Notice the substantive details (including a description of any additional documentation and information required) of any applicable Additional PLAA Completion Requirements and, if applicable, the additional information set out in Section 8.1(c)(iii).

- (c) If, within twenty (20) Business Days after Project Co's completion of the Pre-Submission Consultation, the Issuing Authority has not responded to Project Co in respect of the items set out in Sections 8.1(a)(i) and 8.1(a)(ii), then:
- (i) Project Co shall be deemed to have completed the applicable Pre-Submission Consultation;
  - (ii) there shall be deemed to be no Additional PLAA Completion Requirements in respect of the applicable Listed Project Co PLAA; and
  - (iii) Project Co shall provide Contracting Authority with a written record which will include a description of the efforts Project Co undertook to complete the applicable Pre-Submission Consultation and any supporting documentation.
- (d) Provided that Project Co has completed or has been deemed to have been completed in accordance with Section 8.1(c), the Pre-Submission Consultation and submitted the Pre-Submission Consultation Notice in accordance with Section 8.1(b), then any Additional PLAA Completion Requirements (other than Additional PLAA Completion Requirements resulting from a Variation proposed by Project Co or the evaluation of an alternative solution under the *Ontario Building Code*) shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event.

## 8.2 Listed Project Co PLAA Applications

- (a) In respect of each Listed Project Co PLAA Application Project Co shall:
- (i) ensure that such application has been prepared in accordance with Good Industry Practice and includes all documentation and information required by the applicable Completion Checklist and any applicable Additional PLAA Completion Requirements and satisfies all the requirements contained therein;
  - (ii) no later than two (2) Business Days prior to submitting the Listed Project Co PLAA Application, submit to Contracting Authority a written confirmation that (i) the Permits, Licences, Approvals and Agreements Manager has reviewed the Listed Project Co PLAA Application and, to the best of their knowledge such Listed Project Co PLAA Application includes all documentation and information required by the applicable Completion Checklist, any applicable Additional PLAA Completion Requirements and satisfies all the requirements contained therein and (ii) where a Listed Project Co PLAA Application requires input from an engineer, an engineer of record has reviewed the Listed Project Co PLAA Application and, to the best of their knowledge such Listed Project Co PLAA Application has been prepared in accordance with Good Industry Practice (the “**Listed Project Co PLAA Completeness Confirmation**”).
- (b) Project Co acknowledges and agrees that any Listed Project Co PLAA Application in respect of a Listed Project Co PLAA for which the Issuing Authority is the City of Toronto shall include a copy of the Listed Project Co PLAA Completeness Confirmation from the Permits, Licences, Approvals and Agreements Manager and, if applicable, the applicable engineer of record.

**9. SUBMISSION, REVIEW AND ISSUANCE OF LISTED PROJECT CO PLAAS****9.1 Submission of Listed Project Co PLAA Applications**

- (a) Project Co shall be responsible for submitting all Listed Project Co PLAA Applications to the applicable Issuing Authority on or before the date set out for submission of the Listed Project Co PLAA Application as set out in:
- (i) the Baseline Works Schedule or Recovery Works Schedule, as applicable; and
  - (ii) the Three Week Look-Ahead Schedule most recently delivered prior to the submission of the applicable application;
- (each such date being the “**Target Listed Project Co PLAA Submission Date**”).
- (b) No later than two (2) Business Days following a Listed Project Co PLAA Submission Date, Project Co shall:
- (i) provide Contracting Authority with a copy of the applicable Listed Project Co PLAA Application as submitted to the Issuing Authority; and
  - (ii) cause the applicable Listed Project Co PLAA Submission Date to be entered into the Project Co PLAA Tracking System and the Project PLAA Tracker.
- (c) The first day of the Completeness Review Timeline, as identified in Appendix B, shall begin on the first Business Day following the Listed Project Co PLAA Submission Date. The Completeness Review Timeline is the period within which the Issuing Authority will review the Listed Project Co PLAA Application to determine if all required information and materials have been provided in the Listed Project Co PLAA Application, in accordance with the relevant Completion Checklist and Additional PLAA Completion Requirements. An Issuing Authority shall be deemed to have rejected a Listed Project Co PLAA Application if Project Co has not fulfilled the requirements of the applicable Completion Checklist and the Additional PLAA Completion Requirements.
- (d) The Project Co PLAA Timeline, as identified in Appendix B, shall begin the first Business Day following the end of the Completeness Review Timeline. The Project Co PLAA Timeline is the period within which the Issuing Authority will review the technical content of the Listed Project Co PLAA Application, request clarification as necessary, and make a decision regarding the issuance of the Listed Project Co PLAA.

**9.2 Rejection by Issuing Authority of Listed Project Co PLAA Application**

- (a) If an Issuing Authority rejects a Listed Project Co PLAA Application then Project Co shall immediately notify Contracting Authority of such rejection and, no later than one (1) Business Day following such rejection shall provide Contracting Authority with a written notice that includes:
- (i) the name of the applicable Listed Project Co PLAA;
  - (ii) the applicable Target Listed Project Co PLAA Submission Date;

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- (iii) the applicable Listed Project Co PLAA Submission Date; and
  - (iv) the reasons given by the Issuing Authority for such rejection (including copies of any correspondence received from the Issuing Authority).
- (b) Unless otherwise directed by Contracting Authority, Project Co shall take whatever commercially reasonable steps are required, including the provision of additional information or documentation, in order to cause the Issuing Authority to accept and consider the rejected Listed Project Co PLAA Application as soon as possible.
- (c) Subject to Section 9.7(a), if an Issuing Authority has rejected a Listed Project Co PLAA Application, in whole or in part due to a failure by Project Co to include all documentation and information required by the applicable Completion Checklist and any applicable Additional PLAA Completion Requirements or to satisfy all the requirements contained therein, then:
- (i) Project Co shall be responsible for all costs incurred by Project Co as a result of such rejection (including pursuant to Section 9.2(b));
  - (ii) Project Co shall resubmit to the Issuing Authority a complete Listed Project Co PLAA Application; and
  - (iii) the Listed Project Co PLAA Submission Date shall be revised to be the date upon which Project Co resubmits the complete Listed Project Co PLAA Application for review.
- (d) If an Issuing Authority has rejected a Listed Project Co PLAA Application for any reason other than as set out in Section 9.2(c), then such rejection shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event provided that Project Co has:
- (i) completed or was deemed to have completed the Pre-Submission Consultation;
  - (ii) provided Contracting Authority with the Pre-Submission Consultation Notice in accordance with 8.1(b);
  - (iii) prepared the applicable Listed Project Co PLAA Application in accordance with Section 8.2(a);
  - (iv) submitted the applicable Listed Project Co PLAA Application in accordance with Sections 9.1(a) and 9.1(b);
  - (v) provided Contracting Authority with the notices required pursuant to Section 9.2(a);
  - (vi) complied with its obligations pursuant to Sections 9.2(a) and 9.2(b); and
  - (vii) complied with its obligations in Sections 6.1(f) and 6.2(c) (but with respect to Section 6.1(f)(iii) and Section 6.2(c)(iii), only in respect of the applicable Listed Project Co PLAA).

- (e) In the event Project Co has substantially and materially, but not fully complied with its obligations in Sections 6.1(f) and 6.2(c) as determined by the Contracting Authority, and provided that Project Co has updated the Project PLAA Tracker with respect to the elements of the Listed Project Co PLAA Application that is the subject of a claim for relief, then Project Co may be entitled to relief or compensation in accordance with in Section 9.2(d), but Project Co's failure to fully comply shall be taken into account in determining Project Co's entitlement to any relief or compensation granted and a proportional adjustment shall be made based on the degree of non-compliance with Sections 6.1(f) and 6.2(c), as determined by the Contracting Authority acting reasonably.

### **9.3 Obligations During Review of Listed Project Co PLAA Application**

- (a) Project Co shall, at all times prior to and following the Listed Project Co PLAA Submission Date, comply with all Listed Project Co PLAA Requirements.
- (b) At all times following the Listed Project Co PLAA Submission Date, Project Co shall provide timely and thorough responses (including provision of additional information) in accordance with Good Industry Practice to questions (including requests for additional information that are consistent with the Listed Project Co PLAA Requirements) or concerns posed by any Issuing Authority in respect of a Listed Project Co PLAA Application and such responses shall be made in accordance with deadlines set out in this Project Agreement or in the event that no deadlines are set out in this Project Agreement, within one (1) Business Day of the receipt of questions or concerns posed by the Issuing Authority during the Completeness Review Timeline or within three (3) Business Days of the receipt of questions or concerns posed by the Issuing Authority during the Project Co PLAA Timeline.
- (c) Without limiting its obligations in Section 9.3(b), where Project Co is of the opinion that the questions or concerns raised by the Issuing Authority are not consistent with Listed Project Co PLAA Requirements, within two (2) Business Days of receipt of such questions or concerns, Project Co shall provide written notice to Contracting Authority setting out the question or concern at issue and detailed reasons upon which Project Co has formed such opinion. Such written notice shall be tabled at the next meeting of the PLAA Advisory Committee and approaches to seeking resolution of the questions or concerns raised by the Issuing Authority, in accordance with Good Industry Practice, shall be discussed. In the event that Project Co has used commercially reasonable efforts to resolve the questions or concerns raised by the Issuing Authority in accordance with Good Industry Practice, and such questions or concerns remain unresolved such that the Listed Project Co PLAA continues to be deemed as rejected, then the provisions of 9.2(d) shall apply.

### **9.4 Failure to Make a Determination**

- (a) Subject to Section 9.4(b), if an Issuing Authority fails to:
- (i) issue a Listed Project Co PLAA; or
  - (ii) notify Project Co that it refuses to issue a Listed Project Co PLAA,

on or before the Listed Project Co PLAA Deadline then such failure shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement,



be treated as a Compensation Event, but only to the extent of the Determination Delay Period provided that Project Co has:

- (iii) prepared the applicable Listed Project Co PLAA Application in accordance with Section 8.2(a);
  - (iv) submitted the applicable Listed Project Co PLAA Application in accordance with Sections 9.1(a) and 9.1(b);
  - (v) complied with its obligations in Section 9.3; and
  - (vi) complied with its obligations in Sections 6.1(f) and 6.2(c) (but with respect to Section 6.1(f)(iii) and Section 6.2(c)(iii), only in respect of the applicable Listed Project Co PLAA).
- (b) Without limiting Section 9.4(a), but subject to Section 9.7(a), Project Co shall not be entitled to the relief set out in Section 9.4(a) to the extent that the Issuing Authority's failure to issue a Listed Project Co PLAA is as a result of any failure of Project Co or the Listed Project Co PLAA Application to comply with the applicable Listed Project Co PLAA Requirements.

#### **9.5 Refusal to Issue a Listed Project Co PLAA**

- (a) If an Issuing Authority has notified Project Co that it refuses to issue a Listed Project Co PLAA then Project Co shall, no later than two (2) Business Days following the Listed Project Co PLAA Refusal Date, provide Contracting Authority with a written notice that includes:
- (i) the name of the Listed Project Co PLAA;
  - (ii) the applicable Target Listed Project Co PLAA Submission Date;
  - (iii) the applicable Listed Project Co PLAA Submission Date; and
  - (iv) the reasons given by the Issuing Authority for its refusal (including copies of any correspondence received from the Issuing Authority).
- (b) Unless otherwise directed by Contracting Authority, Project Co shall take whatever commercially reasonable steps are required, including the provision of additional information or documentation, in order to cause the Issuing Authority to approve Listed Project Co PLAA Application as soon as possible.
- (c) Subject to Section 9.7(a), if an Issuing Authority's refusal to issue Project Co a Listed Project Co PLAA is caused, in whole or in part, due to a failure by Project Co to comply with any Listed Project Co PLAA Requirements and Good Industry Practice then:
- (i) Project Co shall be responsible for all costs incurred by Project Co as a result of such refusal to issue (including pursuant to Section 9.2(b)); and
  - (ii) the applicable Listed Project Co PLAA Submission Date shall be revised to be the date upon which Project Co resubmits the complete Listed Project Co PLAA Application.

- (d) If an Issuing Authority has refused to issue a Listed Project Co PLAA for any reason other than Project Co failing to comply with the applicable Listed Project Co PLAA Requirements or Good Industry Practice then subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, such refusal shall be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event provided that Project Co has:
- (i) prepared the applicable Listed Project Co PLAA Application in accordance with Section 8.2(a);
  - (ii) submitted the applicable Listed Project Co PLAA Application in accordance with Sections 9.1(a) and 9.1(b);
  - (iii) complied with its obligations in Section 9.3;
  - (iv) provided Contracting Authority with the notices required pursuant to Section 9.5(a);
  - (v) complied with its obligations pursuant to Section 9.5(b); and
  - (vi) complied with its obligations in Sections 6.1(f) and 6.2(c) (but with respect to Section 6.1(f)(iii) and Section 6.2(c)(iii), only in respect of the applicable Listed Project Co PLAA).

#### 9.6 Issuance of Listed Project Co PLAAs

- (a) In respect of each Listed Project Co PLAA, Project Co shall immediately notify Contracting Authority when the applicable Issuing Authority has:
- (i) issued such Listed Project Co PLAA (the “**Listed Project Co PLAA Issuance Date**”); or
  - (ii) notified Project Co that it refuses to issue such Listed Project Co PLAA (the “**Listed Project Co PLAA Refusal Date**”).
- (b) If the Issuing Authority has issued a Listed Project Co PLAA with terms and conditions that, in the opinion of Project Co, are inconsistent with the Listed Project Co PLAA Requirements then Project Co shall, no later than five (5) Business Days following the Listed Project Co PLAA Issuance Date provide Contracting Authority with a written notice that includes:
- (i) the name of the Listed Project Co PLAA;
  - (ii) the applicable Target Listed Project Co PLAA Submission Date;
  - (iii) the applicable Listed Project Co PLAA Submission Date;
  - (iv) the applicable Listed Project Co PLAA Issuance Date;
  - (v) the terms and conditions imposed by the Issuing Authority which, in the opinion of Project Co, are inconsistent with the Listed Project Co PLAA Requirements and the detailed reasons upon which Project Co has formed such opinion; and

- (vi) all reasons and rationale given by the Issuing Authority for the inclusion of such terms and conditions (including copies of any correspondence received from the Issuing Authority in respect of the same).

For greater certainty, nothing in this Section 9.6(b) shall relieve Project Co of its obligation to comply with all terms and conditions of a Listed Project Co PLAA (including any terms and conditions which, in its opinion, are inconsistent with the Listed Project Co PLAA Requirements).

- (c) If an Issuing Authority has issued a Listed Project Co PLAA with terms and conditions that are inconsistent with the Listed Project Co PLAA Requirements (such inconsistent terms and conditions being, “**Additional Listed PLAA Requirements**”) such Additional Listed PLAA Requirements shall subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event provided that Project Co has:
  - (i) prepared the applicable Listed Project Co PLAA Application in accordance with Section 8.2(a);
  - (ii) submitted the applicable Listed Project Co PLAA Application in accordance with Sections 9.1(a) and 9.1(b);
  - (iii) complied with its obligations in Section 9.2(e);
  - (iv) provided Contracting Authority with the notices required pursuant to Section 9.6(b) and complied with its obligations thereunder; and
  - (v) complied with its obligations in Sections 6.1(f) and 6.2(c) (but with respect to Section 6.1(f)(iii) and Section 6.2(c)(iii), only in respect of the applicable Listed Project Co PLAA).

## 9.7 TTC Consent

- (a) For the Listed Project Co PLAA enumerated below, a failure or refusal of the TTC to provide the written consent included in the relevant Completion Checklist shall not be considered a failure of Project Co to comply with the Listed Project Co PLAA Requirements, nor shall it be considered a failure of Project Co to include all documentation and information required by the relevant Completion Checklist:
  - (i) Road Cut Permit (Full Stream) and/or Construction/Encroachment (Major) Permit;
  - (ii) Road Cut Permit (Short Stream) and/or Construction/Encroachment (Minor) Permit; and
  - (iii) City of Toronto Street Occupancy Permit,

provided that Project Co has diligently sought to obtain the written consent of the TTC described in the relevant Completion Checklist and has otherwise complied with all obligations and requirements of the Project Agreement related to these Listed Project Co PLAAs and their associated Works.

**10. ALTERNATIVE APPROVAL PROCESS BY CONTRACTING AUTHORITY**

- (a) At the sole discretion of Contracting Authority, Project Co may be directed to submit a Listed Project Co PLAA Application that would typically be submitted to the City of Toronto, Toronto Building (as indicated in the Issuing Authority column, Appendix B), directly to Contracting Authority for review and approval.
- (b) Project Co may identify circumstances where demolition permit and building permit applications may not meet the requirements of Applicable Law as described in the *Ontario Building Code*. Under such circumstances, Project Co shall notify Contracting Authority at least thirty (30) Business Days prior to applying for such Project Co Permits, Licences, Approvals and Agreements, and Contracting Authority may, in its sole discretion, determine that such applications shall be submitted directly to Contracting Authority for approval instead of to the City of Toronto. Project Co shall otherwise meet the requirements of the *Ontario Building Code*.
- (c) All provisions of this Schedule 34, including for greater certainty, all requirements, obligations and entitlements to relief, shall continue to apply in the circumstances described in Sections 10(a) and 10(b) with references to Issuing Authority instead being to Contracting Authority.
- (d) With respect to the application of the alternative approval application process for demolition permits, any subsequent building permit applications related to infrastructure on the applicable location may proceed in accordance with Appendix B, or alternatively circumstances may warrant application of the alternative approval process in accordance with Sections 10(a) and 10(b).
- (e) With respect to application of the alternative approval application process for building permit applications (other than demolition permits), once an application has been submitted to the Contracting Authority for approval, any subsequent building permit applications related to the infrastructure associated with the original application shall be submitted directly to the Contracting Authority for approval.

## APPENDIX A TO SCHEDULE 34

CONTRACTING AUTHORITY PERMITS, LICENCES, APPROVALS AND AGREEMENTS

No.	Issuing Authority and Name of Contracting Authority, Permit, Licence, Approval or Agreement	Contracting Authority Responsibilities and Requirements	Project Co Obligations	Date for Issuance
1.	City of Toronto, Transportation Services  Permanent Closure of a Public Thoroughfare	Contracting Authority shall obtain all approvals from the City of Toronto that are required for permanent closures of public thoroughfares that are required to carry out the Works. Council approval was issued on December 15, 2021 for Ontario Line Downtown Stations – Temporary Road Closures and Community Impacts.	Project Co shall carry out its obligations with respect to undertaking these permanent closures in accordance with the terms of approval for permanent closures of public thoroughfares.	Prior to commencement of Works associated with this permit
2.	City of Toronto, Transportation Services  Approval for Permanent Removal of on-street Parking	Contracting Authority shall obtain all approvals from the City of Toronto that are required for permanent removal of on-street parking that are required to carry out the Works. Council approval was issued on December 15, 2021 for Ontario Line Downtown Stations – Temporary Road Closures and Community Impacts.	Project Co shall carry out its obligations with respect to undertaking these permanent closures in accordance with the terms of approval for permanent removal of on-street parking.	Prior to commencement of Works associated with this permit
3.	City of Toronto, Transportation Services  Street Occupation Permit	Contracting Authority is responsible for obtaining Council Approval for Street Occupation for all street occupancy of greater than one year (>365 days) required for specific locations that are identified in Section 3.2.8.6 ( <i>Permitted Lane Closures</i> ) of the Output Specifications. Council approval was issued on December 15, 2021 for Ontario Line Downtown Stations	Project Co is responsible for submitting and obtaining the Street Occupation Permits within the zones for which the Contracting Authority has obtained Council Approval. Project Co will be responsible for submitting and obtaining any renewals or revisions required for these permits and for compliance with the terms of any street occupation permits for	Prior to commencement of Works associated with this permit

No.	Issuing Authority and Name of Contracting Authority, Permit, Licence, Approval or Agreement	Contracting Authority Responsibilities and Requirements	Project Co Obligations	Date for Issuance
		<p>– Temporary Road Closures and Community Impacts.</p>	<p>occupancy of greater than one year (&gt;365 days), as it carries out the Works.</p> <p>Project Co is responsible for obtaining Council Approval for Street Occupation for street occupancy of greater than one year (&gt;365 days) for locations that are not identified in Section 3.2.8.6 (<i>Permitted Lane Closures</i>) of the Output Specifications.</p>	
4.	<p>City of Toronto, Toronto Water</p> <p>Agreement to relocate, alter, construct and/or install municipal water and/or sewer infrastructure</p>	<p>Contracting Authority is responsible for obtaining agreements with Toronto Water for any relocation, alteration, construction and/or installation of municipal water and/or sewer infrastructure. The agreement will also be applicable, in the event that Project Co determines that they wish to proceed to connect/disconnect for public and/or private properties using their own contractor and not one provided by the City of Toronto. The process for obtaining agreements with Toronto Water for the relocation, alteration, construction and/or installation of municipal water and/or sewer infrastructure would be undertaken by the Contracting Authority, concurrent with the permit application process undertaken by Project Co for these works.</p>	<p>Project Co shall be responsible for the permit applications associated with the relocation, alteration, construction and/or installation of municipal water and/or sewer infrastructure and shall undertake the Works related to same, in compliance with the conditions of said agreements. This includes applications for sewage works approval and drinking water works permit, and water and sewer connection and disconnections where Project Co determines that they wish to proceed to connect/disconnect using their own contractor and not one provided by the City of Toronto.</p> <p>Project Co shall notify the Contracting Authority a minimum of twenty (20)</p>	<p>Prior to commencement of Works associated with this permit</p>

No.	Issuing Authority and Name of Contracting Authority, Permit, Licence, Approval or Agreement	Contracting Authority Responsibilities and Requirements	Project Co Obligations	Date for Issuance
			<p>Business Days in advance of the intended submittal of CoT permit applications for relocation, alteration, construction and/or installation of municipal water and/or sewer infrastructure. Such notification will initiate action on the part of the Contracting Authority to prepare and initiate the associated Agreements with the City of Toronto. Within five (5) Business Days upon request by Contracting Authority, Project Co shall provide the Contracting Authority with any required documentation necessary to prepare the Agreements, upon request by and to the satisfaction of the Contracting Authority. This would include, but not be limited to: OHSA Declaration; Toronto Water Wellness Report (as applicable); map of licensed area; scope of work and servicing plans; Drinking Water Works Permit and Municipal Drinking Water License (as applicable).</p> <p>Once the Works are complete, Project Co will be responsible for providing a Certification Letter, and confirmation that the Works have been commissioned in accordance with the</p>	

No.	Issuing Authority and Name of Contracting Authority, Permit, Licence, Approval or Agreement	Contracting Authority Responsibilities and Requirements	Project Co Obligations	Date for Issuance
			City of Toronto Commissioning and Acceptance protocol.	
5.	Sewer Discharge Agreement (Permanent / Long Term)	Contracting Authority is responsible for entering into an agreement with Toronto Water for the Permanent/Long Term Sewer Discharge Approval. The process for obtaining the Sewer Discharge Agreement with Toronto Water for the permanent discharge shall be undertaken by Contracting Authority, concurrent with the permit application process undertaken by Project Co.	Project Co shall be responsible for preparing and submitting the permit applications associated with the discharge and obtaining approval for the Permanent/ Long Term sewer discharge.	Prior to connection to the point of discharge
6.	COT, Permit to Injure or Remove Trees (city-owned street trees, trees on private property, trees on boundaries, trees within RNFP areas, city-owned park trees)	Contracting Authority is responsible for obtaining permits to injure or remove trees, required to carry out the Works for the following locations: <ul style="list-style-type: none"> <li>a. Properties indicated within the limit of the Works for Moss Park Station.</li> <li>b. Properties indicated within the limit of the Works for Osgoode Station.</li> </ul>	Project Co shall meet all terms and conditions of the permit and carry out its obligations with respect to undertaking tree removal activities in the identified locations.	Prior to commencement of Works associated with this permit
7.	MECP  Permit under s. 17(1) in accordance with clause 17(2)(d) of the Endangered Species Act, 2007	Contracting Authority is responsible for obtaining permits under the Ontario	Project Co is responsible for compliance with the conditions of any permit under the Ontario <i>Endangered Species Act</i> .	Prior to commencement of Works associated with this permit



No.	Issuing Authority and Name of Contracting Authority, Permit, Licence, Approval or Agreement	Contracting Authority Responsibilities and Requirements	Project Co Obligations	Date for Issuance
		<p><i>Endangered Species Act</i> (Ontario) that are required to carry out the Works.</p> <p>A Permit under s. 17(1) in accordance with clause 17(2)(d) of the <i>Endangered Species Act, 2007</i>, has been obtained, and is posted to the Data Room.</p>		
8.	<p>Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI)</p> <p>Archaeological Assessment Clearance</p>	<p>Contracting Authority shall obtain MHSTCI Archaeological Assessment Clearance for all Archaeological Assessments that have been completed by the Contracting Authority.</p>	<p>None as it relates to Archaeological Assessments that have been completed by the Contracting Authority</p>	<p>Prior to commencement of Works by Project Co associated with this permit, in the locations subject to the Archaeological Assessments</p>

**APPENDIX B TO SCHEDULE 34**

**LISTED PROJECT CO PERMITS, LICENCES, APPROVALS AND AGREEMENTS**

<b>No.</b>	<b>Name of Project Co Listed Permit, Licence, Approval or Agreement</b>	<b>Issuing Authority</b>	<b>Additional Responsibilities</b>	<b>Completion Checklist</b>	<b>Completeness Review Timelines (number of Business Days)</b>	<b>Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)</b>
1.	Site Plan Review	City of Toronto, City Planning	<p>Project Co shall prepare and submit all documentations and materials that the City of Toronto will require to complete site plan review of Project Co Infrastructure for which site plan review is applicable.</p> <p>Project Co shall prepare and submit a ‘place holder’ site plan review application, to begin the site plan review process for Project Co Infrastructure. No Completeness Review Timeline or Project Co PLAA Timeline apply to the</p>	CoT- Development Approval – Site Plan Control Final Application Checklist	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			<p>‘placeholder’ site plan review application.</p> <p>The submission of the site plan review place holder application must be in advance of the building permit application and applicable part permit applications.</p> <p>Submission and review of site plan submittals (drawings, plans, reports) for Project Co Infrastructure would be undertaken through the site plan review Works Submittal process as set out in Schedule 10 – Review Procedure.</p> <p>Once the site plan review Works Submittals process is complete and the plans, drawings, reports are</p>			

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			<p>finalized, Project Co shall submit a full and complete final site plan review package in accordance with CoT – Development Approval - Site Plan Control - Final Application Checklist to the City of Toronto. The City of Toronto would then issue a Notice of Completed Review acknowledging approval of the site plans.</p> <p>Conditional upon closure of all design comments through Works Submittals Review Procedure, a Project Co PLAA Timeline of twenty five (25) Business Days will apply.</p> <p>The CoT’s final review at this time will not include any</p>			

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			<p>additional design comments and will be for the purpose of ensuring that the plans which will be itemized in the NOCR are in accordance with the plans that were reviewed and accepted by the City through the Schedule 10 – Review Procedure process.</p> <p>Upon receipt of a Notice of Completed Review from the City of Toronto, Project Co shall provide a letter of acknowledgement to the City confirming the accuracy of the list of drawings, plans and reports noted in the Notice of Completed Review and acknowledging any associated site plan advisory notes and comments as its responsibility to address to the extent</p>			

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			required by the Project Agreement and excepting those items that are the responsibility of the Contracting Authority.			
2.	Building Permit	City of Toronto, Toronto Building	None.	CoT - Building Permit Application Checklist	[REDACTED]	[REDACTED]
3.	Building Permit Alternative Solutions	City of Toronto, Toronto Building	None	N/A	[REDACTED]	[REDACTED]
4.	Part Building permit – Shoring	City of Toronto, Toronto Building	None.	CoT – Building Part Permits (Shoring Part Permit) Application Checklist	[REDACTED]	[REDACTED]
5.	Part Building permit – Foundation	City of Toronto, Toronto Building	None.	CoT – Building Part Permits (Foundation Part Permit) Application Checklist	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
6.	Part Building permit – Superstructure	City of Toronto, Toronto Building	None.	CoT – Building Part Permits (Superstructure Part Permit) Application Checklist	[REDACTED]	[REDACTED]
7.	Designated Structures Permit	City of Toronto, Toronto Building	None.	CoT - Designated Structures Permit Application Checklist	[REDACTED]	[REDACTED]
8.	Demolition Permit – Non-Residential	City of Toronto, Toronto Building	Project Co shall obtain all demolition permits – non-residential required for the Works.	CoT - Demolition Permit Application Checklist	[REDACTED]	[REDACTED]
9.	Demolition Permit – Residential (where the combined number of dwelling units in the building or within all buildings associated with one Site Plan Review application to be demolished is	City of Toronto, Toronto Building	Project Co shall obtain all demolition permits and approvals–required for the Works for station locations where the combined number of residential rental units in the building(s) to be demolished is less than 6 units.	CoT - Demolition Permit Application Checklist	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
	less than 6 dwelling units).					
10.	Demolition Approval – Residential  Demolition approval – Residential (where the combined number of residential dwelling units in the building or within all buildings associated with one Site Plan Review application to be demolished is at least 6 and includes at least 1 residential rental unit).	Contracting Authority, pursuant to Section 10 of Schedule 34	For the following locations with buildings that require demolition: <ul style="list-style-type: none"> <li>• King-Bathurst Station: 663 King St West</li> <li>• Exhibition Station: 7 Fraser Avenue</li> <li>• Queen-Spadina: 165 Spadina Avenue, 451 and 453 Queen West</li> </ul> the Contracting Authority advises Project Co, that the Alternative Approval Process by Contracting Authority outlined in Section 10 will apply. Project Co shall submit the demolition permit	CoT - Demolition Permit Application Checklist	[REDACTED]	[REDACTED]



No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			application for such instances to the Contracting Authority in accordance with Section 10 of this schedule.			
11.	Site Services Permit	City of Toronto, Toronto Building	None.	CoT – Building Permit Site Services Permit Application Checklist	[REDACTED]	[REDACTED]
12.	Heating, Ventilation, Air Conditioning Permit	City of Toronto, Toronto Building	None.	CoT – Building Permit Mechanical (HVAC) Permit Application Checklist	[REDACTED]	[REDACTED]
13.	Plumbing & Drain Permit	City of Toronto, Toronto Building	None.	CoT – Building Permit Plumbing & Drains (Inside) Permit Application Checklist	[REDACTED]	[REDACTED]
14.	Sign Permit/Sign Variance Permit	City of Toronto, Toronto Building	None.	CoT – Building Permit Sign Permit Application Checklist	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
15.	Back Flow Prevention Device Permit	City of Toronto, Toronto Building	None.	CoT Building Permit Back Flow Preventor Permit Application Checklist	[REDACTED]	[REDACTED]
16.	Temporary Structures Permit	City of Toronto, Toronto Building	None.	CoT – Building Permit Temporary Structure Permit Application Checklist	[REDACTED]	[REDACTED]
17.	Fire/Security Upgrades Permit	City of Toronto, Toronto Building	None.	CoT – Building Permit Fire/Security Upgrades Application Checklist	[REDACTED]	[REDACTED]
18.	Building Permit, Interior Alteration (Non-Residential)	City of Toronto, Toronto Building	None.	COT – Building Permit Interior Alteration (Non-Residential) Application Checklist	[REDACTED]	[REDACTED]
19.	Authority to Occupy	City of Toronto, Toronto Building	Project Co shall obtain authority to occupy for all South Civil Stations.	CoT - Authority To Occupy Application Checklist	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
20.	Permit to Injure or Remove Trees: City Owned Street Trees	City of Toronto, Parks, Forestry & Recreation	Project Co shall carry out its obligations with respect to tree and vegetation management in accordance with Schedule 17 – Environmental Obligations. Project Co shall obtain all permits and approvals with respect to destruction or injury of city owned street trees that are required to carry out the Works. Project Co shall coordinate the removal of affected trees and determine required compensatory activities in accordance with the provisions of Schedule 17 – Environmental Obligations.	CoT – Street Tree Application Checklist	[REDACTED]	[REDACTED]
21.	Permit to Injure or Remove Trees: on Private Property	City of Toronto, Parks, Forestry & Recreation	Project Co shall carry out its obligations with respect to tree and vegetation management in accordance	CoT – Private Tree Application Checklist	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			<p>with Schedule 17 – Environmental Obligations. Other than with respect to trees that are located on Metrolinx Lands, that are owned by Metrolinx, Project Co shall obtain all permits and approvals with respect to destruction or injury of private trees that are required to carry out the Works. Project Co shall coordinate the removal of affected trees and determine required compensatory activities in accordance with the provisions of Schedule 17 – Environmental Obligations.</p>			
22.	Permit to Injure or Remove Trees: on Boundaries	City of Toronto, Parks, Forestry & Recreation	Project Co shall carry out its obligations with respect to tree and vegetation management in accordance	CoT – Boundary Tree Permit Application Checklist	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			with Schedule 17 – Environmental Obligations. Other than with respect to trees that are located on Metrolinx Lands, that are owned by Metrolinx, Project Co shall obtain all permits and approvals with respect to destruction or injury of boundary/neighbour trees that are required to carry out the Works. Project Co shall coordinate the removal of affected trees and determine required compensatory activities in accordance with the provisions of Schedule 17 – Environmental Obligations.			
23.	Permit to Injure or Remove Trees: within Ravine and Natural Feature	City of Toronto, Parks, Forestry & Recreation	Project Co shall carry out its obligations with respect to tree and vegetation management in accordance	CoT – Ravine and Natural Feature Protection (RNFP) Permit Application Checklist	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
	Protection (RNFP) areas		with Schedule 17 – Environmental Obligations. Other than with respect to trees that are located on Metrolinx Lands, that are owned by Metrolinx, Project Co shall obtain all permits and approvals with respect to destruction or injury of trees within RNFP areas that are required to carry out the Works. Project Co shall coordinate the removal of affected trees and determine required compensatory activities in accordance with the provisions of Schedule 17 – Environmental Obligations.			
24.	Permit to Injure or Remove Trees: City-owned Park Trees	City of Toronto, Parks, Forestry & Recreation	Project Co shall carry out its obligations with respect to tree and vegetation management in accordance	CoT – Park Tree Permit Application Checklist	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			with Schedule 17 – Environmental Obligations. Other than with respect to trees that are located on Metrolinx Lands, that are owned by Metrolinx, Project Co shall obtain all permits and approvals with respect to destruction or injury of City-owned park trees that are required to carry out the Works. Project Co shall coordinate the removal of affected trees and determine required compensatory activities in accordance with the provisions of Schedule 17 – Environmental Obligations.			
25.	Park Access for non-intrusive works	City of Toronto, Parks, Forestry & Recreation	Project Co shall notify the Parks Forestry & Recreation Department and Corporate Real Estate Management	NA	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			<p>(CREM) in the form of a Property Requisition Form (PRF) for written authorization to enter a minimum of eight (8) Business Days in advance. Project Co shall also notify Contracting Authority, Property Acquisition Unit, regarding such requests. Project Co shall obtain the PRF from Parks Forestry &amp; Recreation Department.</p> <p>Permission to access will be in the form of written authorization from the Parks Forestry &amp; Recreation Department and will include terms and conditions to enter which Project Co or a Project</p>			



No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			<p>Co Party will need to assume and fulfil.</p> <p>Project Co shall confirm with City of Toronto, Parks, Forestry &amp; Recreation that their proposed work will fall under non-intrusive works as this may be amended from time to time.</p>			
26.	Park Access Agreement relating to tree injury, removals and compensation plantings	City of Toronto, Parks, Forestry & Recreation	Project Co shall enter into Park Access Agreements with the City of Toronto Parks, Forestry & Recreation in accordance with the requirements of the Chapter 608 of Municipal Code and the City of Toronto, Parks, Forestry & Recreation Park Access Agreement, for Works relating to tree injury, removals and compensation	NA	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			<p>plantings, on lands that are not identified in Part B (<i>Metrolinx Lands</i>) of Schedule 35 – Lands and thus are not Metrolinx Lands.</p> <p>To initiate the Park Access Agreement, Project Co shall submit a Property Requisition Form (PRF) to Parks Forestry &amp; Recreation Department and Corporate Real Estate Management (CREM). Project Co shall also notify Contracting Authority, Property Acquisition Unit, regarding the submission.</p> <p>Permission to access will be provided in the form of a Park Access Agreement from Parks Forestry &amp; Recreation</p>			

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			Department and may include conditions to enter.			
27.	Short Stream Cut Permit / Construction Encroachment (Minor)	City of Toronto, Transportation Services	None.	Road Cut Permit (Short Stream) and/or Construction/Encroachment (Minor) Permit City of Toronto Application Checklists	[REDACTED]	[REDACTED]
28.	Full Stream Cut Permit / Construction Encroachment (Major)	City of Toronto, Transportation Services	None.	Road Cut Permit (Full Stream) and /or Construction/Encroachment (Major) Permit City of Toronto Application Checklist	[REDACTED]	[REDACTED]
29.	Street Occupation Permit	City of Toronto, Transportation Services	Project Co shall obtain all street occupation permits required for the Works, which would include temporary	Street Occupation Permit City of Toronto Application Checklists	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			occupation of on-street parking. Project Co shall be responsible for compliance with the Toronto Parking Authority policy resolution related to cost recovery for street occupancy permits at on-street meter locations, and for other costs that may be applicable for relocation of paid parking machines and equipment.			
30.	Sewer Discharge Permit (Construction / Short Term)	City of Toronto, Toronto Water	None.	CoT - Sewer Use Permit or Discharge Agreement Application Checklist	[REDACTED]	[REDACTED]
31.	Fire Hydrant Use Permit	City of Toronto, Toronto Water	None.		[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
32.	Fire Hydrant Flow Test Permit	City of Toronto, Toronto Water	None.		[REDACTED]	[REDACTED]
33.	Sewage Works Approval (Environmental Compliance Approval (ECA), Transfer of Review Program)	City of Toronto, Toronto Water  Ministry of Environment, Conservation and Parks (MECP)	None.	MECP Environmental Compliance Approval (ECA) - Municipal Sewage Works (Types A, B, D) City of Toronto Application Checklist	[REDACTED]	[REDACTED]
34.	Drinking Water Works Permit (DWWP), Watermain Approval	City of Toronto, Toronto Water  Ministry of Environment, Conservation and Parks (MECP)	None.	Municipal Drinking Water Works Permit (DWWP) – City of Toronto Application Checklist	[REDACTED]	[REDACTED]
35.	Permit to Take Water under the <i>Ontario Water Resources Act</i> (Ontario) and/or	MECP	None.	Permit to Take Water – MECP Application Checklist	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
	Registration under the Environmental Activity Sector Registry (EASR) under the <i>Environmental Protection Act</i> (Ontario)					
36.	Environmental Compliance Approval (ECA), Air and Noise and/or Registration under the Environmental Activity Sector Registry (EASR) under the <i>Environmental Protection Act</i> (Ontario)	MECP	None.		[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
37.	Voluntary Project Review Process	TRCA	<p>Project Co shall prepare and submit all documentation and materials that the TRCA will require for the Voluntary Project Review Process for Works that will occur within TRCA Regulated Areas and seek the issuance of Voluntary Project Review Letters for Works occurring within TRCA Regulated Areas.</p> <p>Project Co shall engage in the Voluntary Project Review Process, wherein the TRCA will review and provide advice on Voluntary Project Review submittals, and address matters raised in the process, and seek the issuance of Voluntary Project Review Letters for Works occurring within TRCA Regulated</p>	<p>Toronto and Region Conservation Authority (TRCA) Voluntary Project Review (VPR) Submission Checklist: General Requirements For All Applications</p> <p>Toronto and Region Conservation Authority (TRCA) Voluntary Project Review (VPR) Submission Checklist: Bridges, Culverts And Other In-Water Works</p> <p>Toronto and Region Conservation Authority (TRCA) Voluntary Project Review (VPR) Submission Checklist: Site Development, Grading and Earthworks</p>	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			<p>Areas. The Contracting Authority shall be informed throughout the VPR process on progress related to addressing matters raised in review.</p> <p>In the event that it is not possible to reasonably resolve matters arising from the Voluntary Project Review process, such that the TRCA determines that it will not issue a Voluntary Project Review Letter, notification shall be provided to the Contracting Authority in accordance with Section 9.5(a).</p>			
38.	Transport Canada Aeronautical Assessment	Transport Canada	Project Co shall follow Transport Canada guidance and address applicable requirements as publicly	NA.	[REDACTED]	[REDACTED]



No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			available for marking and lighting of obstacles to air navigation including the requirements identified in the Aeronautical Assessment Form as issued by Transport Canada.			
39.	NAV Canada Land Use Proposal	NAV Canada	Project Co shall follow NAV Canada guidance and address applicable requirements as publicly available for the NAV CANADA Land Use Program including the detailed land use proposal guidelines as issued by NAV Canada.	NA.	[REDACTED]	[REDACTED]
40.	Approvals for Installation of Radiocommunication	Industry Canada	Project Co shall follow Industry Canada guidance and address applicable requirements as publicly available, including CPC-2-0-	NA.	[REDACTED]	[REDACTED]

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
	and Broadcasting Antenna Systems		<p>03 Radiocommunication and Broadcasting Antenna Systems – Spectrum management and telecommunications.</p> <p>Project Co shall satisfy Industry Canada’s general and technical requirements and consultation requirements regarding installation of antenna systems. Project Co shall ensure that proposals for any antenna system are reviewed by Transport Canada and NAV CANADA in regards to aeronautical safety, that any submission requirements specific to Transport Canada and NAV CANADA are met, and that the antenna system is installed and maintained in a manner</p>			

No.	Name of Project Co Listed Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Completion Checklist	Completeness Review Timelines (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			that is not a hazard to aeronautical safety.			
41.	Electrical Safety Authority Plan Review	Electrical Safety Authority	Project Co shall follow Electrical Safety Authority guidance and address applicable requirements as publicly available for the Electrical Plan Review - Electrical Safety Authority (ESA).	NA.	[REDACTED]	[REDACTED]
42.	Technical Standards and Safety Authority (TSSA) - Elevating Devices and Fuels (Generators, Fuel Tanks)	Technical Standards and Safety Authority (TSSA)	Project Co shall follow Technical Standards and Safety Authority (TSSA) guidance and address applicable requirements as publicly available for the Technical Standards and Safety Authority (TSSA) – Elevating Devices and Fuels.	NA.	[REDACTED]	[REDACTED]

**APPENDIX C TO SCHEDULE 34**

**PROJECT CO STAGED PERMITS, LICENCES, APPROVALS AND AGREEMENTS**

Under the staged process for Sewer Discharge Permits (Construction/Short Term), for Permits to Take Water and for permits to injure or remove trees (city-owned street trees, trees on private property, trees on boundaries, trees within RNFP areas, city-owned park trees), Project Co has the option, should its design align with the assumptions and conditions of any Stage 1 permit in principle that is applied for and received by Contracting Authority, to submit a Stage 2 permit application in accordance with the staged process. Alternatively, Project Co may proceed separately with an application for a Sewer Discharge Permit or PTTW or permit to injure or remove trees outside of this staged process in accordance with Appendix B.

No.	Issuing Authority and Name of Staged Permit, Licence, Approval or Agreement	Stage 1 Permit Conditions	Project Co Obligations	Staged Permits Deadline (number of business days)
1.	MECP  Permit to Take Water	Outlined in Draft PTTW (Reference Number: 0471-C63MAM) and Cover Letter Dated: August 20, 2021(Reference Number 3755-C53HQW).	<p>Project Co shall prepare and submit all documentation and materials that MECP will require (as per the Permit to Take Water – MECP Application Checklist) to issue the final PTTW.</p> <p>Project Co must comply with all terms and conditions of the Draft PTTW (Reference Number: 0471-C63MAM) and Cover Letter Dated: August 20, 2021(Reference Number 3755-C53HQW), which includes monitoring referenced in Item 2 of Schedule A of the Draft PTTW (Hydrogeological Report).</p> <p>The finalization and issuance of the PTTW will be contingent upon Project Co submitting the following documents and</p>	[REDACTED]

No.	Issuing Authority and Name of Staged Permit, Licence, Approval or Agreement	Stage 1 Permit Conditions	Project Co Obligations	Staged Permits Deadline (number of business days)
			<p>information to, and to the satisfaction of, the PTTW director:</p> <ul style="list-style-type: none"> <li>• A letter signed by a person in authority with the contractor that is undertaking the project stating the contractor’s intention to assume responsibility for the Metrolinx project, or a portion of the Metrolinx project, identified in the draft PTTW and quoting the draft PTTW number;</li> <li>• Parts 3, 4, 5 and 6 of the PTTW application form, including proof of the legal name of the contracting firm undertaking the project as required by part 3;</li> <li>• Confirmation of the contractor’s water taking (pumping) rates as indicated in section 9 of the PTTW application form; and,</li> <li>• A completed section 11 of the PTTW application form: the statement of the contractor</li> <li>• For clarity, the PTTW director will only issue a Permit to Project Co that authorizes a water-taking rate which is less than or equal to the draft estimate of the water-taking rate set out in the Draft</li> </ul>	

No.	Issuing Authority and Name of Staged Permit, Licence, Approval or Agreement	Stage 1 Permit Conditions	Project Co Obligations	Staged Permits Deadline (number of business days)
			<p>PTTW. Any request for increased water taking or any change in the management of water taking and return flows that cannot be reconciled against the PTTW director’s technical evaluation of the Contracting Authority submitted Stage 1 application will require a new application.</p> <p>In the event that Project Co determines that the requirements of the Stage 1 Permit cannot be met, Project Co will be obliged to proceed with permitting in accordance with Appendix B.</p>	
2.	<p>COT</p> <p>Sewer Discharge Permit Application, Short Term (construction)</p>	<p>Refer to Project Co obligations column.</p>	<p>Project Co shall prepare and submit all documentation and materials that Toronto Water will require (as per the CoT - Sewer Use Permit or Discharge Agreement Application Checklist) to issue the final discharge approval (one per location) for short term (construction) discharge. This would include an updated hydraulic analysis report for the discharging sewer system.</p>	<p><b>[REDACTED]</b></p>

No.	Issuing Authority and Name of Staged Permit, Licence, Approval or Agreement	Stage 1 Permit Conditions	Project Co Obligations	Staged Permits Deadline (number of business days)
			<p>If Project Co’s submission is to the satisfaction of Toronto Water, and if Project Co meets required criteria as identified below, Toronto Water’s review and issuance of the permit will be in accordance with the Staged Permits Deadline.</p> <p>The following parameters constitute meeting required criteria:</p> <ul style="list-style-type: none"> <li>• A discharge rate and duration less than or equal to the estimated discharge rate in as identified the Sewer Capacity Analysis Report</li> <li>• No change in discharge point location(s) as identified in the Sewer Capacity Analysis Report;</li> <li>• Water quality that meets the criteria outlined in the City of Toronto’s Sewer Use By-Law for sanitary discharge or provide description of treatment system and copy of the ECA if required;</li> <li>• Discharge duration can be changed based on project schedule as approved by Toronto Water, if within the planned timeframe in the Stage 1 Sewer Use submission; and</li> </ul>	

No.	Issuing Authority and Name of Staged Permit, Licence, Approval or Agreement	Stage 1 Permit Conditions	Project Co Obligations	Staged Permits Deadline (number of business days)
			<ul style="list-style-type: none"> <li>Pump capacity less than or equal to proposed pump capacity in the Stage 1 Sewer Use submission.</li> </ul> <p>In the event that Project Co’s submission is not to the satisfaction of Toronto Water, and if Project Co’s submission cannot meet the required criteria identified in the Stage 1 Sewer Discharge Permit, Project Co will be obliged to proceed with permitting in accordance with Appendix B.</p>	



**APPENDIX D TO SCHEDULE 34**

**PLAA FORMS**

See attached.

**ATTACHMENT 1 TO APPENDIX D**

**FORM OF PROJECT PLAA PLAN**

PLAA Plan: Table of Contents

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    - 2.1.1 Strategy to confirm PLAAs to be obtained, associated review timelines, processes and signatories
    - 2.1.2 Strategy to Confirm Municipal Fees/Charges for Applying for and reviewing various approval applications
    - 2.1.3 Strategy to mitigate potential construction conflicts with adjacent development and municipal infrastructure initiatives
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- 4 Permits, Licences, Approvals and Agreements Implementation
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- 4.5 Documentation Control
- 5 Permits, Licences, Approvals and Agreements Tracking in accordance with the requirements of the Section 6.0 of Schedule 34

**ATTACHMENT 2 TO APPENDIX D**  
**FORM OF PROJECT PLAA TRACKER**

[REDACTED]

**APPENDIX E TO SCHEDULE 34****COMPLETION CHECKLISTS**

See below table and attached.

No.	Schedule 34 – Permits, Licences, Approvals and Agreements – Appendix E Checklist
1	Municipal Drinking Water Works Permit (DWWP) – Application Checklist
2	MECP Environmental Compliance Approval (ECA) – Municipal Sewage Works (Types A, B, D) Application Checklist
3	City of Toronto Long Term Sewer Discharge Agreement Application Checklist
4	Road Cut Permit (Full Stream) and/or Construction/Encroachment (Major) Permit City of Toronto Application Checklist
5	Road Cut Permit (Short Stream) and/or Construction/Encroachment (Minor) Permit City of Toronto Application Checklist
6	City of Toronto Short Term/Construction Sewer Use Permit or Discharge Agreement Application Checklist
7	City of Toronto Development Approval – Site Plan Control Application Checklist
8	City of Toronto Street Occupancy Permit Application Checklist
9	Toronto and Region Conservation Authority (TRCA) Voluntary Project Review (VPR) Submission Checklist: Bridges, Culverts and Other In-Water Works

No.	Schedule 34 – Permits, Licences, Approvals and Agreements – Appendix E Checklist
10	Toronto and Region Conservation Authority (TRCA) Voluntary Project Review (VPR) Submission Checklist: General Requirements For All Applications
11	Toronto and Region Conservation Authority (TRCA) Voluntary Project Review (VPR) Submission Checklist: Site Development, Grading and Earthworks
12	City of Toronto Boundary Tree Permit Application Checklist
13	City of Toronto Park Tree Permit Application Checklist
14	City of Toronto Private Tree Permit Application Checklist
15	City of Toronto Ravine and Natural Feature Protection (RNFP) Permit Application Checklist
16	City of Toronto Street Tree Permit Application Checklist
17	Building Permit Application Checklist for the City of Toronto – General Notes
18	Non-residential Building Permit Application Checklist for the City of Toronto
19	Building Part Permits (Building Permit Related) Application Checklist for the City of Toronto – Shoring Part Permit
20	Building Part Permits (Building Permit Related) Application Checklist for the City of Toronto – Foundation Part Permit
21	Building Part Permits (Building Permit Related) Application Checklist for the City of Toronto – Super Structure Part Permit
22	Building Permit Site Services Permit Application Checklist for the City of Toronto

No.	Schedule 34 – Permits, Licences, Approvals and Agreements – Appendix E Checklist
23	Building Permit Plumbing and Drains (inside) Permit Application Checklist for the City of Toronto
24	Building Permit Mechanical (HVAC) Permit Application Checklist for the City of Toronto
25	Demolition Permits Application Checklist for the City of Toronto
26	Designated Structures Application Checklist for the City of Toronto
27	Building Permit Backflow Preventor Application Checklist for the City of Toronto
28	Building Permit Temporary Structure Application Checklist for the City of Toronto
29	Building Permit Occupancy of Building – Authority to Occupy Application Checklist for the City of Toronto
30	Building Permit Sign Permit Application Checklist for the City of Toronto
31	Building Permit Fire/Security Upgrades Permit Application Checklist for the City of Toronto
32	Building Permit Interior Alteration (Non-residential) Permit Application Checklist for the City of Toronto
33	Permit To Take Water – MECP Application Checklist

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**SCHEDULE 35****LANDS****PART A – DEFINITIONS AND INTERPRETATION**

- (a) In this Schedule 35, unless the context indicates a contrary intention, terms that are defined in the Project Agreement (and not otherwise defined in this Schedule 35) shall have the meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) “**City Lands**” means the lands owned by the City of Toronto upon which the New City Infrastructure is or will be located;
  - (ii) “**City Road Allowance**” means, collectively, but not limited to, the municipal streets and rights of way owned by the City of Toronto (or to which the City of Toronto has acquired or will acquire rights) and/or as identified under the City of Toronto Road Classification System – City of Toronto Street Name Index, commonly known as:
    - (i) Strachan Avenue, and any intersecting municipal streets or rights of ways approximately from Ordance Street to the F.G. Gardiner Expressway;
    - (ii) Tecumseth Street, and any intersecting municipal streets or rights of ways approximately from Niagara Street to the rail corridor;
    - (iii) Wellington Street West, and any intersecting municipal streets or rights of ways approximately from Tecumseth Street to Bathurst Street;
    - (iv) Niagara Street, and any intersecting municipal streets or rights of ways approximately from Tecumseth Street and Bathurst Street;
    - (v) Bathurst Street, and any intersecting municipal streets or rights of ways approximately from Stewart Street to Adelaide Street West;
    - (vi) King Street West, and any intersecting municipal streets or rights of ways approximately from Bathurst Street to Portland Street;
    - (vii) Adelaide Street West, and any intersecting municipal streets or rights of ways approximately from Bathurst Street to Portland Street;
    - (viii) Portland Street, and any intersecting municipal streets or rights of ways approximately from Adelaide Street West to Richmond Street West;
    - (ix) Richmond Street West, and any intersecting municipal streets or rights of ways approximately from Portland Street to Augusta Avenue;
    - (x) Augusta Avenue, and any intersecting municipal streets or rights of ways approximately from Richmond Street West to Queen Street West;



- (xi) Queen Street, and any intersecting municipal streets or rights of ways, approximately from Augusta Avenue to Ontario Street;
  - (xii) Jarvis Street, and any intersecting municipal streets or rights of ways approximately from Queen Street East to Shuter Street;
  - (xiii) Sherbourne Street, and any intersecting municipal streets or rights of ways approximately from Queen Street East to Shuter Street;
  - (xiv) Ontario Street, and any intersecting municipal streets or rights of ways, approximately from Queen Street East to Richmond Street East;
  - (xv) Richmond Street East, and any intersecting municipal streets or rights of ways, approximately from Ontario Street to Berkeley Street;
  - (xvi) Adelaide Street East, and any intersecting municipal streets or rights of ways, approximately from Berkeley Street to Parliament Street;
  - (xvii) King Street East, and any intersecting municipal streets or rights of ways, approximately from Berkeley Street to Parliament Street;
  - (xviii) Front Street East, and any intersecting municipal streets or rights of ways, approximately from Berkeley Street to Parliament Street;
  - (xix) Berkeley Street, and any intersecting municipal streets or rights of ways, approximately from Richmond Street East to Scadding Avenue;
  - (xx) Parliament Street, and any intersecting municipal streets or rights of ways, approximately from Front Street East to the F.G. Gardiner Expressway;
  - (xxi) Cherry Street, and any intersecting municipal streets or rights of ways, approximately from Mill Street to Lake Shore Boulevard East;
  - (xxii) Simcoe Street, and any intersecting municipal streets or rights of ways, from Queen Street West to Richmond Street West;
  - (xxiii) University Avenue, and any intersecting municipal streets or rights of ways, from Queen Street West to Armoury Street;
  - (xxiv) James Street, and any intersecting municipal streets or rights of ways, Queen Street West to Albert Street; and
  - (xxv) F.G. Gardiner Expressway, and any intersecting municipal streets or rights of ways, from Strachan Avenue to Dufferin Street;
- (iii) “**Commencement Date**” means the date provided in the column marked “Commencement Date” set out in the table in Part B of this Schedule 35;

- (iv) “**CP Rail Corridor Lands**” means all of the lands owned by CP Rail that are located in the vicinity of the Bala Subdivision between miles 2.1 to 12.2;
  - (v) “**Lands**” means, collectively, the Metrolinx Lands and the Third Party Lands (including, for clarity, all buildings, structures, installations, fixtures, services and any other such improvements thereon and therein);
  - (vi) “**Metrolinx Easement Lands**” means the lands located within the City Road Allowance representing the required location for the Project Co Infrastructure as set out in the Output Specifications;
  - (vii) “**Metrolinx Lands**” means, collectively, the lands owned or to be acquired by Metrolinx or lands in respect of which Metrolinx has acquired or will acquire certain rights, all as set out in the table in Part B of this Schedule 35 and Contracting Authority’s rights of access to the TTC Interchange Stations as set out in Part C of this Schedule 35, and, for clarity, (i) includes the Metrolinx Easement Lands and (ii) excludes the Third Party Lands;
  - (viii) “**Standard Agreements**” has the meaning set out in Section (b)(iii) of Part A.
  - (ix) “**Third Party Lands**” means, collectively, (A) the CP Rail Corridor Lands, (B) the City Road Allowance, (C) the City Lands and (D) the TTC Lands, and does not include the Metrolinx Easement Lands; and
  - (x) “**TTC Lands**” means the lands owned by the TTC or the City of Toronto upon which Existing TTC Infrastructure is, or New TTC Infrastructure will be, located.
- (b) For the purposes of this Schedule 35,
- (i) Subject to Section (b)(ii) of Part A, the Metrolinx Lands are available for use and access by Project Co, subject to Project Co’s obligations with respect to Permits, Licenses, Approvals and Agreements and the terms and conditions of the Project Agreement, for the Construction Activities from the Commencement Date until the earlier of,
    - (A) the end of the period or end date in the column marked “Duration” in the table in Part B of this Schedule 35; and
    - (B) Final Completion.

For clarity, the Metrolinx 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 the Metrolinx Lands following Final Completion.
  - (ii) To the extent that,

- (A) Project Co is required to perform Warranty Work on the Metrolinx Lands or portion(s) thereof beyond the end date for access set out in Section (b)(i) of Part A; or
- (B) Project Co is entitled to a Delay Event pursuant to the terms and conditions of the Project Agreement, with respect to which Contracting Authority has fixed a revised Scheduled Substantial Completion Date or a revised Scheduled Final Completion Date in accordance with Section 30 (*Delay Events*) of the Project Agreement, and Project Co is required to access the Metrolinx Lands or portion(s) thereof beyond the end date for access set out in Section (b)(i) of Part A in order to perform the Works in a manner that is consistent with Project Co's current Progress Works Schedule,

provided that Project Co provides written Notice to Contracting Authority no later than ninety (90) days prior to the commencement date of the Warranty Work or Works, as applicable, Contracting Authority shall be responsible for acquiring access required to carry out the Warranty Work or the Works, as applicable.

- (iii) Pursuant to this Schedule 35 – Lands, for certain Metrolinx Lands, Metrolinx will enter into easement, licence, or similar agreement(s) (the “**Standard Agreements**”) prior to and after Financial Close. 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 Lands that are subject to any easement, licence or similar agreement(s),

and, to the extent such agreement(s) have substantively the same terms and conditions as any Standard Agreements entered into prior to Financial Close and that are provided as Background Information prior to the Technical Reference Date, such agreement(s) shall be treated, for the purposes of Section 17 (*Encumbrances*) of the Project Agreement and for the purpose of Schedule 16 – Encumbrances, as though Project Co had knowledge of such agreements prior to Financial Close. For clarity, this Section (b)(iii) of Part A shall not apply in circumstances where Metrolinx enters into an easement, licence, or similar agreement after Financial Close on different terms and conditions from the Standard Agreement if such differences cause a delay to Project Co in performing the Works, create additional obligations or liabilities for Project Co, or cause an increase in cost to Project Co.

- (iv) Subject to Project Co's obligations with respect to Permits, Licences, Approvals and Agreements 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 Works is subject to the restrictions, qualifications, requirements and other provisions contained in the applicable grant, including the restrictions, qualifications and requirements that are set out in the column marked “Restrictions and Requirements” 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) 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.
- (vii) All Works associated with Stations performed within the Metrolinx Easement Lands are to be contained within a limit of twenty (20) meters from the centre line of the nearest track alignment, except for the following locations:
  - (A) at Simcoe Street, within 35 meters south of the centerline of the eastbound track alignment;
  - (B) at University Avenue, within 115 meters north of the centerline of the westbound track alignment excluding the western 6.1 meters of the University Avenue ROW; and
  - (C) at James Street, within 60 meters north of the centerline of the westbound track alignment.
- (viii) For Lands identified as a temporary easement on property plates, Project Co shall remove all supportive excavation elements including, but not limited to, tie backs, soil anchors and rock bolts, prior to returning the applicable Lands.

**PART B – METROLINX LANDS**

**[REDACTED]**

APPENDIX A TO PART B OF SCHEDULE 35

CONSTRUCTION LANDS EXHIBITS

[REDACTED]

**PART C – TTC INTERCHANGE STATIONS**

**[REDACTED]**

## SCHEDULE 36

## PROPERTY ACCESS MATTERS

## 1. DEFINITIONS

In this Schedule 36, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 36) shall have the meaning given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 “**Actual Property Access Closure Costs**” or “**APACC**” means the total cost of all Actual Property Access Closures for a Property Access Area in respect of a given calendar month, which total cost shall be calculated by multiplying the number of Actual Property Access Closures for the applicable Property Access Area by the applicable Unit Cost.
- 1.2 “**Actual Property Access Closures**” or “**APAC**” means all actual Property Access Closures that occur in a given calendar month for a Property Access Area.
- 1.3 “**Aggregate Actual Property Access Closures**” or “**AAPAC**” means all Actual Property Access Closures for a Property Access Area from Financial Close to Substantial Completion, as set out in the final Property Access Closure Analysis Report.
- 1.4 “**Aggregate Actual Property Access Closures Cost**” or “**AAPACC**” means the sum of all Actual Property Access Closure Costs for a Property Access Area from Financial Close to Substantial Completion, as set out in the final Property Access Closure Analysis Report.
- 1.5 “**Aggregate Target Property Access Closures**” or “**ATPAC**” means the total target Property Access Closures for a Property Access Area from Financial Close to Substantial Completion, which:
  - (a) are set out in the Property Access Closure Target Letter; and
  - (b) shall include and account for all requirements of Section 3.2 (*Construction Requirements*) of the Output Specifications, as well as Schedule 35 – Lands.
- 1.6 “**Aggregate Target Property Access Closures Cost**” or “**ATPACC**” means the total cost of all target Property Access Closures for a Property Access Area from Financial Close to Substantial Completion, as set out in the Property Access Closure Target Letter.
- 1.7 “**Door Closure**” means:
  - (a) the closure of pedestrian access to a building door; or
  - (b) any of the following circumstances in which business operations associated with a building are disrupted:
    - (i) circumstances in which the Works are taking place within 1.5 metres of a building door;



- (ii) Utility shutdowns as a result of the Works that preclude the delivery of Utilities to a building; and
- (iii) circumstances in which pedestrian ingress and egress cannot be provided to a building,

provided that such closure or disruption is as a result of the Works, and provided that such closure or disruption takes place for more than four cumulative hours within any eight hour duration in any day or for more than eight cumulative hours in any day.

1.8 “**Driveway Closure**” means:

- (a) for a property zoned for commercial use:
  - (i) where the width of a driveway as of Financial Close is less than 3.75 metres, a reduction of the width of that driveway to less than the width of that driveway as of Financial Close; or
  - (ii) where the width of a driveway as of Financial Close is greater than or equal to 3.75 metres:
    - (A) a reduction of the width of that driveway to less than 3.75 metres;
    - (B) where the width of a driveway as of Financial Close is less than 7.50 metres, a reduction of the width of that driveway to less than the width of that driveway as of Financial Close, unless Project Co provides, at all times during the duration of the reduction, traffic control persons at the location of that driveway; or
    - (C) where the width of a driveway as of Financial Close is greater than or equal to 7.50 metres, a reduction of the width of that driveway to less than 7.50 metres, unless Project Co provides, at all times during the duration of the reduction, traffic control persons at the location of that driveway; or
- (b) for a property zoned for residential use:
  - (i) where the width of a driveway as of Financial Close is less than 3.0 metres, a reduction of the width of that driveway to less than the width of that driveway as of Financial Close; or
  - (ii) where the width of a driveway as of Financial Close is greater than or equal to 3.0 metres:
    - (A) a reduction of the width of that driveway to less than 3.0 metres;
    - (B) where the width of a driveway as of Financial Close is less than 6.0 metres, a reduction of the width of that driveway to less than the width of that driveway as of Financial Close, unless Project Co provides, at all

times during the duration of the reduction, traffic control persons at the location of that driveway; or

- (C) where the width of a driveway as of Financial Close is greater than or equal to 6.0 metres, a reduction of the width of that driveway to less than 6.0 metres, unless Project Co provides, at all times during the duration of the reduction, traffic control persons at the location of that driveway;

provided that, in each case, such reduction is as a result of the Works and takes place for more than four cumulative hours within any eight hour duration in any day or for more than eight cumulative hours in any day.

- 1.9 **“Property Access Area”** means the defined portions of the Site where Works are to be undertaken in which the Unit Costs are to be applied for any Property Access Closure as identified in Appendix A. The Property Access Areas are delineated as follows:
- (a) Property Access Area 1 – Exhibition Station to Augusta Avenue;
  - (b) Property Access Area 2 – August Avenue to Bay Street;
  - (c) Property Access Area 3 – Bay Street to Sherbourne Street; and
  - (d) Property Access Area 4 – Sherbourne Street to west of the Don River.
- 1.10 **“Property Access Closure”** means a Door Closure, Driveway Closure, or Sidewalk Closure, as applicable, as contemplated in Appendix A, but excludes:
- (a) a Door Closure or Driveway Closure for which there is a Property Access Closure Agreement in full force and effect between the parties thereto; and
  - (b) any Door Closure, Driveway Closure or Sidewalk Closure that is solely the result of a Utility Company carrying out self-performed work that must be carried out by that Utility Company as part of the Works.
- 1.11 **“Property Access Closure Adjustment”** or **“PACA”** means the amount calculated pursuant to Section 5 and, for clarity, adjusted in accordance with Section 5.5.
- 1.12 **“Property Access Closure Agreement”** means an executed and delivered agreement between Project Co or a Project Co Party and the owner(s) or tenant(s) of a property located in a Property Access Area in respect of Project Co or such Project Co Party, as part of the Works, providing alternative access or other mitigating measures to such owner(s) or tenant(s) in respect of a Door Closure or a Driveway Closure. For the purposes of this Schedule 36, “Property Access Closure Agreement” includes all amendments, other modifications and supplements to, restatements of and any termination of such agreement.
- 1.13 **“Property Access Closure Analysis Report”** has the meaning given to it in Section 2.1.
- 1.14 **“Property Access Closure Measurement and Verification Plan”** or **“PACMVP”** has the meaning given to in Section 3.3.

- 1.15 “**Property Access Closure Target Letter**” means the letter attached to Appendix C.
- 1.16 “**Property Access Matters Review Meeting**” has the meaning given in Section 3.6.
- 1.17 “**Sidewalk Closure**” means the closure of a sidewalk that is permitted in Table 3.2.8.6-3 (*Permitted Sidewalk Closures*) of the Output Specifications for more than four cumulative hours within any eight hour duration in any day or for more than eight cumulative hours in any day as a result of the Works, except that a closure of a sidewalk shall not constitute a “Sidewalk Closure” if Project Co provides, at all times during the duration of the closure, a continuous passage for pedestrians by means of an accessible temporary or permanent sidewalk of a width that is not less than the minimum sidewalk width specified in Section 3.2.8.6 (*Permitted Lane Closures*) of the Output Specifications.
- 1.18 “**Unit Cost**” for each Property Access Closure, means the price for each Door Closure, Driveway Closure or Sidewalk Closure as set out in Appendix A. The unit costs are per day.

## 2. **CONTENT AND FORMAT OF THE PROPERTY ACCESS CLOSURE ANALYSIS REPORT**

- 2.1 Project Co shall, on a monthly basis starting at Financial Close, monitor its Property Access Closures at each Property Access Area and provide a report of such Property Access Closures to Contracting Authority (each, a “**Property Access Closure Analysis Report**”) pursuant to and in accordance with this Section 2.1. Project Co shall classify and quantify all Property Access Closures in each Property Access Closure Analysis Report in accordance with this Schedule 36.
- 2.2 The Property Access Closure Analysis Report shall, at a minimum, include the following information:
- (a) using the template provided in Appendix B, a summary of Actual Property Access Closures and Actual Property Access Closure Costs for each Property Access Area, on a Property Access Area by Property Access Area basis, for the previous calendar month, indicating, for each Door Closure, Driveway Closure or Sidewalk Closure:
    - (i) the location (indicating Property Access Area); and
    - (ii) the time, date, and duration;
  - (b) a projection of anticipated Property Access Closures for each Property Access Area for each month from the then current calendar month until the anticipated Substantial Completion Date, along with trends and potential risks associated with the anticipated Property Access Closures;
  - (c) accurate and precise data in support of the items described in Sections 2.2(a) and 2.2(b);
  - (d) for each Property Access Area, a calculation of:
    - (i) the sum of all APACC from Financial Close up to and including the previous calendar month; and

- (ii) the variance between the amount described in Section 2.2(d)(i) and the cost of all projected Property Access Closures from Financial Close up to and including the previous calendar month, as set out in the Property Access Closure Target Letter;
  - (e) for each Property Access Area, a calculation of:
    - (i) the sum of all anticipated APACC from the then current calendar month to the anticipated Substantial Completion Date based on the projected Property Access Closures described in Section 2.2(b); and
    - (ii) the variance between the amount described in Section 2.2(e)(i) and the cost of all anticipated Property Access Closures from the then current calendar month to the anticipated Substantial Completion Date, as set out in the Property Access Closure Target Letter;
  - (f) Project Co's projected estimate of the AAPACC and the Property Access Closure Adjustment;
  - (g) a corrective action plan if there is a forecasted exceedance of Project Co's projected estimate of the AAPACC from the ATPACC by greater than [REDACTED]% for any Property Access Area;
  - (h) the progress of, and any planned adjustments to, any corrective action plan that was in place from any previous Property Access Closure Analysis Reports;
  - (i) the measurement and verification of Property Access Closures in accordance with the Property Access Closure Measurement and Verification Plan;
  - (j) summary tables from all previous Property Access Closure Analysis Reports delivered by Project Co to Contracting Authority; and
  - (k) a full copy of each Property Access Closure Agreement (in un-redacted form) executed and delivered by the parties thereto in the previous month (including, for clarity, any amendment, other modification or supplement to, or restatement or termination of such agreement).
- 2.3 Subject to Section 2.4, Project Co shall prepare and deliver to Contracting Authority a Property Access Closure Analysis Report in respect of each calendar month.
- 2.4 Each Property Access Closure Analysis Report shall be delivered by Project Co to Contracting Authority in accordance with Schedule 10 – Review Procedure within five (5) Business Days after the end of the calendar month that is the subject of the Property Access Closure Analysis Report. Notwithstanding the foregoing, the final Property Access Closure Analysis Report shall be (a) prepared and delivered by Project Co to Contracting Authority twenty (20) Business Days before the anticipated Substantial Completion Date, and (b) updated pursuant to Section 5.5.

### **3. PROCEDURES FOR DETERMINING AND REPORTING PROPERTY ACCESS CLOSURES AND PROPERTY ACCESS CLOSURE ADJUSTMENTS**

- 3.1 Contracting Authority will assess Project Co the cost of Property Access Closures based on the total Property Access Closures that occur per day on a per Property Access Area basis. The cost of Property Access Closures for each Property Access Area shall be included in the calculation of the Property Access Closure Adjustment.
- 3.2 The AAPACC and ATPACC for each Property Access Area shall be used to calculate the Property Access Closure Adjustment. The Property Access Closure Target Letter shall not be amended, altered or adjusted except by the process described in Section 4.
- 3.3 No later than ninety (90) days prior to the first Property Access Closure, Project Co shall submit to Contracting Authority, in accordance with Schedule 10 – Review Procedure, a plan describing how Project Co will track all of its Property Access Closures on a monthly basis for each Property Access Area, how Project Co will evaluate its performance on Property Access Closure progress, and the verification process through which Contracting Authority and the City of Toronto may audit Project Co’s Property Access Closure performance (the “**Property Access Closure Measurement and Verification Plan**” or “**PACMVP**”). Project Co shall ensure that all subsequent Property Access Closure Analysis Reports are consistent with the Property Access Closure Measurement and Verification Plan.
- 3.4 The PACMVP shall, at a minimum, include the following information:
- (a) a narrative clearly describing the methodology to be used to minimize the number and duration of Property Access Closures;
  - (b) clearly identified objectives and targets;
  - (c) identification of the communication methods, protocols and timing by which notification to property owners of Property Access Closures will be made;
  - (d) an anticipated schedule of Property Access Closures organized by Property Access Area;
  - (e) the methods by which Project Co will measure Property Access Closure duration;
  - (f) the methods by which Project Co will compare planned and actual performance in meeting Property Access Closure targets; and
  - (g) the method by which Property Access Closure records will be recorded, preserved and made available to Contracting Authority for the purposes of verification.
- 3.5 Project Co shall not initiate or proceed with initiation or implementation of Property Access Closures prior to submission and review of the PACMVP by Contracting Authority in accordance with Schedule 10 – Review Procedure.
- 3.6 No later than five (5) Business Days following the submission of each Property Access Closure Analysis Report (or as otherwise agreed to between the Parties), Project Co and Contracting Authority shall convene a review meeting (the “**Property Access Matters Review Meeting**”) to be attended by the Project Co Representative and other relevant Project Co representatives (including the Communications and Public Engagement Lead described in Schedule 9 – Key Individuals) and the Contracting Authority Representative. At the Property Access Matters

Review Meeting, Project Co shall present the Property Access Closure Analysis Report to Contracting Authority, and Contracting Authority and Project Co shall discuss the Property Access Closure Analysis Report and the AAPAC for the preceding period.

- 3.7 Project Co shall assist the Contracting Authority Representative by providing information with respect to Property Access Closures and access to the Property Access Closure records, and by other means as may reasonably be required to confirm the information in the Property Access Closure Analysis Report.
- 3.8 For the purpose of this Schedule 36, Property Access Closures shall be measured on a per day basis. Project Co shall ensure that at no time shall any Property Access Closure persist for more than fifteen (15) consecutive days, or more than a combined total of thirty (30) days over the course of the Project. Any two Property Access Closures with less than ten (10) days between closures shall be deemed to be consecutive for the purposes of this Section 3.8. For clarity, if Project Co allows a Property Access Closure to persist for more than fifteen (15) consecutive days, or for more than a combined total of thirty (30) days in contravention of this Section 3.8, Project Co shall continue to incur Actual Property Access Closure Costs for such Property Access Closures in accordance with this Schedule 36.
- 3.9 For clarity, the provisions of this Schedule 36 (including the provisions related to calculating the AAPAC and determining the PACA) shall apply to all Property Access Closures, notwithstanding the occurrence of a Municipal Lane Closure that is permitted or contemplated in the Output Specifications or Schedule 7 – Mobility Matters, and notwithstanding that a Municipal Lane Closure may be proximate or adjacent to a Property Access Closure.

#### **4. PROCESS FOR AMENDING THE AGGREGATE TARGET PROPERTY ACCESS CLOSURE**

- 4.1 In all cases, adjustments or corrections to the ATPAC must be consistent with the principles outlined in the PACMVP.
- 4.2 Project Co and Contracting Authority shall, acting reasonably, agree to make any adjustments or corrections to the APACC, ATPACC, AAPAC and AAPACC for any Property Access Area, but only in the event of changes implemented due to an amendment of the Project Agreement or a Variation that would cause Property Access Closure changes.
- 4.3 The Party requesting an amendment to the ATPAC for a Property Access Area in accordance with Section 4.2 shall initiate a Variation in accordance with Schedule 22 – Variation Procedure. Where required, an amended PACMVP shall also be prepared and include a detailed analysis of the impacts to area businesses and residents, including an analysis of revised Property Access Closure requirements. The amended PACMVP shall include a recommendation regarding amendments to the ATPAC. Both Contracting Authority and Project Co shall agree to the amended ATPAC no later than twenty (20) Business Days following receipt of such analysis. If there is no agreement within a further ten (10) Business Days, then either Party may refer the matter to the Dispute Resolution Procedure.

#### **5. CALCULATION OF PROPERTY ACCESS CLOSURE ADJUSTMENT**

5.1 For the purpose of preparing the Property Access Closure Target Letter, the Aggregate Target Property Access Closures Cost shall be calculated for each Property Access Area as follows:

[REDACTED]

5.2 For the purpose of preparing the Property Access Closure Analysis Report, the Aggregate Actual Property Access Closures Cost shall be calculated for each Property Access Area as follows:

[REDACTED]

5.3 Within two (2) Business Days following the final determination of the AAPACC for each Property Access Area as set out in the final Property Access Closure Analysis Report, Project Co shall calculate the Property Access Closure Adjustment as follows:

[REDACTED]

5.4 Before the expiry of the two (2) Business Day period set out in Section 5.3, Project Co shall provide Notice to Contracting Authority setting out the Property Access Closure Adjustment and the details supporting its calculation for Contracting Authority's review, comment and confirmation. Project Co shall promptly provide Contracting Authority with any other supporting information in respect of Project Co's calculation and adjustment of the Property Access Closure Adjustment that Contracting Authority may reasonably request.

5.5 On the Substantial Completion Date, Project Co shall provide (a) Notice to Contracting Authority setting out any adjustment to the Property Access Closure Adjustment required as a result of any Property Access Closures that occurred between the date of the submission of the final Property Access Closure Analysis Report pursuant to Section 2.4 and the Substantial Completion Date and the details supporting the calculation of such adjustment for Contracting Authority's review, comment and confirmation, and (b) an updated final Property Access Closure Analysis Report that includes and reflects such Property Access Closures.

5.6 The Property Access Closure Adjustment shall be shown as a separate item within the invoice for the Substantial Completion Payment provided by Project Co to Contracting Authority under the Project Agreement.

5.7 For greater certainty,

(a) Contracting Authority shall deduct the amount of the Property Access Closure Adjustment, as reviewed and confirmed by Contracting Authority, from the Substantial Completion Payment pursuant to Section 4.3(k) (*Lump Sum Payments*) of the Project Agreement; and

(b) the Property Access Closure Adjustment deduction from the Substantial Completion Payment shall not be subject to the limitations set out in Section 45.4 (*Maximum Liability*) of the Project Agreement.

5.8 For the purposes of calculating the Property Access Closure Adjustment in accordance with this Schedule 36, the Parties shall have regard to Sections 30.2(j) (*Consequences of a Delay Event*) and 33.2(d) (*Consequences of Force Majeure*) of the Project Agreement.

**6. APPLICATION**

- 6.1 The Property Access Closure requirements of this Schedule 36 will no longer be in effect once Substantial Completion has been achieved.

**7. PROPERTY ACCESS CLOSURE AGREEMENTS**

- 7.1 Without limitation or prejudice to any of Contracting Authority's rights under the Project Agreement whatsoever (including, for greater certainty, under Section 44.1 (*Project Co Indemnities to Contracting Authority*) of the Project Agreement) and subject to Section 7.2, Project Co may, at its risk, cost and expense, enter into or cause a Project Co Party to enter into Property Access Closure Agreements with owners and tenants of properties within Property Access Areas who are affected by Door Closures or Driveway Closures.
- 7.2 Project Co shall ensure that no Property Access Closure Agreement contains confidentiality provisions that would inhibit or prevent such agreement's full and un-redacted disclosure to Contracting Authority pursuant to Section 2.2(k).



**APPENDIX A TO SCHEDULE 36**

**UNIT COSTS FOR PROPERTY ACCESS CLOSURES**

- 1.0 Where a Property Access Closure address or a Unit Cost for a Property Access Closure has not been provided in this Appendix A, Project Co may submit a request to Contracting Authority to perform a Property Access Closure at that address. Contracting Authority may, in its sole discretion, permit the Property Access Closure and, if permitted, provide the Unit Cost. Project Co shall not perform a Property Access Closure at an address for which Contracting Authority has not provided a Unit Cost pursuant to this Appendix A.

[REDACTED]

APPENDIX B TO SCHEDULE 36

**PROPERTY ACCESS CLOSURE ANALYSIS REPORT SUBMITTAL REQUIREMENTS**

Total Property Access Closure Summary	Target Property Access Closure				Actual Property Access Closures				Percent Variance (calculated between viii and iv)	Property Access Closure Adjustment
	Cost of Target Door Closures for Monthly Period (calculated based on formula in Section 5.1)	Cost of Target Driveway Closures Monthly Period (calculated based on formula in Section 5.1)	Cost of Target Sidewalk Closures for Monthly Period (calculated based on formula in Section 5.1)	Total Target Cost	Cost of Actual Door Closures for Monthly Period (calculated based on formula in Section 5.2)	Cost of Actual Driveway Closures for Monthly Period (calculated based on formula in Section 5.2)	Cost of Actual Sidewalk Closures for Monthly Period (calculated based on formula in Section 5.2)	Total Actual Cost		
	i	ii	iii	iv	v	vi	vii	viii	ix	x
Property Access Area 1										
Property Access Area 2										
Property Access Area 3										
Property Access Area 4										

APPENDIX C TO SCHEDULE 36

PROPERTY ACCESS CLOSURE TARGET LETTER

[REDACTED]

## SCHEDULE 37

## INTELLECTUAL PROPERTY

## 1. INTERPRETATION

**1.1 Definitions:** In this Schedule 37, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 37) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Assigned Intellectual Property**” has the meaning given in Section 2.5(a).
- (b) “**Assignee**” has the meaning given in Section 2.5(a).
- (c) “**Assignor**” has the meaning given in Section 2.5(a).
- (d) “**Contracting Authority Intellectual Property**” means:
  - (i) Intellectual Property that is Owned, created, developed or acquired by Contracting Authority or any Contracting Authority Personnel:
    - (A) prior to the Project Term;
    - (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, Contracting Authority Jointly Developed Materials, Subcontractor Intellectual Property or Third Party Intellectual Property;
  - (ii) the Developed Intellectual Property, excluding any Developed Intellectual Property that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Project Co;
  - (iii) any other Project Data that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Contracting Authority; and
  - (iv) subject to Section 39.4 (*Jointly Developed Materials*) of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, Contracting Authority or any Subcontractor alone, jointly with each other or with any other person,  
  
and which is used by Contracting Authority, or required to be used by Project Co or a Subcontractor, in the performance of their respective obligations in respect of the Project or under the Project Agreement.
- (e) “**Contracting Authority Personnel**” means persons acting on behalf of Contracting Authority or employed, engaged or retained by Contracting Authority in connection with the performance of Contracting Authority’s obligations in connection with the Project, including Contracting

Authority's consultants, contractors and subcontractors and the employees, officers, directors, volunteers and agents of Contracting Authority and its direct and indirect consultants, contractors and subcontractors, excluding Project Co and any Subcontractor and their respective Personnel.

- (f) **“Contracting Authority Supplied Third Party Intellectual Property”** means Intellectual Property, Owned by a person other than Contracting Authority, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by Contracting Authority to Project Co under the Project Agreement for the purpose of performing the Works and the Project, including any Background Information.
- (g) **“Contracting Authority Trademarks”** means the Trademarks Owned by Contracting Authority.
- (h) **“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 (for example, source code form), (ii) be licenced for the purpose of preparing derivative works, (iii) be licenced 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 licence fee. Copyleft licences include the GNU General Public Licence, the GNU Lesser General Public Licence, the Mozilla Public Licence, the Common Development and Distribution Licence, the Eclipse Public Licence, and all Creative Commons “sharealike” licences.
- (i) **“Copyleft Materials”** means any software or content subject to a Copyleft Licence.
- (j) **“Deliverable”** means any item required to be supplied or delivered by Project Co to Contracting Authority within the Project Scope, including Equipment, Project Software, Project Data and all other deliverable requirements specified in Schedule 10 – Review Procedure.
- (k) **“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 Project Co Infrastructure or any part of the work delivered as part of the Works;
  - (iii) necessary for the undertaking, completion and performance of the Works or any Equivalent Activity; or
  - (iv) necessary for the Use by Contracting Authority or a subsequent Licensee of any Deliverable, the Project Co Infrastructure, or any part of the work delivered as part of the Works or any Intellectual Property in accordance with the rights granted to Contracting Authority hereunder.
- (l) **“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 Works or the Project Co Infrastructure; and
- (iii) created or designed based on functional, design and performance specifications provided by Contracting Authority, or Contracting Authority Personnel, or Contracting Authority Parties,

and, for greater certainty, Developed Intellectual Property does not include any Project Co Intellectual Property used to develop or create the Developed Intellectual Property.

- (m) **“Embedded Software”** means the Project Co Embedded Software, Subcontractor Embedded Software and Third Party Embedded Software.
- (n) **“Equipment”** means all electrical and mechanical equipment, machinery, computer hardware and systems comprising or used in the Project Co Infrastructure.
- (o) **“Equivalent Activity”** means any activity, undertaking or operation relating to the Project Co Infrastructure done by Contracting Authority, any permitted assignee of Contracting Authority pursuant to Section 47.2 (*Contracting Authority Assignment*) of the Project Agreement and/or any other person acting on behalf of or under the authority of Contracting Authority, which activity, undertaking or operation if done by Project Co would be within the Project Scope, including the Works.
- (p) **“Escrow Agent”** means a recognized provider of escrow services selected by Project Co and approved by Contracting Authority and having a location within the Province of Ontario with whom the Escrow Materials will be deposited in accordance with Section 3.11.
- (q) **“Escrow Agreement”** means an escrow agreement that meets the requirements of Section 3.11 and pursuant to which Escrow Materials are held by the Escrow Agent and Contracting Authority are designated as a beneficiary party.
- (r) **“Escrow Materials”** means:
  - (i) with respect to Software, the Source Materials for that Software;
  - (ii) with respect to Embedded Software, the Source Materials for that Embedded Software; and
  - (iii) with respect to any Equipment, the Source Materials for that Equipment.
- (s) **“Escrow Provider”** means:
  - (i) Project Co in respect of the Project Co Licenced Software;
  - (ii) the applicable Subcontractor in respect of any Subcontractor Licenced Software;
  - (iii) the applicable third party licensor in respect of any Third Party Licenced Software;
  - (iv) Project Co in respect of the Project Co Embedded Software;

- (v) the applicable Subcontractor in respect of any Subcontractor Embedded Software;
  - (vi) the applicable third party licensor in respect of any Third Party Embedded Software; and
  - (vii) in respect of any Equipment, whichever of Project Co and one or more Subcontractors is the supplier of such Equipment.
- (t) **“Expanded Purposes”** means (i) the Permitted Purposes; and (ii) for any other purpose of Metrolinx.
- (u) **“Licence”** means a non-exclusive licence or sub-licence, as applicable, granting the rights and subject to the restrictions and limitations set out in this Schedule 37.
- (v) **“Licenced 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.
- (w) **“Licensee”** means, in respect of any Licence granted or required to be granted by Project Co pursuant to this Schedule 37, Contracting Authority or any permitted assignee under Section 47.2 (*Contracting Authority Assignment*) of the Project Agreement that is the holder of that Licence at the relevant time.
- (x) **“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 Licenced Software.
- (y) **“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 licenced to Contracting Authority under this Schedule 37.
- (z) **“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.
- (aa) **“OTS Software”** means Software that is commonly considered ‘off the shelf’, meaning Software that is (i) made generally available to the public on a commercial basis through regular distribution channels or pre-installed as a standard part of hardware on a non-exclusive basis, (ii) that can be obtained in the ordinary course of business under standard terms and conditions, (iii) that continues to be generally available for license, and (iv) which has not been modified or customized by Project Co or any other person for the Project. For clarity, Software provided on a Software-as-a-Service basis (SaaS) that satisfies the above criteria (i) through (iv) may constitute OTS Software, but in no instance shall Open Source Materials be deemed OTS Software.
- (bb) **“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.

- (cc) **“Open Source Materials”** means any software or content subject to an Open Source Licence.
- (dd) **“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.
- (ee) **“Permitted Purposes”** means:
- (i) during the Project Term, performance of Contracting Authority’s obligations and the exercise of Contracting Authority’s rights under the Project Agreement and any other agreements relating to the Project;
  - (ii) during the Project Term, Contracting Authority’s participation in the Works 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 Project Co Infrastructure;
  - (iii) after the Project Term, any Equivalent Activity;
  - (iv) both during and after the Project Term, the use, integration and interoperation of the Project Co Infrastructure with:
    - (A) any existing or other transit projects undertaken by or on behalf of Contracting Authority or interfacing with Contracting Authority projects; and
    - (B) any existing or after-acquired systems, software, technology or equipment related to the use, operation, maintenance, repair, correction, and renovation of the Project Co Infrastructure,but, for clarity, not any system that is not the Project Co Infrastructure;
  - (v) both during and after the Project Term, the integration and interoperation of the Project Co Infrastructure with any existing or other transit projects undertaken by or on behalf of Contracting Authority or interfacing with Contracting Authority projects; and
  - (vi) both during and after the Project Term, and so long as the Licensee is Contracting Authority or other Governmental Authority:
    - (A) the provision of governmental services and the conduct of operations and activities provided in connection or otherwise associated with the Project Co Infrastructure and the Lands by Contracting Authority or any Governmental Authority or any emergency service provider; and
    - (B) the development of transportation standards, policies and procedures.
- (ff) **“Personnel”** means (i) in reference to Project Co, the Project Co Personnel, (ii) in reference to Contracting Authority, Contracting Authority Personnel, and (iii) in reference to any Subcontractor, such Subcontractor’s Personnel.



- (gg) **“Project Co Infrastructure Architecture and Look and Feel”** means any work product, including any Intellectual Property therein, Owned, created, developed, acquired or licenced whether by Project Co or any Subcontractor in respect of any aspect of the architecture or look and feel of the Works, including 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 tunnel, landscape and urban design elements, fit and finish, or any other aspect of the Works.
- (hh) **“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 licenced 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.
- (ii) **“Project Co Intellectual Property”** means:
- (i) Intellectual Property that is Owned, created, developed or acquired by Project Co or any Project Co Personnel:
    - (A) prior to the Project Term; or
    - (B) during the Project Term but outside the Project Scope; or
    - (C) during the Project Term and within the Project Scope, but which is not Contracting Authority Intellectual Property, Contracting Authority Supplied Third Party Intellectual Property, Subcontractor Intellectual Property, or Third Party Intellectual Property;
  - (ii) the Project Co Licenced Software;
  - (iii) the Project Co Embedded Software;
  - (iv) Project Co’s Technical Information;
  - (v) the Project Intellectual Property;
  - (vi) the Project Data, excluding any other Project Data that are specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Contracting Authority;
  - (vii) any Developed Intellectual Property that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Project Co; and
  - (viii) Subject to Section 39.4 (*Jointly Developed Materials*) of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co,

Contracting Authority, Contracting Authority Parties, or any Subcontractor alone, jointly with each other or with any other person.

- (jj) “**Project Co Licenced 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.
- (kk) “**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.
- (ll) “**Project Data**” means:
- (i) all Design Data; and
  - (ii) any other materials, documents and/or data prepared by or on behalf of Project Co or Subcontractors in relation to the Works, the Project Co Infrastructure or the Project Agreement, excluding the Jointly Developed Materials, the Background Information and any Developed Intellectual Property.
- (mm) “**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 Project Co Infrastructure, but excluding Project Software, Embedded Software, Project Data, Developed Intellectual Property and Technical Information.
- (nn) “**Project Scope**” means the scope of the Project, including the performance of all Works, as defined by the terms of the Project Agreement.
- (oo) “**Project Software**” or “**Software**” means any Project Co Licenced Software, Subcontractor Licenced Software and Third Party Licenced Software, but does not include Embedded Software.
- (pp) “**Software Maintenance and Support**” means, with respect to any Software, the software maintenance and support services for that Software that are provided separately under a software maintenance and support agreement with the licensor of that Software.
- (qq) “**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.
- (rr) “**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 Contracting Authority, 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 Contracting Authority, acting reasonably, in both electronic and paper form, suitable for long term archival storage, and appropriately labelled to describe the contents thereof, of all applicable documentation and other explanatory materials, including programmer's notes, technical or otherwise, for the Software or Embedded Software (other than to the extent that the Software or Embedded Software consists of OTS 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;
- (iii) all Software Tools for such Software or Embedded Software, to the extent not previously delivered with the Software or Embedded Software; and
- (iv) with respect to any Equipment, a complete copy, in English or another language acceptable to the Contracting Authority, acting reasonably, in both electronic and paper form, suitable for long term archival storage, and appropriately labelled to describe the contents thereof, of all applicable documentation and other explanatory materials for the Equipment as may be required for a Person skilled in the applicable technology other than the supplier of the Equipment to specify the performance of the Equipment or replacement parts thereof and to maintain and operate the Equipment without further recourse to the supplier, which will include, to the extent the following items have been or are created or the Equipment and are required to so specify performance or for such maintenance and operation, pseudocode descriptions, flowcharts and state diagrams,

provided that, with respect to (i) and (ii) above, to the extent that the Software or Embedded Software consists of OTS Software, only a complete list of such OTS Software, including the version number and the name of the licensor or the Software as a Service provider shall be required as the Source Materials for such OTS Software.

- (ss) **“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 licenced 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.

- (tt) “**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 Contracting Authority Intellectual Property, Contracting Authority Supplied Third Party Intellectual Property, Project Co Intellectual Property, or Third Party Intellectual Property;
  - (ii) the Subcontractor Licenced Software;
  - (iii) the Subcontractor Embedded Software;
  - (iv) the Subcontractor’s Technical Information; and
  - (v) subject to Section 39.4 (*Jointly Developed Materials*) of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, Contracting Authority, Contracting Authority Parties, or any Subcontractor alone, jointly with each other or with any other person.
- (uu) “**Subcontractor Licenced 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.
- (vv) “**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.
- (ww) “**Technical Information**” means technical information relating to any Equipment supplied or Intellectual Property licenced 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.
- (xx) “**Third Party Embedded Software**” means computer software that is not Owned by Contracting Authority, Project Co or a Subcontractor and that:
- (i) is included, embedded or otherwise incorporated in Equipment;
  - (ii) is not licenced 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.
- (yy) “**Third Party Intellectual Property**” means Intellectual Property Owned by a person other than Contracting Authority, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by Project Co or a Subcontractor under the Project Agreement as or as part of any Deliverable, including Third Party Licenced Software and Third Party Embedded Software.
- (zz) “**Third Party Licenced Software**” means any computer software that is not Owned by Contracting Authority, Project Co or a Subcontractor, is not Third Party Embedded Software and is delivered, supplied or otherwise provided by Project Co or a Subcontractor under the Project Agreement as or as part of any Deliverable.
- (aaa) “**Trademark Licence Agreement**” means the trademark licence agreement entered into between Project Co and Contracting Authority providing for the licence by Contracting Authority of Contracting Authority Trademarks to Project Co, being substantially in the form of Appendix A attached to this Schedule 37.
- (bbb) “**Trust Rights**” has the meaning given in Section 2.5(b).
- (ccc) “**Use**” means, with respect to any Intellectual Property, to do any and all things with that Intellectual Property that the Owner of that Intellectual Property could do, including to load, transmit, access, execute, use, disclose, store, display, copy, adapt, translate, incorporate into other materials, practice, make and have made, but specifically excluding the right to Modify and subject to any limitations in the provision of this Schedule 37 pursuant to which a Licence is granted.

## 2. OWNERSHIP

**2.1 Project Co Intellectual Property:** Project Co shall be and remain the sole and exclusive Owner of the Project Co Intellectual Property. For certainty, nothing in this Schedule 37 shall transfer to Project Co any Ownership of, or grant to Project Co any right in respect of, Contracting Authority Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Project Co Intellectual Property, except for the Licence granted under Section 3.1.

**2.2 Contracting Authority Intellectual Property:** Contracting Authority shall be and remain the sole and exclusive Owner of Contracting Authority Intellectual Property. For certainty, nothing in this Schedule 37 shall transfer to Contracting Authority any Ownership of, or grant to Contracting Authority any right in respect of, the Project Co Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Contracting Authority Intellectual Property, except for the Licence granted under Section 3.2.

For greater clarity and without limiting Contracting Authority’s Ownership rights, Project Co acknowledges and agrees that Contracting Authority shall be entitled to Use and Modify, and in each case shall be entitled to license other Persons to Use and/or Modify, the Developed Intellectual Property (other than any Developed Intellectual Property that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Project Co) in any manner and for any purpose whatsoever, including in connection with the Expanded Purposes.

**2.3 Subcontractor Intellectual Property:** As between Contracting Authority and Project Co, but subject to any agreement to the contrary between Project Co and any Subcontractor, each Subcontractor shall be and remain the sole and exclusive Owner of its Subcontractor Intellectual Property.

**2.4 Contracting Authority Supplied Third Party Intellectual Property:** As between Contracting Authority and Project Co, but subject to any agreement to the contrary between Contracting Authority and the Owner of any Contracting Authority Supplied Third Party Intellectual Property, the Owner of any Contracting Authority Supplied Third Party Intellectual Property shall be and remain the sole and exclusive Owner of any Contracting Authority Supplied Third Party Intellectual Property. For certainty, nothing in this Schedule 37 shall transfer to Project Co or any Subcontractor any Ownership of, or grant to Project Co or any Subcontractor any right in respect of, Contracting Authority Supplied Third Party Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Project Co Intellectual Property or any Contracting Authority Intellectual Property or any Subcontractor Intellectual Property, except for the Licence granted under Section 3.1.

## **2.5 Assignments**

- (a) If, notwithstanding Section 2.1, 2.2, 2.3, or 2.4 or Section 39.4 (*Jointly Developed Materials*) of the Project Agreement, either party (the “**Assignor**”) retains, acquires or owns any right, title or interest in or to any Intellectual Property that is to be Owned by another person (the “**Assignee**”) pursuant to Section 2.1, 2.2, 2.3, or 2.4 or Section 39.4 (*Jointly Developed Materials*) 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 Section 2.5(a) is not effective on the date hereof or on any future date, either generally or pursuant to the laws of any jurisdiction, then any and all right, title and interest in and to the Assigned Intellectual Property that is retained, acquired or owned by the Assignor (collectively, the “**Trust Rights**”), will be held by the Assignor in trust for the exclusive benefit and use of the Assignee, except for any Licences granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 37, and the Assignor will execute and deliver to the Assignee such transfers, assignments, documents and instruments as may be necessary to transfer and assign to the Assignee the Trust Rights, free and clear of all liens, claims, charges or encumbrances, promptly upon receipt thereof from the Assignee, and will otherwise cooperate with the Assignee to give effect to, record and register the Assignee’s ownership of the Trust Rights.
- (c) Project Co will include in each Subcontract provisions equivalent to Sections 2.5(a) or 2.5(b) with respect to: (i) Contracting Authority Intellectual Property, Jointly Developed Materials, Developed Intellectual Property, Project Data and any Modifications thereto, and shall enforce those provisions against each Subcontractor to the extent necessary to ensure that Contracting Authority remains at all times the sole and exclusive Owner of all such property; and (ii) Contracting Authority Supplied Third Party Intellectual Property and any Modifications thereto, and shall

enforce those provisions against each Subcontractor to the extent necessary to ensure that the Licensor remains at all times the sole and exclusive Owner of all such property.

**2.6 Personnel:** Contracting Authority and Project Co shall, and Project Co shall include in each Subcontract an obligation of each Subcontractor to, ensure that their respective Personnel shall:

- (a) by duly executed written agreement or by operation of law, irrevocably and unconditionally sell, assign and transfer to that party all right, title and interest that its Personnel may have in or to any and all Intellectual Property referred to in this Schedule 37 and all Modifications thereto, such that agreements as to Ownership of Intellectual Property pursuant to Sections 2.1, 2.2, 2.3 or 2.4, and Section 39.4 (*Jointly Developed Materials*) of the Project Agreement and the assignment by that party pursuant to Section 2.5 include all right, title and interest of its Personnel; and
- (b) by duly executed written agreement, irrevocably waive all non-transferable rights, including moral rights, that they have or may have in any Intellectual Property assigned by such Personnel pursuant to Section 2.6(a) in favour of the assignee and its successors, assigns and licensees.

### 3. LICENCES

#### 3.1 Licence by Contracting Authority to Project Co

- (a) Subject to Section 3.1(d), Contracting Authority hereby grants to Project Co:
  - (i) a royalty free, fully paid-up, limited Licence to Use and Modify Contracting Authority Intellectual Property for the sole purpose of and only to the extent necessary for the performance by Project Co of the Project Scope and its obligations under the Project Agreement; and
  - (ii) a limited Licence to Use Contracting Authority Supplied Third Party Intellectual Property for the sole purpose of and only to the extent necessary for the performance by Project Co of the Project Scope and its obligations under the Project Agreement.
- (b) Subject to Section 3.1(d), Project Co may sublicense its rights under the Licence granted in Section 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 Section 3.1(b), Project Co may not transfer, assign, sublicense or otherwise dispose of the Licence granted under Section 3.1(a) without the prior written consent of Contracting Authority, which consent may be given or refused by Contracting Authority in its absolute and unfettered discretion.
- (d) The Licence of any Contracting Authority Supplied Third Party Intellectual Property pursuant to Section 3.1(a) shall be subject to the terms and conditions of the licence agreement between Contracting Authority and the licensor of Contracting Authority Supplied Third Party Intellectual Property. Contracting Authority will provide to Project Co a copy of any such third party licence agreement (which may be redacted as to financial and other terms not relevant to use of Contracting Authority Supplied Third Party Intellectual Property by Project Co and Subcontractors), or where prohibited from doing so by obligations of confidentiality to the third party licensor, a summary of the obligations, limitations and restrictions applicable to use of Contracting Authority Supplied

Third Party Intellectual Property by Project Co and Subcontractors. Project Co will comply, and will require any Subcontractor to comply, with the terms and conditions of such third party licence agreement (as set out in the copy of the third party licence agreement or summary thereof provided by Contracting Authority to Project Co) to the extent applicable to Project Co and any Subcontractor in the performance of their respective obligations under the Project Agreement and any Subcontract. If requested by Contracting Authority, Project Co will, and will require any Subcontractor to, execute and deliver to Contracting Authority and the third party licensor an agreement that includes reasonable terms for the protection of the confidentiality of Contracting Authority Supplied Third Party Intellectual Property and an acknowledgement of the third party licensor's ownership thereof, unless Project Co disputes such ownership.

- (e) The Licence granted to Project Co under: Section 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 obligations under the Project Agreement; Section 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 other obligations under the Project Agreement; and (B) the termination of the contract in respect of the applicable Contracting Authority Supplied Third Party Intellectual Property or Contracting Authority's licence or sublicense rights thereunder.
- (f) The Licences granted to Project Co under Section 3 do not include licences to any Contracting Authority Trademarks. The use of any Contracting Authority Trademarks shall be governed by the terms of the Trademark Licence Agreement.

### **3.2 Licence by Project Co to Contracting Authority**

- (a) Project Co hereby grants to Contracting Authority a Licence to:
  - (i) Use and Modify the Project Co Intellectual Property (excluding Project Co Licenced Software and Project Co Embedded Software) that is Delivered and the Subcontractor Intellectual Property (excluding the Subcontractor Licenced Software and the Subcontractor Embedded Software) that is Delivered;
  - (ii) Use, and have Limited Modification Rights to, the Project Co Licenced Software that is Delivered and the Subcontractor Licenced Software that is Delivered and only in respect of the modules that are Delivered; and
  - (iii) Use, and have Limited Modification Rights to, the Project Co Embedded Software and the Subcontractor Embedded Software as part of and for the Use of the Equipment in which such software is included, embedded or otherwise incorporated,

for the Permitted Purposes. Subject to Section 3.11, the Licences granted pursuant to this Section 3.2 in respect of Project Software and Embedded Software apply to only object code versions thereof and not the source code materials for any such Project Software or Embedded Software. For greater clarity, to the extent that any Licensed Intellectual Property is subject to a License granted in this Section 3.2(a) and such Licensed Intellectual Property is also included within the scope of any Escrow Materials, the License granted herein shall take precedence and Contracting Authority shall have all such rights to Use, Modify, and shall have such Limited Modification Rights to same, as are contemplated in such License.



- . addition and notwithstanding any other provision of this Schedule 37, with respect to such components of Project Co Infrastructure Architecture and Look and Feel that consist of the architecture of the tunnel, landscape and urban design elements, fit and finish, or any other aspect of the Project Co Infrastructure, and/or look and feel of the Project Co Infrastructure, that are not owned by Contracting Authority pursuant to this Schedule 37, Project Co hereby grants to Contracting Authority a Licence to Use and Modify any Project Co Infrastructure Architecture and Look and Feel that is not owned by Contracting Authority pursuant to this Schedule 37, for the Expanded Purposes.
- (b) The Licences granted pursuant to this Section 3.2 will be irrevocable (except as provided in Section 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 Licenced Intellectual Property in respect of which the Licence is granted), and permit Use by Contracting Authority on an enterprise basis without restriction or limitation as to users (whether by number, identity or otherwise), location, capacity, authorized system or otherwise, as part of or in connection with the Project Co Infrastructure, or in the case of the Project Co Infrastructure Architecture and Look and Feel, in connection with the Expanded Purposes.
- (c) The Licences granted pursuant to this Section 3.2 may be transferred, assigned, sublicensed and otherwise disposed of by Contracting Authority subject to and in accordance with Section 47.2 (*Contracting Authority Assignment*) 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 Licenced 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 Licenced Intellectual Property to which such failure applied and not to any other Licenced Intellectual Property. Except as specifically provided in this Section 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 Section 3.2(d) the Licence granted under this Section 3.2 is perpetual and irrevocable. No breach of or default under this Schedule 37 by Contracting Authority shall constitute a repudiation of the Licence granted under this Section 3.2 by Contracting Authority.
- (e) The Licensee may provide and disclose the Licenced Intellectual Property to any employee, contractor, subcontractor, consultant, service provider, outsourcer or other person retained by the Licensee in connection with the Permitted Purposes, except in respect of the Project Co Infrastructure 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 Licenced 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 Licenced Intellectual Property, including a breach by any such person of Contracting Authority's obligations of confidentiality in respect of any Confidential Information that is or is part of Licenced Intellectual Property.

- (f) The Licensee may Use Project Software that is licenced 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 Licenced Intellectual Property as may be reasonably necessary for Use and Modification of the Licenced 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 Licenced Intellectual Property and licenced 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 Licenced Software, Project Co Embedded Software, Subcontractor Intellectual Property, Subcontractor Licenced Software or Subcontractor Embedded Software.
- (h) The Licensee will not remove from any Licenced Intellectual Property any markings or notices with respect to the ownership thereof, copyright therein or the confidentiality thereof.
- (i) Where Contracting Authority has the right to Modify any Licenced Intellectual Property, Project Co shall ensure that all authors of such Licenced Intellectual Property have waived all moral rights that such authors may have therein in favour of Contracting Authority and its successors, assigns and licensees.
- (j) If, pursuant to Section 3.2(a) and by virtue of the definition of Delivered in Section 1.1(k), Contracting Authority is granted a License in respect of any Project Co Intellectual Property or Subcontractor Intellectual Property that is not a Deliverable or incorporated, embedded or otherwise included in any Deliverable, Project Co shall, or shall cause the applicable Subcontractor to, physically supply and deliver to Contracting Authority the Project Co Intellectual Property and Subcontractor Intellectual Property that falls within the definition of Delivered but has not previously been physically supplied and delivered to Contracting Authority, together with all related Project Co's Technical Information as may be necessary for Contracting Authority to Use and Modify that Project Co Intellectual Property and Subcontractor Intellectual Property in accordance with the Licenses granted herein.
- (k) In respect of the Project Co Intellectual Property and all or any part of the Source Materials for any Licensed Intellectual Property that are included with the Licensed Intellectual Property when Delivered to Contracting Authority pursuant to the Project Agreement ("**Included Source Materials**") therefor, Project Co shall provide to Contracting Authority training and consulting services to ensure that Contracting Authority is able to carry out all Equivalent Activities and Permitted Purposes in respect of the Project Co Intellectual Property and the Subcontractor Intellectual Property, excluding Equivalent Activities and Permitted Purposes that require access to and Use and Modification of Escrow Materials other than the Included Source Materials. Project Co shall cause each Subcontractor in respect of its Subcontractor Intellectual Property and any Included Source Materials therefor to provide such training and consulting services. In addition,

Project Co shall, and shall cause each Subcontractor to, disclose and provide to Contracting Authority all trade secrets, know-how, documentation and other information of any kind whatsoever within their possession or control as may be necessary for Contracting Authority to carry out all Equivalent Activities and Permitted Purposes in respect of the Project Co Intellectual Property and the Subcontractor Intellectual Property, excluding any of the foregoing that form part of Escrow Materials.

- (l) Project Co shall use reasonable commercial efforts to ensure that each Deliverable and all Intellectual Property included in each Deliverable as and when delivered to Contracting Authority do not contain Harmful Code, a Lock or Undisclosed Functionality. Upon notice by Contracting Authority that a Deliverable or any item of Intellectual Property as delivered to Contracting Authority contains Harmful Code, a Lock or Undisclosed Functionality, Project Co shall promptly repair or replace the Deliverable or item of Intellectual Property so that the Deliverable or item of Intellectual Property does not contain the Harmful Code, Lock or Undisclosed Functionality (as applicable). In this Section 3.2(l): “**Harmful Code**” means a virus, worm, “Trojan Horse”, or other code or routine that manifests contaminating or destructive properties that might damage, harm, detrimentally interfere with, or otherwise adversely affect a Deliverable, any Intellectual Property or the System or any computer system, hardware, software, equipment, or services in connection with which the Deliverable or Intellectual Property is Used or any related data; “**Lock**” means a “time bomb”, “logic bomb”, “back door”, “drop-dead device” or any other disabling or limiting code, design or routine that might be used to interrupt, lock, disable, erase, limit the functionality or Use of, or otherwise adversely affect, or facilitate unauthorized access to, a Deliverable, any Intellectual Property or the System or the computer system, hardware, software, equipment, or services in connection with which the Deliverable or Intellectual Property is Used or any related data; and “Undisclosed Functionality” means a functionality providing the capability to automatically communicate with or transmit data to any person or computer system, that is not expressly required by the Project Agreement or otherwise expressly agreed to by Contracting Authority.

### 3.3 Licences with Subcontractors

- (a) Project Co will be responsible to obtain from each Subcontractor the right to grant the Licence under Section 3.2 in respect of the Subcontractor Intellectual Property.
- (b) Project Co will be responsible to obtain from each Subcontractor the right to Use and Modify the Subcontractor Intellectual Property to the extent necessary for Project Co to perform its obligations under the Project Agreement, on such terms as are not in breach of or conflict with the Project Agreement.
- (c) Project Co will be responsible to grant to each Subcontractor the right to Use and Modify Contracting Authority Intellectual Property and Project Co Intellectual Property to the extent necessary for each Subcontractor to perform its obligations under its Subcontract, on such terms as are not in breach of or conflict with the Project Agreement.

**3.4 Third Party Intellectual Property:** Project Co will not, and will not permit any Project Co Personnel, Subcontractor or Subcontractor Personnel to, incorporate, embed or otherwise include in the Project Co Infrastructure or any Deliverable any Third Party Intellectual Property unless:

- (a) for Third Party Intellectual Property other than Third Party Embedded Software, such Third Party Intellectual Property is provided by the Owner thereof pursuant to a licence agreement that:
- (i) grants to the Licensee rights equivalent to or better than the rights granted under the Licence in Section 3.2, including being assignable in accordance with Section 3.2(c), and, where the Third Party Intellectual Property is software or includes software, provides for the maintenance and support of that software on terms acceptable to Contracting Authority; or
  - (ii) has been approved by Contracting Authority in writing, which approval may be given or refused by Contracting Authority in its absolute and unfettered discretion;

and such licence agreement, if not entered into with Contracting Authority directly, has been assigned or is freely assignable to Contracting Authority;

- (b) for Third Party Embedded Software, either (i) such Third Party Embedded Software is embedded in Equipment and is not provided by the Owner thereof pursuant to a licence agreement, but may be used by Contracting Authority or any subsequent owner of the machine or equipment as part of and for the intended purposes of such machine or equipment upon the purchase thereof, or (ii) such Third Party Embedded Software is subject to a licence agreement that complies with Section 3.4(a).
- (c) If Project Co, Project Co Personnel, Subcontractor or Subcontractor Personnel incorporates, embeds or includes any Third Party Intellectual Property in the Project Co Infrastructure or any Deliverable other than in compliance with this Section 3.4, then in addition to any other rights and remedies Contracting Authority may have against Project Co, Project Co will at its sole cost and expense take all necessary steps to comply with this Section 3.4 or, if Project Co is unable to do so, to remove such Third Party Intellectual Property and replace it with Project Co Intellectual Property that provides the same (or, substantially and in all relevant respects, equivalent functionality and performance, provided that all deviations from the functionality and performance of such Third Party Intellectual Property have been notified in advance and in writing to Contracting Authority specifying in reasonable detail each such deviation and the reason as to why each such deviation is an immaterial deviation to the functionality and performance of such Third Party Intellectual Property, and Contracting Authority has agreed in writing to such substitution) functionality and performance as such Third Party Intellectual Property and which will operate within the Project Co Infrastructure without any degradation thereof or adverse effect thereon, and which will be included in the Project Co Intellectual Property for the purposes of the Licence granted pursuant to Section 3.2.

**3.5 Non-Assertion:** Project Co agrees not to assert, and to cause its Subcontractors not to assert, any Intellectual Property right against Contracting Authority or any Licensee that would have the effect of diminishing the rights granted to Contracting Authority or any Licensee hereunder. Without limiting the generality of the foregoing, Project Co will not sue, and will cause its Subcontractors not to sue, Contracting Authority or any Licensee on the basis that any Equivalent Activity or the Ownership or Use of the Project Co Infrastructure or any Deliverable within the scope of the Permitted Purposes infringes any Intellectual Property right of Project Co or any Subcontractor.

**3.6 Deliveries:** Project Co will deliver to Contracting Authority all Licenced 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 Licenced Intellectual Property other than Project Software and will be the property of Contracting Authority, notwithstanding Project Co's, a Subcontractor's or a third party's Ownership of the Licenced Intellectual Property. If any Licenced Intellectual Property requires software in order to Use that Licenced Intellectual Property, Project Co will ensure that such software will be commercially available to Contracting Authority at a reasonable licence fee, or if such software is not commercially available, Project Co will at its cost provide such software and a licence therefor to Contracting Authority and Contracting Authority Parties on terms and conditions that do not result in any impairment of Contracting Authority's Use of the Licenced Intellectual Property in accordance with the Licence therefor.

- 3.7 Pass Through Obligations:** Project Co is responsible to include in all contracts with Project Co Personnel and in all Subcontracts with Subcontractors such terms and conditions as may be necessary for Project Co to grant, or obtain for Contracting Authority, the Ownership, Licences, rights and benefits provided for in this Schedule 37.
- 3.8 Conflicting Software Licences:** All software referenced in this Schedule 37 will be licenced in accordance with this Schedule 37 or such other software license agreement for same as may be agreed to by Contracting Authority in accordance with Section 3.4, and any form of software licence agreement used or provided by a licensor in association with any such software will be of no force or effect and will not be binding on Contracting Authority or any other Licensee, even if by its terms such software licence agreement is stated to be accepted by the installation or use of the software, and regardless of any acceptance of such software licence agreement that is required in order to install or use the software.
- 3.9 Trademarks and Names:** Except as expressly set forth: (a) in the Trademark Licence Agreement; (b) the Project Agreement; or (c) otherwise in a writing executed by each of Contracting Authority and Project Co, neither Party shall use any Trademarks owned by the other Party, or use the names or any identifying logos or otherwise of the other Party in any advertising or permit them so to be used.
- 3.10 Open Source.** Project Co shall not, and shall cause the Subcontractor not to, incorporate, embed or include any Open Source Materials in any Deliverables, Contracting Authority Intellectual Property or Contracting Authority Supplied Third Party Intellectual Property without the prior written consent of Contracting Authority.
- 3.11 Escrow Agreements**
- (a) If requested by Contracting Authority (which for the purposes of this Section 3.11 includes any permitted assignee under Section 47.2 (*Contracting Authority Assignment*) of the Project Agreement), at any time during the Project Term, Project Co will, or will require the applicable Subcontractor or third party licensor to, enter into an Escrow Agreement for any Software or Embedded Software (an “**Escrowed Deliverable**”) on terms that comply with this Section 3.11, or amend its existing Escrow Agreement for such Software or Embedded Software to comply with this Section 3.11, and add Contracting Authority as a beneficiary under the Escrow Agreement.
- (b) The Escrow Provider will deposit with the Escrow Agent the Escrow Materials for the Escrowed Deliverable and all Modifications thereto provided by the Escrow Provider to Contracting Authority as part of the Works, Software Maintenance and Support (if purchased by or on behalf

- of Contracting Authority) or any other services performed by the Escrow Provider for Contracting Authority, and in the case of Software or the Embedded Software, the Escrow Provider will update the Escrow Materials to conform to the then-current version of the Software in use by Contracting Authority including all Modification thereto made for the benefit of Contracting Authority.
- (c) Contracting Authority will have the right, on reasonable notice to the Escrow Provider and the Escrow Agent, to verify that the Escrow Materials conform to the Escrowed Deliverable supplied to and in use by Contracting Authority to which the Escrow Materials relate. In addition, Contracting Authority may purchase such additional verification services as may be offered by the Escrow Agent and the Escrow Provider will cooperate with Contracting Authority and the Escrow Agent in the performance of those verification services.
- (d) Contracting Authority will have the right to obtain from the Escrow Agent a copy of the Escrow Materials retained by such Escrow Agent for a particular Escrow Provider 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 thirty (30) days after the appointment;
  - (iii) the Escrow Provider seeks protection from its creditors or undertakes any reorganization for the purpose of obtaining relief from its creditors;
  - (iv) the Escrow Provider ceases to carry on business; or
  - (v) in the case of Software, if Contracting Authority is purchasing Software Maintenance and Support for the Software in respect of which the Escrow Materials have been deposited, if the Escrow Provider has given Contracting Authority or any of its representatives notice that it will no longer provide Software Maintenance and Support or if the Escrow Provider defaults in the performance of Software Maintenance and Support and does not remedy that default within thirty (30) days after receipt of notice from Contracting Authority demanding that the Escrow Provider do so.
- (e) Project Co shall ensure that the Escrow Agreement: (i) requires the Escrow Agent to release the Escrow Materials to Contracting Authority if any of the events listed in Section 3.11(d) occur; (ii) does not contain any provision placing any obligation on Contracting Authority, including any indemnity obligation; and (iii) complies with and does not contradict any provision of this Section 3.11. Where this Section 3.11 places an obligation on the Escrow Agent, Project Co shall cause the Escrow Agent to comply with all such obligations.
- (f) Project Co hereby grants, and Project Co shall ensure that all Escrow Providers grant to Contracting Authority, with effect as of the date the applicable Software or the applicable Embedded Software is used in connection with the Project Scope (but subject, for greater clarity, to the release of the applicable Escrow Materials), a Licence to:
- (i) Use the Escrow Materials to enable Contracting Authority to Use the Escrowed Deliverable to which the Escrow Materials relate for the Permitted Purposes, and where the Escrowed

Deliverable is or contains Licenced 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 Escrow Materials which Modifications are only used for the Permitted Purposes or the Expanded Purposes, as applicable, and are subject to confidentiality obligations under Section 3.11(f)(vi);
  - (iii) in the case of Escrow Materials for Software and Embedded Software, 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) in the case of Escrow Materials for Equipment, use the Escrow Materials to design and manufacture, or to have designed, manufactured and supplied, replacement Equipment or parts therefor;
  - (v) make only those copies of the Escrow Materials that Contracting Authority reasonably requires for the purposes set out in Sections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii); and
  - (vi) disclose the Escrow Materials, or any part thereof, only to agents, employees or contractors of Contracting Authority as reasonably required for the purposes set out in Sections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii), provided that such agents, employees and contractors are bound by obligations of confidentiality in respect of any Escrow Materials disclosed to them, the breach of which shall constitute a breach by Contracting Authority of its obligations of confidentiality in respect of the Escrow Materials.
- (g) The Licence granted pursuant to Section 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 licence granted by such third party to Contracting Authority,
- and in either case remain in effect for so long as such licence remains in effect.
- (h) Except where Contracting Authority (i) terminates the Escrow Agreement, (ii) has a renewal right and fails to renew the Escrow Agreement, or (iii) fails to make payments as set out in Section 3.11(i), the Escrow Provider will not terminate or fail to renew the Escrow Agreement without entering into a new Escrow Agreement with a replacement escrow agent on terms and conditions substantially the same as the Escrow Agreement and this Section 3.11.
- (i) The Contracting Authority will pay all fees charged by the Escrow Agent in association with the deposit and maintenance of the Escrow Materials by the Escrow Agent under the Escrow Agreement for the benefit of Contracting Authority. The Escrow Provider shall have no responsibility or liability arising from any failure of Contracting Authority to pay fees when due in order to maintain the Escrow Materials with the Escrow Agent.

(j) If Contracting Authority receives the Escrow Materials, then as between Contracting Authority and Project Co and notwithstanding any other provision of the Project Agreement, Contracting Authority will own all Modifications to the Escrow Materials made by or for Contracting Authority and all Intellectual Property in such Modifications.

(k) For greater certainty, the provisions of this Section 3.11 do not extend to include any OTS Software.

**3.12 Modifications:** Notwithstanding the granting of any licence pursuant to this Schedule 37, where Contracting Authority has made any Modification to the Project Co Intellectual Property or the Subcontractor Intellectual Property other than (a) a Modification made by or on behalf of Project Co or a Subcontractor or otherwise authorized by Project Co or any Subcontractor, or (b) a Modification made through the Limited Modification Rights, then,

(i) any warranty provided by Project Co under the Project Agreement shall not apply solely in respect of and directly to the extent 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 44.1(g) (*Project Co Indemnities to Contracting Authority*) 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 TO SCHEDULE 37

FORM OF TRADEMARK LICENCE AGREEMENT

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## TRADEMARK LICENCE AGREEMENT

**THIS TRADEMARK LICENCE AGREEMENT**, effective as of [DATE] (the “**Agreement**”), is between Contracting Authority (the “**Licensor**”), and Project Co (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 November 8, 2022 (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 trademarks 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 licence 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 licence 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 Sublicence:** 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 trademark owned by [LICENSOR] used under licence by [LICENSEE]". Licensee undertakes to comply with all relevant laws and regulations pertaining to trademarks 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 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 Licence:** 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 are 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 *Trademarks Act*, R.S.C., 1985, c. T-13, as amended from time to time.
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 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 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.

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20. **Severability:** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as near as possible to its original intent and effect.
21. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles. Each of the Parties attorn to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
22. **Counterparts:** The Project Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to the other Party an original signed copy of the Project Agreement which was so faxed.

*[Remainder of page intentionally blank – Next page is the signature page.]*

IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the date set forth above.

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

Per:

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

Title:

Per:

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

Title:

I/We have authority to bind the corporation.

**METROLINX**

Per:

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

Title:

I/We have authority to bind the corporation.

[LICENSEE]

Per:

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

Title:

Per:

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

Title:

I/We have authority to bind the corporation.

EXHIBIT A TO APPENDIX A

TRADEMARKS

*[Note: To be completed once trademarks identified.]*

**SCHEDULE 39**  
**FORM OF RSSOM INTERFACE AGREEMENT**



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THIS AGREEMENT is made as of the 15<sup>th</sup> day of November, 2022

**BETWEEN:**

**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

(“**Contracting Authority**”)

**AND:**

[REDACTED]

(“**RSSOM Project Co**”)

**AND:**

**ONTARIO TRANSIT GROUP INC.**, [REDACTED]

(“**South Civil Project Co**”)

**WHEREAS:**

- A. RSSOM Project Co has on the date hereof entered into an agreement (the “**RSSOM Project Agreement**”) with Contracting Authority to design, construct, finance, supply, operate, maintain and rehabilitate the Ontario Line Subway, to design, construct and finance the New Third Party Infrastructure, and to carry out the RSSOM Project Operations (all as defined in the RSSOM Project Agreement);
- B. South Civil Project Co has on or about November 8, 2022 entered into an agreement (the “**South Civil Project Agreement**”) with Contracting Authority to design, construct and finance a tunnel for the underground portion of the southern alignment between Exhibition Station and a portal location within the Don Yard and for other associated structures required for the new subway line in Toronto, Ontario, and to carry out the South Civil Works (all as defined in the South Civil Project Agreement); and
- C. RSSOM Project Co and South Civil Project Co have agreed to (a) establish and participate in an Integration Committee (as defined herein) with a view to coordinating the integration of the conduct of certain of their activities so as to meet their respective obligations under the RSSOM Project Agreement and the South Civil Project Agreement; (b) establish and participate in a Design Integration Working Group for the integration of the design of the RSSOM Project and the South Civil Project; and (c) resolve Integration Disputes (as defined herein) in accordance with the Integration Dispute Resolution Procedure (as defined herein), all in accordance with the terms of this agreement (the “**Agreement**”).

In consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

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**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, including the recitals and appendices, unless the context indicates a contrary intention, the following terms shall have the following meanings,

“**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.

“**Construction Integration Working Group**” has the meaning given in Section 5.1.

“**Contracting Authority**” has the meaning given in the preamble.

“**Contracting Authority Party**” has the meaning given to such term in either Project Agreement.

“**Crown**” means His Majesty the King in right of Ontario.

“**Design Integration Working Group**” has the meaning given in Section 4.1.

“**Dispute**” means all disagreements, disputes, or controversies arising during or following the Project Term in relation to or arising out of the interpretation, enforceability, performance, breach, or validity of the RSSOM Project Agreement or the South Civil Project Agreement, as applicable, or any provision of such Project Agreement, the rights or obligations of the Parties under such Project Agreement, or the exercise of failure to exercise a discretion or power given to a Party under such Project Agreement, but shall not include an Adjudication Dispute or any matter in respect of which the Independent Certifier is entitled or required to make a final and binding determination under either the RSSOM Project Agreement or the South Civil Project Agreement as applicable.

“**DIWG Draft Submittals**” means DIWG Review South Civil Integration Works Submittals or DIWG Review RSSOM Integration Works Submittals, as applicable.

“**DIWG Review RSSOM Integration Works Submittals**” has the meaning given in Section 4.4(b).

“**DIWG Review South Civil Integration Works Submittals**” has the meaning given in Section 4.4(b).

“**Governmental Authority**” has the meaning given to such term in either Project Agreement.

“**Initial Integration Improvement Workshop Notice**” has the meaning given in Section 3.6(c).

“**Integration Committee**” has the meaning given to such term in Section 3.1.

“**Integration Dispute**” means a Dispute for which a Notice designating such Dispute as an Integration Dispute has been given by Contracting Authority pursuant to the Integration Dispute Resolution Procedure.

“**Integration Dispute Resolution Procedure**” means the procedure for final resolution of all Integration Disputes as set out in Appendix A hereto.

“**Integration Improvement Goals**” has the meaning given in Section 3.6(a).

“**Integration Improvement Opportunities**” has the meaning given in Section 3.6(f).

“**Integration Improvement Process**” has the meaning given in Section 3.6(a).

“**Integration Improvement Workshop Participants**” has the meaning given in Section 3.6(e).

“**Integration Improvement Workshops**” has the meaning given in Section 3.6(c).

“**Management Board of Cabinet**” has the meaning set out in the *Management Board of Cabinet Act (Ontario), R.S.O., 1990, c. M.1.*

“**OL Project Cos**” means, collectively, RSSOM Project Co and South Civil Project Co, and “**OL Project Co**” means either one of them.

“**Parties**” means each of Contracting Authority, RSSOM Project Co and South Civil Project Co and “**Party**” means any one of them without specificity.

“**Project Agreements**” means, collectively, the RSSOM Project Agreement and the South Civil Project Agreement, and “**Project Agreement**” means either one of them.

“**Proposed Integration Improvements List**” has the meaning given in Section 3.6(g).

“**Province Person**” has the meaning set out in either Project Agreement.

“**RSSOM Commercial Close**” has the meaning given to the term “Commercial Close” in the RSSOM Project Agreement.

“**RSSOM Contracting Authority Representative**” has the meaning given to the term “Contracting Authority Representative” in the RSSOM Project Agreement.

“**RSSOM Construction Manager**” means the lead “Construction Manager” identified in Schedule 9 – Key Individuals to the RSSOM Project Agreement.

“**RSSOM Design Manager**” means the “Design Manager” identified in Schedule 9 – Key Individuals to the RSSOM Project Agreement.

“**RSSOM Financial Close**” has the meaning given to the term “Financial Close” in the RSSOM Project Agreement.

“**RSSOM Independent Certifier**” has the meaning given to the term “Independent Certifier” in the RSSOM Project Agreement.

“**RSSOM Integration Works Submittals**” has the meaning given to the term “RSSOM Infrastructure Works Submittals” in Schedule 10 – Review Procedure of the South Civil Project Agreement.

“**RSSOM Operations Director**” means the “Operations Director” identified in Schedule 9 – Key Individuals to the RSSOM Project Agreement.

“**RSSOM Project**” has the meaning given to the term “Project” in the RSSOM Project Agreement.

“**RSSOM Project Agreement**” has the meaning in Recital A.

“**RSSOM Project Co**” has the meaning given in the preamble.

“**RSSOM Project Co Parties**” has the meaning given to the term “Project Co Parties” in the RSSOM Project Agreement.

“**RSSOM Project Co Representative**” means the person designated as such by RSSOM Project Co on or prior to Commercial Close and any permitted replacement.

“**RSSOM Project Co Termination Date**” means “Termination Date” as defined in the RSSOM Project Agreement.

“**RSSOM System Integration Manager**” means the “System Integration Manager” identified in Schedule 9 – Key Individuals to the RSSOM Project Agreement.

“**RSSOM Works Committee**” has the meaning given to the term “Works Committee” in the RSSOM Project Agreement.

“**South Civil Commercial Close**” has the meaning given to the term “Commercial Close” in the South Civil Project Agreement.

“**South Civil Contracting Authority Representative**” has the meaning given to the term “Contracting Authority Representative” in the South Civil Project Agreement.

“**South Civil Construction Manager**” means the lead “Construction Manager” identified in Schedule 9 – Key Individuals to the South Civil Project Agreement.

“**South Civil Design Manager**” means the “Design Manager” identified in Schedule 9 – Key Individuals to the South Civil Project Agreement.

“**South Civil Final Completion Date**” has the meaning given to the term “Final Completion Date” in the South Civil Project Agreement.

“**South Civil Financial Close**” has the meaning given to the term “Financial Close” in the South Civil Project Agreement.

“**South Civil Independent Certifier**” has the meaning given to the term “Independent Certifier” in the South Civil Project Agreement.

“**South Civil Infrastructure**” means the Project Co Infrastructure as defined in the South Civil Project Agreement.

“**South Civil Integration Works Submittals**” has the meaning given to the term “South Civil Infrastructure Works Submittals” in Schedule 10 – Review Procedure of the RSSOM Project Agreement.

“**South Civil Project**” has the meaning given to the term “Project” in the South Civil Project Agreement.

“**South Civil Project Agreement**” has the meaning in Recital B.

“**South Civil Project Co**” has the meaning given in the preamble.

“**South Civil Project Co Parties**” has the meaning given to the term “Project Co Parties” in the South Civil Project Agreement.

“**South Civil Project Co Representative**” means the person designated as such by South Civil Project Co on or prior to Commercial Close and any permitted replacement.

“**South Civil Project Co Termination Date**” means “Termination Date” as defined in the South Civil Project Agreement.

“**South Civil System Integration Manager**” means the “System Integration Manager” identified in Schedule 9 – Key Individuals to the South Civil Project Agreement.

“**South Civil Works Committee**” has the meaning given to the term “Works Committee” in the South Civil Project Agreement.

## 1.2 In Writing

Unless otherwise expressly provided, any notice, certificate, consent, approval, determination, agreement or waiver which is required to be issued, made or given in terms of this Agreement shall be required to be issued, made or given in writing in accordance with Section 8.5 hereof.

## 1.3 Interaction Between Project Agreements and this Agreement

- (a) To the extent of any inconsistency or conflict between the provisions of this Agreement and the provisions of either Project Agreement, the provisions of the applicable Project Agreement shall prevail as between the parties thereto, provided that, with respect to the resolution of an Integration Dispute the provisions of this Agreement shall prevail.
- (b) Except to the extent expressly provided in this Agreement, nothing in this Agreement shall affect, modify, reduce or limit in any way or manner whatsoever the rights or the obligations of any OL Project Co with respect to Contracting Authority under its respective Project Agreement, provided that, in all cases, there shall be no duplication of any claims made or amounts paid or payable by any party to this Agreement to any other party to this Agreement, whether under this Agreement, the RSSOM Project Agreement or the South Civil Project Agreement.
- (c) Except to the extent expressly provided for by the Parties in this Agreement, nothing in this Agreement shall affect, modify, reduce or limit in any manner whatsoever the rights or obligations of Contracting Authority with respect to any OL Project Co under the respective Project Agreements.

## 1.4 Joint and Several Liability

[REDACTED]

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## ARTICLE 2 GENERAL OBLIGATIONS

### 2.1 Purpose and Intent

The Parties acknowledge and agree that, for the RSSOM Project and the South Civil Project to be successful, it is necessary that the Parties work together cooperatively to address any integration issues arising in connection therewith. The Parties have therefore agreed to enter into this Agreement in order to commit to establish, and take part in, the Integration Committee, the Design Integration Working Group and the Construction Integration Working Group and agree to the Integration Dispute Resolution Procedure.

### 2.2 No Liability

The Parties hereby agree as follows:

- (a) Contracting Authority and RSSOM Project Co shall not be responsible or liable (whether in contract, tort, breach of statutory duty or under any other theory of law) to any Party in respect of any act, omission or statement by South Civil Project Co or any South Civil Project Co Party;
- (b) Contracting Authority and South Civil Project Co shall not be responsible or liable (whether in contract, tort, breach of statutory duty or under any other theory of law) to any Party in respect of any act, omission or statement by RSSOM Project Co or any RSSOM Project Co Party; and
- (c) no knowledge (whether constructive or implied, but excluding, for greater certainty, any actual knowledge of a Party) shall be imputed to a Party solely as a result of it being a party to this Agreement, nor shall such knowledge be used or relied upon in any claim or action at law made or instituted by any other Party against such Party in connection with the RSSOM Project or the South Civil Project under or pursuant to the RSSOM Project Agreement or the South Civil Project Agreement respectively, whether by waiver or otherwise,

provided that nothing in this Section 2.2 shall affect the rights and liabilities of the Parties, as applicable, under the Project Agreements, which would otherwise have arisen under the relevant Project Agreement.

## ARTICLE 3 INTEGRATION COMMITTEE

### 3.1 Establishment

- (a) The Parties shall, within thirty (30) days following the later to occur of South Civil Financial Close and RSSOM Financial Close, establish a committee (the “**Integration Committee**”) consisting of the following (and each Party shall identify its representatives by notice to the other Parties within such thirty (30) period)
  - (i) six representatives appointed by Contracting Authority from time to time, one of whom will be the RSSOM Contracting Authority Representative and one of whom will be the South Civil Contracting Authority Representative (provided if the RSSOM Contracting Authority Representative and South Civil Contracting



Authority Representative are the same person, Contracting Authority shall appoint 5 additional representatives);

- (ii) on behalf of South Civil Project Co: the South Civil Project Co Representative, the South Civil Construction Manager, the South Civil System Integration Manager and the South Civil Design Manager; and
- (iii) on behalf of RSSOM Project Co: the RSSOM Project Co Representative, the RSSOM Construction Manager, the RSSOM System Integration Manager and RSSOM Design Manager,

provided that the representatives that shall attend any Integration Improvement Workshops contemplated in Section 3.6 shall be the Integration Improvement Workshop Participants contemplated in Section 3.6(e).

- (b) A representative of each of the South Civil Independent Certifier and the RSSOM Independent Certifier shall be required to attend meetings as non-voting members of the Integration Committee. Members of the Integration Committee may invite, on prior Notice to all members, (i) such advisors and consultants as they require from time to time to attend meetings and to provide briefings to the Integration Committee, or (ii) representatives of North Civil Project Co to participate in meetings of the Integration Committee (including any Integration Improvement Workshops) on a non-voting basis to discuss matters relating to the integration of design of the Ontario Line Subway.
- (c) The RSSOM Contracting Authority Representative shall be the chairperson at all meetings of the Integration Committee, provided that any Integration Improvement Workshops shall be chaired by a representative of Contracting Authority identified in the applicable notice delivered by Contracting Authority pursuant to Section 3.6(c) or Section 3.6(e), as applicable.

### 3.2 Function and Role

- (a) The Integration Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to integration and handover of the South Civil Infrastructure and all matters contemplated in Schedule 42 – South Civil Infrastructure Access and Handover of the RSSOM Project Agreement, and Schedule 45 – Integration with the RSSOM Project of the South Civil Project Agreement. The Integration Committee shall interface with the South Civil Works Committee, the RSSOM Works Committee and the System Management Committee (as defined in the RSSOM Project Agreement) as and when required. In addition to the foregoing, the Integration Committee shall engage in the Integration Improvement Process set out in Section 3.6.
- (b) The Integration Committee shall be responsible for receiving and reviewing all matters related to integration of the South Civil Infrastructure with the RSSOM Project, including:
  - (i) discuss and resolve any matters or issues that arise under Schedule 42 – South Civil Infrastructure Access and Handover of the RSSOM Project Agreement or Schedule 45 – Integration with the RSSOM Project of the South Civil Project Agreement,

- (ii) discuss and resolve any matters referred to the Integration Committee for consideration by the Design Integration Working Group or the Construction Integration Working Group, and
  - (iii) any special matters referred to the Integration Committee by Contracting Authority or either OL Project Co, including any Integration Improvement Opportunities identified by Contracting Authority as contemplated in Section 3.6(h).
- (c) Subject to Sections 3.2(d) and 3.6(i), any unanimous decision of the Integration Committee shall be final and binding on the Parties. If the Integration Committee is unable to reach a unanimous decision, any Party may refer the matter for resolution in accordance with Article 7 (Integration Dispute Resolution Procedure).
- (d) The Integration Committee shall not have authority to make decisions with respect to or approve (but may discuss and make recommendations to the applicable Parties in respect of):
- (i) any amendment to or waiver of any provision of this Agreement;
  - (ii) any amendment to or waiver of any obligations or requirements set out in the RSSOM Project Agreement or the South Civil Project Agreement); and
  - (iii) any Variation (as defined in the RSSOM Project Agreement) or any Variation (as defined in the South Civil Project Agreement).

### 3.3 Term of Integration Committee

Unless otherwise agreed by the Parties, the Integration Committee shall operate only until the South Civil Final Completion Date.

### 3.4 Replacement of Committee Members

Contracting Authority shall be entitled to replace any of its representatives on the Integration Committee by written Notice to the OL Project Cos. Contracting Authority will use commercially reasonable efforts to deliver prior written Notice of any such replacement to the OL Project Cos. The OL Project Cos may replace any of their representatives on the Integration Committee with the prior written consent of Contracting Authority.

### 3.5 Procedures and Practices

- (a) The members of the Integration Committee may:
- (i) adopt such procedures and practices for the conduct of the activities of the Integration Committee as they consider appropriate from time to time;
  - (ii) invite to any meeting of the Integration Committee such other persons as the members of the Integration Committee may agree;
  - (iii) exclude from any meeting of the Integration Committee such persons as the members of the Integration Committee may agree; and

- (iv) receive and review reports from any person or organization agreed to by the members of the Integration Committee.
- (b) Once established, the Integration Committee shall meet at least once each month from the later of RSSOM Financial Close or South Civil Financial Close, as applicable, until the South Civil Final Completion Date, unless otherwise agreed by the members of the Integration Committee or the Parties. Members of the Integration Committee shall, by notice to the other members of the Integration Committee to be delivered no later than five (5) Business Days prior to the date of a meeting of the Integration Committee scheduled pursuant to this Section 3.5(b), propose agenda items for discussion at such meeting, or confirm that such member has no agenda items to include for discussion at such meeting.
- (c) Any one of the RSSOM Project Co Representative, the South Civil Project Co Representative, the RSSOM Contracting Authority Representative or the South Civil Contracting Authority Representative may convene a special meeting of the Integration Committee at any time. Special meetings of the Integration Committee may be convened on not less than five (5) Business Days' Notice to all members of the Integration Committee identifying the agenda items to be discussed at the special meeting.
- (d) Unless otherwise agreed by the members of the Integration Committee, the Integration Committee shall meet in the City of Toronto. Meetings of the Integration Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting.
- (e) Four representatives of Contracting Authority (one of whom shall be the RSSOM Contracting Authority Representative and one of whom shall be the South Civil Contracting Authority Representative (and if they are the same person, 3 additional Contracting Authority Representatives shall be required) and two representatives of each of the OL Project Cos shall constitute a quorum at any meeting of the Integration Committee. A quorum of members may exercise all the powers of the Integration Committee. The members shall not transact business at a meeting of the Integration Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Integration Committee, including those made by telephone or other form of communication, shall be recorded and maintained by RSSOM Project Co. RSSOM Project Co shall circulate copies of such minutes within five (5) Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority or South Civil Project Co notifies the other Parties within five (5) Business Days of receipt of the minutes that such Party disagrees with the contents of the minutes, Contracting Authority and the OL Project Cos shall be deemed to have approved such minutes. RSSOM Project Co shall maintain a complete set of all minutes of the meetings of the Integration Committee and shall make such minutes available for inspection by the other Parties hereto during regular business hours.

### 3.6 Integration Improvement Process

- (a) The Parties shall participate, in accordance with this Section 3.6, in a process (the “**Integration Improvement Process**”) whose purpose shall be to create meaningful

dialogue among the Parties with a view to identifying opportunities to improve, where possible, the integration of the Projects with a view to the successful delivery of the Ontario Line Subway System on schedule. Such improvements could relate to design, construction or scheduling aspects of either Project, and/or to changes to allocation of scope of Works (as defined in either Project Agreement) as between the Projects which, in each case, may reduce integration risk and improve certainty of delivery of the Projects and the Ontario Line Subway System (the “**Integration Improvement Goals**”).

- (b) The Parties shall engage in the Integration Improvement Process in a collaborative good faith manner pursuant to this Section 3.6 as part of the work of the Integration Committee.
- (c) The Integration Improvement Process shall take place pursuant to workshops (the “**Integration Improvement Workshops**”) each of which shall take place for at least three (3) days (or such other duration as the Integration Improvement Workshop Participants shall determine in respect of the applicable Integration Improvement Workshop). Contracting Authority shall, no later than five (5) Business Days after the date that the Integration Committee is established pursuant to Section 3.1(a), confirm by Notice (the “**Initial Integration Improvement Workshop Notice**”) to the other Parties the date on which the first Integration Improvement Workshop shall take place, which date shall be no later than ten (10) Business Days after the date of the Initial Integration Improvement Workshop Notice. Contracting Authority shall identify in the Initial Integration Improvement Workshop Notice, in respect of the initial Integration Improvement Notice, (i) the Contracting Authority’s Integration Improvement Workshop Participants, (ii) the Contracting Authority’s Integration Improvement Workshop Participant that shall act as chairperson of the Integration Improvement Workshop and (iii) the list of Integration Improvement Opportunities to be discussed at such initial Integration Improvement Workshop (which may include any of the Integration Opportunities identified in the Parties’ response to the RFP in respect of either Project). Each OL Project Co shall, by Notice to the other Parties delivered no later than five (5) Business Days after the date of the Initial Integration Improvement Workshop Notice, identify such Party’s Integration Improvement Workshop Participants for such Integration Improvement Workshop.
- (d) Each subsequent Integration Improvement Workshop shall take place (i) during the period ending on the one (1) year anniversary of the date of the initial Integration Improvement Workshop, on a quarterly basis, with each subsequent Integration Improvement Workshop taking place on the date that is the three (3) month anniversary of the preceding Integration Improvement Workshop (or if such day is not a Business Day, on the next following Business Day), and (ii) at all times thereafter during the term of this Agreement, at such times and in such frequency as the Integration Improvement Workshop Participants shall agree from time to time at the most recent Integration Improvement Workshop. The Integration Improvement Workshops shall be in addition to all other meetings of the Integration Committee.
- (e) The participants at each Integration Improvement Workshop (for each Integration Improvement Workshop, the “**Integration Improvement Workshop Participants**”) shall be such members of the Integration Committee, Design Integration Working Group or Construction Integration Working Group, such other representatives (including members of executive leadership and Project teams) of each Party, or the RSSOM Independent Certifier and/or South Civil Independent Certifier, as each Party shall identify with a view to ensuring that the Integration Improvement Workshop Participants are able to engage in the Integration Improvement Process in a meaningful manner as contemplated in Section

3.6(a) and contribute to the evaluation of, and proposal of, Integration Improvement Opportunities.

- (f) Each OL Project Co shall by Notice to Contracting Authority delivered no later than fifteen (15) Business Days prior to each Integration Improvement Workshop (other than the initial Integration Improvement Workshop) identify in respect of such Integration Improvement Workshop (i) its Integration Improvement Workshop Participants and (ii) the proposed changes to the Projects which would, in its opinion, likely advance the Integration Improvement Goals (“**Integration Improvement Opportunities**”), and which such Party proposes for discussion at the Integration Improvement Workshop.
- (g) Contracting Authority shall, by Notice to the other Parties delivered no later than five (5) Business Days prior to each Integration Improvement Workshop (other than the initial Integration Improvement Workshop) identify in respect of such Integration Improvement Workshop (i) its Integration Improvement Workshop Participants, (ii) its Integration Improvement Workshop Participant that shall act as chairperson and (iii) a list of all Integration Improvement Opportunities to be discussed at the Integration Improvement Workshop (the “**Proposed Integration Improvements List**”). For clarity, Contracting Authority shall include in the Proposed Integration Improvements List such Integration Improvement Opportunities as it shall determine, in its sole discretion and shall not be obligated to include therein all Integration Improvement Opportunities identified by the OL Project Cos in their Notices delivered pursuant to Section 3.6(f).
- (h) Contracting Authority may, in its sole discretion, propose for discussion at an Integration Committee meeting any Integration Improvement Opportunities (whether identified in the Proposed Integration Improvements List or not and whether proposed by the OL Project Cos or not).
- (i) The Parties acknowledge that any amendments to the Project Agreements that are required to give effect to any Integration Improvement Opportunities (whether identified in the Proposed Integration Improvements List or not) shall require a Variation and the Contracting Authority shall determine, in its sole discretion, whether to implement any Integration Improvement Opportunity by way of a Variation. For clarity, notwithstanding any agreement or disagreement by the Parties at a meeting of the Integration Committee or otherwise (including any Integration Improvement Workshop) with respect to the merit of, or the need for, an Integration Improvement Opportunity, the implementation of any Variation to give effect thereto shall remain at the sole discretion of Contracting Authority.
- (j) The terms of Sections 3.5(b)-(f) shall not apply in respect of any meetings of the Integration Committee that are Integration Improvement Workshops.

#### ARTICLE 4 DESIGN INTEGRATION WORKING GROUP

##### 4.1 Establishment

- (a) The Parties shall, within thirty (30) days following the later to occur of South Civil Financial Close and RSSOM Financial Close, establish a working group which shall be responsible for all matters relating to the integration of the design of the South Civil Project and the RSSOM Project (the “**Design Integration Working Group**”).

- (b) The Design Integration Working Group shall include the following permanent members (and each Party shall identify its representatives (other than the RSSOM Operations Director) by notice to the other Parties within thirty (30) days following the later to occur of South Civil Financial Close and RSSOM Financial Close and RSSOM Project Co shall identify the RSSOM Operations Director by notice to the other Parties within ten (10) days after the date on which it is required to be appointed pursuant to the terms of the RSSOM Project Agreement):
- (i) South Civil Design Manager;
  - (ii) South Civil System Integration Manager;
  - (iii) RSSOM Design Manager;
  - (iv) RSSOM System Integration Manager;
  - (v) RSSOM Operations Director; and
  - (vi) Representative(s) of the Contracting Authority.
- (c) The RSSOM Design Manager shall chair the Design Integration Working Group.

#### 4.2 Function and Role

The Design Integration Working Group shall be responsible for:

- (a) coordinating the integrated design of the RSSOM Project with the South Civil Project;
- (b) promoting collaboration between RSSOM Project Co's designers and South Civil Project Co's designers;
- (c) resolution of design interface issues relating to the RSSOM Project and South Civil Project;
- (d) oversight of the interface management process described in the Output Specifications (as defined in the South Civil Project Agreement) and the Output Specifications (as defined in the RSSOM Project Agreement);
- (e) monitoring of the interface matrix and interface register delivered by RSSOM Project Co pursuant to Schedule 15 to the RSSOM Project Agreement or by South Civil Project Co pursuant to Schedule 15 to the South Civil Project Agreement;
- (f) resolution of interface management issues relating to the RSSOM Project and the South Civil Project, and directing the completion of the Interface Control Documents as required pursuant to Schedule 10 – Review Procedure of each of the Project Agreements;
- (g) coordination of sharing of design data between RSSOM Project Co and South Civil Project Co as needed to deliver the RSSOM Project and South Civil Project;
- (h) review and coordination of RSSOM Integration Works Submittals and South Civil Integration Works Submittals as contemplated in Section 4.4; and

- (i) report progress to the Integration Committee and Construction Integration Working Group.

#### 4.3 Term of Design Integration Working Group

Unless otherwise agreed by the Parties, the Design Integration Working Group shall operate only until the South Civil Final Completion Date.

#### 4.4 DIWG Draft Submittals

- (a) Nothing in this Section 4.4 shall limit or modify the obligations of the Parties pursuant to Schedule 10 – Review Procedure of either the RSSOM Project Agreement or South Civil Project Agreement. All submittals made pursuant to Section 4.4 of this Agreement are intended to be informal interim draft submittals and shall not be reviewed in accordance with Schedule 10 – Review Procedure until such time as submittals are made pursuant to Schedule 10 – Review Procedure.
- (b) The Design Integration Working Group shall develop a schedule (which shall be consistent with the Interim Baseline Works Schedule or Baseline Works Schedule (each as defined under the South Civil Project Agreement, and as defined under the RSSOM Project Agreement), as then applicable) for the timing of development and submission, by (i) South Civil Project Co of interim drafts of all South Civil Integration Works Submittals (the “**DIWG Review South Civil Integration Works Submittals**”) and (ii) RSSOM Project Co of interim drafts of all RSSOM Integration Works Submittals (the “**DIWG Review RSSOM Integration Works Submittals**”) to the Design Integration Working Group for review, in each case, in advance of their submission pursuant to (and at the times required under) Schedule 10 – Review Procedure of the applicable Project Agreement (and delivery thereof by Contracting Authority to the other OL Project Co pursuant to Part C of Schedule 10 of the applicable Project Agreement). Such schedule shall be developed with a view to ensuring sufficient opportunity for the Design Integration Working Group to review and consider (1) each DIWG Review South Civil Integration Works Submittal and provide an opportunity to South Civil Project Co to revise it to reflect discussions at the Design Integration Working Group prior to its submission under Schedule 10 – Review Procedure of the South Civil Project Agreement and (2) each DIWG Review RSSOM Integration Works Submittal and provide an opportunity to RSSOM Project Co to revise it to reflect discussions at the Design Integration Working Group prior to its submission under Schedule 10 – Review Procedure of the RSSOM Project Agreement.
- (c) If the Design Integration Working Group fails to agree to and develop the schedule contemplated in Section 4.4(b) of this Agreement within thirty (30) days following the later to occur of South Civil Financial Close and RSSOM Financial Close, such schedule shall be deemed to require delivery to the Design Integration Working Group of (i) each DIWG Review South Civil Integration Work Submittal that is Critical Data as defined under the South Civil Project Agreement no later than fifteen (15) Business Days prior to the applicable Critical Data Deadline as defined under the South Civil Project Agreement, (ii) each other DIWG Review South Civil Integration Work Submittal no later than fifteen (15) Business Days prior to the date on which it is required to be submitted under Schedule 10 – Review Procedure of the South Civil Project Agreement as required under the Interim Baseline Works Schedule or Baseline Works Schedule (each as defined under the South Civil Project Agreement), as then applicable, (iii) each DIWG Review RSSOM Integration Work Submittal that is Critical Data as defined under the RSSOM Project Agreement no later than fifteen (15) Business Days prior to the applicable Critical Data Deadline as

defined under the RSSOM Project Agreement, (iv) each other DIWG Review RSSOM Integration Work Submittal no later than fifteen (15) Business Days prior to the date on which it is required to be submitted under Schedule 10 – Review Procedure of the RSSOM Project Agreement as required under the Interim Baseline Works Schedule or Baseline Works Schedule (each as defined under the RSSOM Project Agreement), as then applicable.

- (d) South Civil Project Co shall submit the DIWG Review South Civil Integration Works Submittals, and RSSOM Project Co shall submit the DIWG Review RSSOM Integration Works Submittals, in each case to the Design Integration Working Group, in accordance with the schedule developed pursuant to Section 4.4(b).
- (e) The Design Integration Working Group shall discuss and consider each DIWG Review South Civil Integration Works Submittal and each DIWG Review RSSOM Integration Works Submittal with a view to agreeing to any changes thereto.
- (f) Upon receipt of any DIWG Draft Submittal the Design Integration Working Group shall meet and consider such DIWG Draft Submittal in a reasonable and collaborative manner with a view to discussing and resolving any comments to such DIWG Draft Submittal made by any members of the Design Integration Working Group prior to submission of such DIWG Draft Submittal pursuant to Schedule 10 – Review Procedure.

#### 4.5 Procedures and Practices.

- (a) The members of the Design Integration Working Group may:
  - (i) adopt such procedures and practices for the conduct of the activities of the Design Integration Working Group as they consider appropriate from time to time;
  - (ii) invite to any meeting of the Design Integration Working Group other parties to resolve specific interface matters, (including Early Works Contractors as defined in either the RSSOM Project Agreement or the South Civil Project Agreement) where such parties' involvement in the Ontario Line Subway may impact more than one of the Parties hereto, or such other persons as the other members of the Design Integration Working Group may agree;
  - (iii) exclude from any meeting of the Design Integration Working Group such persons as the members of the Design Integration Working Group may agree, acting reasonably; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the Design Integration Working Group.
- (b) Once established, the Design Integration Working Group shall meet at least once each week from the later of RSSOM Financial Close or South Civil Financial Close, as applicable, until the South Civil Final Completion Date, unless otherwise agreed by the members of the Design Integration Working Group or the Parties. The Design Integration Working Group shall establish the frequency of scheduled meetings of the Design Integration Working Group (and confirm whether it shall meet on a weekly basis or otherwise) at the first meeting thereof.



- (c) Members of the Design Integration Working Group shall, by notice to the other members thereof to be delivered no later than five (5) Business Days prior to the date of any meeting of the Design Integration Working Group scheduled pursuant to Section 4.5(b), propose agenda items for discussion at such meeting, or confirm that such member has no agenda items to include for discussion at such meeting.
- (d) Any member of the Design Integration Working Group may convene a special meeting of the Design Integration Working Group at any time. Special meetings of the Design Integration Working Group may be convened on not less than five (5) Business Days' Notice, or such other period of time as may be agreed to by the Design Integration Working Group, to all members of the Design Integration Working Group identifying the agenda items to be discussed at the special meeting.
- (e) Unless otherwise agreed by the members of the Design Integration Working Group, the Design Integration Working Group shall meet in the City of Toronto. Meetings of the Design Integration Working Group may be held by means of such telephonic, electronic or other communication facilities as to 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.
- (f) One representative of Contracting Authority, one representative of RSSOM Project Co and one representative of South Civil Project Co shall constitute a quorum at any meeting of the Design Integration Working Group. A quorum of members may exercise all the powers of the Design Integration Working Group. The members shall not transact business at a meeting of the Design Integration Working Group unless a quorum is present. Decisions of the Design Integration Working Group shall be made by agreement of representatives of each of the Contracting Authority, RSSOM Project Co South Civil Project Co.
- (g) Minutes of all meetings, recommendations and decisions of the Design Integration Working Group, including those made by telephone or other form of communication, shall be recorded and maintained by RSSOM Project Co. RSSOM Project Co shall circulate copies of such minutes within five (5) Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority or South Civil Project Co notifies the other Parties within five (5) Business Days of receipt of the minutes that such Party disagrees with the contents of the minutes, Contracting Authority and the OL Project Cos shall be deemed to have approved such minutes. RSSOM Project Co shall maintain a complete set of all minutes of the meetings of the Design Integration Working Group and shall make such minutes available for inspection by the other Parties hereto during regular business hours.
- (h) The Design Integration Working Group may refer any unresolved issues for consideration by the Integration Committee.

## ARTICLE 5 CONSTRUCTION INTEGRATION WORKING GROUP

### 5.1 Establishment

- (a) The Parties shall, within thirty (30) days following the later to occur of South Civil Financial Close and RSSOM Financial Close, establish a working group which shall be

responsible for all matters relating to the integration of the construction of the South Civil Project and the RSSOM Project (the “**Construction Integration Working Group**”);

- (b) The Construction Integration Working Group shall include the following permanent members (and each Party shall identify its representatives by notice to the other Parties within thirty (30) following the later to occur of South Civil Financial Close and RSSOM Financial Close):
  - (i) South Civil Construction Manager;
  - (ii) RSSOM Construction Manager; and
  - (iii) Representative(s) of the Contracting Authority.
- (c) The RSSOM Construction Manager shall chair the Construction Integration Working Group.

## 5.2 Function and Role

The Construction Integration Working Group shall be responsible for:

- (a) coordinating the integrated construction of the RSSOM Project and the South Civil Project;
- (b) promoting collaboration between RSSOM Project Co and South Civil Project Co with a focus on the access and handover process set out in Schedule 42 – South Civil Infrastructure Access and Handover of the RSSOM Project Agreement;
- (c) oversight of the interface management process described in the Output Specifications (as defined in the South Civil Project Agreement) and the Output Specifications (as defined in the RSSOM Project Agreement);
- (d) monitoring of the interface matrix and interface register delivered by RSSOM Project Co pursuant to Schedule 15 to the RSSOM Project Agreement or by South Civil Project Co pursuant to Schedule 15 to the South Civil Project Agreement;
- (e) coordinate RSSOM Integration Works Submittals and South Civil Integration Works Submittals relating to construction;
- (f) coordinate access by RSSOM Project Co to elevators prior to handover thereof by South Civil Project Co;
- (g) report progress to the Integration Committee and Design Integration Working Group; and
- (h) resolution of construction interface issues relating to the RSSOM Project and South Civil Project.

## 5.3 Term of Construction Integration Working Group

Unless otherwise agreed by the Parties, the Construction Integration Working Group shall operate only until the South Civil Final Completion Date.

## 5.4 Procedures and Practices

- (a) The members of the Construction Integration Working Group may:
- (i) adopt such procedures and practices for the conduct of the activities of the Construction Integration Working Group as they consider appropriate from time to time;
  - (ii) invite to any meeting of the Construction Integration Working Group other parties to resolve specific interface matters, (including Early Works Contractors as defined in either the RSSOM Project Agreement or the South Civil Project Agreement) where such parties' involvement in the Ontario Line Subway may impact more than one of the Parties hereto, or such other persons as the other members of the Construction Integration Working Group may agree;
  - (iii) exclude from any meeting of the Construction Integration Working Group such persons as the members of the Construction Integration Working Group may agree, acting reasonably; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the Construction Integration Working Group.
- (b) Once established, the Construction Integration Working Group shall meet at least once each week from the later of RSSOM Financial Close or South Civil Financial Close, as applicable, until the South Civil Final Completion Date, unless otherwise agreed by the members of the Construction Integration Working Group or the Parties. The Construction Integration Working Group shall establish the frequency of scheduled meetings of the Construction Integration Working Group (and confirm whether it shall meet on a weekly basis or otherwise) at the first meeting thereof.
- (c) Members of the Construction Integration Working Group shall, by notice to the other members thereof to be delivered no later than five (5) Business Days prior to the date of any meeting of the Construction Integration Working Group scheduled pursuant to Section 5.4(b), propose agenda items for discussion at such meeting, or confirm that such member has no agenda items to include for discussion at such meeting.
- (d) Any member of the Construction Integration Working Group may convene a special meeting of the Construction Integration Working Group at any time. Special meetings of the Construction Integration Working Group may be convened on not less than five (5) Business Days' Notice, or such other period of time as may be agreed to by the Construction Integration Working Group, to all members of the Construction Integration Working Group identifying the agenda items to be discussed at the special meeting.
- (e) Unless otherwise agreed by the members of the Construction Integration Working Group, the Construction Integration Working Group shall meet in the City of Toronto. Meetings of the Construction Integration Working Group may be held by means of such telephonic, electronic or other communication facilities as to 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.

- (f) One representative of Contracting Authority, one representative of RSSOM Project Co and one representative of South Civil Project Co shall constitute a quorum at any meeting of the Construction Integration Working Group. A quorum of members may exercise all the powers of the Construction Integration Working Group. The members shall not transact business at a meeting of the Construction Integration Working Group unless a quorum is present. Decisions of the Construction Integration Working Group shall be made by agreement of representatives of each of the Contracting Authority, RSSOM Project Co South Civil Project Co
- (g) Minutes of all meetings, recommendations and decisions of the Construction Integration Working Group, including those made by telephone or other form of communication, shall be recorded and maintained by RSSOM Project Co. RSSOM Project Co shall circulate copies of such minutes within five (5) Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority or South Civil Project Co notifies the other Parties within five (5) Business Days of receipt of the minutes that such Party disagrees with the contents of the minutes, Contracting Authority and the OL Project Cos shall be deemed to have approved such minutes. RSSOM Project Co shall maintain a complete set of all minutes of the meetings of the Construction Integration Working Group and shall make such minutes available for inspection by the other Parties hereto during regular business hours.
- (h) The Construction Integration Working Group may refer any unresolved issues for consideration by the Integration Committee.

## ARTICLE 6 TERMINATION

### 6.1 Termination of Agreement

This Agreement shall take effect on the date hereof and, subject to Section 8.11, shall terminate and cease to have effect on the earlier of:

- (a) the earlier of the RSSOM Project Agreement, or the South Civil Project Agreement expires or terminates in accordance with its terms; and
- (b) the earlier of the RSSOM Project Co Termination Date or the South Civil Project Co Termination Date,

provided that such expiry or earlier termination shall be without prejudice to any accrued rights and liabilities of the Parties prior to or as at the date of expiry or earlier termination of this Agreement and without prejudice to the final determination of any Integration Dispute that has not been finally determined prior to or as at the date of expiry or earlier termination of this Agreement and this Section 6.1 shall survive any such termination.

## ARTICLE 7 INTEGRATION DISPUTE RESOLUTION PROCEDURE

### 7.1 Integration Disputes

Any Dispute which has been designated as an Integration Dispute shall be heard or determined in accordance with the Integration Dispute Resolution Procedure set out in Appendix A hereto.

## 7.2 Commencement of Disputes

Each Party hereto acknowledges and agrees that it may not make any claim or demand, or assert any Dispute or commence any action or proceeding against any of the other Parties in connection with the South Civil Project or the RSSOM Project or the terms of this Agreement provided that nothing in this Section 7.2 shall in any way prevent, prohibit, limit or restrict (i) Contracting Authority or South Civil Project Co from making any such claim or demand, Dispute or action or proceeding against each other as may be asserted, made or initiated under the South Civil Project Agreement or (ii) Contracting Authority or RSSOM Project Co from making any such claim or demand, Dispute or action or proceeding against each other as may be asserted, made or initiated under the RSSOM Project Agreement.

## 7.3 Obligation to continue

The Parties shall diligently carry out their respective obligations under this Agreement and their respective Project Agreements during the pendency of any Integration Disputes.

# ARTICLE 8 GENERAL PROVISIONS

## 8.1 Interpretative Provisions

In this Agreement:

- (a) references to this Agreement include the Appendices and other attachments hereto, each of which form an integral part hereof;
- (b) references to “hereunder”, “herein” and “hereof” are to the provisions of this Agreement, and references to Articles and Sections herein refer to articles, sections, or subsections of this Agreement;
- (c) the headings of the Articles, Sections, Appendices and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provision hereof;
- (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) where a term is defined herein, a derivative of such term shall have a corresponding meaning unless the context otherwise requires.
- (f) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing the statute so referred to or the regulations made pursuant thereto;
- (g) any reference to “including” and/or “includes” means “including, without limitation” and/or “includes, without limitation” respectively;
- (h) unless otherwise expressly stated, any reference to dollars or \$ means Canadian dollars;

- (i) all references to any agreement, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned; and
- (j) 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.

## 8.2 General Duty to Mitigate

Contracting Authority and each OL 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 any other Party pursuant to this Agreement.

## 8.3 Entire Agreement

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

## 8.4 Enurement

This Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

## 8.5 Notices

- (a) All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Agreement (including Notices to RSSOM Project Co Representative and South Civil Project Co Representative) shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the RSSOM Contracting Authority Representative and the South Civil Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority, RSSOM Contracting Authority Representative or South Civil Contracting Authority Representative:

Metrolinx  
2 Queen Street East, 11th Floor  
Toronto, ON M5C 3G7

Attn.: [REDACTED]  
Email: [REDACTED]

If to RSSOM Project Co:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

and:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

and:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

If to South Civil Project Co:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

- (b) Where any Notice is provided or submitted to a Party via electronic submission, an original of the Notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 8.5(b).

- (c) Any Party to this Agreement may, from time to time, change any of its contact information set forth in Section 8.5(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 8.5(e), 8.5(f) and 8.5(g):
  - (i) a Notice given by registered mail shall be deemed to have been received on the third (3<sup>rd</sup>) 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 electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (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 electronic submission in accordance with this Section 8.5.
- (f) If any Notice delivered by hand or transmitted by electronic submission 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 electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such Notice was successful.

## 8.6 Governing Law and Jurisdiction

- (a) This Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Subject to Article 7 hereof (Integration 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 Agreement affects the rights, protections and immunities of the Crown under the *Crown Liability and Proceedings Act (Ontario)*.

## 8.7 Assignment

- (a) Either OL Project Co (in this Section 8.7(a), the "**Transferring Project Co**") may assign, transfer or otherwise dispose of the benefit of this Agreement to any person (in this Section 8.7(a), the "**assignee**") to whom the Transferring Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement to which it is party pursuant to Section 59.1 (*Project Co Assignment*) of the RSSOM Project Agreement or Section 47.1 (*Project Co Assignment*) of the South Civil Project Agreement, as applicable, and shall provide



written notice to Contracting Authority and the other OL Project Co 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 the Transferring Project Co under this Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, Contracting Authority and the other OL Project Co, each acting reasonably. Contracting Authority, the OL Project Cos and the assignee shall, at the Transferring Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

- (b) Contracting Authority may assign, transfer or otherwise dispose of the benefit of the whole or part of this Agreement to any person (in this Section 8.7(b), the “**assignee**”) to whom Contracting Authority assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.2 (*Contracting Authority Assignment*) of the RSSOM Project Agreement and Section 47.2 (*Contracting Authority Assignment*) of the South Civil Project Agreement, and shall provide written notice to the OL Project Cos of such assignment, transfer or other disposition.
- (c) Neither OL Project Co shall assign, novate, or otherwise transfer its interest in this Agreement to any person except concurrently with an assignment, novation or transfer of its Project Agreement to the same person in accordance with the provisions of the applicable Project Agreement.

## **8.8 Time of the Essence**

Time is of the essence of every provision of this Agreement. Extension, waiver or variation of any provisions of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

## **8.9 Further Assurance**

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

## **8.10 Third Party Beneficiaries**

Except as provided in the indemnities pursuant to the Project Agreements, it is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injury or property damage pursuant to the terms or provisions of this Agreement.

## **8.11 Survival**

The Parties agree that Article 1, Section 2.2, Article 7 and Article 8 of this Agreement shall survive the termination of this Agreement.

## **8.12 Waiver**

- (a) No waiver made or given by a Party under or in connection with this Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver

made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.

- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

### 8.13 Counterparts

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

### 8.14 Language of Agreement

Each Party acknowledges having requested and being satisfied that this Agreement and related documents be drawn in English. *Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.*

### 8.15 Liability

Metrolinx, as Crown agency, shall be liable for all of the obligations of Contracting Authority under this Agreement.

### 8.16 No Reliance

- (a) Each of the Parties acknowledge that:
  - (i) it has not entered into this 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 Agreement or not, except those expressly made, given or repeated in this 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 Agreement; and
  - (ii) this Section 8.16 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

### 8.17 Costs

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 Agreement.

**8.18 Proof of Authority**

Each Party reserves the right to require any person executing this Agreement on behalf of any other Party to provide proof, in a form acceptable to such Party, as applicable, that they have the requisite authority to execute this Agreement on behalf of and to bind such Party.

**8.19 Copyright Notice**

The Parties acknowledge that King's Printer for Ontario is the exclusive owner of copyright in the Project Agreements and this Agreement.

***[REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]***

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement as of the day and year first above written.

**METROLINX**

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

I have authority to bind the corporation.

[REDACTED]

[REDACTED]

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

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

We have authority to bind the corporation.

[REDACTED]

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

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

We have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

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Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation.

[REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

**ONTARIO TRANSIT GROUP INC.**

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation

## APPENDIX A TO SCHEDULE 39

INTEGRATION DISPUTE RESOLUTION PROCEDURE**1. General****1.1 Definitions**

- (a) In this Appendix A, unless the context otherwise requires:
- (i) “**Adjudication Dispute**” means a matter to which there is a statutory right to submit such matter to adjudication under the *Construction Act* (Ontario);
  - (ii) “**Arbitration Act, 1991**” means the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended from time to time.
  - (iii) “**Arbitration Referral Period**” has the meaning given in Section 3.13(a) of this Appendix A.
  - (iv) “**CIDB**” has the meaning given in Section 3.1(a) of this Appendix A.
  - (v) “**CIDB Chair**” has the meaning given in Section 3.1(c)(ii) of this Appendix A.
  - (vi) “**CIDB Expiry Date**” means five (5) years after the South Civil Project Substantial Completion Date, subject to any extension of the CIDB Expiry Date pursuant to Section 3.1(b) of this Appendix A.
  - (vii) “**CIDB Member**” has the meaning given in Section 3.1(a) of this Appendix A.
  - (viii) “**CIDB Member Agreement**” has the meaning given in Section 3.1(a) of this Appendix A.
  - (ix) “**CIDB Member Statement**” has the meaning given in Section 3.3(a) of this Appendix A.
  - (x) “**CIDB Technical Member**” has the meaning given in Section 3.1(c)(i) of this Appendix A.
  - (xi) “**Claimant**” has the meaning given in Section 3.6(a) of this Appendix A.
  - (xii) “**Date of Commencement**” has the meaning given in Section 3.6(b) of this Appendix A.
  - (xiii) “**Dispute**” has the meaning given in Section 1.1 of the main body of this Agreement.
  - (xiv) “**Integration Dispute**” has the meaning given in Section 1.1 of the main body of this Agreement.
  - (xv) “**Integration Dispute Notice Supporting Documents**” means all key documents relevant to the Integration Dispute on which the Party intends to rely for the purposes of resolving the Integration Dispute pursuant to this Integration Dispute Resolution Procedure in the possession or control of such Party following reasonable due diligence.

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- (xvi) “**Notice of Request to Arbitrate**” has the meaning given in Section 4(c) of this Appendix A.
- (xvii) “**Parties**” means the Parties to this Interface Agreement and, in respect of any Integration Dispute, includes any other Parties added to such Integration Dispute in accordance with this Integration Dispute Resolution Procedure, and “**Party**” means any one of them without specificity, as the context requires.
- (xviii) “**Party Executive**” has the meaning given in Section 2(a) of this Appendix A.
- (xix) “**Party Executive IDRP Termination Notice**” has the meaning given in Section 2(e) of this Appendix A.
- (xx) “**Party Representative**” means the Contracting Authority Representative, the RSSOM Project Co Representative, the South Civil Project Co Representative, a person designated as such by a Project Co Party or a person designated as such by a Civil Contractor Party, as the context requires.
- (xxi) “**Project Agreement**” has the meaning given in Section 1.1 of the main body of this Agreement.
- (xxii) “**Public Safety Integration Dispute**” means any Integration Dispute which Contracting Authority, RSSOM Project Co or South Civil Project Co, acting reasonably, determines involves an alleged breach of this Interface Agreement, the RSSOM Project Agreement or the South Civil Project Agreement by another Party or any act or omission on the part of another Party or any person with whom another Party is legally affiliated or for whom another Party is legally responsible (including a Project Co Party, a Civil Contractor Party or a Contracting Authority Party, as applicable), which creates or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any user of any part of or the whole of the Project or the Lands, or to the environment.
- (xxiii) “**Reply**” has the meaning given in Section 3.7 of this Appendix A.
- (xxiv) “**Reply Period**” has the meaning given in Section 3.7(a) of this Appendix A.
- (xxv) “**Respondent**” has the meaning given in Section 3.6(a) of this Appendix A.
- (xxvi) “**Rules of Civil Procedure**” means R.R.O. 1990, Reg. 194: Rules of Civil Procedure under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended from time to time.
- (xxvii) “**Statement of Case**” has the meaning given in Section 3.6(a) of this Appendix A.
- (xxviii) “**Statement of Reply**” has the meaning given in Section 3.7(a) of this Appendix A.
- (xxix) “**Third Party Arbitration**” has the meaning given in Section 6(a) of this Appendix A.
- (xxx) “**Third Party Litigation**” has the meaning given in Section 6(b) of this Appendix A.

**1.2 Applicability of Integration Dispute Resolution Procedure**

- (a) All Integration Disputes shall be resolved subject to and in accordance with this Integration Dispute Resolution Procedure.
- (b) Without limiting any provision of this Appendix A, the Parties intend that all Integration Disputes that arise:
  - (i) prior to the CIDB Expiry Date, shall be resolved in accordance with Sections 2 to 5; and
  - (ii) on and following the CIDB Expiry Date, shall be resolved in accordance with Sections 2, 4 and 5.

**1.3 Notice of Integration Dispute**

- (a) Where a Notice of Dispute has been given under the RSSOM Project Agreement or the South Civil Project Agreement, as applicable, Contracting Authority may give Notice to Project Co and South Civil Project Co designating such Dispute as an Integration Dispute where it appears to Contracting Authority that:
  - (i) there is a claim for contribution, indemnity or other relief under any one or more of the following:
    - (A) Sections 56.1(a)(vi) or 56.1(a)(vii) (*Project Co Indemnities to Contracting Authority*) of the RSSOM Project Agreement;
    - (B) Sections 56.2(a)(i), 56.2(a)(ii) or 56.2(a)(iii) (*Contracting Authority Indemnities to Project Co*) of the RSSOM Project Agreement arising, directly or indirectly, out of, or in consequence of, or involving or relating to any act or omission, or any deliberate or negligent act or omission, of a Civil Contractor (as applicable);
    - (C) Sections 44.1(a)(vii) or 44.1(a)(viii) (*Project Co Indemnities to Contracting Authority*) of the South Civil Project Agreement; or
    - (D) Sections 44.2(a)(i), 44.2(a)(ii) or 44.2(a)(iii) (*Contracting Authority Indemnities to Project Co*) of the South Civil Project Agreement arising, directly or indirectly, out of, or in consequence of, or involving or relating to any act or omission, or any deliberate or negligent act or omission, of RSSOM Project Co (as applicable);
  - (ii) as a result of, in respect of, or arising out of the same matter or occurrence or series of matters or occurrences (including common issues of damages or compensation), there is any one or more of the following:
    - (A) doubt as to responsibility or entitlement to relief among Contracting Authority, RSSOM Project Co and South Civil Project Co, or the respective extent to which each may be responsible or entitled, whether jointly, severally or in the alternative;
    - (B) a common question of fact among Contracting Authority, RSSOM Project Co and South Civil Project Co;



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- (C) a common question of law among Contracting Authority, RSSOM Project Co and South Civil Project Co, including the determination of rights that depends upon the interpretation of the RSSOM Project Agreement or South Civil Project Agreement, as applicable, or the interpretation of Applicable Law; or
- (iii) the Parties agree that designation of such Dispute as an Integration Dispute may promote or secure the most expeditious and least expensive determination of such Dispute on its merits.
- (b) Contracting Authority may give a Notice under section 1.3(a) designating a Dispute as an Integration Dispute, at any time that is at least seven (7) days before the Date of Commencement of a CDB proceeding with respect to such Dispute. For greater certainty, Contracting Authority may issue a Notice pursuant to Section 1.3(a) concurrent with a Notice of Dispute under either Project Agreement.
- (c) Any Project Co Party or Civil Contractor Party referred to in a Notice designating a Dispute as an Integration Dispute who is not a Party to such Integration Dispute may be added or joined by Contracting Authority as a necessary Party where Contracting Authority considers that the presence of such additional Party is necessary to enable the issues in the Integration Dispute to be effectively and completely determined.
- (d) Where Notice designating a Dispute as an Integration Dispute has been given by Contracting Authority, the Dispute shall thereafter be considered and heard or determined in accordance with this Integration Dispute Resolution Procedure, unless a Party challenges such Notice, by bringing a motion or application to the CIDB within seven (7) days after such Notice was given, and demonstrates that:
- (i) grounds for such Notice, as set out in this Section 1.3, do not exist;
- (ii) designation of the Dispute as an Integration Dispute will unduly complicate or delay the Dispute, or cause undue prejudice to such Party, in a manner which cannot be adequately addressed by appropriate terms, directions, or an award of costs; or
- (iii) the Dispute is an Adjudication Dispute or a matter in respect of which the Independent Certifier is entitled or required to make a final and binding determination under either the RSSOM Project Agreement or the South Civil Project Agreement, as applicable.
- (e) The CIDB shall decide whether a Dispute should be heard or determined as an Integration Dispute, on such terms and subject to such directions as the CIDB may decide, where any Party challenges a Notice designating such Dispute as an Integration Dispute.
- (f) All time periods with respect to a Dispute under Schedule 27 – Dispute Resolution Procedure of the RSSOM Project Agreement or the South Civil Project Agreement, as applicable, shall be suspended where a Notice designating such Dispute as an Integration Dispute has been challenged until the CIDB has decided whether such Dispute should be heard or determined as an Integration Dispute.
- (g) Any Party may challenge a decision of the CIDB that a Dispute should be heard or determined as an Integration Dispute by delivering a Notice of Request to Arbitrate such decision within seven (7) days after the date of the decision of the CIDB. All time periods with respect to such Dispute under Schedule 27 – Dispute Resolution Procedure of the RSSOM Project Agreement or the South

Civil Project Agreement, as applicable, shall be suspended where such Notice of Request to Arbitrate has been delivered until the arbitral tribunal has decided pursuant to Section 4 whether such Dispute should be heard or determined as an Integration Dispute.

- (h) If no Party delivers a Notice of Request to Arbitrate a decision of the CIDB whether a Dispute should be heard or determined as an Integration Dispute before the expiry of the time period set out in Section 1.3(g), or if any arbitration that is commenced pursuant to Section 4 is subsequently abandoned by the Parties in writing before an arbitral award is made pursuant to Section 4, then the decision of the CIDB whether a Dispute should be heard or determined as an Integration Dispute shall be final and binding on the Parties.

#### **1.4 Independent Certifier Determinations and Decisions**

- (a) If a Party refers an Integration Dispute in respect of a determination or decision of the Independent Certifier made pursuant to the RSSOM Project Agreement or the South Civil Project Agreement for resolution by the CIDB pursuant to Section 3, the Independent Certifier shall not be permitted to provide its opinion as an expert to the CIDB pursuant to Section 3.9(c).

#### **1.5 Continued Performance During Integration Disputes**

- (a) RSSOM Project Co, South Civil Project Co and Contracting Authority shall diligently carry out their respective obligations under the RSSOM Project Agreement or the South Civil Project Agreement, as applicable, during the pendency of any Integration Dispute. If during the pendency of any Integration Dispute it is considered necessary by any Party to proceed in respect of a matter that is in Dispute, then subject to Section 1.5(b), any Party may proceed without prejudice to any other Party's rights under the RSSOM Project Agreement or the South Civil Project Agreement, as applicable, in respect of the Integration Dispute (including in respect of any entitlement of RSSOM Project Co or South Civil Project Co to a Delay Event, Compensation Event and/or Variation).
- (b) While an Integration Dispute is pending, Contracting Authority may give such written instructions as in Contracting Authority's opinion are necessary in respect of the matter that is the subject of the Dispute, including for RSSOM Project Co to proceed with the Project Operations or South Civil Project Co to proceed with the Works which are the subject of the Dispute in accordance with the position of Contracting Authority, and RSSOM Project Co or South Civil Project Co, as applicable, shall comply with such written instructions forthwith.
- (c) RSSOM Project Co and South Civil Project Co acknowledge and agree that (i) a pending Integration Dispute will not justify any failure or refusal to comply with any written instructions given by Contracting Authority pursuant to Section 1.5(b), including in the event that complying with such written instructions would prevent RSSOM Project Co or South Civil Project Co, as applicable, from achieving Substantial Completion by the applicable Scheduled Substantial Completion Date, and (ii) RSSOM Project Co and South Civil Project Co shall have no right to require a determination pursuant to this Integration Dispute Resolution Procedure or otherwise of whether or not Contracting Authority is entitled to give such written instructions or whether or not RSSOM Project Co or South Civil Project Co, as applicable, is required to comply with such written instructions, before complying with such written instructions. Only concurrently with or after complying with Contracting Authority's written instructions shall RSSOM Project Co or South Civil Project Co be entitled to refer any such Dispute for resolution.
- (d) Any claims for time and/or cost consequences of complying with this Section 1.5(d) shall be addressed as part of the resolution of the applicable Integration Dispute, provided that, in the event

the matter of the Integration Dispute is determined in favour of RSSOM Project Co or South Civil Project Co, as applicable, proceeding in accordance with Contracting Authority's written instructions pursuant to Section 1.5(b) shall (i) subject to and in accordance with Section 40 (*Delay Events*) of the RSSOM Project Agreement or Section 30 (*Delay Events*) of the South Civil Project Agreement, as applicable, be treated as a Delay Event; (ii) subject to and in accordance with Section 41 (*Compensation Events*) of the RSSOM Project Agreement or Section 31 (*Compensation Events*) of the South Civil Project Agreement, as applicable, be treated as a Compensation Event; and (iii) subject to and in accordance with Schedule 22 – Variation Procedure of the RSSOM Project Agreement or South Civil Project Agreement, as applicable, result in a Variation.

## 1.6 Mutual Resolution Efforts

- (a) The Parties agree that at all times each of them will make reasonable and *bona fide* efforts to resolve any Integration Dispute:
- (i) in the ordinary course in accordance with the RSSOM Project Agreement or the South Civil Project Agreement, as applicable, starting with the Project teams of the Parties; and
  - (ii) if and to the extent the Project teams cannot resolve the matter in the ordinary course in accordance with the RSSOM Project Agreement or the South Civil Project Agreement, as applicable, by amicable negotiations on a without prejudice basis among the Party Representatives.
- (b) Each Party shall provide full, frank, candid and timely disclosure of relevant facts, information and documents (subject to legal privilege) as may be required by the RSSOM Project Agreement or the South Civil Project Agreement, as applicable, or reasonably requested by another Party to facilitate the resolution of any Integration Dispute and shall provide such cooperation and assistance as is necessary to enable the issues in any Integration Dispute to be effectively and completely determined.
- (c) The communication of facts, documents, or information by a Party on a without prejudice basis does not relieve that Party of any obligation to deliver any facts, documents or information required under the RSSOM Project Agreement or the South Civil Project Agreement, as applicable.

## 2. Amicable Resolution by Party Executives

- (a) Upon receipt of a Notice designating a Dispute as an Integration Dispute, the Integration Dispute shall be escalated for amicable resolution by an executive of each Party (each a “**Party Executive**”).
- (b) The selected Party Executive for each Party shall be:
- (i) in a position of authority above that of the Party Representative; and
  - (ii) shall have or be delegated full authority to resolve the Integration Dispute subject only to approval of the Chief Executive Officer and board of directors or similar governing or regulatory body of the Party (as applicable).
- (c) The Party Executives shall promptly, and by no later than fifteen (15) Business Days (or such longer period agreed by the Parties in writing) from the date of the receipt of the Notice designating the Dispute as an Integration Dispute, meet and make reasonable and *bona fide* efforts to resolve the Integration Dispute.

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- (d) All discussions and negotiations held, and all communications exchanged, among the Parties in connection with the Party Executive negotiations shall be on a without prejudice basis to facilitate the resolution of the Integration Dispute.
- (e) Any Party may terminate the process of amicable resolution by the Party Executives by providing Notice of termination of such process (each a “**Party Executive IDRP Termination Notice**”) at any time:
- (i) if the initial Party Executive meeting does not occur by the expiry of the period set out in Section 2(c); or
- (ii) ten (10) Business Days after the initial Party Executive meeting described in Section 2(c).
- (f) The requirements of this Section 2 cannot be waived or amended except as expressly agreed by the Parties pursuant to Section 8(a).

### 3. Combined Integration Dispute Board

#### 3.1 Appointment of the CIDB

- (a) The Combined Integration Dispute Board (“**CIDB**”) shall be a standing body composed of three members appointed in accordance with this Integration Dispute Resolution Procedure (each a “**CIDB Member**”). On or before South Civil Financial Close, the CIDB shall be constituted by a written agreement among the Parties and each of the CIDB Members substantially in the form set out in Attachment 2 to this Appendix A and executed and delivered in accordance with Schedule 2 – Completion Documents (each a “**CIDB Member Agreement**”).
- (b) The CIDB shall remain constituted until the CIDB Expiry Date. The Parties may agree in writing to extend the term of the CIDB, and shall agree in writing to any extensions necessary in order to obtain CIDB decisions in relation to Integration Disputes which remain outstanding at the end of the CIDB term.
- (c) Unless otherwise agreed by the Parties in writing:
- (i) two CIDB Members shall be Professional Engineers qualified to practice in Ontario or another province of Canada or have technical and/or senior managerial expertise relevant to the Project (each a “**CIDB Technical Member**”); and
- (ii) the third Member, who shall be the chair of the CIDB, shall have significant experience in construction law and shall be either: (A) a lawyer who is licensed to practice law in Ontario or another province of Canada other than Quebec; or (B) an ex-judge or master of a superior court in Ontario or another province of Canada other than Quebec providing adjudication, arbitration and/or mediation services in Ontario or another province of Canada (the “**CIDB Chair**”).
- (d) Each CIDB Member shall be independent, impartial and, unless otherwise agreed by the Parties in writing, experienced in resolving and deciding disputes of a type, complexity and value commensurate with the potential Integration Disputes that could be referred to the CIDB.
- (e) Each of RSSOM Project Co and South Civil Project Co shall appoint a CIDB Technical Member of its choice on or prior to South Civil Financial Close, and shall deliver to the other Parties a CIDB

Member Statement for that CIDB Member upon appointment in accordance with Schedule 2 – Completion Documents.

- (f) Contracting Authority shall appoint the CIDB Chair on or prior to South Civil Financial Close, and deliver a CIDB Member Statement for the CIDB Chair upon appointment in accordance with Schedule 2 – Completion Documents.
- (g) Before commencing CIDB activities, each CIDB Member shall sign with the Parties a CIDB Member Agreement. The CIDB Member Agreement may be terminated in accordance with the CIDB Member Agreement.

### 3.2 Replacement of CIDB Member

- (a) When a CIDB Member must be replaced due to death, incapacity, resignation, termination or removal, or when a CIDB Technical Member must be replaced because such CIDB Technical Member has ceased to be a Technical Member of the CDB under the RSSOM Project Agreement or the South Civil Project Agreement, as applicable, a new CIDB Member shall be appointed within thirty (30) days of the need for replacement arising, in the same manner as the CIDB Member being replaced was originally selected in accordance with this Integration Dispute Resolution Procedure, unless otherwise agreed by the Parties in writing. All actions taken by the CIDB prior to the replacement of a CIDB Member shall remain valid. When one CIDB Member is to be replaced, the other CIDB Members shall continue to be CIDB Members, but shall not hold hearings or issue CIDB decisions without the agreement of the Parties in writing prior to the replacement of the CIDB Member.
- (b) If a Party fails to appoint a replacement CIDB Technical Member and the Parties cannot agree on an alternative CIDB Technical Member within the period of time set out in Section 3.2(a), any Party may refer the appointment of that CIDB Technical Member or the alternative CIDB Technical Member for a court determination pursuant to Section 5(b).
- (c) If Contracting Authority is unable to appoint a replacement CIDB Chair within the period of time set out in Section 3.2(a), any Party may refer the appointment of the replacement CIDB Chair for a court determination pursuant to Section 5(b).

### 3.3 Impartiality of CIDB Members

- (a) Every prospective CIDB Member shall sign a statement of acceptance, availability, impartiality and independence and disclose in writing to the Parties and the other CIDB Members, any facts or circumstances which might call into question the CIDB Member's independence in the eyes of the Parties or give rise to reasonable doubts as to the prospective CIDB Member's impartiality (including if such prospective CIDB Member, other than a prospective CIDB Technical Member being appointed in accordance with Section 3.1(f), is or has been a CDB Member or arbitrator under the RSSOM Project Agreement or the South Civil Project Agreement), substantially in the form set out in Attachment 1 to this Appendix A (the "**CIDB Member Statement**").
- (b) A CIDB Member shall immediately disclose in writing to the Parties any facts or circumstances concerning the CIDB Member's impartiality or independence which may arise in the course of such CIDB Member's tenure.
- (c) Should any Party wish to challenge a prospective or current CIDB Member on the basis of an alleged lack of impartiality, independence or qualifications, it may, as soon as practicable after

learning of the facts upon which the challenge is based, submit to the CIDB and the other Parties a request for a decision upon the challenge including a written statement of such facts.

- (d) If the challenged prospective or current CIDB Member does not withdraw, and the other Parties do not agree to the challenge, any Party may refer the matter for a court determination pursuant to Section 5(b).
- (e) No Party shall challenge a current CIDB Member on the basis of an alleged lack of impartiality or independence as a result of the CIDB Member carrying out its duties under the CIDB Member Agreement, including the provision of without prejudice dispute resolution assistance.
- (f) If a prospective or current CIDB Member is successfully challenged, the prospective CIDB Member shall not be appointed, or the current CIDB Member shall be removed forthwith from the CIDB, and the CIDB Member Agreement, if any, between that CIDB Member and the Parties shall be automatically terminated.

### **3.4 Project Monitoring by the CIDB**

- (a) The Parties shall fully cooperate with the CIDB and communicate information to it in a timely manner.
- (b) During any meetings and site visits in which the CIDB participates, the CIDB may review the performance of the Parties' obligations under the RSSOM Project Agreement and South Civil Project Agreement, as applicable, with the Parties. The Parties may at any time by agreement in writing request that the CIDB (i) provide informal assistance to the Parties with regards to avoiding or addressing Integration Disputes; or (ii) mediate any Integration Dispute. All such reviews by the CIDB and any informal assistance or mediation provided by the CIDB pursuant to this Section 3.4(b) is provided on a without prejudice basis and shall not be considered or referred to in any such Integration Dispute or if any Integration Dispute is submitted for resolution in any subsequent dispute resolution processes or proceedings.
- (c) Each Party is required to copy the other Parties in all written communications in respect of the Project it provides to a CIDB Member. Unless otherwise agreed by the Parties in writing or as provided in Section 3.10(d), no Party shall have any conversation or any meeting with any CIDB Member in respect of the Project without the other Parties being included in such conversation or being present at such meeting.

### **3.5 CIDB to Resolve Integration Disputes**

- (a) If the Parties are unable to resolve an Integration Dispute prior to the CIDB Expiry Date through amicable resolution by the Party Executives pursuant to Section 2 and a Party delivers a Party Executive IDR Termination Notice to the other Parties, then any Party may in writing refer the Integration Dispute to the CIDB for resolution.
- (b) The CIDB shall have all the powers in respect of Integration Disputes that a CDB has in respect of other Disputes under the RSSOM Project Agreement or the South Civil Project Agreement, as applicable.

### 3.6 Statement of Case

- (a) The Party referring an Integration Dispute to the CIDB pursuant to Section 3.5(a) (the “**Claimant**”) shall submit a concise written statement of its case (the “**Statement of Case**”) to the responding Parties (the “**Respondent**”) and the CIDB within thirty (30) days (or such longer period agreed by the Parties in writing, acting reasonably) of a Party’s referral of the Integration Dispute to the CIDB for resolution pursuant to Section 3.5(a). The Statement of Case shall only include:
- (i) the Notice of Dispute, including all Integration Dispute Notice Supporting Documents;
  - (ii) the issues submitted to the CIDB for decision;
  - (iii) a statement of the Claimant’s position, including a statement of relevant facts and law; and
  - (iv) any amendments, updates, additions to, or deletions from the Notice of Dispute or the Integration Dispute Notice Supporting Documents.
- (b) The date on which the Statement of Case is received by the CIDB Chair shall be deemed to be the date of the commencement of the CIDB proceeding (the “**Date of Commencement**”).
- (c) If the Claimant provides any material amendment, update, addition to, or deletion from the Notice of Dispute or the Integration Dispute Notice Supporting Documents pursuant to Section 3.6(a)(iv), then the CIDB shall permit each Respondent a reasonable amount of time to review and respond to such material amendment, update, addition to, or deletion from the Notice of Dispute or the Integration Dispute Notice Supporting Documents, and shall extend the Reply Period accordingly pursuant to Section 3.7(b)(i).
- (d) Unless the CIDB orders otherwise, the Claimant shall not be entitled to rely upon any documents other than the documents contained in its Statement of Case. In the event that the CIDB permits the Claimant to rely on any additional documents, the CIDB shall permit each Respondent a reasonable amount of time to review and respond to such additional documents.

### 3.7 Statement of Reply

- (a) Subject to Section 3.7(b), within thirty (30) days of the Date of Commencement (the “**Reply Period**”), each Respondent shall deliver to the Claimant and the CIDB a concise written statement of its reply to the Statement of Case (the “**Statement of Reply**”). The Statement of Reply shall only include:
- (i) a statement of the Respondent’s position, including a statement of relevant facts and law;
  - (ii) the issues submitted to the CIDB for a decision; and
  - (iii) any documents not contained in the Statement of Case on which the Respondent intends to rely.
- (b) The Reply Period may be extended to permit each Respondent additional time to provide its Statement of Case by:
- (i) order of the CIDB (including pursuant to Section 3.6(c) or Section 3.6(d)); or

- (ii) agreement of the Parties, acting reasonably.

### **3.8 Additional Documents Required by the CIDB**

- (a) The CIDB may at any time request a Party to submit additional written statements or documentation within a reasonable amount of time to assist the CIDB in preparing its decision. Each such request shall be communicated in writing by the CIDB to the Parties, and any additional written statements or documentation submitted in response to the CIDB's request shall be submitted to the CIDB and the other Parties. The CIDB shall permit the other Parties a reasonable amount of time to review and respond to such additional written statements or documentation.

### **3.9 Evidence and Powers of the CIDB**

- (a) Subject to Section 3.9(b), the CIDB shall decide Integration Disputes based on the Parties' Statement of Case and Statement of Reply and any additional documents and responses delivered pursuant to any of Sections 3.6(d), 3.7(a) or 3.8(a).
- (b) If there are any material factual disputes among the Parties or other issues arising from the Parties' Statement of Case or Statement of Reply, the CIDB may order such additional procedural steps or give such directions as the CIDB considers appropriate to address such disputes or other issues, with a view to proportionality and the Parties' desire to resolve Integration Disputes in a cost-effective and expeditious manner.
- (c) Without limiting Section 3.9(b), the CIDB may, if necessary, appoint one or more experts after considering the positions of the Parties or, subject to Section 1.4(a), obtain and consider the opinion of the Independent Certifier, as an expert.

### **3.10 Hearings**

- (a) The CIDB shall order that a hearing in respect of the Integration Dispute take place unless the Parties and CIDB agree in writing that a hearing is not required.
- (b) The hearing shall be conducted in Toronto, Ontario or by teleconference or videoconference on written agreement of the Parties and the CIDB.
- (c) The Parties shall appear through duly authorized representatives. In addition, the Parties may be assisted or represented by advisers and legal counsel.
- (d) If any Party refuses or fails to take part in the CIDB hearing or in any preceding steps, the CIDB may proceed notwithstanding such refusal or failure.
- (e) The CIDB may request that the Parties provide and exchange summaries of their argument in advance of the hearing.
- (f) Subject to the discretion of the CIDB, the hearing shall proceed as follows:
  - (i) the Claimant shall present its case;
  - (ii) each Respondent shall present its case; and
  - (iii) the Claimant shall have an opportunity to reply.



### 3.11 Basis for Decision

- (a) The CIDB shall make decisions under the RSSOM Project Agreement based on the provisions of the RSSOM Project Agreement and under the South Civil Project Agreement based on the provisions of the South Civil Project Agreement.
- (b) The CIDB may take into account:
  - (i) any failure of a Party to comply with the RSSOM Project Agreement or South Civil Project Agreement, as applicable, including any of its mitigation obligations or its procedural obligations under this Interface Agreement; and
  - (ii) any unreasonable delay in bringing the claim, including any unreasonable delay that prevented or prejudiced proper investigation of, opportunity for mitigation of, or ability to respond to the claim.
- (c) A decision of the CIDB shall be in writing and state the findings, reasons, and determination of the CIDB and include:
  - (i) a summary of the Integration Dispute, the positions of the Parties and the decision requested; and
  - (ii) a summary of the relevant provisions of the RSSOM Project Agreement or South Civil Project Agreement, as applicable, and the relevant facts and law considered by the CIDB.
- (d) The CIDB shall issue its decision promptly and, in any event, within thirty (30) days after the hearing unless the Parties consent in writing to an extension, which consent shall not be unreasonably withheld. Failure to issue a decision of the CIDB within the time allowed does not invalidate the decision.
- (e) The CIDB shall make its decision by a majority of the CIDB Members. Any CIDB Member who disagrees with the decision shall give the reasons for such disagreement in a separate written document that shall form part of the decision but which shall not be binding on the Parties.

### 3.12 Costs

- (a) Unless otherwise agreed by the Parties in writing or ordered by the CIDB, or otherwise set out in a CIDB Member Agreement, all CIDB Member fees and expenses and any other costs associated with the establishment and activities of the CIDB (including in relation to obtaining CIDB decisions and the cost of any experts appointed pursuant to Section 3.9(c)) shall be paid by the Parties in accordance with each CIDB Member Agreement, and shared as follows:
  - (i) [REDACTED]% by Contracting Authority;
  - (ii) [REDACTED]% by each of RSSOM Project Co and South Civil Project Co.
- (b) Each Party shall bear its own costs associated with Integration Disputes referred to the CIDB for a decision.

### 3.13 Subsequent Dispute Resolution Procedure to the CIDB

- (a) Any Party that is dissatisfied with a decision of the CIDB may, within thirty (30) days of the release of the CIDB's decision (or such longer period agreed by the Parties, acting reasonably) (the "**Arbitration Referral Period**"), deliver a Notice of Request to Arbitrate the Integration Dispute pursuant to Section 4(c). The decision of the CIDB shall be stayed during the Arbitration Referral Period. If the Integration Dispute is arbitrated pursuant to Section 4, the arbitration tribunal shall conduct the arbitration *de novo* and the decision of the CIDB shall not, subject to the following sentence, be binding on the Parties. If no Party delivers a Notice of Request to Arbitrate the Integration Dispute pursuant to Section 4(c) before the expiry of the Arbitration Referral Period, or if any arbitration that is commenced pursuant to Section 4 is subsequently abandoned by the Parties in writing before an arbitral award is made pursuant to Section 4, then the decision of the CIDB shall be final and binding on the Parties.
- (b) The Parties agree that any decision of the CIDB that becomes final and binding on the Parties in accordance with Section 3.13(a) shall not be subject to appeal, arbitration, litigation or any other dispute resolution process and expressly waive any and all such rights in respect of the Integration Dispute resolved by the CIDB.

## 4. Arbitration

- (a) Prior to the CIDB Expiry Date, if the Parties fail to resolve an Integration Dispute through the processes set out in Sections 2 and 3, and where no final and binding CIDB decision exists in respect of the Integration Dispute, then the Integration Dispute shall be resolved by *de novo* arbitration in accordance with this Section 4.
- (b) On and following the CIDB Expiry Date, if the Parties fail to resolve the Integration Dispute through the process set out in Section 2, then the Dispute shall be resolved by *de novo* arbitration in accordance with this Section 4.
- (c) Any Party may deliver a Notice of request to arbitrate an Integration Dispute eligible to be referred to arbitration in accordance with this Integration Dispute Resolution Procedure (each a "**Notice of Request to Arbitrate**").
- (d) A Notice of Request to Arbitrate will not be effective unless it:
- (i) is signed by the Party Representative;
  - (ii) if applicable, is delivered to the other Party Representatives within the period of time set out in Section 3.13(a) following the release of any applicable CIDB decision;
  - (iii) indicates it is a Notice of Request to Arbitrate pursuant to Section 4(c); and
  - (iv) expressly identifies the Integration Dispute to be arbitrated.
- (e) The *Arbitration Act, 1991* shall apply to an arbitration pursuant to this Section 4.
- (f) An Integration Dispute referred to arbitration shall be resolved by a single arbitrator unless:
- (i) the Parties otherwise agree in writing; or

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- (ii) one of the Parties, by Notice delivered to the other Parties within seven (7) days after delivery of a Notice of Request to Arbitrate, requires the Integration Dispute to be resolved by a three person arbitral tribunal, in which case the Integration Dispute shall be resolved by a three person arbitral tribunal.
  - (g) If the arbitral tribunal is comprised of a single arbitrator:
    - (i) the Parties shall jointly appoint the arbitrator; and
    - (ii) if the Parties are unable to agree on the arbitrator within thirty (30) days after delivery of the Notice of Request to Arbitrate, any Party may apply to the Ontario Superior Court of Justice to appoint the arbitrator pursuant to the *Arbitration Act, 1991*.
  - (h) If the arbitral tribunal is comprised of three arbitrators:
    - (i) RSSOM Project Co and South Civil Project Co shall each appoint one arbitrator and Contracting Authority shall appoint the third arbitrator, who shall act as the chair; and
    - (ii) if the Parties have not appointed an arbitrator or arbitrators pursuant to Section 4(h)(i), any Party may apply to the Ontario Superior Court of Justice to appoint the remaining arbitrator(s) pursuant to the *Arbitration Act, 1991*.
  - (i) All arbitrators must have qualifications and experience relevant to the issues in the Integration Dispute commensurate with the nature, complexity and value of the Integration Dispute(s) to be arbitrated.
  - (j) No one shall be nominated or appointed to act as an arbitrator who is or was within the past five years:
    - (i) a Member of a CDB under the RSSOM Project Agreement or the South Civil Project Agreement;
    - (ii) an arbitrator under the RSSOM Project Agreement or the South Civil Project Agreement, unless the arbitral tribunal will be comprised of three (3) arbitrators with one (1) arbitrator who is an existing or former arbitrator under the RSSOM Project Agreement and one (1) arbitrator who is an existing or former arbitrator under the South Civil Project Agreement; or
    - (iii) in any way interested, financially or otherwise, in the conduct of the Project Operations under the RSSOM Project Agreement, the Works under the South Civil Project Agreement, or in the business affairs of Contracting Authority, RSSOM Project Co, South Civil Project Co or any consultant, subconsultant or subcontractor of any of them who may be involved or implicated in the Integration Dispute.
  - (k) Unless otherwise agreed by the Parties, the seat and venue of the arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
  - (l) The arbitral tribunal shall render its award as soon as possible and no later than sixty (60) days after the date of the closure of the hearing, or such other period of time as agreed to by the Parties in writing and accepted by the arbitral tribunal.

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- (m) The costs of the arbitration are within the discretion of the arbitral tribunal. In exercising discretion to award costs, 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 such Party has in the arbitration.
  - (n) The award of the arbitral tribunal shall be final and binding upon the Parties and not subject to appeal.
  - (o) Where a Dispute has been designated as an Integration Dispute, the arbitral tribunal shall have all the powers in respect of such Integration Dispute that an arbitral tribunal has in respect of other Disputes under the RSSOM Project Agreement or the South Civil Project Agreement, as applicable.
  - (p) The arbitral tribunal shall make decisions under the RSSOM Project Agreement based on the provisions of the RSSOM Project Agreement and under the South Civil Project Agreement based on the provisions of the South Civil Project Agreement.

## 5. Litigation

- (a) If necessary to prevent irreparable harm to a Party, including in connection with a Public Safety Integration Dispute, nothing contained in this Appendix A will prevent the Parties from seeking interim protection from the Ontario Superior Court of Justice, including seeking an interlocutory injunction. However, the Parties agree that no irreparable harm shall occur if the RSSOM Project Agreement or South Civil Project Agreement, as applicable, is terminated and that any termination of the RSSOM Project Agreement or South Civil Project Agreement, as applicable, by any Party, if found to be wrongful, would be adequately compensated for by an award of damages.
- (b) Any Party may bring an application or motion directly to the Ontario Superior Court of Justice for a determination regarding appointment of a challenged or a proposed alternative CIDB Member or arbitrator.
- (c) All litigation permitted pursuant this Integration Dispute Resolution Procedure shall be resolved in the Ontario Superior Court of Justice. All Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of any Integration Disputes which are to be resolved by litigation.

## 6. Stay and Consolidation with Third Party and Integration Disputes

- (a) Subject to Section 6(c), if any 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 an Integration Dispute, then any arbitration of the Integration Dispute which includes those common factual, legal or damages issues may be stayed, consolidated or joined with the Third Party Arbitration(s) but only if the Parties to the Integration Dispute and the other parties to such Third Party Arbitration all agree in writing.
- (b) Subject to Section 6(c), if any Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:
  - (i) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of an arbitration under this Integration Dispute Resolution Procedure ; and

- (ii) such Party is brought directly into the Third Party Litigation as a party to that litigation, then on the application of any 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 the Third Party Litigation.
- (c) Sections 6(a) and 6(b) only apply:
- (i) if the Integration Dispute includes a claim by one Party against another 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
- (ii) to those specific issues that are common issues in the arbitration under this Integration Dispute Resolution Procedure and the Third Party Arbitration or the Third Party Litigation, such that all other issues in the Integration Dispute shall continue to be resolved by arbitration under this Integration Dispute Resolution Procedure and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.
- (d) Where two or more Integration Disputes are pending between or among Contracting Authority and any Civil Contractor(s), at any stage of the Integration Resolution Dispute Procedure, the Parties to such Integration Disputes may agree or the CIDB or arbitral tribunal, as applicable, may order that:
- (i) an Integration Dispute shall be considered or consolidated with, or heard at the same time as or immediately before or after, another Integration Dispute; or
- (ii) claims made in an Integration Dispute shall be:
- (A) stayed until after the determination of claims in another Integration Dispute; or,
- (B) asserted by way of counterclaim, crossclaim or third party claim in another Integration Dispute.

## 7. Confidentiality

- (a) Unless otherwise agreed by the Parties in writing or required by law, no Party shall rely on or introduce as evidence in any subsequent proceeding or investigation, and shall treat as confidential and inadmissible in any arbitration or litigation proceeding or other investigation or proceeding, any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered:
- (i) on a without prejudice basis, including through the process for the amicable resolution of the Integration Dispute by the Party Executives set out in Section 2; or
- (ii) through the decision process by any Party or the CIDB or any CIDB Member, except for a decision and reasons of the CIDB, which may be introduced in any subsequent dispute resolution processes or proceedings regarding the same Integration Dispute(s).

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- (b) Any CIDB Member or arbitrator appointed pursuant this Integration Dispute Resolution Procedure shall keep all information about any Integration Dispute(s) referred to the CIDB or for arbitration confidential and shall not disclose such information to anyone other than the Parties.
  - (c) Any arbitrator shall execute non-disclosure agreements in a form satisfactory to the Parties, providing that, among other things, material delivered by a Party in connection with arbitration shall not be disclosed to any person or used for any other purpose, in accordance with this Section 7, and all such material shall remain the property of the Party disclosing or delivering same.
  - (d) A Member of the CIDB or arbitrator shall not be compelled to give evidence in any proceeding in respect of an Integration Dispute that was referred to the CIDB or arbitrator for a decision.

## **8. Miscellaneous**

- (a) The Parties can, by written agreement on an Integration Dispute by Integration Dispute basis:
  - (i) extend any or all timelines set out in this Integration Dispute Resolution Procedure;
  - (ii) agree to waive or by-pass any one or more of the Integration Dispute resolution processes in Sections 2 and 3 and, instead, proceed directly to resolution of the Integration Dispute by arbitration pursuant to Sections 4;
  - (iii) agree to a different process for arbitration than the one contemplated in this Integration Dispute Resolution Procedure; or
  - (iv) agree to refer any Integration Dispute to mediation by a neutral third party mediator.

## ATTACHMENT 1 TO APPENDIX A

**FORM OF CIDB MEMBER STATEMENT OF ACCEPTANCE, AVAILABILITY,  
IMPARTIALITY AND INDEPENDENCE**

**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

(“Contracting Authority”)

**AND TO:** THE MINISTER OF INFRASTRUCTURE

**AND TO:** [REDACTED] (“RSSOM Project Co”)

**AND TO:** ONTARIO TRANSIT GROUP INC. (“South Civil Project Co”)

**RE:** The **INTERFACE AGREEMENT** dated the 15<sup>th</sup> day of November, 2022 between Contracting Authority, RSSOM Project Co and South Civil Project Co, the **RSSOM PROJECT AGREEMENT** dated the 15<sup>th</sup> day of November, 2022 between Contracting Authority and RSSOM Project Co, and the **SOUTH CIVIL PROJECT AGREEMENT** dated the 8<sup>th</sup> day of November, 2022 between Contracting Authority and South Civil Project Co, each in respect of the Ontario Line Subway

## 1. General

### 1.1 Name and Position

- (a) Family Name(s):
- (b) Given Name(s):
- (c) CIDB Member Position (circle one):    Technical or Chair
- (d) Please attach a current copy of your CV.

### 1.2 Definitions, Interpretation and Governing Law

- (a) This statement (the “**Statement**”) shall be interpreted in accordance with the Interface Agreement, the RSSOM Project Agreement and the South Civil Project Agreement, and governed by the laws of Ontario, without regard to conflict of laws provisions. Please initial below all relevant statements.

### 1.3 Acceptance

- (a) I accept to serve as a Combined Integration Dispute Board (“**CIDB**”) Member (“**CIDB Member**”) in accordance with the Interface Agreement, the RSSOM Project Agreement and the South Civil Project Agreement.

**Initial:** \_\_\_\_\_

- (b) I decline to serve as a CIDB Member in accordance with the Interface Agreement, the RSSOM Project Agreement and the South Civil Project Agreement. *(If you tick here, simply date and sign the form without completing any other sections).*

**Initial:** \_\_\_\_\_

**1.4 Availability**

- (a) I confirm, on the basis of the information presently available to me that I have received and reviewed a copy of the Interface Agreement and can devote the time necessary to discharge the duties of a CIDB Member throughout the entire duration of the CIDB’s anticipated activities as diligently, efficiently and expeditiously as possible in accordance with the timelines and procedures set out in the Interface Agreement.

**Initial:** \_\_\_\_\_

- (b) I understand that it is important to discharge the duties of a CIDB Member set out in the Interface Agreement as promptly as reasonably practicable. My current and anticipated professional roles and significant engagements are set out below for the information of the Parties (anonymized as necessary to remain compliant with my professional obligations).

**Initial:** \_\_\_\_\_

Number of currently pending matters or roles in which I am involved *(i.e. arbitrations and dispute board activities pending now, not previous experience; additional details you wish to make known to the Parties in relation to these matters can be provided on a separate sheet):*

	<b>As tribunal or dispute board chair / sole arbitrator / sole DB member</b>	<b>As co-arbitrator / co-dispute board member</b>	<b>As counsel</b>	<b>As other</b>
Standing dispute boards				
Ad-hoc dispute boards				
Arbitrations				
Court litigation (e.g. international commercial courts)				
Other (attach separate sheet if necessary)				

I have attached a calendar showing for the next twenty-four (24) months all currently scheduled hearings and other existing commitments (anonymized as necessary) that would prevent me from attending meetings or sitting in a hearing on this Project.



I have further marked in the box below or on a separate sheet any other relevant information regarding my availability.

- (c) I shall make best efforts to maintain the availability necessary to discharge the duties of a CIDB Member throughout the entire duration of the CIDB’s anticipated activities which require my involvement, and shall immediately disclose in writing to the Parties and the other CIDB Members any additional significant matters that I may become involved in and any other relevant information regarding my availability which may arise in the course of my tenure as a CIDB Member and which may materially affect my ability to discharge my duties as a CIDB Member.

**Initial:** \_\_\_\_\_

**1.5 Independence and Impartiality**

- (a) In deciding which disclosure method applies to you, you should take into account, whether there exists any past, present or future, anticipated or planned relationship, direct or indirect, whether financial, professional or of any other kind, between you and any of the Parties, their lawyers or other representatives, or related entities and individuals. You are also required to disclose all recent, professional or personal, relationships with all key members of all Parties. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

- (i) **Nothing to disclose:** I am impartial and independent of the Parties and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the Parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

**Initial:** \_\_\_\_\_

- (ii) **Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

I confirm that the matters disclosed above represent full and complete disclosure with respect to any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality.

**Initial:** \_\_\_\_\_

- (b) I shall make best efforts to maintain the independence and impartiality necessary to discharge the duties of a CIDB Member throughout the entire duration of the CIDB's anticipated activities, but shall immediately disclose in writing to the Parties and the other CIDB Members any facts or circumstances concerning my impartiality or independence which may arise in the course of my tenure as a CIDB Member.

**Initial:** \_\_\_\_\_

- (c) In accordance with the Interface Agreement, I understand that the Parties may exercise their right to challenge me on the basis of an alleged lack of impartiality, independence or qualifications. In the event that I do not withdraw and the other Parties do not agree to the challenge, I understand that the challenge shall be determined in accordance with the Interface Agreement.

**Initial:** \_\_\_\_\_

- (d) In the event that I am successfully challenged, I understand that I will be removed from the CIDB forthwith and that my CIDB Member Agreement shall be terminated.

**Initial:** \_\_\_\_\_

## **1.6 Delivery**

- (a) This Statement may be delivered by sending a fully executed copy by electronic mail or other electronic transmission to the Parties, and such delivery shall be as effective as the manual delivery of this executed Statement.

***[SIGNATURE PAGE FOLLOWS IMMEDIATELY]***

Date:

Signature:

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## ATTACHMENT 2 TO APPENDIX A

FORM OF CIDB MEMBER AGREEMENT

This CIDB Member Agreement (this “Agreement”) is entered into among:

- (a) **CIDB Member:** [●] [*Note: Full name and title (sole Member, CIDB Technical Member (the “CIDB Member”)*);
- (b) **Party 1:** METROLINX (“Contracting Authority”);
- (c) **Party 2:** [REDACTED] (“RSSOM Project Co”); and
- (d) **Party 3:** ONTARIO TRANSIT GROUP INC. (“South Civil Project Co”),  
  
(collectively, the “Undersigned Parties”).

**WHEREAS:**

- A. The Undersigned Parties have entered into an agreement dated November 15, 2022 (the “Interface Agreement”) for the **Ontario Line Subway** (the “Project”);
- B. The Interface Agreement provides for the appointment of a Combined Integration Dispute Board (the “CIDB”), and that the CIDB shall, *inter alia*, issue decisions under the Interface Agreement, and perform other tasks in accordance with the Interface Agreement (the “CIDB Services”);
- C. Certain Integration Disputes may be referred to the CIDB for determination in accordance with the Interface Agreement; and
- D. The undersigned individual has been appointed to serve on the CIDB as a CIDB Member

The CIDB Member and the Parties therefore agree as follows:

**1.1 Definitions and Interpretation**

- (a) This Agreement shall be interpreted in accordance with the Interface Agreement and defined terms shall have the same meaning as in the Interface Agreement, unless otherwise specified here.
- (b) If there is any conflict between this Agreement and the Interface Agreement, this Agreement will take precedence to the extent of the conflict.

**1.2 Undertaking**

- (a) The CIDB Member shall act as [**a CIDB Technical Member/the CIDB Chair**] and hereby agrees to perform the duties of a CIDB Member and provide the CIDB Services in accordance with the terms of the Interface Agreement and the terms of this Agreement.
- (b) The CIDB Member confirms that he or she is and shall remain impartial and independent of the Parties.

- (c) The CIDB Member further confirms that he or she has executed and will comply with the terms of the CIDB Member Statement.

### 1.3 Composition of the CIDB and Contact Details

- (a) Subject to Section 3 of the Integration Dispute Resolution Procedure under the Interface Agreement, the CIDB shall be composed of three independent and impartial CIDB Members.
- (b) The CIDB Member can be contacted as follows: CIDB Member: [*Note: Include name, address, telephone, email and any other contact details.*]
- (c) The CIDB Chair is listed below and can be contacted as follows: CIDB Chair: [*Note: Include name, address, telephone, email and any other contact details.*]
- (d) The [**other CIDB Technical Member**] is listed below and can be contacted as follows: CIDB Technical Member: [*Note: Include name, address, telephone, email and any other contact details.*]
- (e) The Parties to the Interface Agreement are those indicated above with the following contact details:
- (i) Party 1:
- Metrolinx  
2 Queen Street East, 11<sup>th</sup> Floor  
Toronto, Ontario  
M5C 3G7
- Attn.: [REDACTED]  
Email: [REDACTED]
- (ii) Party 2:
- [REDACTED]
- Attn.: [REDACTED]  
Email: [REDACTED]
- with a copy to:
- [REDACTED]
- Attn.: [REDACTED]  
Email: [REDACTED]
- and:
- [REDACTED]
- Attn.: [REDACTED]  
Email: [REDACTED]

and:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

(iii) Party 3:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

(f) Any changes in these contact details shall be immediately communicated to all other Undersigned Parties.

#### 1.4 Qualifications

- (a) The Parties recognise that the CIDB Member is a [●], in accordance with Section 3.1(c) of the Integration Dispute Resolution Procedure under the Interface Agreement.
- (b) The Parties recognise that the CIDB Member is independent, impartial and skilled in resolving and deciding disputes of a type, complexity and value commensurate with the Integration Dispute(s) likely to be referred to the CIDB, in accordance with Section 3.1(d) of the Integration Dispute Resolution Procedure under the Interface Agreement.

#### 1.5 Fees and Disbursements

- (a) In consideration of the CIDB Member performing the CIDB activities in accordance with this Agreement and the Interface Agreement, the CIDB Member shall be entitled to be paid the initial fee (the “**Initial Fee**”) and the ad-hoc hourly fee (the “**Ad-hoc Hourly Fee**”) described in this Section 1.5.
- (b) The Initial Fee shall be a lump sum amount equal to CAD \$[REDACTED] and shall be reflected in the first invoice of the CIDB Member provided pursuant to Section 1.6(a).
- (c) The CIDB Member’s Initial Fee shall cover:
- (i) reviewing and becoming and remaining familiar with the RSSOM Project Agreement and the South Civil Project Agreement, including without limitation, the Output Specifications, Schedule 42 – South Civil Infrastructure Access and Handover of the RSSOM Project Agreement, and Schedule 45 – Integration with the RSSOM Project of the South Civil Project Agreement:

- (ii) reviewing any relevant amendments to the RSSOM Project Agreement, the South Civil Project Agreement and Variation Confirmations;
  - (iii) reviewing correspondence from the Parties, and other documents which the CIDB is required to review;
  - (iv) reviewing specific documents which the CIDB requests for its review;
  - (v) attending internal CIDB meetings;
  - (vi) attending meetings and/or any site visits in which the CIDB is required to participate;
  - (vii) providing informal assistance with Integration Disputes or potential Integration Disputes;
  - (viii) managing and coordinating the operation of the CIDB; and
  - (ix) any overhead and office expenses.
- (d) The CIDB Member's Ad-hoc Hourly Fee shall be [CAD \$[●] per hour], and shall be billed in hourly increments for certain work performed. The Ad-hoc Hourly Fee shall cover:
- (i) preparation for and attendance at ad-hoc meetings/site visits with the Parties; and
  - (ii) any work carried out in connection with referrals for a CIDB decision, including preparation, attendance at hearings, review of the Parties' submissions, delivery of the CIDB decision, and revisions to same.
- (e) Any non-productive ad-hoc travel shall be reimbursed at half the hourly rate of the CIDB Member's Ad-hoc Hourly Fee.
- (f) Reasonable CIDB Member expenses and disbursements relating to (i) flights (at economy class rates), (ii) hotel (to a maximum of CAD \$[REDACTED] per night), and (iii) the cost of retaining any experts shall be reimbursed at cost, with the prior approval of the Parties. All other costs and disbursements are and shall be deemed to be included in the Initial Fee and the Ad-hoc Hourly Fee. The CIDB Member shall retain all receipts and proof of payment of claimed disbursements and expenses, and shall provide them to the Parties or any Party upon request. The Parties shall have no obligation to reimburse the CIDB Member if the CIDB Member fails to produce receipts and proof of payment upon request.

## 1.6 Payment of Fees and Expenses

- (a) Unless otherwise agreed by the Parties and the CIDB Member in writing, all fees, expenses and disbursements payable under this Agreement shall be invoiced by the CIDB Member to the Parties on a monthly basis, which invoice shall reflect the performance of the CIDB activities performed in the previous month and be in form and substance reasonably satisfactory to the Parties.
- (b) RSSOM Project Co, South Civil Project Co and Contracting Authority shall each pay one third of such fees, expenses and disbursements to the CIDB Member, with the exception of the Initial Fee, which shall be split (i) [REDACTED]% by Contracting Authority and (ii) [REDACTED]% by each of RSSOM Project Co and South Civil Project Co. While each Party is responsible for paying its portion of the CIDB Member's fees, expenses and disbursements, this obligation is several and

not joint. If one Party fails to make payment, the other Parties may make payment of the amounts owed by the non-paying Party and recover the costs of doing so from the non-paying Party, but has no obligation to do so.

- (c) All payments to the CIDB Member shall be made to the following account: **[name of bank, account number, SWIFT code, etc.]**.
- (d) All payments to the CIDB Member under this Agreement shall be payable by the Parties monthly in arrears, and by no later than the date that is thirty (30) days of the receipt by the Parties of an invoice provided by the CIDB Member in accordance with this Agreement.
- (e) Intentionally deleted.

### **1.7 Duration and Termination of this Agreement**

- (a) Subject to Section 3 of the Integration Dispute Resolution Procedure under the Interface Agreement, the CIDB Member agrees to serve for the duration of the CIDB to the extent reasonably possible.
- (b) The Parties may at any time, without cause and with immediate effect, jointly terminate this Agreement.
- (c) The CIDB Member may terminate this Agreement at any time by giving a minimum of three months' written notice to the Parties, unless otherwise agreed by the Parties and the CIDB Member in writing.
- (d) If the CIDB Member is successfully challenged in accordance with Section 4.3 of Appendix A to the CIDB Member Agreement, the CIDB Member shall be removed forthwith from the CIDB and this Agreement shall be terminated.
- (e) The CIDB Member shall be entitled to claim payment for work performed to the date of termination of this Agreement in accordance with this Agreement, but shall not be entitled to claim any further payment.

### **1.8 Indemnity**

- (a) The Parties shall jointly and severally indemnify and hold harmless the CIDB Member from any claims of third parties for anything done or omitted to be done in the discharge of the CIDB Member's activities under this Agreement.
- (b) The indemnity provided in Section 1.8(a) shall not extend to:
  - (i) any act or omission of the CIDB Member that is shown to have been in bad faith;
  - (ii) any breach of this Agreement by the CIDB Member,
  - (iii) any negligent or unlawful act or omission or willful misconduct of the CIDB Member;
  - (iv) any action taken by the CIDB Member outside the scope of authority set forth in this Agreement; or



- (v) any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the CIDB Member.
- (c) The indemnity provided in Section 1.8(a) shall survive the termination of this Agreement.

### **1.9 Confidentiality**

- (a) The CIDB Member and all of the member's affiliates, employees, servants and agents shall keep all information about the Project, the CIDB Member's involvement on the Project, any CIDB Services performed by the CIDB, and any Integration Dispute(s) referred for a CIDB decision strictly confidential and shall not disclose such information to anyone other than the Parties.
- (b) The CIDB Member shall treat as confidential any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered on a without prejudice basis or through the CIDB decision process by any other Party or the CIDB or any CIDB Member, except as set out in Section 7(a)(ii) of the Integration Dispute Resolution Procedure under the Interface Agreement.
- (c) Material delivered by a Party in connection with a CIDB decision shall not be disclosed to any person or used, copied, supplied or reproduced for any other purpose other than for the performance of the CIDB Services, and all such material shall remain the property of the Party disclosing or delivering same.
- (d) The CIDB Member shall be bound by and shall comply with the confidentiality and communication provisions set out in Section 52 (*Confidentiality/Communications*) of the RSSOM Project Agreement and Section 40 (*Confidentiality*) of the South Civil Project Agreement.
- (e) The Parties may at any time require the CIDB Member to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the CIDB Services to give written undertakings, in the form of confidentiality agreements on terms required by the Parties, relating to the non disclosure of confidential information, in which case the CIDB Member must promptly arrange for such agreements to be made.

### **1.10 Disputes and Applicable Law**

- (a) All disputes arising out of this Agreement which are not subject to resolution pursuant to Section 5(b) of the Integration Dispute Resolution Procedure under the Interface Agreement shall be finally settled by arbitration by one arbitrator agreed by the Undersigned Parties in writing or appointed in accordance with the *Arbitration Act*, 1991. This Agreement shall be governed by the laws of Ontario, without regard to conflict of laws provisions. The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.

### **1.11 Counterparts**

- (a) This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

*[Remainder of page intentionally left blank]*

This Agreement is entered into on [specify date] at [specify place].

**METROLINX**

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

**[CIDB MEMBER]**

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

Name:

Title:

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

Name:

Title:

I/We have the authority to bind the corporation.

**ONTARIO TRANSIT GROUP INC.**

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation

**CONNECT 6IX GENERAL PARTNERSHIP, [REDACTED]:**

**[REDACTED]**

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

Name: **[REDACTED]**

Title: **[REDACTED]**

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

Title: **[REDACTED]**

We have authority to bind the corporation.

**HITACHI RAIL ONTARIO GP INC.**

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

Name: Vincenzo Ragone

Title: Director

\_\_\_\_\_  
Name: Thomas Hawkesworth

Title: Director

We have authority to bind the corporation.

**[REDACTED]**

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

Name: **[REDACTED]**

Title: **[REDACTED]**

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

Title: **[REDACTED]**

We have authority to bind the corporation.

**[REDACTED]**

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

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

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**SCHEDULE 40****RAIL CORRIDOR ACCESS AND FLAGGING****1. INTERPRETATION AND DEFINITIONS****1.1 Schedule Documents**

- (a) This Schedule 40 consists of the main body of this Schedule 40 and the appendices and attachments as follows:
- (i) Appendix A – Project-Specific Provisions, including,
    - (A) Attachment 1 to Appendix A – Rules of the Route; and
    - (B) Attachment 2 to Appendix A – Exhibition Station Events;
  - (ii) Appendix B – Implementation of Track Protection and Flagging;
  - (iii) Appendix C – Train Schedules, including;
    - (A) Attachment 1 to Appendix C – Future Service Increases;
  - (iv) Appendix D – Rail Corridor Access Commercial Matters, including,
    - (A) Attachment 1 to Appendix D – Access Prices and Access Request Notice Periods;
    - (B) Attachment 2 to Appendix D – Form of Rail Corridor Access Narrative Table; and
    - (C) Attachment 3 to Appendix D – Rail Corridor Discount Sample Calculations;
  - (v) Appendix E – Multi-Year Calendar;
  - (vi) Appendix F – Third Party Operator Railway Operations Provisions; and
  - (vii) Appendix G – Metrolinx Dedicated Risk Assessment Process, including,
    - (A) Attachment 1 to Appendix G – Advance Dedicated Risk Assessments.

**1.2 Definitions**

In this Schedule 40, unless the context indicates a contrary intention, terms that are defined in the Project Agreement (and not otherwise defined in this Schedule 40) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Access Agreements**” means the agreements that Project Co is obliged to execute to access the CN Territory or the CP Territory, as applicable, as set out in Appendix A to this Schedule 40.
- (b) “**Access Approval Process**” has the meaning given in Section 4.1(a).

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- (c) “**Access End Time**” has the meaning given in Appendix D to this Schedule 40.
- (d) “**Access Opportunities Calendar**” has the meaning given in Section 3.2(a), as amended from time to time.
- (e) “**Access Opportunity**” means any single instance of opportunity for Rail Corridor Access that may be available to Project Co, as set out in the Rules of the Route.
- (f) “**Access Price**” has the meaning given in Appendix D to this Schedule 40.
- (g) “**Access Start Time**” has the meaning given in Appendix D to this Schedule 40.
- (h) “**Adjacent Track Closed**” has the meaning given in the GO Transit General Engineering Instructions.
- (i) “**Advance Metrolinx Dedicated Risk Assessments**” has the meaning given in Attachment 1 to Appendix G to this Schedule 40.
- (j) “**Annual Engineering Access Planning Meeting**” has the meaning given in the Metrolinx Network Access Planning Standard;
- (k) “**Applicable CROR**” has the meaning given in Section 2.2(a).
- (l) “**Application for Access**” has the meaning given in Section 4.4(a).
- (m) “**Barrier**” means,
- (i) a structure that creates a physical barrier; or
  - (ii) a space that creates a barrier without a structure.
- (n) “**Booking Request**” has the meaning given in Section 4.3(a).
- (o) “**Canadian Pacific Minimum Safety Requirements for Contractors Working on CP Property in Canada**” means the Rail Corridor Access requirements of CP Rail.
- (p) “**Canadian Rail Operating Rules**” or “**CROR**” means the Transport Canada Canadian Rail Operating Rules, as at the Technical Reference Date.
- (q) “**Category of Access**” has the meaning given in Section 3.1(a).
- (r) “**CN Standards**” mean the Canadian National Railway Company standards set out in the Output Specifications.
- (s) “**CN Supplemented CROR**” means the CROR as revised or supplemented by CN Rail from time to time for application on the CN Territory.
- (t) “**CN Territory**” means that part of the Rail Corridors owned by CN Rail.

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- (u) “**Control Location**” means a portion of the Rail Corridor to which specific Rail Corridor Access rules apply, as set out in Attachment 1 to Appendix A to this Schedule 40.
- (v) “**CP Railway Maintenance and Freight Information**” means the CP Rail railway maintenance and freight information attached as Appendix F to this Schedule 40.
- (w) “**CP Standards**” mean the Canadian Pacific Railway Company standards set out in the Output Specifications.
- (x) “**CP Supplemented CROR**” means the CROR as revised or supplemented by CP Rail from time to time for application on the CP Territory.
- (y) “**CP Territory**” means that part of the Rail Corridors owned by CP Rail.
- (z) “**Delivering Work Within Possessions**” has the meaning given in the Work Plan Methodology Template User Manual.
- (aa) “**Disruptive Possession Access**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (bb) “**Emergency Rail Situation**” means any situation that, in the opinion of CN Rail, CP Rail or Metrolinx, causes an immediate and serious threat or danger to the public, Contracting Authority Parties, or Project Co Parties, or that causes an immediate and serious threat to VIA Rail’s, CN Rail’s, CP Rail’s or Metrolinx’s Railway Operations.
- (cc) “**Event**” means an event, including tradeshow, live sports games, music concerts, cultural events, community events, or a combination thereof, that may generate significantly increased attendance or customer access at Exhibition Station.
- (dd) “**Events Schedule**” means the calendar of confirmed Event dates and times, published by Metrolinx each calendar year on April 1<sup>st</sup> and August 1<sup>st</sup>.
- (ee) “**Foul of Track**” means that an individual and/or work equipment is,
- (i) within four feet of the nearest rail;
  - (ii) within the GO Transit Heavy Rail Clearance Envelopes; or
  - (iii) on or over the yellow line at the edge of station platforms,
- and “**Fouling of Track**” has a corresponding meaning.
- (ff) “**Fouling**” means encroaching on prohibited GO Transit Heavy Rail Clearance Envelopes.
- (gg) “**General Access Rules**” has the meaning given in Section 6.2(a).
- (hh) “**GO Transit General Engineering Instructions**” means the GO Transit General Engineering Instructions dated April 2020, as at the Technical Reference Date.



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- (ii) “**GO Transit Heavy Rail Clearance Envelopes**” has the meaning given in the GO Transit Track Standards.
- (jj) “**GO Transit Track Standards**” means the GO Transit Track Standards dated May 2018, as at the Technical Reference Date.
- (kk) “**Green Work Complexity Assessment**” has the meaning given in the Work Plan Methodology Template User Manual.
- (ll) “**Main Track**” has the meaning given in Appendix A to this Schedule 40.
- (mm) “**Major Track Closure**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (nn) “**Metrolinx Access Contact**” has the meaning given in Section 7.2(a)(i).
- (oo) “**Metrolinx Dedicated Risk Assessment**” has the meaning given in Appendix G to this Schedule 40.
- (pp) “**Metrolinx Network Access Planning Standard**” means the Metrolinx Network Access Planning Standard dated May 2021, as at the Technical Reference Date.
- (qq) “**Metrolinx Supplemented CROR**” means the CROR as revised and supplemented by Metrolinx from time to time for application on the Metrolinx Territory.
- (rr) “**Metrolinx Territory**” means that part of the Rail Corridors owned by Metrolinx.
- (ss) “**Minor Track Closure**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (tt) “**Multi-Year Calendar**” has the meaning given in Section 3.2(a).
- (uu) “**No Comment or Reviewed As Noted-Minor Issues Designation**” means a designation, determined by Contracting Authority after review of a Works Submittal in accordance with Schedule 10 – Review Procedure, of either,
- (i) “NO COMMENT” on the applicable Works Submittal; or
- (ii) “REVIEWED AS NOTED-MINOR ISSUES” on the applicable Works Submittal, with no “RE-SUBMIT” requirement, and provided that all non-conformances noted in the review have been corrected.
- (vv) “**Non-Disruptive Access**” has the meaning given in the Metrolinx Network Access Planning Standard;
- (ww) “**Peak Hours**” means the peak hours applicable to the Project Rail Corridor as set out in Appendix A to this Schedule 40.

- (xx) “**Permitted Rail Corridor Access**” is a Rail Corridor Access for which Metrolinx has issued a Rail Corridor Access Permit.
- (yy) “**Planned Railway Operations Changes**” has the meaning given in Section 2.1(c)(vi).
- (zz) “**Platform Closure**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (aaa) “**Possession Pack**” has the meaning given to it in the Metrolinx Network Access Planning Standard.
- (bbb) “**Project Rail Corridor**” means the Rail Corridor(s) applicable to this Project as set out in Appendix A to this Schedule 40.
- (ccc) “**Project Specific Access Rules**” has the meaning given in Section 6.2(b).
- (ddd) “**Quarterly Disruptive Possession Meeting**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (eee) “**Rail Corridor**” means each of the Union Station, Lakeshore East, Lakeshore West, Milton, Barrie, Kitchener, Richmond Hill and Stouffville rail corridors as described by Metrolinx on the date hereof, and “**Rail Corridors**” means all such rail corridors, further detailed in the Metrolinx Network Access Planning Standard.
- (fff) “**Rail Corridor Access**” means entry onto one or more of the Rail Corridors.
- (ggg) “**Rail Corridor Access Discount**” has the meaning given in Appendix D to this Schedule 40.
- (hhh) “**Rail Corridor Access Permit**” has the meaning given in Section 4.6(a).
- (iii) “**Rail Corridor Access Plan**” has the meaning given in Section 3.3(a).
- (jjj) “**Rail Corridor Access Site**” means the part of the Rail Corridor on which Project Co is permitted to perform Works as set out in a Rail Corridor Access Permit.
- (kkk) “**Rail Corridors Infrastructure Handover Protocols**” means the GO Transit Rail Corridors Infrastructure Handover Protocols, as at the Technical Reference Date.
- (lll) “**Railway Flag Person**” means the foreman and other flag persons in charge of the protection of track work and Track Units during the Rail Corridor Access and by way of flagging.
- (mmm) “**Railway Maintenance**” means the maintenance activities being carried out on or adjacent to the Rail Corridor at any time.
- (nnn) “**Railway Operations**” means the operation of one or more active railways by Metrolinx or Third Party Operators, including, for clarity, the passage of freight, equipment, and passenger trains both in revenue service and non-revenue service.
- (ooo) “**Railway Safety Act (Canada)**” means the *Railway Safety Act*, 1985, c. 32 (4th Supp.), as amended from time to time.

- (ppp) “**Red Work Complexity Assessment**” means a Work Complexity Assessment in respect of Works that have a high risk of overrunning the finishing time of the corresponding Rail Corridor Access.
- (qqq) “**Rule 841**” has the meaning given in the Canadian Rail Operating Rules.
- (rrr) “**Rule 842**” has the meaning given in the Canadian Rail Operating Rules.
- (sss) “**Rules of the Route**” means the rules set out in Attachment 1 to Appendix A to this Schedule 40, as amended by Contracting Authority from time to time to reflect Planned Railway Operations Changes.
- (ttt) “**Signal Person**” means the Project Co employee responsible for communicating with the Railway Flag Person to govern Project Co’s entrance into the Rail Corridor Access Site.
- (uuu) “**Special Request Meeting**” has the meaning given in Section 3.4(a)(iv).
- (vvv) “**Subcategory of Access**” has the meaning given in Section 3.1(a).
- (www) “**Subdivision**” and “**Subdivisions**” means a subdivision or subdivisions on a Rail Corridor.
- (xxx) “**T-8 Week Process**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (yyy) “**Third Party Operators**” means third parties to whom Metrolinx grants the right to carry out Railway Operations on the Metrolinx Territory including CN Rail, CP Rail and VIA Rail or third parties who carry out Railway Operations on the CN Territory or CP Territory.
- (zzz) “**Track Closure**” means the closure of one or more tracks within the Rail Corridor.
- (aaaa) “**Track Protection**” has the meaning given in Section 9.1(a).
- (bbbb) “**Track Protection Forecast**” has the meaning given in Section 9.1(e).
- (cccc) “**Track Unit**” means a vehicle or machine capable of on-track operation and utilized for track inspection, track work and other railway activities when on the track.
- (dddd) “**Train Schedules**” means the current and projected train schedules set out in Appendix C to this Schedule 40 and the Third Party Operator Railway Operations provisions set out in Appendix F to this Schedule 40.
- (eeee) “**White Period Access**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (ffff) “**Work Complexity Assessment**” has the meaning given in Section 4.3(a)(v).
- (gggg) “**Work Event and Protection Request**” has the meaning given in Section 4.4(a).
- (hhhh) “**Work Plan Methodology Template**” has the meaning given in Section 4.5(a).

- (iii) “**Work Plan Methodology Template User Manual**” means the Metrolinx Work Plan Methodology Template User Manual, as at the Technical Reference Date.
- (jjj) “**Zone**” means an area within the Rail Corridor that contains multiple Control Locations and is defined for the purposes of limiting simultaneous Major Track Closure and/or Minor Track Closure, as set out in Appendix A to this Schedule 40.

## 2. ACCESSING THE RAIL CORRIDOR

### 2.1 Fundamental Requirements of Rail Corridor Access

- (a) Project Co shall not,
  - (i) access any part of any Rail Corridor unless and until it has received a Rail Corridor Access Permit for Rail Corridor Access;
  - (ii) enter or occupy any part of a Rail Corridor during a Permitted Rail Corridor Access other than the Rail Corridor Access Site that is explicitly approved in the Rail Corridor Access Permit;
  - (iii) commit any Fouling or Fouling of Track without the consent of Metrolinx, unless explicitly permitted in a Rail Corridor Access Permit; or
  - (iv) perform any Works on or adjacent to a Rail Corridor, unless,
    - (A) Project Co’s Contractor Site Specific Safety Manual has been reviewed by Contracting Authority;
    - (B) Project Co has executed all Access Agreements applicable to the Project Rail Corridor as set out in Appendix A to this Schedule 40; and
    - (C) Project Co has scheduled, applied for, and received a Rail Corridor Access Permit and Track Protection for the applicable Works in accordance with this Schedule 40.
- (b) Metrolinx may, at any time, implement, or decline to implement a Planned Railway Operations Change. Contracting Authority shall provide Project Co at least seven (7) days’ Notice prior to the implementation of a Planned Railway Operations Change.
- (c) Project Co acknowledges and agrees that,
  - (i) certain portions of the Works may have to be carried out on or adjacent to tracks on which Railway Operations, Railway Maintenance, and works by third party contractors are carried out;
  - (ii) portions of the Works may be carried out on CP Territory or CN Territory as set out in Appendix A to this Schedule 40;

- (iii) Other Contractors performing construction or maintenance activities may have Permitted Rail Corridor Accesses at the same time and in close proximity to Project Co's Permitted Rail Corridor Access;
  - (iv) if Project Co's performance of the Works requires Rail Corridor Access, these Works will be affected by Railway Operations;
  - (v) the freight trains that operate on the Rail Corridor do not operate in accordance with a prescribed schedule;
  - (vi) the schedules for Railway Operations change from time to time, and Project Co shall plan, design and organize its construction means and methodologies in accordance with the Access Opportunities Calendar and the planned changes to Railway Operations set out in the Train Schedules, including, for clarity, the changes to peak periods and frequency of trains ("**Planned Railway Operations Changes**"); and
  - (vii) Project Co shall,
    - (A) only be permitted to submit a Booking Request that is shown as available in the current Access Opportunities Calendar; and
    - (B) have no special rights with respect to the Access Opportunities Calendar, subject only to the right to submit advance Booking Requests prior to Commercial Close.
- (d) Project Co shall plan, design and organize its construction means and methodologies,
- (i) with regard to the access that is available to Project Co in accordance with the Access Opportunities Calendar, Rules of the Route, the Train Schedules, and the rules for applying for and receiving Rail Corridor Access in accordance with this Schedule 40;
  - (ii) to anticipate Railway Operations and Railway Maintenance based on the Train Schedules, the Access Opportunities Calendar, and information set out in Appendix A to this Schedule 40;
  - (iii) to avoid interference with all Railway Operations;
  - (iv) in accordance with the access provisions applicable to the Project Rail Corridor, or any parts thereof, as set out in the Project Agreement, including, for clarity, the Output Specifications, Schedule 35 – Lands, Schedule 29 – Safety, System Assurance and Security and this Schedule 40;
  - (v) in accordance with the applicable Rail Corridor Access Permit;
  - (vi) to anticipate the lack of predictability of the passage of freight trains on the Project Rail Corridor, in accordance with Appendix F to this Schedule 40;
  - (vii) to ensure that safe and uninterrupted Railway Operations always take priority over the performance of the Works, subject only to the applicable Permitted Rail Corridor Access; and

- (viii) in accordance with the corresponding (i) Metrolinx-approved Metrolinx Dedicated Risk Assessment, as applicable, as set forth in Appendix G to this Schedule 40 and (ii) Metrolinx-accepted Advance Metrolinx Dedicated Risk Assessments, as applicable, as set forth in Attachment 1 to Appendix G to this Schedule 40.
- (e) Project Co shall,
  - (i) prepare and serve all notices of Works on the Project Rail Corridor as required under the *Railway Safety Act* (Canada);
  - (ii) respond to any objection received in respect of any notices of Works on the Project Rail Corridor served as required under the *Railway Safety Act* (Canada); and
  - (iii) obtain all required Permits, Licences, Approvals and Agreements, in addition to the Rail Corridor Access Permit, that are required to carry out the Works that are the subject of the Rail Corridor Access Permit.
- (f) With respect to Works carried out under a Rail Corridor Access Permit on CN Territory and CP Territory, Project Co shall,
  - (i) permit and facilitate access to the Rail Corridor Access Site(s), the Works on the Rail Corridor Access Site(s), and all documentation regarding Works on the Rail Corridor Access Site(s) for,
    - (A) CN Rail or CP Rail representatives, as applicable; and
    - (B) utility owners, in the case of utility crossings on the Project Rail Corridor;
  - (ii) provide monthly reports, with sections of the monthly reports that are with respect to CN Rail, the CN Territory, CP Rail and the CP Territory for CN Rail and CP Rail, to Metrolinx on the progress of the Works on the Rail Corridor Access Site(s), including any Permits, Licences, Approvals and Agreements, public consultations, changes, and schedules, which reports Metrolinx will forward to CN Rail or CP Rail, as applicable; and
  - (iii) together with Contracting Authority, meet with representatives of CN Rail or CP Rail, as applicable, on at least a monthly basis to review the progress of and any issues relating to the Works on the Rail Corridor Access Site(s).
- (g) Project Co shall use the web-based system prescribed by Contracting Authority to access and make applications related to the Access Approval Process, including the online submission of any documentation described in this Schedule 40.

## 2.2 Canadian Rail Operating Rules – Supplementary Provisions

- (a) Metrolinx carries out Railway Operations on Metrolinx Territory, CN Territory and CP Territory. While each of Metrolinx, CN Rail and CP Rail applies the CROR on its own Territory, each of Metrolinx, CN Rail and CP Rail may revise or supplement the CROR with additional provisions or requirements specific to the Metrolinx Territory, the CN Territory or the CP Territory. The

CROR that is applicable to the Project is set out in Appendix A to this Schedule 40 (the “**Applicable CROR**”).

### 3. RAIL CORRIDOR ACCESS PLANNING

#### 3.1 Categories of Permitted Access to the Rail Corridor

- (a) Metrolinx shall categorize each Rail Corridor Access into a category of access, in accordance with the Metrolinx Network Access Planning Standard, and as described in Attachment 1 to Appendix A to this Schedule 40 (each a “**Category of Access**” and each sub category a “**Subcategory of Access**”).
- (b) Project Co shall comply with the then current Rules of the Route.
- (c) Project Co acknowledges and agrees that,
  - (i) Project Co may not be eligible to apply for all Categories of Access and Subcategories of Access; and
  - (ii) the only Categories of Access and Subcategories of Access that Project Co is eligible to apply for with respect to the Project and the Project Rail Corridor are set out in Appendix A to this Schedule 40.

#### 3.2 Access Opportunities Calendar

- (a) Metrolinx shall create, maintain and update a calendar setting out the availability of all Categories of Access on the Rail Corridors (the “**Access Opportunities Calendar**”). Project Co acknowledges and agrees that Metrolinx has provided a multi-year projection of the Access Opportunities Calendar to Project Co as set out in Appendix E to this Schedule 40 (the “**Multi-Year Calendar**”).
- (b) Project Co may, from time to time during the Project Term, submit Booking Requests based on the Access Opportunities Calendar in accordance with the following:
  - (i) Project Co acknowledges and agrees that Project Co may be one of many entities seeking Rail Corridor Access on the Project Rail Corridor. Project Co shall be entitled to the amount of Rail Corridor Access stated in Attachment 1 to Appendix A to this Schedule 40;
  - (ii) Project Co may submit advance Booking Requests prior to Commercial Close in accordance with Section 4.2, in which case, subject to Section 9.4(2) (*Rail Corridor Access-Advance Booking Requests*) of the RFP and Section 4.3 of this Schedule 40, the access dates requested in such advance Booking Requests shall be secured;
  - (iii) In respect of Booking Requests made by Project Co after Commercial Close, Project Co shall not receive preferential treatment with respect to the specific dates within any given calendar year, and Project Co shall not be eligible for a Delay Event, a Compensation Event or any other form of compensation or relief arising from the allocation of Rail Corridor Access opportunities to Project Co or Other Contractors; and

- (iv) Metrolinx may amend the Access Opportunities Calendar, including, for clarity, the Multi-Year Calendar, to take into account the Planned Railway Operations Changes, opportunities for Rail Corridor Access that have been allocated, changes to Railway Operations and Railway Maintenance, and Events Schedule.
- (c) Project Co acknowledges and agrees that, subject to Attachment 2 to Appendix A to this Schedule 40, if Metrolinx amends the Access Opportunities Calendar or the Multi-Year Calendar to take into account changes to Railway Operations that are not Planned Railway Operations Changes and, as a result, Project Co experiences delay or additional cost, such delay and cost shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event.
- (d) Project Co acknowledges and agrees that if Metrolinx elects not to implement any or a portion of the Planned Railway Operations Changes and, as a result,
  - (i) Project Co experiences delay or additional cost, such delay and cost shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event; and
  - (ii) Project Co experiences cost savings or schedule efficiencies, then Contracting Authority shall be entitled to such cost savings and schedule efficiencies and, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation.

### 3.3 Rail Corridor Access Plan

- (a) No later than the deadline set out in the Metrolinx Network Access Planning Standard, Project Co shall submit its first Rail Corridor Access Plan, for review by Contracting Authority, in accordance with Schedule 10 – Review Procedure (the “**Rail Corridor Access Plan**”). Project Co’s first Rail Corridor Access Plan shall be substantially the same as the draft Rail Corridor Access Plan Project Co submitted, as Proponent, in the RFP process that preceded this Project Agreement.
- (b) Project Co shall not submit an Application for Access until its first Rail Corridor Access Plan has been reviewed pursuant to Schedule 10 – Review Procedure and has received a No Comment or Reviewed As Noted-Minor Issues Designation from Contracting Authority. As part of Contracting Authority’s review of the Rail Corridor Access Plan, Contracting Authority may comment on the matters set out in Sections 3.3(d)(i), 3.3(d)(ii) and 3.3(d)(iii) and the appropriateness of the Category of Access proposed by Project Co in accordance with Section 3.3(d)(iv) for each of Project Co’s proposed Rail Corridor Accesses. Project Co shall, acting reasonably, address Contracting Authority’s comments in its Rail Corridor Access Plan.
- (c) No later than the deadlines set out in the Metrolinx Network Access Planning Standard, Project Co shall submit updates to its then current Rail Corridor Access Plan, for review by Contracting Authority, in accordance with Schedule 10 – Review Procedure. If Project Co fails to submit an update to its Rail Corridor Access Plan in accordance with this Section 3.3 or fails to achieve a No Comment or Reviewed As Noted-Minor Issues Designation more than two times in a row for the same updated Rail Corridor Access Plan, Metrolinx may suspend consideration of Project Co’s



Applications for Access until a No Comment or Reviewed As Noted-Minor Issues Designation is achieved by Project Co for the applicable updated Rail Corridor Access Plan.

- (d) The Rail Corridor Access Plan and each subsequent update thereto shall identify each of Project Co's requested Rail Corridor Accesses, including:
- (i) the type and scope of work to be carried out for each Rail Corridor Access;
  - (ii) the duration of the Rail Corridor Access;
  - (iii) the location(s) and access and egress points, gates, barriers and plank crossings applicable to the Works;
  - (iv) the Category of Access and Subcategory of Access that will be required for each Rail Corridor Access;
  - (v) the specific tracks whose closures are being requested;
  - (vi) the estimated flagging resources required for each Rail Corridor Access; and
  - (vii) the proposed start and end date and start and end time for each Rail Corridor Access that is planned to occur during the next three years.
- (e) Project Co acknowledges and agrees that any update to the Rail Corridor Access Plan submitted pursuant to this Section 3.3 does not revise or alter any Application for Access submitted to Metrolinx prior to the submission of any update to the Rail Corridor Access Plan, nor will it impact the dates or deadlines for review of any such applications by Metrolinx.

### 3.4 Planning and Status Meetings

- (a) Project Co shall attend the following meetings:
- (i) an Annual Engineering Access Planning Meeting which informs the development or continuance of the Rules of the Route, and supports the potential coordination of Disruptive Possession Accesses between contractors and Third Party Operators, as described in the Metrolinx Network Access Planning Standard;
  - (ii) Quarterly Disruptive Possession Meetings prior to Project Co's Disruptive Possession Accesses, on the dates set out in the then current Metrolinx Network Access Planning Standard;
  - (iii) meetings associated with the T-8 Week Process, as described in the Metrolinx Network Access Planning Standard; and
  - (iv) monthly meetings to review unique Disruptive Possession Access requests (each a "**Special Request Meeting**").

#### 4. RAIL CORRIDOR ACCESS APPROVAL PROCESS

##### 4.1 Access Approval Process

- (a) Subject to Appendix A to this Schedule 40, Project Co shall seek approval from Metrolinx for each Rail Corridor Access in accordance with the following five steps (collectively the “**Access Approval Process**”), and as detailed in the Metrolinx Network Access Planning Standard:
- (i) Step 1 – Subject to Section 4.2, Project Co shall submit a Booking Request, including a Work Complexity Assessment in accordance with Section 4.3, for review and response by Metrolinx;
  - (ii) Step 2 – After Project Co has achieved a No Comment or Reviewed As Noted-Minor Issues Designation from Contracting Authority on its first Rail Corridor Access Plan, in accordance with Section 3.3, Project Co shall submit its Application(s) for Access and Work Complexity Assessment(s), in accordance with the timelines set out in the Metrolinx Network Access Planning Standard, for review and approval by Metrolinx;
  - (iii) Step 3 – After Metrolinx approves a Work Complexity Assessment for an Application for Access, Project Co shall submit its Work Plan Methodology Template and, as required, the Delivering Work Within Possessions portion of the Work Plan Methodology Template in accordance with Section 4.4(a), for review and approval by Metrolinx;
  - (iv) Step 4 – After Metrolinx approves Project Co’s Application for Access and Work Plan Methodology Template, including, if required, the Delivering Work Within Possessions portion of the Work Plan Methodology Template, Project Co shall complete all steps associated with the T-8 Week Process, as set out in the Metrolinx Network Access Planning Standard; and
  - (v) Step 5 – After Steps 1 through 4 have been completed successfully, and Project Co has received a “GO” at the GO/NO-GO White Board Meeting, in accordance with the Metrolinx Network Access Planning Standard, Metrolinx shall issue a Rail Corridor Access Permit to Project Co for Rail Corridor Access, in accordance with Section 4.6.
- (b) If, at any step in the Access Approval Process, Metrolinx provides comments on a submission to Project Co, Project Co shall incorporate all of Metrolinx’s comments into the submission and resubmit the submission to Metrolinx. For greater certainty, to the extent Contracting Authority has noted a Reviewed As Noted-Minor Issues in respect of a Rail Corridor Access Plan as contemplated in Section 4.1(a)(ii), the same shall have been corrected by Project Co in accordance with Schedule 10 – Review Procedure prior to the issuance by Metrolinx of any Rail Corridor Access Permit.

##### 4.2 Advance Booking Requests

- (a) Project Co may make a Booking Request in accordance with Section 4.3 at any time prior to the deadline set out in Section 4.3, but shall not be eligible to complete the remaining steps (Steps 2 to 5) of the Access Approval Process set out in Section 4.1(a) until Project Co’s Rail Corridor Access Plan has been submitted to, and reviewed by, Contracting Authority in accordance with Section 3.3 and Project Co has received a No Comment or Reviewed As Noted-Minor Issues Designation from Contracting Authority.

- (b) The Parties acknowledge and agree that, subject to and in accordance with the rules that were set out in the RFP process that preceded this Project Agreement,
- (i) Project Co was permitted to submit Booking Requests for certain Rail Corridor Access prior to Commercial Close;
  - (ii) Booking Requests made by Project Co prior to Commercial Close were entered into the Access Opportunities Calendar prior to Commercial Close; and
  - (iii) for clarity, for those Booking Requests made by Project Co and entered into the Access Opportunities Calendar prior to Commercial Close, Project Co must meet the requirements of Section 3.3 and must complete the remaining steps (Steps 2 to 5) of the Access Approval Process set out in Section 4.1(a) in order to have its Rail Corridor Access approved.

### 4.3 Booking Requests

- (a) Project Co shall, no later than the deadline set out in the Metrolinx Network Access Planning Standard, submit a request to book each requested Rail Corridor Access (each a “**Booking Request**”). Each Booking Request shall include, for the requested Rail Corridor Access,
- (i) Project Co’s opinion as to which Category of Access and Subcategory of Access should apply;
  - (ii) the date(s) for the requested Rail Corridor Access;
  - (iii) the location of the Rail Corridor Access Site, including the applicable Subdivision or Subdivisions and mile posts setting out the limits of the proposed Rail Corridor Access Site;
  - (iv) the proposed Access Start Time;
  - (v) the proposed Access End Time;
  - (vi) Project Co’s opinion of the appropriate Access Price; and
  - (v) a work complexity assessment in accordance with the Work Plan Methodology Template User Manual (each a “**Work Complexity Assessment**”), using the form provided by Metrolinx.
- (b) Save and except in respect of any Booking Request made prior to Commercial Close in accordance with Section 4.2(b), Project Co shall ensure that each requested Rail Corridor Access included in a Booking Request is available in the then current Access Opportunities Calendar.
- (c) Subject to Attachment 2 to Appendix A to this Schedule 40, Metrolinx shall, no later than the deadline set out in the Metrolinx Network Access Planning Standard, review Project Co’s Booking Request to determine whether the requested Rail Corridor Access is available in accordance with the then current Access Opportunities Calendar. Metrolinx shall determine the Access Price for the applicable Project Co Booking Request, as set out in Attachment 1 to Appendix D to this Schedule 40. Subject to Attachment 2 to Appendix A to this Schedule 40, Metrolinx may, in its sole

discretion, and on a one-time basis per requested Rail Corridor Access (in addition to any adjustments made by Metrolinx to the requested date for Rail Corridor Access in respect of a Booking Request made prior to Commercial Close in accordance with Section 9.4 (*Rail Corridor Access-Advance Booking Requests*) of the RFP),

- (i) no later than one-hundred and fifty-five (155) Business Days prior to Project Co's requested date for a Major Track Closure, revise the requested date by up to one week;
  - (ii) no later than eighty (80) Business Days prior to Project Co's requested date for a Platform Closure or a Minor Track Closure revise the requested date by up to one week; and
  - (iii) no later than twenty (20) Business Days prior to Project Co's requested date for a Non-Disruptive Access, White Period Access revise the requested date by up to one week.
- (d) For clarity, Project Co acknowledges and agrees that,
- (i) Metrolinx may exercise its rights set out in Section 4.3(c) notwithstanding that Metrolinx may have revised the requested date for a Rail Corridor Access prior to Commercial Close in accordance with the RFP; and
  - (ii) notwithstanding Section 8.2, Project Co shall not be entitled to a Delay Event or a Compensation Event arising from Metrolinx's revision of a requested date for a Rail Corridor Access in accordance with Section 4.3(c), or in accordance with Section 9.4 (*Rail Corridor Access-Advance Booking Requests*) of the RFP, and the number of days of any such revisions shall not be taken into account for purposes of Section 8.2.

#### 4.4 Application for Access

- (a) After Metrolinx has reviewed and approved Project Co's Rail Corridor Access Plan pursuant to Section 3.3 and Project Co's Booking Request pursuant to Section 4.3, Project Co shall submit an application for Rail Corridor Access for each Rail Corridor Access requested, each of which must correspond to a Booking Request made by Project Co in accordance with Section 4.3 (each an "**Application for Access**"), using the form provided by Metrolinx, including a work event and protection request (each a "**Work Event and Protection Request**") following the information set out in the Metrolinx Network Access Planning Standard.
- (b) Project Co shall submit each Application for Access in accordance with the submission requirements set out in this Schedule 40 and in accordance with the deadlines set out in the Metrolinx Network Access Planning Standard.
- (c) No later than the deadlines set out in the Metrolinx Network Access Planning Standard, Metrolinx shall review Project Co's Application for Access and the corresponding Work Complexity Assessment and, with respect to Minor Track Closures, categorize the Work Complexity Assessment as either a Green Work Complexity Assessment or a Red Work Complexity Assessment in accordance with the Work Plan Methodology Template User Manual. If the Work Complexity Assessment relates to a Major Track Closure, Metrolinx shall categorize the Work Complexity Assessment as a Red Work Complexity Assessment.

#### 4.5 Work Plan Methodology Template Submission

- (a) After Metrolinx has reviewed and approved an Application for Access in accordance with Section 4.4, Project Co shall submit, no later than the deadline set out in Metrolinx Network Access Planning Standard, for review and approval by Contracting Authority, a work plan methodology for that Application for Access in accordance with the Work Plan Methodology Template User Manual (each a “**Work Plan Methodology Template**”).
- (b) Project Co shall ensure that each Work Plan Methodology Template submitted pursuant to Section 4.5(a) is consistent with the corresponding Application for Access.
- (c) For an Application for Access that has been assigned a Red Work Complexity Assessment pursuant to Section 4.4(c), Project Co shall include the following in its Work Plan Methodology Template:
  - (i) a completed Delivering Work Within Possessions submission in the Work Plan Methodology Template and in accordance with the Work Plan Methodology Template User Manual;
  - (ii) a schedule contingency of at least ten percent of the total estimated number of hours for the corresponding Rail Corridor Access in the duration of such Rail Corridor Access; and
  - (iii) any information that Project Co believes is relevant to the Application for Access or any information that Metrolinx may request, acting reasonably.
- (d) Project Co acknowledges and agrees that Contracting Authority may, in its sole discretion, at any time prior to issuing a Rail Corridor Access Permit in respect of an Application for Access, request that Project Co complete and submit a Delivering Work Within Possessions component as part of its Work Plan Methodology Template and the Application for Access, irrespective of whether the Application for Access has been assigned a Red Work Complexity Assessment or a Green Work Complexity Assessment.
- (e) Metrolinx shall review Project Co’s Work Plan Methodology Template no later than the deadlines set out in the Metrolinx Network Access Planning Standard.

#### 4.6 Rail Corridor Access Permit

- (a) If Project Co has received an approval from Metrolinx pursuant to each of Sections 4.3, 4.4 and 4.4(a), and is otherwise compliant with this Schedule 40 and Schedule 29 – Safety, System Assurance and Security, Metrolinx shall issue to Project Co a permit in respect of the Rail Corridor Access set out in the corresponding Work Event and Protection Request (each a “**Rail Corridor Access Permit**”). Only a Rail Corridor Access Permit issued by Metrolinx permits Project Co to enter the applicable Rail Corridor Access Site.
- (b) A Rail Corridor Access Permit may include one or more of the following:
  - (i) a final Possession Pack;
  - (ii) receipt of a “GO” at the GO/NO-GO Whiteboard Meeting, as described in the Metrolinx Network Access Planning Standard; and

- (iii) other permits, as provided in accordance with the Metrolinx Network Access Planning Standard.
- (c) Metrolinx may, in its sole discretion, grant a Rail Corridor Access Permit for a single entry into a Rail Corridor Access Site or for multiple entries into that Rail Corridor Access Site over an extended period of time, each depending on the scope of the Works to be completed under the applicable Rail Corridor Access Permit.
- (d) Project Co shall ensure that appropriate Rail Corridor Access Permits are obtained from Metrolinx and displayed at the Rail Corridor Access Site prior to performing any Works requiring a Rail Corridor Access Permit.
- (e) Project Co shall carry out all Rail Corridor Accesses in accordance with the applicable Rail Corridor Access Permits, and the Work Plan Methodology Template, including the Delivering Work Within Possessions component, if applicable, and the approved Work Event and Protection Request.

## 5. CANCELLATION OR MODIFICATION OF RAIL CORRIDOR ACCESS

- (a) If Project Co becomes aware that Project Co will cancel or modify a Rail Corridor Access, then Project Co shall promptly provide Contracting Authority with Notice of such cancellation or modification.
- (b) If Project Co has failed to give written Notice of the cancellation or modification of a Permitted Rail Corridor Access no later than six (6) Business Days before the scheduled start time of the Permitted Rail Corridor Access as specified in the Rail Corridor Access Permit, Project Co shall pay all costs and expenses for scheduled flagging services that Project Co fails to use. For informational purposes, Metrolinx anticipates that the base cost of flagging is \$[REDACTED] per hour per crew.

## 6. GENERAL RULES FOR CATEGORIES OF ACCESS

### 6.1 Categories of Access

- (a) Notwithstanding anything else to the contrary in this Project Agreement, Project Co is eligible to make application for only those Categories of Access, and Subcategories of Access, if applicable, set out in Appendix A to this Schedule 40.

### 6.2 Rules for Categories and Subcategories of Rail Corridor Access

- (a) The general rules applicable to each Category of Access and each Subcategory of Access that are generally applicable on the Rail Corridors are set out in Attachment 1 to Appendix A to this Schedule 40 (the “**General Access Rules**”).
- (b) Notwithstanding the General Access Rules, Project Co may be subject to Project specific rules that modify the General Access Rules and apply to Rail Corridor Access on the Project Rail Corridor for this Project (the “**Project Specific Access Rules**”). The Project Specific Access Rules applicable to this Project are set out in Attachment 1 to Appendix A to this Schedule 40.

## 7. ACCESSING THE RAIL CORRIDOR

### 7.1 Preparatory Work Prior to a Permitted Rail Corridor Access

- (a) Project Co shall perform advance preparatory work, in accordance with this Schedule 40, CP Standards or CN Standards, as applicable, and the Output Specifications, in order to minimize the duration of each Permitted Rail Corridor Access and to ensure the completion of the applicable Works, including the completion of the Rail Corridors Infrastructure Handover Protocols, within the allotted time set out in the applicable Rail Corridor Access Permit.
- (b) No later than forty-eight (48) hours prior to the date and time that a Permitted Rail Corridor Access is scheduled to commence, in accordance with the applicable Rail Corridor Access Permit, Project Co shall,
  - (i) ensure that all resources and equipment required to carry out the Works set out in the approved Work Plan Methodology Template are available to be deployed when required and are permitted by the applicable Rail Corridor Access Permit; and
  - (ii) give Notice to Metrolinx that the requirements of Section 7.1(b)(i) have been met.
- (c) If Contracting Authority determines that Project Co has not complied with Section 7.1(b)(i) in respect of a Rail Corridor Access Permit, Contracting Authority may cancel that Rail Corridor Access Permit.
- (d) Project Co may Dispute a decision by Metrolinx pursuant to Section 7.1(c) and may refer it for resolution in accordance with Schedule 27 – Dispute Resolution Procedure. A Dispute by Project Co pursuant to this Section 7.1(d) shall not, in any way whatsoever, interfere with or stop the Metrolinx cancellation of the Rail Corridor Access Permit.

### 7.2 Red Work Complexity Assessment Works – Rules and Requirements

- (a) For each Rail Corridor Access Permit in respect of an Application for Access with a Red Work Complexity Assessment, Project Co shall provide Contracting Authority with the following:
  - (i) written progress updates, via email to the individual identified by Metrolinx as the Metrolinx contact person (the “**Metrolinx Access Contact**”), during Project Co’s performance of all preparatory Works required in accordance with the applicable Work Plan Methodology Template, every twenty-four (24) hours during the five (5) Business Days that precede the applicable Permitted Rail Corridor Access;
  - (ii) written progress updates every four (4) hours or as otherwise instructed by the Metrolinx Access Contact, via email to the Metrolinx Access Contact, in accordance with the applicable Work Plan Methodology Template, for the duration of the performance of the Works during the duration of the applicable Permitted Rail Corridor Access;
  - (iii) a detailed written summary of the progress of the Works when compared to the applicable Work Plan, at each of the critical milestones identified in the Work Plan Methodology Template for the applicable Permitted Rail Corridor Access; and

- (iv) a description of any contingency or mitigation actions that Project Co has taken in order to maintain the progress of the Works in a manner that is consistent with the applicable Work Plan Methodology Template.
- (b) If directed by Contracting Authority, Project Co shall meet with Contracting Authority to discuss Project Co's progress of the Works with respect to any or all of the critical milestones described in a Work Plan Methodology Template with a Red Work Complexity Assessment.
- (c) Contracting Authority shall use the information provided by Project Co pursuant to Sections 7.2(a) and 7.2(b) in order to assess the progress of the preparatory Works required for the corresponding Rail Corridor Access, and the progress of the Works during such Rail Corridor Access.
- (d) Project Co acknowledges and agrees that, if Metrolinx determines, with respect to Works pursuant to a Work Plan Methodology Template with a Red Work Complexity Assessment, that,
  - (i) the Works related to the Rail Corridor Access will not be completed within the permitted time set out in the applicable Rail Corridor Access Permit; or
  - (ii) notwithstanding any contingency or mitigation actions that Project Co has taken or intends to take in accordance with the Work Plan Methodology Template, Project Co will not be able to complete the Works, and restore the Rail Corridor to a service condition in accordance with the requirements set out in Section 7.3, within the time set out in the Rail Corridor Access Permit,then Metrolinx may,
  - (iii) at any time prior to the commencement of the Rail Corridor Access, require Project Co to cease all preparatory work and Metrolinx may cancel such Rail Corridor Access; and
  - (iv) at any time during the Rail Corridor Access, require Project Co to cease all the Works, restore the Rail Corridor to a service condition in accordance with the requirements set out in Section 7.3 and vacate the Rail Corridor.
- (e) Project Co shall not be eligible for a Delay Event or a Compensation Event if an action taken by Metrolinx pursuant to Section 7.2(d) arose as a result of an act or omission of Project Co.
- (f) Project Co may Dispute a decision by Metrolinx pursuant to Section 7.2(d) and may refer it for resolution in accordance with Schedule 27 – Dispute Resolution Procedure. A Dispute by Project Co pursuant to this Section 7.2(f) shall not, in any way whatsoever, interfere with or stop the Metrolinx cancellation of the Rail Corridor Access Permit.

### **7.3 Inspections, Handover, and Completion of a Permitted Rail Corridor Access**

- (a) Prior to the completion of each Permitted Rail Corridor Access, and within the allotted time set out in the applicable Rail Corridor Access Permit, Project Co shall inspect the Works, complete the Rail Corridors Infrastructure Handover Protocols and shall certify to Metrolinx that the Rail Corridor Access Site meets the requirements of the standards set out in Appendix A to this Schedule 40 and the Output Specifications. One or more of Metrolinx, CP Rail or CN Rail, as set out in Appendix A to this Schedule 40 will inspect and place the track in service prior to the re-



commencement of routine Railway Operations or the termination of the Permitted Rail Corridor Access. Project Co shall coordinate this inspection with Metrolinx.

#### **7.4 Rail Corridor Condition and Construction Requirements**

- (a) Except in cases of Major Track Closure, Project Co shall provide continued safe movement of Railway Operations through or adjacent to the Rail Corridor Access Site, as applicable, in accordance with the standards set out in Appendix A to this Schedule 40 and the Output Specifications.
- (b) Project Co shall, at all times, abide by the directions of the Railway Flag Person, provided that such directions are consistent with the CROR, Metrolinx Supplemented CROR, CN Supplemented CROR, or CP Supplemented CROR, as applicable.

### **8. REDUCTION AND DELAY OF RAIL CORRIDOR ACCESS**

#### **8.1 Reduction in the Time Allocated for a Permitted Rail Corridor Access**

- (a) Metrolinx may, in its sole discretion and after the issuance of a Rail Corridor Access Permit, reduce the length of time that Project Co will be allowed for a Permitted Rail Corridor Access. In the event of such a reduction the following rules shall apply, subject to Attachment 2 to Appendix A to this Schedule 40:
  - (i) For all Categories of Access and Subcategories of Access except for a Major Track Closure:
    - (A) if the reduction is for less than the greater of,
      - (I) fifteen minutes in total; or
      - (II) ten percent of the total planned duration for Rail Corridor Access under the applicable Rail Corridor Access Permit (measured from the date and time the Railway Flag Person was scheduled to arrive at the location of the applicable Works on the Rail Corridor),then Project Co shall not be eligible for a Delay Event, a Compensation Event or any other compensation of any kind whatsoever arising from the reduction of the total planned duration;
    - (B) if the reduction is equal to or exceeds the greater of,
      - (I) fifteen minutes in total; or
      - (II) ten percent of the total planned duration for Rail Corridor Access under the applicable Rail Corridor Access Permit (measured from the date and time the Railway Flag Person was scheduled to arrive at the location of the applicable Works on the Rail Corridor),

then such reduction shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event;

- (C) if Metrolinx reduces more than twenty-five percent of the total number of Permitted Rail Corridor Accesses, each by less than ten percent of the total planned duration for Rail Corridor Access under the applicable Rail Corridor Access Permit (measured from the date and time the Railway Flag Person was scheduled to arrive at the location of the applicable Works on the Rail Corridor), then Project Co shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be entitled to a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be entitled to a Compensation Event; and
  - (D) if Metrolinx reduces more than seventy-five percent of the total number of Permitted Rail Corridor Accesses, each by less than fifteen minutes, then Project Co shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be entitled to a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be entitled to a Compensation Event.
- (ii) For Major Track Closures,
- (A) if the reduction is for less than two (2) hours in total, Project Co shall not be eligible for a Delay Event, a Compensation Event or any other compensation of any kind whatsoever arising from the reduction, delay or cancellation; and
  - (B) if the reduction is for greater than two (2) hours in total then such reduction shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event.

## 8.2 Delay of a Requested Rail Corridor Access

- (a) Metrolinx may, in its sole discretion, at any time after the submission by Project Co of a Booking Request, but in any event prior to the issuance by Metrolinx of a Rail Corridor Access Permit, delay the date or time for any requested Rail Corridor Access. In the event of such a delay, subject in all cases to Section 4.3(d) and Attachment 2 to Appendix A to this Schedule 40, the following rules shall apply:
  - (i) for a Non-Disruptive Access or a White Period Access,
    - (A) if Metrolinx has given Project Co at least twenty (20) Business Days' prior Notice of the delay and the delay is for less than or equal to seven (7) days, Project Co shall not be eligible for a Delay Event, a Compensation Event or any other compensation of any kind whatsoever arising from the delay; and

- (B) if Metrolinx fails to give the Notice required by Section 8.2(a)(i)(A) or if the delay is for more than seven (7) days the delay shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event;
- (ii) for a Platform Closure or a Minor Track Closure,
  - (A) if Metrolinx has given Project Co at least eighty (80) Business Days' prior Notice of the delay and the delay is for less than or equal to seven (7) days, Project Co shall not be eligible for a Delay Event, a Compensation Event or any other compensation of any kind whatsoever arising from the delay; and
  - (B) if Metrolinx fails to give the Notice required by Section 8.2(a)(ii)(A) or if the delay is for more than seven (7) days the delay shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event;
- (iii) for Major Track Closures,
  - (A) if Metrolinx has given Project Co at least one-hundred and fifty-five (155) Business Days prior Notice of the delay and the delay is for less than or equal to seven (7) days, Project Co shall not be eligible for a Delay Event, a Compensation Event or any other compensation of any kind whatsoever arising from the delay; and
  - (B) if Metrolinx fails to give the Notice required by Section 8.2(a)(iii)(A) or if the delay is for more than seven (7) days, such delay shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event; and
- (iv) for all Categories of Access and Subcategories of Access, if Metrolinx delays a requested Rail Corridor Access in a Booking Request pursuant to Sections 8.2(a)(i)(A), 8.2(a)(ii)(A) or 8.2(a)(iii)(A), as applicable, Metrolinx shall identify, up to ten (10) Business Days following the provision of any such Notice, as applicable, an alternate date and time for the Rail Corridor Access. If Metrolinx delays a requested Rail Corridor Access in a Booking Request pursuant to Sections 8.2(a)(i)(A), 8.2(a)(ii)(A) or 8.2(a)(iii)(A), as applicable, without identifying an alternative date and time for the Rail Corridor Access in accordance with the time period set forth in this Section 8.2(a)(iv), it shall be considered to be a delay in excess of seven (7) days pursuant to Sections 8.2(a)(ii)(B), 8.2(a)(ii)(B) or 8.2(a)(iii)(B), as applicable.

## 9. IMPLEMENTING TRACK PROTECTION AND FLAGGING REQUIREMENTS

### 9.1 Implementation of Track Protection and Flagging

- (a) Metrolinx may, in its sole discretion, determine the appropriate track protection applicable to each Permitted Rail Corridor Access, including Rule 841 and Rule 842 (“**Track Protection**”).
- (b) At all times during a Permitted Rail Corridor Access, Project Co shall comply with the requirements of the Track Protection prescribed by Metrolinx throughout the Rail Corridor Access Site.
- (c) During a Permitted Rail Corridor Access, Project Co shall carry out the Works in accordance with Track Protection requirements set out in Appendix A and Appendix C to this Schedule 40 and the Rail Corridor Access Permit.
- (d) Project Co shall not use flagging services on a standby basis.
- (e) No later than five (5) Business Days after Financial Close, Project Co shall submit to Metrolinx a track protection forecast as set out in Appendix A to this Schedule 40 (the “**Track Protection Forecast**”).

## 10. RAIL CORRIDOR SAFETY

### 10.1 General

- (a) During Project Co’s performance of the Works in the Rail Corridor, Project Co shall adhere to, and shall cause Project Co Parties to adhere to, the Canadian Rail Operating Rules, the *Occupational Health and Safety Act* (Ontario), directions of the Railway Flag Person, including with respect to security restrictions, safety requirements or emergency situations, the Track Protection confirmation granted by Metrolinx, the Applicable Law, Schedule 29 – Safety, System Assurance and Security, and any additional rules and directions set out in the Appendices to this Schedule 40.
- (b) Project Co shall comply with all instructions of the Railway Flag Person related to Railway Operations, and Project Co shall not be entitled to a Delay Event, a Compensation Event or any other compensation of any kind whatsoever with respect to such instructions.
- (c) If, during Project Co’s performance of Works on or adjacent to the Rail Corridor, an Emergency Rail Situation arises, Metrolinx, CN Rail or CP Rail, as applicable, may direct that Project Co and all Project Co Parties exit from the Rail Corridor for such period of time as is necessary for Metrolinx, CN Rail or CP Rail, as applicable, acting reasonably, to remedy the Emergency Rail Situation. Provided that the Emergency Rail Situation did not arise as a result of an act or omission of Project Co or a Project Co Party, then, provided that the delay meets the reduction threshold set out in Sections 8.1(a)(i)(B) or 8.1(a)(ii)(B), as applicable, any delay in the Works or any additional costs in respect of the Works due to an evacuation or shutdown pursuant to this Section 10.1(c) shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event.

## 10.2 Training Requirements

- (a) Project Co shall ensure that all employees of Project Co or a Project Co Party who are granted access to the Rail Corridor or have the potential to enter the Rail Corridor are trained and current in the following railway safety training course:
- (i) Metrolinx – approved Personal Track Safety Program (<https://www.metrolinx.com/en/projectsandprograms/constructionanddevelopment/personal-track-safety-program.aspx>); and
  - (ii) all training set out in Appendix A to this Schedule 40.
- (b) Project Co shall ensure that all employees of Project Co or a Project Co Party who are engaged in track work and/or operate track mounted construction equipment are trained and current in the following railway safety training courses:
- (i) Metrolinx Supplemented CROR; and
  - (ii) GO Transit General Engineering Instructions.
- (c) Project Co shall maintain and keep on the Site an up-to-date list of all employees of Project Co or a Project Co Party that have been trained in accordance with this Section 10.2. Project Co shall ensure all such trained employees shall, at all times when on the Rail Corridor, wear the sticker that is issued upon successful completion of the courses, on a readily visible location on their hardhats, or carry the wallet card that is issued upon successful completion of the courses. Project Co shall not commence Construction Activities on the Rail Corridor until Project Co has complied with this Section 10.2(c).

## 11. DELAY AND COMPENSATION EVENTS

- (a) Project Co shall not be eligible for a Delay Event or a Compensation Event arising from:
- (i) the implementation of a Planned Railway Operations Changes;
  - (ii) changes to the Access Opportunities Calendar arising from a Planned Railway Operations Changes; or
  - (iii) Contracting Authority's change to a web-based system to access and make application for the Access Approval Process.

**APPENDIX A TO SCHEDULE 40**  
**PROJECT-SPECIFIC PROVISIONS**

See attached.

**APPENDIX B TO SCHEDULE 40**

**IMPLEMENTATION OF TRACK PROTECTION AND FLAGGING**

See attached.

**APPENDIX C TO SCHEDULE 40**

**TRAIN SCHEDULES**

[REDACTED]



**APPENDIX D TO SCHEDULE 40**

**RAIL CORRIDOR ACCESS COMMERCIAL MATTERS**

See attached.

**APPENDIX E TO SCHEDULE 40**

**MULTI-YEAR CALENDAR**

[REDACTED]

**APPENDIX F TO SCHEDULE 40**

**THIRD PARTY OPERATOR RAILWAY OPERATIONS PROVISIONS**

See attached.

**APPENDIX G TO SCHEDULE 40**

**METROLINX DEDICATED RISK ASSESSMENT PROCESS**

See attached.

**APPENDIX A TO SCHEDULE 40**  
**PROJECT-SPECIFIC PROVISIONS**

[REDACTED]

**ATTACHMENT 1 TO APPENDIX A**

**RULES OF THE ROUTE**

[REDACTED]

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**ATTACHMENT 2 TO APPENDIX A****EXHIBITION STATION EVENTS****1. REDUCTION AND MODIFICATION OF ACCESS OPPORTUNITIES RELATED TO EVENTS****1.1 Reduction in the number or duration of Access Opportunities**

(a) Metrolinx may amend the Access Opportunities Calendar or the Rules of the Route to account for updates to the Events Schedule, and reduce the number or duration of Access Opportunities available to Project Co, or the duration of Rail Corridor Accesses requested by Project Co. In the event of any such reduction, the following rules shall apply:

(i) For all Categories of Access and Subcategories of Access, except for a Major Track Closure:

(A) if the reduction is,

(I) for less than four hours and Metrolinx has given Project Co at least two (2) weeks' prior Notice of the reduction in a Rail Corridor Access; and

(II) applied to less than thirty of the total number of Rail Corridor Accesses requested by Project Co,

then Project Co shall not be eligible for a Delay Event, a Compensation Event, or any other compensation of any kind whatsoever arising from the reduction of the total available Access Opportunities; and

(B) if the reduction is,

(I) equal to or exceeds four hours and Metrolinx has not given Project Co at least two (2) weeks' prior Notice of the reduction in a Rail Corridor Access; or

(II) applied to thirty or more of the total number of Rail Corridor Accesses requested by Project Co,

then such reduction shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event.

(ii) For a Major Track Closure,

(A) if the reduction is,

(I) for less than four hours and Metrolinx has given Project Co at least four (4) weeks' prior Notice of the reduction; and

- (II) applied to less than eight of the total number of Rail Corridor Accesses requested by Project Co,

then Project Co shall not be eligible for a Delay Event, a Compensation Event, be entitled to a Variation or any other compensation of any kind whatsoever arising from the reduction of the total available Access Opportunities; and

- (B) if the reduction is,

- (I) equal to or exceeds four hours and Metrolinx has not given Project Co at least four (4) weeks' prior Notice of the reduction; or

- (II) applied to eight (8) or more of the total number of Rail Corridor Accesses requested by Project Co,

then such reduction shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event.

## 1.2 Modification to Access Opportunities Caused by Events

- (a) Metrolinx may, in its sole discretion, at any time after Commercial Close, revise the dates or times of any available Access Opportunities, or delay the date or time for any Rail Corridor Access requested by Project Co, due to the occurrence of an Event. In the event of such a revision to available Access Opportunities or such a delay to the date or time of a Rail Corridor Access requested by Project Co, the following rules shall apply:

- (i) for all Categories of Access and Subcategories of Access, except for Major Track Closures,

- (A) if,

- (I) Metrolinx has given Project Co at least four (4) weeks' prior Notice of the modification;

- (II) Metrolinx revises the previously available or requested date or time by up to eight (8) days; and

- (III) Metrolinx modifies less than a total of twenty Access Opportunities,

then Project Co shall not be eligible for a Delay Event, a Compensation Event, or any other compensation of any kind whatsoever arising from the modification; and

- (B) if,

- (I) Metrolinx fails to give Project Co at least four (4) weeks' prior Notice of the modification;

- (II) Metrolinx revises the previously available or requested date or time by more than eight (8) days; or



- (III) Metrolinx modifies twenty or more of the total number of Access Opportunities,

then the modification shall be, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event;

- (ii) for Major Track Closures,

- (A) if,

- (I) Metrolinx has given Project Co at least twelve (12) weeks' prior Notice of the modification;

- (II) Metrolinx revises the previously available or requested date or time by up to eight (8) days; and

- (III) Metrolinx modifies less than a total of two Access Opportunities,

then Project Co shall not be eligible for a Delay Event, a Compensation Event, or any other compensation of any kind whatsoever arising from the modification; and

- (B) if,

- (I) Metrolinx fails to give Project Co at least twelve (12) weeks' prior Notice of the modification; or

- (II) Metrolinx revises the previously available or requested date or time by more than eight (8) days, and

- (III) Metrolinx modifies two or more of the total number of Access Opportunities,

then the modification shall be, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event.

**APPENDIX B TO SCHEDULE 40****IMPLEMENTATION OF TRACK PROTECTION AND FLAGGING**

- (a) Metrolinx shall determine, in its sole discretion, whether Project Co will be obliged to have track protection for a Rail Corridor Access, having regard to the Canadian Rail Operating Rules, Applicable CROR and the GO Transit General Engineering Instructions.
- (b) Provided that Project Co has fully complied with the requirements set out in this Schedule 40, Metrolinx shall provide the flagging resources for Project Co to perform the Works in respect of the corresponding Rail Corridor Access.
- (c) Project Co shall perform the Works in the Rail Corridor, and shall carry out all Rail Corridor Access, in accordance with the instructions of the Railway Flag Persons and in accordance with the Canadian Rail Operating Rules, Applicable CROR, the GO Transit General Engineering Instructions and the Access Agreement, if applicable. For clarity, in scheduling the Works, Project Co shall allow time for the protecting foreman to set up and dismantle flags in accordance with the Canadian Rail Operating Rules and Applicable CROR.
- (d) Project Co shall prioritize the use of Temporary Barrier Separation method of protection in accordance with the, then current, GO Transit General Engineering Instructions to perform any Works that can have an impact on any train movement.
- (e) Project Co shall ensure that all gates that provide direct access to the Rail Corridor are governed by the Railway Flag Person. Project Co shall ensure that the railway approved locks are Abloy (or a Metrolinx approved equivalent) switch locks. Project Co shall not use private locks on these gates. Project Co acknowledges that it is the responsibility of the Railway Flag Person to lock and close all gates that are not in immediate use. If during the performance of the Works, Project Co requires the use of these gates, Project Co shall assign a Signal Person at each gate to govern construction equipment, vehicles and personnel entering the Rail Corridor. Project Co shall ensure that the Signal Person is in direct communication with the Railway Flag Person via radio or face to face contact, and that hand signals are prohibited. Project Co acknowledges that it will be at the sole discretion of the Railway Flag Person to grant permission to the Signal Person as to whom may enter the Rail Corridor.
- (f) Project Co acknowledges that:
  - (i) prior to entering the Rail Corridor a Railway Flag Person must be present and that Project Co's forces shall attend a job briefing outlining the protection areas where work may take place and any restrictions that will be in place;
  - (ii) Project Co must ensure that the GO Transit General Engineering Instructions rules and restrictions discussed at the job briefing are followed by Project Co and Project Co Parties;
  - (iii) Adjacent Track Closed protection can only take place under the following requirements:
    - (A) a Work Plan Methodology Template has been submitted and approved in accordance Section 4.5 (*Work Plan Methodology Template Submission*) of this Schedule 40; and

- (B) an approved Rail Corridor Access Permit has been granted in accordance with Section 4.6 (*Rail Corridor Access Permit*) of this Schedule 40;
- (iv) Adjacent Track Closed shall be applied when an adjacent track is used as protection;
- (v) Metrolinx shall mark the area where the Adjacent Track Closed is authorized with an appropriate marker to indicate that the track adjacent is inactive;
- (g) Project Co shall apply Rule 842s to perform the Works on or adjacent to the Rail Corridor and, subject to the parameters set out below, Project Co shall not perform Works under more than one Rule 842s at any one time. For clarity, Rule 842s will have the following parameters:
  - (i) Two (2) sub-foreman;
  - (ii) Rule 842s shall be no longer than 5 miles in length, unless otherwise approved by Metrolinx; and
  - (iii) Separation between Rule 842's shall be in compliance with the Canadian Rail Operating Rules.
- (h) Where applicable, Project Co shall perform the Works under Rule 841 as prescribed by the Canadian Rail Operating Rules.
- (i) Project Co shall use the form provided by Metrolinx for all requests for flagging services and shall reference the applicable Rail Corridor Access Permit in the Work Event and Protection Request. Metrolinx will not arrange flagging services for Project Co unless a Rail Corridor Access Permit has been granted.
- (j) Project Co shall not carry out a Rail Corridor Access without a Railway Flag Person and Signal Person present.
- (k) Project Co shall have a competent supervisor present in reasonable proximity to the Rail Corridor at all times during a Rail Corridor Access, to whom Metrolinx and the Railway Flag Person shall issue instructions regarding performance of the Works within the Rail Corridor. Project Co shall also have a competent supervisor present to ensure all persons performing the Works in the Rail Corridor have the applicable training certificates on their person in addition to escorting non-certified personnel who are not directly involved in the completion of the Works (such as for deliveries) on and off the Rail Corridor; provided that any such non-certified personnel cannot access the Rail Corridor unless such person's access has been approved by the Railway Flag Person.
- (l) Project Co shall supply each Railway Flag Person with a Kenwood TK3302 or approved equivalent portable two-way radio for communication with the competent supervisor(s) referred to in Section (k) of this Appendix B and shall ensure that all radios provided to the Railway Flag Persons communicate on the same frequency. The protocols regarding Track Protection radio communication with the Railway Flag Person shall be governed by the Railway Flag Person.
- (m) Project Co shall adhere to the Canadian Rail Operating Rules, the Applicable CROR and the Canadian Pacific Minimum Safety Requirements for Contractors Working on CP Property in Canada when working on or adjacent to the Rail Corridor. If Project Co fails to adhere to the Canadian Rail Operating Rules, the Applicable CROR and the Canadian Pacific Minimum Safety Requirements for Contractors Working on CP Property in Canada, or the instructions of a Railway

Flag Person during a Rail Corridor Access, Metrolinx may, in its sole discretion, require Project Co to vacate the Rail Corridor under terms and conditions to be determined by Metrolinx. If Project Co is required to vacate the Rail Corridor in accordance with this Section (m), Project Co shall not be eligible for a Delay Event or Compensation Event arising from the requirement to vacate the Rail Corridor.

- (n) Project Co shall adhere to the Railway Flag Person's procedures pertaining to job briefings, supplemental job briefings (should changes arise on site), sign-in/out procedures, and other railway flagging related duties in compliance with Section (m) of this Appendix B.
- (o) Project Co shall submit the Work Event and Protection Requests in accordance with the deadlines set out in Appendix B to draft Metrolinx Network Access Planning Standard with respect to the applicable Rail Corridor Access Permit being sought.
- (p) Project Co shall comply with the radio communications protocol for crossing of the tracks as defined by Metrolinx and its Railway Flag Person. Project Co shall ensure that there is no crossing of the tracks by vehicles or workers without first advising and obtaining permission from the Railway Flag Person using radio communication devices. Project Co acknowledges that hand signals are prohibited.
- (q) The Rule 842 protecting foreman's responsibilities include being in direct communication with train movements, and CROR qualified flagging sub-foreman to ensure the safe Railway Operations and the safety of persons and machinery. In performance of their duties, the Rule 842 foreman requires direct access to their vehicle at all times to communicate with the train crews via a thirty-watt radio. It will be in the sole discretion of the Rule 842 foreman, the flagging manager, or Metrolinx as to whether, based on the scope of work and the amount of train movement, the protecting foreman can also protect any local contracting forces working for Project Co (not applicable during Peak Hours). Otherwise, a flagging sub-foreman will be the person in direct communication with Project Co providing Track Protection. Project Co shall ensure that it does not unnecessarily distract the Rule 842 foreman from performing their duties.
- (r) Metrolinx will provide Project Co with no more than the number of sub-foremen as prescribed in the Canadian Rail Operating Rules with respect to each Rail Corridor Access. For clarity, the number of sub-foremen that Metrolinx provides to Project Co with respect to each Rail Corridor Access shall be determined by Metrolinx on a case by case basis and set out in the Work Event and Protection Request, and in no event shall this Section (r) of this Appendix B be construed to mean that Metrolinx is guaranteeing the provision of any number of sub-foremen to Project Co for a Rail Corridor Access.

## APPENDIX D TO SCHEDULE 40

RAIL CORRIDOR ACCESS COMMERCIAL MATTERS**1.1 Definitions**

- (a) “**Access End Time**” means, for each Rail Corridor Access, the end time set out in Attachment 1 to Appendix A to this Schedule 40 for the applicable Category of Access or Subcategory of Access.
- (b) “**Access Price**” means, for each Rail Corridor Access, the price for each Subcategory of Access, based on the applicable Access Request Notice Period, as set out in Attachment 1 to this Appendix D.
- (c) “**Access Request Notice Period**” means the time period during which the corresponding Booking Request is submitted, or, if no Booking Request is submitted, the time period during which the corresponding Application for Access is submitted. There are three possible Access Request Notice Periods, all as set out in Attachment 1 to this Appendix D.
- (d) “**Access Start Time**” means, for each Rail Corridor Access, the start time set out in Attachment 1 to Appendix A to this Schedule 40 for the applicable Subcategory of Access.
- (e) “**Aggregate Actual Rail Corridor Access Cost**” has the meaning given in Section 1.3(a).
- (f) “**Aggregate Rail Corridor Access Cancellation Cost**” means the aggregate Rail Corridor Access Cancellation Costs of all Rail Corridor Accesses that are requested and cancelled by Project Co, as determined by Contracting Authority in accordance with the rules set out in this Appendix D.
- (g) “**Aggregate Rail Corridor Access Cost**” means the aggregate Rail Corridor Access Costs of all Rail Corridor Accesses that are requested by Project Co.
- (h) “**Aggregate Target Rail Corridor Access Cost**” has the meaning given in Section 1.2(a).
- (i) “**Other Rail Corridor Contractor**” means a third party performing works on the Metrolinx rail corridor beyond the boundaries of the Project Rail Corridor. For clarity, “Other Rail Corridor Contractor” excludes third parties performing work that does not require any track closures and that has no impact to any train movements, including maintenance work.
- (j) “**Rail Corridor Access Adjustment**” means the adjustment described in Section 1.7(a).
- (k) “**Rail Corridor Access Cancellation Cost**” means, for each Rail Corridor Access, the cost of the Rail Corridor Access that is requested and cancelled by Project Co, as determined by Contracting Authority in accordance with the rules set out in this Appendix D.
- (l) “**Rail Corridor Access Cost**” means the cost for each Rail Corridor Access that is requested by Project Co, as determined by Contracting Authority in accordance with the rules set out in this Appendix D.
- (m) “**Rail Corridor Access Discount**” means the discount described in Section 1.4(a)(iii).
- (n) “**Rail Corridor Access Matters Review Meeting**” has the meaning given in Section 1.6(b).

- (o) **“Rail Corridor Access Narrative”** has the meaning given in Section 1.6(a).

## 1.2 Aggregate Target Rail Corridor Access Cost

- (a) The aggregate target Rail Corridor Access Cost is \$[REDACTED] and represents Project Co’s genuine estimate, as a Proponent in the RFP Process that preceded this Project Agreement, of the aggregate of all Access Prices for all Rail Corridor Accesses required to carry out the Works (the **“Aggregate Target Rail Corridor Access Cost”**).

## 1.3 Aggregate Actual Rail Corridor Access Cost

- (a) Contracting Authority shall calculate the **“Aggregate Actual Rail Corridor Access Cost”** by adding the Aggregate Rail Corridor Access Cancellation Cost to the Aggregate Rail Corridor Access Cost.

## 1.4 Rail Corridor Access Costs

- (a) Contracting Authority shall apply the following rules to calculate a Rail Corridor Access Cost for each Rail Corridor Access included in a Booking Request or a Rail Corridor Access Permit:
- (i) Subject to Section 1.4(a)(ii), Contracting Authority shall apply an amount equal to the Access Price for the applicable Access Request Notice Period. For clarity, this Section 1.4(a)(i) shall apply even if the actual duration of the Rail Corridor Access is shorter than the duration of time between the applicable Access Start Time and Access End Time.
  - (ii) Contracting Authority shall apply an adjusted Access Price that is,
    - (A) [REDACTED]% of the Access Price for the **“[REDACTED]”** Rail Corridor Accesses” identified in the Multi-Year Calendar;
    - (B) [REDACTED]% of the Access Price for the **“[REDACTED]”** Rail Corridor Accesses” identified in the Multi-Year Calendar; and
    - (C) [REDACTED]% of the Access Price for the **“[REDACTED]”** Rail Corridor Accesses” identified in the Multi-Year Calendar.

- (iii) Subject to Section 1.4(b), if an Other Rail Corridor Contractor requests a rail corridor access intended to occur during a Rail Corridor Access requested by Project Co, then Contracting Authority shall apply a discount to calculate the Rail Corridor Access Cost for such Rail Corridor Access (the “**Rail Corridor Access Discount**”). In calculating the Rail Corridor Access Discount, Contracting Authority shall apply the following formula for each portion of Project Co’s Rail Corridor Access that is shared with a different number of Other Rail Corridor Contractors:

$$\text{Rail Corridor Access Discount} = \frac{h}{(n + 1) \cdot d}$$

*WHERE:*

*h = the number of hours during which Project Co’s Rail Corridor Access and each of the Other Rail Corridor Contractors’ rail corridor accesses occur concurrently;*

*n = the total number of Other Rail Corridor Contractors applicable to the Rail Corridor Access; and*

*d = the duration, in hours, of Project Co’s Rail Corridor Access; and*

$$\text{Rail Corridor Access Cost} = A \cdot (1 - D)$$

*WHERE:*

*A = the Access Price for the applicable Access Request Notice Period; and*

*D = the Rail Corridor Access Discount.*

For clarity, this Section 1.4(a)(iii) shall apply notwithstanding the timing of submittal of the rail corridor access request by the Other Rail Corridor Contractor, and whether or not the other rail corridor access request actually occurs. For ease of reference, sample calculations that are intended to enhance the clarity of how this Section 1.4(a)(iii) is intended to operate have been attached as Attachment 3 to this Appendix D.

- (b) The Rail Corridor Access Discount set out in Section 1.4(a) shall not apply to Project Co’s Rail Corridor Accesses that are Non-Disruptive Accesses or White Period Accesses
- (c) If Project Co causes a cancellation of a Rail Corridor Access that was included in a Booking Request or a Permitted Rail Corridor Access, then Contracting Authority shall not apply a Rail Corridor Access Cost for such Rail Corridor Access, except as set out in Section 1.5.
- (d) If Metrolinx cancels a Rail Corridor Access that was included in a Booking Request or a Permitted Rail Corridor Access, including if such cancellation is directly caused by one or more of the events set out Section 30.1(a) (*Delay Events – Definition*) of the Project Agreement, and provided that such cancellation or revision did not arise, directly or indirectly, as a result of any act or omission of Project Co or any Project Co Party, then, for the purposes of calculating the Aggregate Rail Corridor Access Cost, Contracting Authority shall apply the Rail Corridor Access Cost for the

originally requested Rail Corridor Access and there shall be no Rail Corridor Access Cost for the corresponding replacement Rail Corridor Access.

### 1.5 Rail Corridor Access Cancellation Costs

- (a) If Project Co causes a cancellation of a Rail Corridor Access that was included in a Booking Request or a Permitted Rail Corridor Access, or if Project Co fails to make timely submittals during the Access Approval Process as set out in Schedule 40, then Contracting Authority shall apply the following rules to calculate the Rail Corridor Access Cancellation Cost for such Rail Corridor Access:
- (i) for a Non-Disruptive Access or White Period Access that is cancelled, Contracting Authority shall apply a Rail Corridor Access Cancellation Cost of [REDACTED]% of the full Rail Corridor Access Cost;
  - (ii) for a Rail Corridor Access other than a Non-Disruptive Access and White Period Access that is cancelled within the applicable Access Request Notice Period in which Project Co made the Booking Request, Contracting Authority shall apply an amount of zero for the Rail Corridor Access Cancellation Cost;
  - (iii) for a Rail Corridor Access other than a Non-Disruptive Access and White Period Access that is cancelled within the Access Request Notice Period immediately following the applicable Access Request Notice Period (for example, if Project Co requested the Rail Corridor Access within Access Request Notice Period #1 and cancelled the Rail Corridor Access within Access Request Notice Period #2), Contracting Authority shall apply a Rail Corridor Access Cancellation Cost of [REDACTED]% of the full Rail Corridor Access Cost; and
  - (iv) for a Rail Corridor Access other than a Non-Disruptive Access or White Period Access that is cancelled within two Access Request Notice Periods following the applicable Access Request Notice Period (for example, if Project Co requested the Rail Corridor Access within Access Request Notice Period #1 and cancelled the Rail Corridor Access within Access Request Notice Period #3), Contracting Authority shall apply a Rail Corridor Access Cancellation Cost of [REDACTED]% of the full Rail Corridor Access Cost.
- (b) For the purposes of calculating the Rail Corridor Access Cancellation Cost, and notwithstanding the presence of any Other Rail Corridor Contractor, the adjustment described in Section 1.4(a)(iii) shall not apply, and Contracting Authority shall apply the amount of the full Access Price to calculate the Rail Corridor Access Cancellation Costs.

### 1.6 Content and Format of the Rail Corridor Access Analysis Narrative

- (a) No later than three months following the date of Project Co's first Rail Corridor Access, and subsequently on a quarterly basis, Project Co shall submit to Contracting Authority a narrative summarizing all Rail Corridor Accesses that have occurred, on a cumulative basis, from Financial Close, including a table that is in the form of Attachment 2 to this Appendix D (the "**Rail Corridor Access Narrative**").
- (b) No later than five (5) Business Days after the submission of each Rail Corridor Access Narrative (or at a different time as agreed to by the Parties), Project Co and Contracting Authority shall



convene a review meeting that is attended by representatives of Project Co and Contracting Authority to review the Rail Corridor Access Narrative (the “**Rail Corridor Access Matters Review Meeting**”). At the Rail Corridor Access Matters Review Meeting, Project Co shall present the Rail Corridor Access Narrative to Contracting Authority.

- (c) No later than fifteen (15) Business Days after the Rail Corridor Access Matters Review Meeting, Contracting Authority shall give Notice to Project Co of the details of any disagreement with respect to the Rail Corridor Access Narrative. If a Notice is provided pursuant to this Section 1.6(c), the Parties shall meet on an expedited basis following the delivery of such Notice, in order to resolve any matters of disagreement in the applicable Rail Corridor Access Narrative.

### 1.7 Calculation of Rail Corridor Access Adjustment

- (a) Contracting Authority shall apply an adjustment to the Substantial Completion Payment in accordance with this Section 1.7 (the “**Rail Corridor Access Adjustment**”).
- (b) If the Aggregate Actual Rail Corridor Access Cost is an amount that is both,
- (i) less than, or equal to, the amount of the Aggregate Target Rail Corridor Access Cost plus [REDACTED] per cent of the Aggregate Target Rail Corridor Access Cost; and
  - (ii) greater than, or equal to, the amount of the Aggregate Target Rail Corridor Access Cost minus [REDACTED] per cent of the Aggregate Target Rail Corridor Access Cost,

then Contracting Authority shall make no Rail Corridor Access Adjustment.

- (c) Subject to Section 1.7(b), the Rail Corridor Access Adjustment shall be calculated by Contracting Authority using the following formula:

$$\text{Rail Corridor Access Adjustment} = (A - B)$$

*WHERE:*

*A = the Aggregate Target Rail Corridor Access Cost; and*

*B = the Aggregate Actual Rail Corridor Access Cost.*

- (d) Subject to Section 1.7(b), the absolute value of the Rail Corridor Access Adjustment that is calculated in accordance with the formula set out in Section 1.7(c),
- (i) shall be added to the Substantial Completion Payment, if the Rail Corridor Access Adjustment is a positive number; and
  - (ii) may, in the sole discretion of Contracting Authority, be subtracted from the Substantial Completion Payment if the Rail Corridor Access Adjustment is a negative number.
- (e) Subject to Project Co meeting its obligations in Sections 30.2 (*Consequences of a Delay Event*) and 30.3 (*Delay Events – Mitigation*) of the Project Agreement, if an event listed in Section 30.1(a) (*Delay Events – Definition*) of the Project Agreement requires Project Co to access the Rail Corridor for a duration that is longer than Project Co otherwise would have required to access the

Rail Corridor in order to perform the scope of work that Project Co intended to perform during the Rail Corridor Access, the duration of the Rail Corridor Access attributable solely to the applicable Section 30.1(a) (*Delay Events – Definition*) event, shall not apply for the purpose of calculating Aggregate Actual Rail Corridor Access Cost, and shall not contribute to the Rail Corridor Access Adjustment.

- (f) Project Co and Contracting Authority shall, acting reasonably, agree to make any adjustments to the Aggregate Target Rail Corridor Access Cost, but only in the event of changes implemented due to an amendment of the Project Agreement or a Variation that would cause Rail Corridor Access changes.
- (g) The Rail Corridor Access Adjustment deduction from the Substantial Completion Payment shall not be subject to the limitations set out in Section 45.4 (*Maximum Liability*) of the Project Agreement.
- (h) The Rail Corridor Access Adjustment shall not exceed an amount that is [REDACTED]% of the Aggregate Target Rail Corridor Access Cost.

**ATTACHMENT 1 TO APPENDIX D**

**ACCESS PRICES AND ACCESS REQUEST NOTICE PERIODS**

[REDACTED]

**ATTACHMENT 2 TO APPENDIX D**

**FORM OF RAIL CORRIDOR ACCESS NARRATIVE TABLE**

[REDACTED]

**ATTACHMENT 3 TO APPENDIX D**

**RAIL CORRIDOR DISCOUNT SAMPLE CALCULATIONS**

[REDACTED]

**APPENDIX F TO SCHEDULE 40****THIRD PARTY OPERATOR RAILWAY OPERATIONS PROVISIONS****1. METROLINX MAINTENANCE INFORMATION**

(a) Metrolinx will perform maintenance works on the Rail Corridor, as follows:

(i) Weekday Inspection

- (A) From Monday to Thursday, between the hours of 0930 and 1400, inspections will be done along the north and south sides of the Rail Corridor, from Clarkson Road (MI 16.09) to Union (MI 0.00); and
- (B) From Tuesday to Friday, between the hours of 0930 and 1400, inspections will be done along the north and south sides of the Rail Corridor, from Burlington Station (MI 31.50) to Clarkson Road (MI 16.09).
- (C) Routine intrusive signals and communications weekday inspections and maintenance will be typically conducted outside of service hours. Non-intrusive signals and communications weekday inspections and maintenance (i.e. work outside of the live corridor) will be conducted from time to time.

(ii) Weekend Inspection

- (A) If the weekday inspection patrols do not complete the network inspections on weekdays, weekend patrols will perform inspection during the weekend, as required.
- (B) Weekend inspections will be typically conducted during the day, during non-peak hours. If there are extreme temperature fluctuations (hot/cold/rain), weekend inspections will be typically done before the start of the peak, on the day of the occurrence.
- (C) Routine intrusive signals and communications weekend inspections and maintenance will be typically conducted outside of service hours. Non-intrusive signals and communications weekend inspections and maintenance (i.e. work outside of the live corridor) will be conducted from time to time.

(iii) Maintenance Frequency

- (A) If issues are found during the inspections throughout the Rail Corridor and the required maintenance work is expected to take less than 2 hours to be completed, such work will be performed at that time, under a TOP.
  - (B) If issues are found during the inspections throughout the Rail Corridor and the required maintenance work is expected to take more than 2 hours to be completed (such as switch maintenance), such work will be performed typically at night or outside of the peak hours, with the closure of one or more tracks. This type of maintenance work will typically happen every week and could last for up to 3 days.
  - (C) There will be two forms of maintenance inspections:
    - (I) ultra-sonic testing, occurring 3 times a year, once in the period between the months of March and June, once in the period between the months of June and September, and once in the period between the months of September and December; and
    - (II) geometry testing, occurring 3 times a year, once in the period between the months of March and June, once in the period between the months of June and September, and once in the period between the months of September and December, in each case following the corresponding ultra-sonic testing inspection,  
  
and each form of maintenance inspection work will typically take:
      - (III) up to 1 night per track;
      - (IV) up to 2 nights per interlocking plant with up to 4 switches; and
      - (V) up to 3 nights per interlocking plant with 5 switches or more.
  - (D) Signals and communications maintenance will be performed by Metrolinx on the Project Rail Corridor at a frequency as defined in the GO Transit Signals and Communications Standards General Instruction, Section 301 (h) Inspection and Testing Intervals, Table 301(h)-02.
- (iv) Inspection and maintenance work will be performed with a minimal crew compliment.

**2. CN RAIL FREIGHT INFORMATION**

(a) Information on the passage of CN Rail trains on the Rail Corridor is described in Table 1.

Table 1 – CN Rail freight information

Train	Weekly Frequency	Allowable Window		Limits		Comments/Notes
		From Time	To Time	From MI	To MI	
1	5 times per week	20:00	05:00	8.42	19.15	* Mondays, Tuesdays, Thursdays and Sundays: (Start) Oakville Yard (MI 19.15) - spurs M725 and M726 (MI 9.10 and MI 9.12, respectively) - Canpa (MI 8.51) - M747 (MI 8.67) - VIA Yard (MI 8.32) - Oakville Yard (MI 19.15) (Return). * Wednesdays: (Start) Oakville Yard (MI 19.15) - Canpa (MI 8.51) - VIA Yard (MI 8.32) - Union (MI 0) (Return)
2	Daily	11:00	19:00	20.6	31.94	(Start) Oakville Yard (MI 20.57) - OC60 (MI 25.94 and 26.70) - Aldershot East Yard (MI 33.31) - Oakville Yard (MI 20.57) (Return)
3	5 times per week	23:00	05:00	20.6	31.94	Mondays, Tuesdays, Wednesdays, Thursdays and Sundays: (Start) Oakville Yard (MI 20.57) - Brant (MI 31.86) - Oakville Yard MI 20.57 (Return)
4	Daily	10:00	15:00	8.81	31.94	(Start) Oakville Yard (MI 19.15) - OJ 30 (MI 18.87) - Oakville Yard M 19.15 (Return)
5	Daily	9:00	17:00	8.81	31.94	
6	Daily	13:00	21:00	8.81	31.94	
7	Daily	21:00	5:00	16.7	31.94	* (Start) Aldershot East Yard (MI 33.31) - OC 92 (MI 28.64) - OC 81 (MI 27.72) - OC 60 (MI 26.70) - OC 55 (MI 25.65) - OC 31 (MI 24.19) - OH 30, OH 29 and OB 49 (MI 17.48) - CN Oakville Yard (MI 19.15) - OC 40 (MI 25.02) - Aldershot East Yard (MI 33.31) (Return).



						* Occasionally on Wednesdays and Sundays: (Start) Aldershot East Yard (MI 33.31) - OD 50 (M 31.86) - Aldershot East Yard (MI 33.31) (Return) "
8	Daily	21:00	05:00	8.81	31.94	(Start) Canpa (MI 8.51) - Oakville Yard (MI 19.15) - Oakville Yard (MI 20.57) - Aldershot East Yard (MI 33.31) - Canpa (MI 8.51) (Return).

**APPENDIX G TO SCHEDULE 40****METROLINX DEDICATED RISK ASSESSMENT PROCESS**

- (a) Without limiting Project Co's obligations to conduct risk assessments pursuant to the Project Agreement and pursuant to Applicable Law, Project Co shall conduct a risk assessment, in accordance with the Metrolinx Safety Department Risk Assessment Guide MX-SMS-G001, for activities with potential to impact Railway Operations (each a "**Metrolinx Dedicated Risk Assessment**").
- (b) The following activities and scenarios shall require a Metrolinx Dedicated Risk Assessment to be approved by Metrolinx, prior to issuance to Project Co of a Rail Corridor Access Permit:
- (i) a request by Project Co to implement a Temporary Barrier Separation, as defined in the then current GO Transit General Engineering Instructions;
  - (ii) a request by Project Co to implement a Continuous Work Zone (CWZ), as defined in the then current GO Transit General Engineering Instructions;
  - (iii) a request by Project Co to implement an Adjacent Line Closure (ALC), as defined in the then current GO Transit General Engineering Instructions;
  - (iv) a request by Project Co to perform the Work from above the Rail Corridor, utilizing a protective structure as Barrier Separation, as defined in the then current GO Transit General Engineering Instructions; and
  - (v) any other activity to be carried out by Project Co during a Rail Corridor Access that, in Contracting Authority's reasonable opinion, may have a Risk Index equal to "Elevated" or "High", in each case as defined in the Metrolinx Safety Department Risk Assessment Guide MX-SMS-G00.
- (c) Metrolinx's approval of a Metrolinx Dedicated Risk Assessment shall be contingent upon Project Co's successful demonstration that adequate mitigation measures or corrective actions are planned to be implemented, such that the risks identified therein are as low as reasonably practical and, in any event, that the Risk Index for any such risk is no greater than "Medium", as defined in the Metrolinx Safety Department Risk Assessment Guide MX-SMS-G00.
- (d) Project Co shall seek approval from Metrolinx for each Metrolinx Dedicated Risk Assessment in accordance with the following process:
- (i) Eighty (80) Business Days prior to the corresponding Rail Corridor Access that requires a Metrolinx Dedicated Risk Assessment, Project Co shall submit for Contracting Authority's review a draft Risk Assessment Worksheet, in accordance with the Metrolinx Safety Department Risk Assessment Guide MX-SMS-G001.
  - (ii) As part of the draft Risk Assessment Worksheet submission, Project Co shall complete the Hazard Table including the following steps:
    - (A) Step 2 – Triggering Circumstances;

- (B) Step 4 – Project Co members of the Risk Assessment Team;
  - (C) Step 5 – Identify Risk Scenarios;
  - (D) Step 6 – Evaluate Risk;
  - (E) Step 7 – Mitigation and Control(s); and
  - (F) Step 8 – Re-evaluate Risk – Determine Residual Risk.
- (iii) No later than five (5) Business Days after the receipt of the draft Risk Assessment Worksheet, Contracting Authority shall confirm to Project Co the parties that will form the Risk Assessment Team, including the Risk Assessment Lead, the Impacted Groups and the Contracting Authority Parties.
  - (iv) No later than ten (10) Business Days after the receipt of the draft Risk Assessment Worksheet (or at a different time as agreed to by the Parties), Project Co shall attend a meeting with the Risk Assessment Team to review the draft Risk Assessment Worksheet and to facilitate the Metrolinx Dedicated Risk Assessment process (the “**Metrolinx Dedicated Risk Assessment Review Meeting**”). At the Metrolinx Dedicated Risk Assessment Review Meeting, Project Co shall present the draft Risk Assessment Worksheet. Contracting Authority shall provide verbal feedback to Project Co on the draft Risk Assessment Worksheet.
  - (v) No later than ten (10) Business Days following the Metrolinx Dedicated Risk Assessment Review Meeting, Contracting Authority shall provide written feedback to Project Co on the draft Risk Assessment Worksheet.
  - (vi) No later than ten (10) Business Days following receipt of written feedback from Contracting Authority, Project Co shall submit an updated Risk Assessment Worksheet for Contracting Authority’s review and approval, including appropriate revisions based on the verbal and written feedback provided by Contracting Authority pursuant to Sections 1.1(d)(iv) and 1.1(d)(v), as well as completion of Step 9 – Comments and Notes and Step 10 – Workshop Review, Communication, Notification and Document Retention of the Hazard Table.
  - (vii) No later than ten (10) Business Days following the receipt of Project Co’s updated Risk Assessment Worksheet, Contracting Authority shall provide written feedback to Project Co.
  - (viii) If Project Co disagrees with critical aspects of the written feedback provided by Contracting Authority pursuant to Section 1.1(d)(vii), Project Co shall give Notice to Contracting Authority of the details of such disagreement. Following the delivery of such Notice, the Parties agree to meet on an expedited basis to resolve any matters of disagreement on the feedback provided by Contracting Authority pursuant to Section 1.1(d)(vii).
  - (ix) Following the meeting between the Parties pursuant to Section 1.1(d)(viii), any persisting Dispute between Contracting Authority and Project Co with respect to the updated Metrolinx Dedicated Risk Assessment may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

- (e) Project Co shall not be granted a Rail Corridor Access Permit in respect of Works that require a Metrolinx Dedicated Risk Assessment, pursuant to Section 1.1(b), unless,
  - (i) Metrolinx has approved the Metrolinx Dedicated Risk Assessment; and
  - (ii) Project Co has confirmed that,
    - (A) Project Co has successfully completed the implementation of all mitigations or corrective actions, in each case in accordance with the Risk Assessment Worksheet approved by Metrolinx; and
    - (B) Project Co has available evidence of the completion of all mitigations or corrective actions, in each case in accordance with the Risk Assessment Worksheet approved by Metrolinx.

**ATTACHMENT 1 TO APPENDIX G****ADVANCE DEDICATED RISK ASSESSMENTS****1. ADVANCE METROLINX DEDICATED RISK ASSESSMENTS COMPLETED BY CONTRACTING AUTHORITY****1.1 Scope**

- (a) Contracting Authority has completed the Advance Metrolinx Dedicated Risk Assessments (as defined below) to accommodate anticipated construction activities based on [REDACTED]. These Metrolinx Dedicated Risk Assessments are for the following aspects and activities, provided in the Background Information:

- (i) [REDACTED];
- (ii) [REDACTED];
- (iii) [REDACTED]; and
- (iv) [REDACTED] (“Sponsors Executive Summary”).

- (b) The assessments referenced in Section 1.1(a)(i) to Section 1.1(a)(iii) and the Sponsors Executive Summary (collectively the “**Advance Metrolinx Dedicated Risk Assessments**”), were completed in general conformance with the Metrolinx Dedicated Risk Assessment Process, as outlined in Appendix G to this Schedule 40, and received acceptance by Metrolinx.

**1.2 Reliance on Metrolinx Dedicated Risk Assessments by Contracting Authority**

- (a) The Advance Metrolinx Dedicated Risk Assessments and the accompanying summary document provide information related to the risks and mitigation measures of the conceptual anticipated construction activities, including proposed risk mitigation measures considered reasonable, using commonly employed construction means and methods. The Advance Metrolinx Dedicated Risk Assessments outline acceptable mitigating solutions, risk controls, residual risks and conclusions considered appropriate for a conceptual Category of Access or Subcategory of Access, and to accommodate a conceptual construction schedule. Project Co may utilize the contents of the Advance Metrolinx Dedicated Risk Assessments to inform its understanding of permissible construction activities and equipment, and corresponding restrictions, opportunities, and mitigations required when working under a form of Barrier Separation, as defined in the GO Transit General Engineering Instructions.
- (b) Project Co shall draft the Metrolinx Dedicated Risk Assessments as required to support its actual construction means and methods and submit for Metrolinx approval in accordance with the Metrolinx Dedicated Risk Assessment Process, as outlined in Appendix G to this Schedule 40.

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**SCHEDULE 41****EARLY WORKS HANDOVER****1. DEFINITIONS**

- 1.1** “**Built to Specification and Design**” means, in respect of any Early Works Infrastructure Section or any Early Works Infrastructure comprised therein, that it is built in conformance with the Early Works Technical Specifications applicable thereto, subject to Seasonal Minor Deficiencies.
- 1.2** “**Built to Specification and Design Deficiency**” has the meaning given in Section 3.1(d)(ii)(A) of this Schedule 41.
- 1.3** “**CA Post-Handover Response**” has the meaning given in Section 3.1(d) of this Schedule 41.
- 1.4** “**Early Works Construction Defect**” means any deficiency, defect or error in the Early Works Infrastructure other than to the extent such deficiency, defect or error (i) has arisen as a result of ordinary wear and tear or (ii) was caused or contributed to by Project Co or any Project Co Party.
- 1.5** “**Early Works Construction Latent Defect**” means an Early Works Construction Defect that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Early Works Infrastructure if such inspection took place on the last day of the applicable Early Works Construction Defect Warranty Period.
- 1.6** “**Early Works Contract**” means each of the Contracts entered into with the Early Works Contractors in respect of the Early Works.
- 1.7** “**Early Works Design and Construction Data**” has the meaning set out in Section 2.2(b) of this Schedule 41.
- 1.8** “**Early Works Infrastructure Section**” means, in respect of each Early Works Contract, each of the discrete segments of the Early Works Infrastructure listed in the column titled “Early Works Infrastructure Section” in Appendix A of this Schedule 41.
- 1.9** “**Early Works Lands**” means the applicable Lands set out in Part B (*Metrolinx Lands*) of Schedule 35 – Lands.
- 1.10** “**Early Works Section Final Completion**” means, in respect of an Early Works Infrastructure Section, final completion thereof in accordance with the applicable Early Works Contract.
- 1.11** “**Early Works Section Handover**” has the meaning set out in Section 2.1(a) of this Schedule 41.
- 1.12** “**Early Works Section Handover Date**” means, in respect of an Early Works Infrastructure Section, the date determined pursuant to Section 3.1(a) of this Schedule 41.
- 1.13** “**Early Works Section Handover Notice**” has the meaning set out in Section 3.1(a) of this Schedule 41.

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- 1.14** “**Early Works Technical Specifications**” means, in respect of each Early Works Contract and the Early Works Infrastructure to be delivered thereunder, the technical specifications applicable thereto, contained in Appendix B to this Schedule 41.
- 1.15** “**Early Works Warranty Period**” means, subject to Section 4.2:
- (a) in respect of an Early Works Construction Defect, the period commencing on the applicable Early Works Section Handover Date and ending on the date that is two (2) years thereafter (the “**Early Works Construction Defect Warranty Period**”); or
  - (b) in respect of an Early Works Construction Latent Defect, the period commencing on the day following the end of the applicable Early Works Construction Defect Warranty Period and ending on the Termination Date.
- 1.16** “**Early Works Warranty Work**” means, in respect of any Early Works Infrastructure, work to correct an Early Works Construction Defect, Early Works Construction Latent Defect or any work to correct any damage to other Project Co Infrastructure caused by such repair or correction work.
- 1.17** “**Handover Data and Equipment**” means, in respect of an Early Works Infrastructure Section, as-built drawings for the applicable Early Works Infrastructure and other applicable Early Works Design and Construction Data and equipment identified in the Early Works Technical Specifications as being necessary to achieve Early Works Section Handover in respect of such Early Works Infrastructure Section.
- 1.18** “**No Earlier Than Date**” means, in respect of an Early Works Infrastructure Section, the corresponding date identified in the column titled “No Earlier Than Date” in Appendix A to this Schedule 41.
- 1.19** “**No Later Than Date**” means, in respect of an Early Works Infrastructure Section, the corresponding date identified in the column titled “No Later Than Date” in Appendix A to this Schedule 41.
- 1.20** “**Project Co Post-Handover Deficiency**” has the meaning set out in Section 3.1(c) of this Schedule 41.
- 1.21** “**Project Co Post-Handover Deficiency List**” has the meaning set out in Section 3.1(c) of this Schedule 41.
- 1.22** “**Post-Handover Inspection Period**” has the meaning given in Section 3.1(b) of this Schedule 41.
- 1.23** “**Seasonal Minor Deficiencies**” means, in respect of any Early Works Infrastructure, any defects, deficiencies and items of outstanding work that are seasonal in nature and could not be completed on or prior to the applicable Early Works Section Handover Date and that would not materially impair (i) Project Co’s use of such Early Works Infrastructure, or (ii) safety or security on the Project Co Infrastructure in any relevant respect.

## 2. CONTRACTING AUTHORITY OBLIGATIONS

### 2.1 Handover of Early Works Infrastructure Sections

- (a) Contracting Authority shall cause each Early Works Infrastructure Section to be handed over to Project Co, subject to and in accordance with the provisions of this Schedule 41. Subject to Section 3 of this Schedule 41, each Early Works Infrastructure Section shall be handed over to Project Co on a Built to Specification and Design basis on the applicable Early Works Section Handover Date (each such handover being a “**Early Works Section Handover**”).
- (b) On or before the Early Works Section Handover Date applicable to each Early Works Infrastructure Section, Contracting Authority shall:
  - (i) ensure that the applicable Early Works Contractor and its contractors have vacated the applicable Early Works Infrastructure Section and corresponding Early Works Lands (except as expressly contemplated pursuant to the terms of the Project Agreement); and
  - (ii) provide Project Co with the most recent versions of all Early Works Design and Construction Data received from the applicable Early Works Contractor in respect of the applicable Early Works Infrastructure Section (and Contracting Authority shall provide final versions of such Early Works Design and Construction Data as soon as reasonably practicable thereafter upon receipt thereof from the applicable Early Works Contractor).
- (c) In the event that an Early Works Section Handover occurs on a day prior to the No Earlier Than Date applicable to the relevant Early Works Infrastructure Section, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation.
- (d) In the event that an Early Works Section Handover has not occurred on or before the No Later Than Date applicable to the relevant Early Works Infrastructure Section, then Project Co shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be entitled to a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be entitled to a Compensation Event.
- (e) Without prejudice to any rights Project Co may have under the Project Agreement, Project Co may, prior to any Early Works Section Handover Date, request to participate with Contracting Authority in, or conduct, an inspection of any Early Works Infrastructure. Contracting Authority may determine, whether to permit Project Co or any Project Co Party to participate in, or conduct, such an inspection, and shall act reasonably in making such determination where it has received at least five (5) Business Days notice from Project Co of such intended inspection. If Contracting Authority permits Project Co or a Project Co Party to participate in, or conduct, such an inspection, then Project Co or the applicable Project Co Party shall comply with all instructions provided by Contracting Authority in respect of such inspection.



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- (f) Contracting Authority may, by Notice to Project Co prior to any Early Works Section Handover Date, request that Project Co participate with Contracting Authority in an inspection of any Early Works Infrastructure. If so requested, Project Co (or an applicable Project Co Party) shall participate in such inspection together with Contracting Authority, and Project Co or the applicable Project Co Party shall comply with all instructions provided by Contracting Authority in respect of such inspection.
  - (g) In respect of each Early Works Infrastructure Section, following Early Works Section Handover and subject to the terms of Section 4.1, at all times from and after the applicable Early Works Section Handover Date:
    - (i) the applicable Early Works Infrastructure Section shall form part of the Project Co Infrastructure and the Ontario Line Subway and Project Co shall be responsible for such Early Works Infrastructure Section in accordance with the provisions of the Project Agreement; and
    - (ii) the applicable Early Works Lands that such Early Works Infrastructure Section is situated on shall form part of the Lands that Project Co is responsible for under the Project Agreement.

## 2.2 Handover Data and Equipment, and Early Works Design and Construction Data

- (a) Contracting Authority shall provide Project Co with all Handover Data and Equipment in respect of each applicable Early Works Infrastructure Section on or before the Early Works Section Handover Date thereof.
- (b) Contracting Authority shall provide to Project Co all design and construction related data and information received from the applicable Early Works Contractor in respect of the Early Works Infrastructure and shall update such information from time to time on an ongoing basis upon receipt of such updates from the applicable Early Works Contractor (such data and information, as updated from time to time, referred to as the “**Early Works Design and Construction Data**”).

## 3. EARLY WORKS INFRASTRUCTURE SECTION HANDOVER

### 3.1 Early Works Infrastructure Section Handover

- (a) In respect of each Early Works Infrastructure Section, Contracting Authority shall provide written notice (the “**Early Works Section Handover Notice**”) to Project Co of the day on which Early Works Section Handover in respect of such Early Work Infrastructure Section shall occur (the “**Early Works Section Handover Date**”). The Early Works Section Handover Date shall be no earlier than thirty (30) days from the date of the Early Works Section Handover Notice. For clarity, if the Early Works Section Handover Date is a day that is less than thirty (30) days after the date of the Early Works Section Handover Notice then the Early Works Section Handover Date shall be deemed to be the day that is thirty (30) days from the date of the Early Works Section Handover Notice.
- (b) In respect of each Early Works Infrastructure Section, Project Co shall, during the period commencing on the Early Works Section Handover Date and ending thirty (30) days

thereafter (the “**Post-Handover Inspection Period**”) carry out such inspections of the Early Works Infrastructure that has become Project Co Infrastructure as Project Co deems necessary in order to determine (to the extent possible from a visual inspection carried out by a competent person in a manner consistent with Good Industry Practice) whether such Project Co Infrastructure has been Built to Specification and Design and shall invite Contracting Authority to participate in such inspections.

- (c) Project Co shall, no later than the last day of the Post-Handover Inspection Period, provide in writing to Contracting Authority Project Co’s opinion as to whether such Project Co Infrastructure is Built to Specification and Design and, if applicable, a list of all deficiencies (each a “**Project Co Post-Handover Deficiency**”) which, in Project Co’s opinion, prevent such Project Co Infrastructure from being Built to Specification and Design (the “**Project Co Post-Handover Deficiency List**”). Project Co shall identify in the Project Co Post-Handover Deficiency List, in respect of each Project Co Post-Handover Deficiency:
- (i) an explanation of why it constitutes a non conformance to the Built to Specification and Design standard, the modifications that would be required to be made to the applicable Early Works Infrastructure to remove such Project Co Post-Handover Deficiency, with specific reference to the applicable requirements of the applicable Early Works Technical Specifications, and
  - (ii) set out any modifications which Project Co considers necessary to the definition of Built to Specification and Design, including the applicable Early Works Technical Specifications, in the event that such Project Co Post-Handover Deficiency is not corrected.
- (d) Within ten (10) Business Days of receipt of a Project Co Post-Handover Deficiency List, Contracting Authority shall (in case of (i) below) and may (in case of (ii) below), by Notice to Project Co (the “**CA Post-Handover Response**”) indicate:
- (i) whether (notwithstanding any Project Co Post-Handover Deficiency List) Contracting Authority is of the opinion that the applicable Early Works Infrastructure was Built to Specification and Design as of the Early Works Section Handover Date, in which case such Early Works Infrastructure shall be deemed to be Built to Specification and Design as of such Early Works Section Handover Date (subject to the Dispute Resolution Procedure); or
  - (ii) with respect to each Project Co Post-Handover Deficiency, whether Contracting Authority,
    - (A) agrees that such Project Co Post-Handover Deficiency is a deficiency in meeting the Built to Specification and Design standard (a “**Built to Specification and Design Deficiency**”) in which case Contracting Authority may, in its sole discretion, take any one or more of the following actions:

- (i) require Project Co to correct the Built to Specification and Design Deficiency by issuing a Variation subject to and in accordance with Schedule 22 – Variation Procedure;
  - (ii) modify the requirements of the Project Agreement (including the Early Works Technical Specifications) by issuing a Variation subject to and in accordance with Schedule 22 – Variation Procedure in order to eliminate the Built to Specification and Design Deficiency; or
  - (iii) arrange for the correction of the Built to Specification and Design Deficiency by the applicable Early Works Contractor or an Additional Contractor; or
- (B) does not agree that the Project Co Post-Handover Deficiency identified by Project Co is a Built to Specification and Design Deficiency in which case Contracting Authority shall not have any further obligation in respect of such Project Co Post-Handover Deficiency except as may be determined pursuant to the Dispute Resolution Procedure and subject to Section 4.1 of this Schedule 41.

If Contracting Authority does not provide the confirmation set out above in this Section 3.1(d)(ii) in respect of any Project Co Post-Handover Deficiency, it shall be deemed to have provided the response set out in Section 3.1(d)(ii)(B) in respect thereof on that date that is ten (10) Business Days after receipt of a Project Co Post-Handover Deficiency List.

- (e) If Project Co disagrees with any determination made by Contracting Authority in respect of a Project Co Post-Handover Deficiency included in the CA Post-Handover Response then Project Co may, no later than ten (10) Business Days after receipt of the CA Post-Handover Response, refer such matter for resolution in accordance with the Dispute Resolution Procedure. Project Co acknowledges and agrees that if it does not initiate a Dispute within such timeframe with respect to any Project Co Post-Handover Deficiency, it shall be deemed to waive any claim that such Built to Specification and Design Deficiency prevents the applicable Early Works Infrastructure from being Built to Specification and Design (subject to Section 4.1 of this Schedule 41).
- (f) Subject to Section 3.1(e) and Section 4.1 of this Schedule 41, Project Co may not make any claim or commence any Dispute asserting that a Built to Specification and Design Deficiency exists at any time after the end of the Post-Handover Inspection Period unless (i) such Built to Specification and Design Deficiency is included in a Project Co Post-Handover Deficiency List delivered on or prior to such date, (ii) such Built to Specification and Design Deficiency could not reasonably be ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Early Works Infrastructure if such inspection took place on the last day of the Post-Handover Inspection Period, or (iii) such Built to Specification and Design Deficiency is also an Early Works Construction Defect or an Early Works Construction Latent Defect.
- (g) Contracting Authority shall provide Notice to Project Co upon completion of all Seasonal Minor Deficiencies.

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**4. WARRANTY CLAIMS, WARRANTY WORK AND SEASONAL MINOR DEFICIENCIES**

- 4.1** During each applicable Early Works Warranty Period, Contracting Authority shall (or shall cause the applicable Early Works Contractor or an Additional Contractor to) promptly, at Contracting Authority's sole cost and expense, correct and Make Good all Early Works Construction Defects and Early Works Construction Latent Defects arising in respect of the Early Works Infrastructure (the "**Early Works Warranty Work**"), subject to Section 4.3 of this Schedule 41.
- 4.2** The applicable Early Works Warranty Period shall be extended for a further two (2) years from the date of the last Early Works Warranty Work completed in respect of the applicable Early Works Infrastructure. For clarity, any extension of an Early Works Warranty Period for the purposes of a correction shall only apply to the relevant Early Works Warranty Work and not the Early Works Infrastructure delivered under any Early Works Contract as a whole nor the whole of any Early Works Infrastructure Section.
- 4.3** Project Co may not make any claim or commence any Dispute asserting that an Early Works Construction Defect exists in respect of any Early Works Infrastructure that has become Project Co Infrastructure in accordance with the terms of this Schedule 41 or that any damage has been caused to any Project Co Infrastructure as a result of any Early Works Warranty Work, in each case at any time after the end of the applicable Early Works Warranty Period.
- 4.4** Project Co shall provide access to the applicable Project Co Infrastructure and Lands to the applicable Early Works Contractor or Additional Contractor, as applicable, and their contractors, for the purpose of carrying out Early Works Warranty Work and completion of Seasonal Minor Deficiencies, subject to Section 4.6 of this Schedule 41 at all times after the applicable Early Works Section Handover Dates, including,
- (a) arranging access to the relevant portion of the Lands during normal working hours;
  - (b) arranging for the applicable Early Works Contractor or Additional Contractor or their contractors to use utilities available on the Site including power and water and toilet facilities; and
  - (c) accommodating reasonable parking for the applicable Early Works Contractor or Additional Contractor or their contractors' labor and material deliveries.
- 4.5** Project Co may, acting reasonably, schedule all Early Works Warranty Work and work to complete Seasonal Minor Deficiencies at times that are convenient to the Works and do not cause delay in the performance of the Works provided that:
- (a) Project Co shall ensure that its scheduling of Early Works Warranty Work pursuant to this Section 4.5 of this Schedule 41 does not, in any way, worsen the relevant Early Works Construction Defect; and
  - (b) Project Co shall ensure that its scheduling of Early Works Warranty Work and work to complete Seasonal Minor Deficiencies pursuant to this Section 4.5 of this Schedule 41 does not in any way void, or risk voiding, the applicable Early Works Contractor's warranty,
- in each case where Project Co has (or should reasonably have had) knowledge of such impact.

4.6 In connection with any Early Works Contractor accessing any Project Co Infrastructure or Lands after the applicable Early Works Section Handover Date, for any of the purposes contemplated in Section 4.4 of this Schedule 41, Contracting Authority shall require such Early Works Contractor, pursuant to the terms of the applicable Early Works Contract, to:

- (i) comply with all directions of Project Co in respect of any matter regarding health and safety at the applicable Early Works Infrastructure Section;
- (ii) coordinate with Project Co the means of access to the applicable Early Works Infrastructure Section;
- (iii) keep the Early Works Infrastructure Section and all Project Co Infrastructure thereon in a safe and orderly state in accordance with Good Industry Practice; and
- (iv) not materially interfere with or delay the work of Project Co or any Project Co Parties, and not do anything that causes Project Co to be in contravention of its obligations under the Occupational Health and Safety Act (Ontario), and to promptly cease and desist any activity that results or has a likelihood in resulting in such interference or delay or causes such contravention.

4.7 In connection with an Early Works Contractor accessing any Project Co Infrastructure or Lands after the applicable Early Works Section Handover Date, for any of the purposes contemplated in Section 4.4 of this Schedule 41, if:

- (i) such Early Works Contractor causes any damage to the Works;
- (ii) Project Co incurs any additional costs or there is any delay in the Works as a result of such Early Works Contractor 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 these Sections 4.4 and 4.5 of this Schedule 41 if Project Co incurs any additional costs or there is any delay in the Works as a result of any such access by such Early Works Contractor,

then any such delay in the Works or additional costs in respect of the Works shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement be treated as a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be treated as a Compensation Event.

4.8 If, in connection with an Early Works Contractor accessing any Project Co Infrastructure or Lands after the applicable Early Works Section Handover Date for the purpose of completing Seasonal Minor Deficiencies, Project Co is not able to schedule such work as contemplated in Section 4.5 of this Schedule 41 in a manner which does not materially interfere with or delay the work of Project Co or any Project Co Party pursuant to the Project Agreement, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation.

**APPENDIX A TO SCHEDULE 41**

**EARLY WORKS HANDOVER**

[REDACTED]

**APPENDIX B TO SCHEDULE 41**  
**EARLY WORKS TECHNICAL SPECIFICATIONS**

See attached.

**APPENDIX B TO SCHEDULE 41**

**EARLY WORKS TECHNICAL SPECIFICATIONS**

[REDACTED]



**SCHEDULE 42****PAYMENT PROCEDURES****1. DEFINITIONS****1.1 Definitions**

The following terms shall have the following meanings:

- (a) “**Adjusted Finishing Holdback Amount**” has the meaning given in Section 5.2(e).
- (b) “**Adjusted Legislative Holdback Amount**” has the meaning given in Section 5.1(e).
- (c) “**Finishing Holdback Payment Certificate**” has the meaning given in Section 5.2(e).
- (d) “**Legislative Holdback Payment Certificate**” has the meaning given in Section 5.1(e).
- (e) “**Notice of Non-Payment of Finishing Holdback**” has the meaning given in Section 5.2(c).
- (f) “**Notice of Non-Payment of Legislative Holdback**” has the meaning given in Section 5.1(c).
- (g) “**Proper Invoice**” has the meaning given to it in the *Construction Act* (Ontario), and must also comply with the requirements set forth in Sections 3.1 to 3.3.
- (h) “**Proper Invoice Delivery Date**” has the meaning given in Section 3.2(a).

**2. GENERAL****2.1 Electronic Payment**

- (a) Notwithstanding any other provision of the Project Agreement, for the purpose of this Project Agreement, payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and the other details of the transfer.

**3. PAYMENT OF PROPER INVOICE****3.1 Proper Invoice**

- (a) A Proper Invoice shall mean a written bill or other request for payment issued by Project Co for services or materials in respect of the Works performed under this Agreement and must contain the following:
  - (i) the information set out in Section 6.1 of the *Construction Act* (Ontario);
  - (ii) the amounts certified for payment by the Independent Certifier and allocation of any applicable holdbacks;

- (iii) the direction of Project Co regarding payment pursuant to Section 4.4 (*Direction on Payments*) of the Project Agreement, including any electronic payment information, and any consent of the Lenders' Agent for redirection pursuant to Section 4.4 (*Direction on Payments*) of the Project Agreement as applicable;
- (iv) evidence of compliance with workers' compensation insurance requirements for the Works performed, including a WSIB Clearance Certificate;
- (v) a CCDC-9A statutory declaration as of the date of the Proper Invoice declaring that payments in connection with the Works have been made; and
- (vi) where the Proper Invoice includes final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the *Construction Act* (Ontario), a certificate of completion and statutory declarations or other assurances from the relevant Subcontractor confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.

### 3.2 Delivery of a Proper Invoice

- (a) The earliest date that a given Proper Invoice is eligible to be delivered to Contracting Authority (the "**Proper Invoice Delivery Date**") is set out below, and any invoice submitted earlier than permitted below may be subject to a notice of non-payment as a result, at Contracting Authority's election:
  - (i) for payment of any Milestone Payment, no earlier than the applicable Milestone Payment Completion Date;
  - (ii) for payment of the Substantial Completion Payment, no earlier than the Substantial Completion Date;
  - (iii) for payment of the Completion Holdback, no earlier than the Minor Deficiencies Completion Date where Seasonal Minor Deficiencies remain to be resolved and otherwise no earlier than the Final Completion Date; and
  - (iv) for payment of the Seasonal Works Holdback, no earlier than the Final Completion Date,

and the amount of any such Proper Invoice must be no greater than the amount certified for payment by the Independent Certifier pursuant to Section 3.3(a)(iii), below, and shall list and have deducted any applicable deductions or holdbacks applied pursuant to the Project Agreement.

### 3.3 Review of a Proper Invoice

- (a) Prior to delivery of each Proper Invoice, the following process shall be followed:
  - (i) No later than thirty (30) days prior to the anticipated Proper Invoice Delivery Date, Project Co shall submit a draft payment application to the Independent Certifier and Contracting Authority containing the breakdown of amounts intended to be included in the Proper Invoice, holdback accounting, tax information and all supporting

documentation required by the Project Agreement or reasonably requested by the Independent Certifier or Contracting Authority.

- (ii) From the fifteenth (15<sup>th</sup>) day to the fifth (5<sup>th</sup>) day prior to the Proper Invoice Delivery Date, Project Co shall meet with the Contracting Authority and Independent Certifier in order to review the information and documentation provided, and any additional information or documentation reasonably requested by the Independent Certifier or Contracting Authority, in order to assist Project Co with the preparation of the Proper Invoice.
  - (iii) At least three (3) days prior to the Proper Invoice Delivery Date, if the documents and information submitted are satisfactory to the Independent Certifier, the Independent Certifier shall issue a certificate of payment in the amount applied for or in such other amount determined by the Independent Certifier to be properly due.
- (b) Project Co shall not make material changes to the information to be submitted by way of the resulting Proper Invoice on or after the fourth (4<sup>th</sup>) day prior to the Proper Invoice Delivery Date.

### **3.4 Compliance with Prompt Payment Requirements**

- (a) Subject to the giving of a notice of non-payment in the prescribed form and manner, and to any requirement or entitlement to retain a holdback pursuant to the *Construction Act* (Ontario), Contracting Authority shall pay the amount payable under a Proper Invoice as Project Co may direct no later than twenty-eight (28) days after receiving the Proper Invoice from Project Co.
- (b) Project Co shall comply with, and shall cause the Project Co Parties to comply with any applicable timelines for prompt payment contained in the Project Agreement or required by the *Construction Act* (Ontario), and shall indemnify Contracting Authority for any costs incurred by Contracting Authority (including legal and consulting costs) as a result of Project Co's failure or the failure of those for whom Project Co is responsible to comply with such timelines, except to the extent caused solely by Contracting Authority.

## **4. NOTICE OF NON-PAYMENT**

### **4.1 Notice of Non-Payment**

- (a) If Contracting Authority disputes payment of a Proper Invoice in whole or in part, Contracting Authority may refuse to pay all or any portion of the Proper Invoice if Contracting Authority delivers a notice of non-payment no later than fourteen (14) days after receiving the Proper Invoice from Project Co, subject to the separate requirements governing Delivery of a Notice of Non-Payment of Legislative Holdback or a Notice of Non-Payment of Finishing Holdback.

## **5. PAYMENT OF LEGISLATIVE HOLDBACK**

### **5.1 Payment of Legislative Holdback**

- (a) Contracting Authority covenants and agrees with Project Co to pay to Project Co the Legislative Holdback in accordance with this Section 5.1 and the *Construction Act* (Ontario) or pay to such party as otherwise directed by Project Co and shall not accept any redirection without the consent

of the person to whom payment is directed. Contracting Authority agrees to pay the Legislative Holdback as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by Contracting Authority of the Legislative Holdback in accordance with this Section 5.1 as Project Co may direct, constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the Legislative Holdback to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under the *Construction Act* (Ontario).

- (b) Prior to release of the Legislative Holdback, Project Co shall:
- (i) submit a written request for release of the Legislative Holdback;
  - (ii) submit a CCDC 9A (2018) Statutory Declaration;
  - (iii) submit a declaration that there are no liens registered or written notices of lien given pursuant to the *Construction Act* (Ontario), or provide proof that all liens and written notices of lien have been satisfied, vacated, discharged, withdrawn or otherwise provided for in accordance with Sections 17.2 (*No Encumbrances*) and 17.3 (*Construction Act*) of the Project Agreement; and
  - (iv) submit an original WSIB Clearance Certificate.
- (c) If Contracting Authority determines that Project Co is not entitled to some or all of the Legislative Holdback, then no later than forty (40) days after the publication of the applicable certification or declaration of substantial performance or if no certification or declaration is published, the date the Project Agreement is completed, abandoned or terminated, Contracting Authority shall publish in the form and manner prescribed, a notice specifying the amount of the Legislative Holdback that the Contracting Authority will not pay (the “**Notice of Non-Payment of Legislative Holdback**”).
- (d) No later than three (3) days following the publication of the Notice of Non-Payment of Legislative Holdback, Contracting Authority shall notify Project Co of the publication of the Notice of Non-Payment of Legislative Holdback.
- (e) Within forty (40) days from the date of publication of the certificate of substantial performance pursuant to the *Construction Act* (Ontario), the Independent Certifier shall issue a certificate for payment of the Legislative Holdback (the “**Legislative Holdback Payment Certificate**”) in an amount equal to the Legislative Holdback less the amount specified in the Notice of Non-Payment of Legislative Holdback, if any (the “**Adjusted Legislative Holdback Amount**”).
- (f) Subject to any liens registered or written notices of lien being addressed, the Adjusted Holdback Amount set out in the Legislative Holdback Payment Certificate is due and payable within sixty (60) days from the date of publication of the certificate of substantial performance pursuant to the *Construction Act* (Ontario), or such other time required or permitted by the *Construction Act* (Ontario).
- (g) If Project Co disagrees with Contracting Authority regarding Project's entitlement to Legislative Holdback or any or all of the amount specified in the Notice of Non-Payment of Legislative

Holdback it may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

- (h) Prior to the date of the release of the Legislative Holdback, Project Co shall have removed from the Lands, the Project Co Infrastructure, the New Third Party Infrastructure and the Existing Infrastructure all supplies, waste materials, rubbish and temporary facilities and all personnel except as required to achieve Final Completion or to correct any remaining Minor Deficiencies.

## 5.2 Payment of Finishing Holdback

- (a) Contracting Authority covenants and agrees with Project Co to pay to Project Co the Finishing Holdback in accordance with this Section 5.2 and the *Construction Act* (Ontario) or pay to such party as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. Contracting Authority agrees to pay the Finishing Holdback as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by Contracting Authority of the Finishing Holdback in accordance with this Section 5.2 as Project Co may direct, constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority’s obligation to pay the Finishing Holdback to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payment under the *Construction Act* (Ontario).
- (b) Prior to the release of the Finishing Holdback, Project Co shall:
  - (i) submit a written request for release of the Finishing Holdback;
  - (ii) submit a CCDC 9A (2018) Statutory Declaration;
  - (iii) a declaration that there are no liens registered or written notices of lien given pursuant to the *Construction Act (Ontario)*, or provide proof that all liens and written notices of lien have been satisfied, vacated, discharged, withdrawn or otherwise provided for in accordance with Sections 17.2 (*No Encumbrances*) and 17.3 (*Construction Act*) of the Project Agreement; and
  - (iv) submit an original WSIB Clearance Certificate.
- (c) If Contracting Authority determines that Project Co is not entitled to some or all of the Finishing Holdback, then no later than forty (40) days after the date the Project Agreement is completed, abandoned or terminated, Contracting Authority shall publish, a notice specifying the amount of the Finishing Holdback that Contracting Authority will not pay (the “**Notice of Non-Payment of Finishing Holdback**”).
- (d) No later than three (3) days following the publication of the Notice of Non-Payment of Finishing Holdback, the Contracting Authority shall notify Project Co of the publication of the Notice of Non-Payment of Finishing Holdback.
- (e) Within forty (40) days after the date the Project Agreement is completed, abandoned or terminated, the Independent Certifier shall issue a certificate for payment of the Finishing Holdback (the “**Finishing Holdback Payment Certificate**”) in an amount equal to the Finishing

Holdback less the amount specified in the Notice of Non-Payment of Legislative Holdback, if any (the “**Adjusted Finishing Holdback Amount**”).

- (f) Subject to any liens registered or written notices of lien being addressed pursuant to Sections 17.2 (*No Encumbrances*) and 17.3 (*Construction Act*) of the Project Agreement, the Adjusted Finishing Holdback Amount is due and payable by Contracting Authority within sixty (60) days from the date the Project Agreement is completed, abandoned or terminated, or such other time required or permitted by the *Construction Act* (Ontario).
- (g) If Project Co disagrees with Contracting Authority regarding Project Co’s entitlement to Finishing Holdback or any or all of the amount specified in the Notice of Non-Payment of Finishing Holdback it may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

### **5.3 Payment of Completion Holdback and Seasonal Works Holdback**

- (a) Contracting Authority covenants and agrees with Project Co to pay to Project Co (or to such other person as Project Co otherwise directs) the following holdbacks, as applicable, together with all interest accrued thereon and applicable HST, and to not accept any redirection without the consent of any such other person to whom payment is directed:
  - (i) the Completion Holdback in accordance with and on the dates set out in Section 23.8(b) (*Failure to Rectify Section Minor Deficiencies and Minor Deficiencies*) and Section 23.8(c) (*Failure to Rectify Section Minor Deficiencies and Minor Deficiencies*) of the Project Agreement; and
  - (ii) the Seasonal Works Holdback in accordance with and on the date set out in Section 23.8(c) (*Failure to Rectify Section Minor Deficiencies and Minor Deficiencies*) of the Project Agreement.
- (b) Project Co acknowledges and agrees that payment by Contracting Authority of the Completion Holdback and Seasonal Works Holdback, as applicable, in accordance with Section 5.3(a) of this Schedule 42, constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority’s obligation to pay the Completion Holdback and Seasonal Works Holdback, as applicable, to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under the *Construction Act* (Ontario).

## SCHEDULE 43

## INCENTIVE PAYMENTS

PART A – SOUTH CIVIL INCENTIVE REGIME

## 1. DEFINITIONS

- (a) In Part A of this Schedule 43, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in Part A of this Schedule 43) shall have the meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Incentive Event Completion”** means, with respect to Incentive Events (i) for each Project Co Infrastructure Section, that the Section Substantial Completion Date has been achieved with respect thereto, or (ii) for each Project Co Infrastructure Subsection, that the Subsection RSSOM Access Date has been achieved with respect thereto.
  - (ii) **“Incentive Event Completion Date”** means, with respect to Incentive Events (i) for each Project Co Infrastructure Section, the applicable Section Substantial Completion Date, or (ii) for each Project Co Infrastructure Subsection, the applicable Subsection RSSOM Access Date.
  - (iii) **“Incentive Events”** has the meaning set out in Section 2.1(c) of Part A of this Schedule 43, subject to Section 2.1(e) of Part A of this Schedule 43.
  - (iv) **“Incentive Payment”** means, with respect to an Incentive Event, the amount identified in the column titles “Incentive Payment” in Part A of Appendix A to Schedule 45 – Integration with RSSOM Project for the applicable Incentive Event.
  - (v) **“Incentive Payment Date”** means with respect to each Incentive Event, the date that is thirty (30) days after the Incentive Event Completion Date applicable thereto.
  - (vi) **“Integration Dispute Resolution Procedure”** means the dispute resolution procedure set out in the Interface Agreement.
  - (vii) **“No Later Than Date”** means, with respect to each Incentive Event, the date identified in respect thereof in the column titled “No Later Than Date” in Part A of Appendix A to Schedule 45 – Integration with RSSOM Project.

## 2. INCENTIVE EVENTS

## 2.1 Incentive Events

- (a) Except as expressly provided herein, nothing in Part A of this Schedule 43 shall restrict, limit, prejudice or in any other way impair the rights or remedies of the Parties under any other provision of this Project Agreement.

- (b) In the event that Project Co achieves Incentive Event Completion for an Incentive Event on or prior to the No Later Than Date applicable thereto, Contracting Authority covenants and agrees to pay to Project Co (or as Project Co may direct) the Incentive Payment applicable to such Incentive Event, plus any HST applicable thereon, no later than the Incentive Payment Date applicable thereto. For certainty, if, for any reason, Project Co fails to achieve Incentive Event Completion in respect of a given Incentive Event on or prior to the No Later Than Date applicable to such Incentive Event, Contracting Authority shall have no obligation to pay to Project Co the Incentive Payment in respect of such Incentive Event.
- (c) An “**Incentive Event**” occurs upon a Subsection RSSOM Access Date or a Section Substantial Completion Date, as applicable, being achieved in respect of a Project Co Infrastructure Subsection or Project Co Infrastructure Section, as applicable, for which an Incentive Payment is identified in the column titled “Incentive Payment” in Part A of Appendix A to Schedule 45 – Integration with RSSOM Project.
- (d) In the event that, in respect of any Incentive Event, Incentive Event Completion does not occur on or prior to the applicable No Later Than Date, but it is finally determined pursuant to the Integration Dispute Resolution Procedure that Incentive Event Completion for that Incentive Event was in fact achieved on or prior to the applicable No Later Than Date, Project Co shall be entitled to receive the applicable Incentive Payment for such Incentive Event on a day that is no later than thirty (30) days following such final determination.
- (e) The Contracting Authority may (but shall have no obligation to), by way of Variation, identify additional events that shall be deemed to be Incentive Events, in which case it shall specify in such Variation the applicable event and the Incentive Event Completion Date and Incentive Payment applicable thereto.

### 3. GENERAL

- (a) Subject to Section 3(b) of Part A of this Schedule 43, Project Co acknowledges and agrees that:
- (i) Project Co achieving Incentive Event Completion for an Incentive Event by the No Later Than Date applicable thereto shall be at Project Co’s sole cost and risk and shall be without recourse to Contracting Authority, and that Project Co shall not be eligible for a Delay Event, Compensation Event or any relief or additional compensation under the Project Agreement in the event that Project Co fails to achieve Incentive Event Completion for any Incentive Event by the No Later Than Date applicable thereto and as a result does not receive an Incentive Payment. For greater certainty:
- (A) the No Later Than Date for each Incentive Event is fixed and shall not be extended under any circumstances, notwithstanding any extension of the No Later Than Date for purposes of the determination of a Subsection RSSOM Access Date or a Section Substantial Completion Date as contemplated in Schedule 45 – Integration with RSSOM Project Co, and including as a result of a Delay Event, and that Project Co shall not have the benefit of Section 30 (*Delay Events*) of the Project Agreement in the event that Project Co fails to achieve Incentive Event Completion for any Incentive Event by the No Later



- Than Date applicable thereto due to the occurrence of one or more Delay Events;
- (B) the failure by Project Co to achieve Incentive Event Completion for any Incentive Event by the No Later Than Date applicable thereto shall not be subject to the provisions of Sections 28 (*Changes in Law*), 29 (*Variations*), 31 (*Compensation Events*), 32 (*Relief Events*), 33 (*Force Majeure*) or 36 (*Relief Event and Non Default Termination*) of the Project Agreement; and
  - (C) Project Co shall have no right or remedy as against Contracting Authority in the event that Project Co fails to achieve Incentive Event Completion for any Incentive Event by the No Later Than Date applicable thereto due to any act or omission of Contracting Authority, including Contracting Authority committing a breach of any of its obligations under the Project Agreement;
    - (ii) any and all efforts undertaken and/or extra costs incurred by Project Co specifically for the purpose of achieving Incentive Event Completion for any Incentive Event by the No Later Than Date applicable thereto are undertaken and/or incurred entirely at Project Co's risk, without recourse to Contracting Authority;
    - (iii) no part of any Incentive Payment shall form part of the Cost of the Works or the Cost of the Financing;
- (b) The terms of Section 3(a) of Part A of this Schedule 43 shall not prejudice any right that Project Co may otherwise have pursuant to Sections 28 (*Changes in Law*), 29 (*Variations*), 30 (*Delay Events*), 31 (*Compensation Events*), 32 (*Relief Events*), 33 (*Force Majeure*) or 36 (*Relief Event and Non Default Termination*) of the Project Agreement in connection with a failure to achieve a RSSOM Subsection Access Date or a Section Substantial Completion Date by the applicable No Later Than Date as contemplated in Schedule 45 – Integration with RSSOM Project.
- (c) The provisions of Sections 4.1 (*Payment – General*), 4.8 (*Compensation on Termination*) and 4.10 (*HST*) to 4.20 (*Taxes – Indemnity*), inclusive, of the Project Agreement shall apply to the rights and obligations of the Parties set forth in Part A of this Schedule 43.

**PART B – TOC EARLY HANDOVER INCENTIVE REGIME****1. DEFINITIONS**

- (a) In Part B of this Schedule 43, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in Part B of this Schedule 43) shall have the meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) “**CA ET Response**” has the meaning given to it in Section 2(c).
  - (ii) “**Early Handover Conditions**” means that all Lands comprising the applicable Early Handover Site are:
    - (A) vacated by Project Co;
    - (B) free and clear of all Project Co equipment and activities;
    - (C) surplus to any further Project requirements, including any further requirement for access by Project Co or by RSSOM Project Co; and,
    - (D) in substantially the same condition as provided to Project Co, except as permitted by the Project Agreement.
  - (iii) “**Early Handover Days**” has the meaning given to it in Section 2(a)(iii);
  - (iv) “**Early Handover Site**” means any Lands for which Contracting Authority has determined that an ET Notice may be given, as identified in the column entitled “Restriction/Requirement” in Schedule 35 – Lands.
  - (v) “**EHI Payment**” has the meaning given to it in Section 2(c).
  - (vi) “**ET Notice**” has the meaning given to it in Section 2(a), as it may be amended in accordance with Section 2(d).
  - (vii) “**New ET Handover Date**” has the meaning given to it in Section 2(a)(ii).
  - (viii) “**Requested EHI Payment**” has the meaning given to it in Section 2(a)(iv).

**2. EARLY HANDOVER OF TOC LANDS**

- (a) At any time that is prior to twelve (12) months before the Scheduled Substantial Completion Date, and upon at least twelve (12) months written notice of early handover to Contracting Authority (an “**ET Notice**”), Project Co may request that Contracting Authority accept early handover of Lands comprising an Early Handover Site. The ET Notice shall specify:
- (i) the Early Handover Site that is the subject of the ET Notice;

- (ii) the date when the Early Handover Site will satisfy the Early Handover Conditions (the “**New ET Handover Date**”);
  - (iii) the number of days by which completion of the handover of the Early Handover Site will be early in comparison to the Scheduled Substantial Completion Date (the “**Early Handover Days**”);
  - (iv) the amount of any compensation Project Co requests, calculated with reference to the compensation contemplated pursuant to Appendix B to this Schedule 43, pro-rated based on the number of Early Handover Days (by reference to a 365 day calendar year) and the site area and dimensions of the Lands which are the subject of the ET Notice (the “**Requested EHI Payment**”); and
  - (v) that early handover of the Early Handover Site on the New ET Handover Date is not contingent upon any terms or conditions of Project Co.
- (b) Contracting Authority may accept or reject any ET Notice in its sole discretion and subject to such terms (including satisfactory inspection of the Lands comprising the Early Handover Site) as Contracting Authority may determine.
- (c) Within ninety (90) days of receipt of an ET Notice, Contracting Authority shall provide written notice to Project Co (a “**CA ET Response**”) of its decision to (i) accept the ET Notice, (ii) reject the ET Notice, or (iii) accept the ET Notice with a payment that differs from the Requested EHI Payment (an “**EHI Payment**”) or a different early completion date, and subject to any other terms which Contracting Authority may determine in its sole discretion, including with respect to the final site area and dimensions and any related price adjustments.
- (d) In the event that Contracting Authority accepts an ET Notice on a modified basis as contemplated in Section 2(c)(iii) above, Project Co shall within ten (10) days of receipt of the applicable CA ET Response provide written notice to Contracting Authority of whether it accepts the terms set out in the applicable CA ET Response. If Project Co does not provide such notice of acceptance of the terms of the CA ET Response within such ten (10) day period, the ET Notice shall be deemed to be rejected. If Project Co accepts the terms of such CA ET Response within such timeframe, the ET Notice shall be deemed amended in accordance with the terms of such CA ET Response.
- (e) Contracting Authority shall, in its sole discretion, determine the amount of any EHI Payment that shall apply in respect of any Early Handover Site based on Appendix B to this Schedule 43, the number of Early Handover Days, and the final site area and dimensions of the Lands which are the subject of the ET Notice. Contracting Authority may in its sole discretion move an Early Handover Site to a higher tier or increase the compensation range set out in Appendix B to this Schedule 43.
- (f) In respect of each Early Handover Site for which an ET Notice has been delivered and accepted (with or without modified terms), Project Co shall complete the handover of the applicable Early Handover Site on the New ET Handover Date in accordance with the applicable ET Notice (as it may be amended pursuant to a CA ET Response), including the Early Handover Conditions, and Contracting Authority shall pay Project Co the applicable EHI Payment, plus any HST applicable thereon, upon Substantial Completion.

- (g) If Project Co fails to complete the handover of the applicable Early Handover Site on the New ET Handover Date in accordance with the ET Notice, including the Early Handover Conditions, no EHI Payment shall be payable to Project Co in respect of such Early Handover Site, and Project Co shall have no further right or entitlement to receive any payment in respect of the early handover of Lands comprising such Early Handover Site from Contracting Authority.

### 3. GENERAL

- (a) Nothing in Part B of this Schedule 43 shall restrict, limit, prejudice or in any other way impair the rights or remedies of the Parties under any other provision of this Project Agreement, including the right of Contracting Authority to require Project Co at any time to handover any Lands earlier than the Scheduled Substantial Completion Date, in which case Project Co shall be, subject to and in accordance with Schedule 22 – Variation Procedure, entitled to a Variation.
- (b) The provisions of Sections 4.1 (*General – Payment*), 4.8 (*Compensation on Termination*) and 4.10 (*HST*) to 4.20 (*Taxes – Indemnity*), inclusive, of the Project Agreement shall apply to the rights and obligations of the Parties set forth in Part B of this Schedule 43.

**APPENDIX A TO SCHEDULE 43**  
**RESERVED INCENTIVE EVENTS**

[REDACTED]

**APPENDIX B TO SCHEDULE 43**

**EARLY HANDOVER SITES**

[REDACTED]

## SCHEDULE 44

## GEOTECHNICAL BASELINE REPORT

## 1. DEFINITIONS

In this Schedule 44, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 44) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 “**Geotechnical Baseline Statements**” means the statements embedded in the Project GBR that are identified in bold and italics typeface within square brackets, and the statements identified in Sections 2.2(a) and 2.2(b);
- 1.2 “**Geotechnical Testing**” has the meaning given in Section 2.3(a)(iii);
- 1.3 “**Geotechnical Testing Boreholes**” has the meaning given in Section 2.4(a)(vi);
- 1.4 “**Geotechnical Testing Requirements**” has the meaning given in Section 2.4(a);
- 1.5 “**Geotechnical Testing Results**” has the meaning given in Section 2.3(a)(iv);
- 1.6 “**Geotechnical Testing Zone**” has the meaning given in Section 2.4(a)(v); and
- 1.7 “**Hazardous Waste**” has the meaning given in Ontario Regulation 347/90 under the Ontario *Environmental Protection Act*.
- 1.8 “**Project GBR**” has the meaning given in Section 2.1(a).

## 2. GEOTECHNICAL BASELINE REPORT AND GEOTECHNICAL BASELINE STATEMENTS

## 2.1 Project GBR

- (a) For the purposes of the Project Agreement “**Project GBR**” shall mean the report entitled [REDACTED] attached as Appendix A to this Schedule 44.
- (b) Project Co acknowledges and agrees that the Geotechnical Baseline Statements contained in the Project GBR are contractually binding, and that all other information in the Project GBR is Background Information only.
- (c) For clarity, notwithstanding that the Project GBR is a Schedule to the Project Agreement, only the Geotechnical Baseline Statements contained in the Project GBR can be used by Project Co to establish a Differing Geotechnical Site Condition or Contracting Authority Contamination as described in Section 2.3.
- (d) The Parties acknowledge and agree that the Geotechnical Baseline Statements shall be interpreted in accordance with the following:

- (i) Geotechnical Baseline Statements are standalone and independent statements and do not rely upon the remaining portions of the Project GBR to either interpret, support, or provide context to a Geotechnical Baseline Statement;
- (ii) if a table, figure or footnote is referenced in the Geotechnical Baseline Statement, the referenced table, figure or footnote is considered to be part of the Geotechnical Baseline Statement;
- (iii) any reference to the stratigraphic profile in a Geotechnical Baseline Statement is considered to be a reference to the computer aided design and drafting (CADD) version of the stratigraphic profile; and
- (iv) in the event of ambiguities, conflicts or inconsistencies between or among one or more of the Geotechnical Baseline Statements, or between or among any Geotechnical Baseline Statement and any other information set out in the Project GBR or other Background Information, the following shall apply:
  - (A) any Geotechnical Baseline Statement(s) establishing a higher risk or level of variability in the applicable Site Condition shall govern and take precedence over all Geotechnical Baseline Statement(s) that establish a lower risk or variability in the applicable Site Conditions; and
  - (B) the Geotechnical Baseline Statements shall govern and take precedence over any other information set out in the Project GBR or other Background Information.

## 2.2 Geotechnical Baseline Statements Not Included In Project GBR

- (a) The following Geotechnical Baseline Statements are applicable to elements of Works not covered under the Project GBR. Project Co acknowledges and agrees that the following Geotechnical Baseline Statements are contractually binding:
  - (i) for baseline purposes, all in situ excavated material will be classified as Non-Hazardous Waste; and
  - (ii) for baseline purposes, all groundwater will require advanced treatment in addition to sedimentation control, to meet the City of Toronto Sewers By-law limits for sanitary and combined sewers discharge.
- (b) The following Geotechnical Baseline Statements are applicable to elements of Works not covered under the Project GBR. Project Co acknowledges and agrees that the following Geotechnical Baseline Statements are contractually binding:
  - (i) for baseline purposes, the founding strata for building foundations are outlined in Appendix C to this Schedule 44.
- (c) With respect to the Geotechnical Baseline Statements set out in Section 2.2(b)(i),



- (i) without limiting any other obligation of Project Co under the Project Agreement including Sections 2.3 and 2.4 hereof, as applicable, Project Co shall complete the Existing Adjacent Structure verification study set out in Section 3.1.10.4 (*Geotechnical Instrumentation and Protection of Existing Adjacent Structures*) of the Output Specifications and submit the results in accordance with Work Submittal item S-128A (*Construction Impact Assessment Report*) of Appendix A (*Minimum Works Submittals*) to Schedule 10 – Review Procedure; and
- (ii) to the extent that Project Co fails to comply with its obligations under Section 2.2(c)(i), Project Co shall not be entitled to relief pursuant to Section 18.2(c) (*Geotechnical Site Conditions*) of the Project Agreement.

### 2.3 Evidence for Differing Geotechnical Site Condition and Contamination Claims

- (a) In order to establish whether:
  - (i) a Geotechnical Site Condition experienced by Project Co is a Differing Geotechnical Site Condition pursuant to Section 18.2 (*Geotechnical Site Conditions*) of the Project Agreement; or
  - (ii) Contamination encountered by Project Co is Contracting Authority Contamination pursuant to Section 18.3 (*Contamination*) of the Project Agreement on the basis that it is Contamination that was not described in a Geotechnical Baseline Statement,

for the purposes of a claim for a Delay Event or Compensation Event pursuant to Section 18.2(c) (*Geotechnical Site Conditions*) and Section 18.3(g) (*Contamination*) of the Project Agreement, respectively, Project Co shall provide Contracting Authority with the following information:

- (iii) written evidence of all investigations consisting of subsurface explorations, geological mapping in conjunction with photographs and videos, or a combination thereof, laboratory and field test results, and other construction field reports conducted by Project Co in accordance with Section 2.4 to this Schedule 44 (the “**Geotechnical Testing**”);
- (iv) comparison of the results of the Geotechnical Testing (the “**Geotechnical Testing Results**”) with the applicable Geotechnical Baseline Statement using statistical and analytical methods, and graphics (including stratigraphic profiles as applicable), on a “like for like” basis of Geotechnical Testing being conducted in an unbiased, systematic manner across the same zone indicated for the Geotechnical Baseline Statement, such as for all or a portion of the Project alignment;
- (v) identification and description of the impact of the alleged Differing Geotechnical Site Condition or Contracting Authority Contamination, as applicable, on production rates, materials, equipment use, labour requirements and other cost and schedule expectations (including as may have been based on the applicable Geotechnical Baseline Statement); and

- (vi) any other information required by the Project Agreement (including pursuant to Section 30 (*Delay Events*) of the Project Agreement and Section 31 (*Compensation Events*) of the Project Agreement).

## 2.4 Testing Requirements

- (a) Any Geotechnical Testing shall be conducted in accordance with the following requirements (collectively, the “**Geotechnical Testing Requirements**”):
  - (i) Project Co shall comply with the minimum requirements set out in Appendix B to this Schedule 44 for the Geotechnical Baseline Statement against which Project Co is claiming a Differing Geotechnical Site Condition.
  - (ii) Project Co shall notify Contracting Authority at least twenty-four hours in advance of any Geotechnical Testing and Contracting Authority shall have the right to be present at and observe any such Geotechnical Testing.
  - (iii) Project Co shall ensure that Contracting Authority is provided the opportunity to obtain split or duplicate samples or testing measurements as Project Co obtains from such Geotechnical Testing.
  - (iv) All Geotechnical Testing shall be conducted by Project Co in accordance with:
    - (A) Sections 3.1.10.1(a)(vii)(C) and 3.1.10.1(a)(vii)(D) (*Subsurface Investigations and Testing Prior to Final Design and Construction*) of the Output Specifications for advancing boreholes, test holes and subsurface explorations, and testing (field, in situ, and laboratory); and
    - (B) ASTM D 4879-08 – Standard Guideline for Geotechnical Mapping of Large Underground Openings in Rock and the requirements of Section 3.1.10.1(a)(vii) (*Subsurface Investigations and Testing Prior to Final Design and Construction*) of the Output Specifications for geological mapping.
  - (v) The minimum investigation zone for any Geotechnical Testing (each such zone a “**Geotechnical Testing Zone**”) shall extend a minimum of ten meters horizontally in all directions beyond the areal extent of each claimed Differing Geotechnical Site Conditions, and a minimum of five meters vertically below the lowest elevation at which the Differing Geotechnical Site Condition is being claimed.
  - (vi) All boreholes for Geotechnical Testing (the “**Geotechnical Testing Boreholes**”) shall be performed in accordance with the requirements of the Geotechnical Testing Zone.
  - (vii) Project Co shall perform all Geotechnical Testing Boreholes in accordance with Good Industry Practice and Applicable Law, and decommission the Geotechnical Testing Boreholes in accordance with Ontario Regulation 903 (as amended).

2.5 **Testing at Project Co Risk**

- (a) Contracting Authority will reimburse Project Co for additional costs incurred in relation to Geotechnical Testing as a result of successful Differing Geotechnical Site Condition or Contracting Authority Contamination claims for which compensation is owed to Project Co. All costs of Geotechnical Testing associated with unsuccessful Differing Geotechnical Site Condition or Contracting Authority Contamination claims, and all delays associated with any Geotechnical Testing will remain with Project Co, except to the extent such additional costs or delays are caused or contributed to by Contracting Authority.

APPENDIX A TO SCHEDULE 44

PROJECT GBR

[REDACTED]

**APPENDIX B TO SCHEDULE 44****MINIMUM TESTING REQUIREMENTS**

1. For the purposes of this Appendix B, a “representative number” of Geotechnical Testing Boreholes, tests, shafts, samples, piezometers, field measurements, or other requirements shall be determined by Contracting Authority based on the nature and areal extent of the claimed Differing Geotechnical Site Condition. The following are examples of how a “representative number” of Geotechnical Testing may be determined, which are provided for illustrative purposes only:
  - (a) For a potential Differing Geotechnical Site Condition caused by the cumulative length of buried valley conditions being [REDACTED] meters greater than what is set out in the applicable Geotechnical Baseline Statement, a “representative number” of Geotechnical Testing Boreholes and samples could include a minimum of five Geotechnical Testing Boreholes spaced over the lengths of the buried valley zones, with continuous samples from two meters above to two meters below the zones where buried valley conditions were encountered.
  - (b) For a potential Differing Geotechnical Site Condition relating to subsurface conditions at an emergency egress building, a “representative number” of Geotechnical Testing Boreholes and samples could include one or two Geotechnical Testing Boreholes at the emergency egress building location in question, with continuous samples from two meters above to two meters below the potential Differing Geotechnical Site Condition zone.
2. Any capitalized terms that are not defined in this Schedule 44 or Schedule 1 – Definitions and Interpretation shall have the meanings set out in the Project GBR.
3. Those Geotechnical Baseline Statements where measurements or evidence will be required to demonstrate a Differing Geotechnical Site Condition have been reproduced in this Appendix B for convenience only. In the event of ambiguities, conflicts or inconsistencies between or among one or more of the Geotechnical Baseline Statements set out in this Appendix B and one or more of the Geotechnical Baseline Statements set out in the Project GBR, the Geotechnical Baseline Statements set out in the Project GBR shall govern and take precedence over the Geotechnical Baseline Statements set out in this Appendix B.
4. The extent of the Geotechnical Testing Zone and/or geographical scope of minimum testing requirements set out in this Appendix B shall be subject to Project Co being able to secure sufficient access to the relevant lands to perform the relevant Geotechnical Testing or, if Project Co is unable to do so despite using commercially reasonable efforts, Contracting Authority granting such access. If such access is not available, the Parties shall agree on a revised extent of Geotechnical Testing Zone and /or geographical scope of the minimum testing requirements set out in this Appendix B considering the access available to Project Co.

[REDACTED]

**APPENDIX C TO SCHEDULE 44**

**BASELINES FOR FOUNDING STRATA OF BUILDING FOUNDATIONS**

[REDACTED]

## SCHEDULE 45

## INTEGRATION WITH RSSOM PROJECT

## 1. DEFINITIONS

- 1.1 “**Access Readiness Deficiency List**” has the meaning given in Section 6.2(a)(iii) of this Schedule 45.
- 1.2 “**Access Ready**” means, in respect of a Project Co Infrastructure Subsection, that the Project Co Infrastructure forming part thereof is built in compliance with the Project Agreement, including the Output Specifications, in respect of all Access Ready Requirements, in the opinion of the Independent Certifier.
- 1.3 “**Access Ready Checklist**” means, in respect of any Project Co Infrastructure Subsection, the table listing of requirements for access set out in Part C to Appendix A to this Schedule 45.
- 1.4 “**Access Ready Inspection**” has the meaning given in Section 6.2(a)(i) of this Schedule 45.
- 1.5 “**Access Ready Requirements**” means, in respect of any Project Co Infrastructure Subsection, all requirements set out in the applicable Access Ready Checklist.
- 1.6 “**Built to Specification and Design**” means, in respect of any Critical RSSOM Infrastructure Works, that they are built in conformance with:
- (a) the RSSOM Infrastructure Technical Specifications; and
  - (b) any Critical RSSOM Infrastructure Data,
- each as modified pursuant to the Design Submittal Review Process.
- 1.7 “**Construction Integration Working Group**” has the meaning given to it in the RSSOM Interface Agreement.
- 1.8 “**Critical Data**” means the data and information set out in the column titled “Critical Data” in Part B of Appendix A to this Schedule 45.
- 1.9 “**Critical Data Deadline**” means the date set out in the column titled “Critical Data Deadline” in Part B of Appendix A to this Schedule 45, as such date may be amended pursuant to Section 30 (*Delay Events*) of the Project Agreement.
- 1.10 “**Critical RSSOM Infrastructure Data**” means the data and information set out in the column titled “Critical RSSOM Infrastructure Data” in Part A of Appendix B to this Schedule 45.
- 1.11 “**Critical RSSOM Infrastructure Data Deadline**” means the date set out in the column titled “Critical RSSOM Infrastructure Data Deadline” in Part A of Appendix B to this Schedule 45.
- 1.12 “**Critical RSSOM Infrastructure Works**” means, in respect of a Project Co Infrastructure Section the works to be carried out by RSSOM Project Co identified by reference to such Project Co

Infrastructure Section in the column titled “Critical RSSOM Infrastructure Works” in Part B of Appendix B to this Schedule 45.

- 1.13** “**Critical RSSOM Infrastructure Works Complete**” means, in respect of any Critical RSSOM Infrastructure Works, that such Critical RSSOM Infrastructure Works have achieved Critical RSSOM Infrastructure Works Completion.
- 1.14** “**Critical RSSOM Infrastructure Works Completion**” means, in respect of any Critical RSSOM Infrastructure Works, completion thereof in compliance with the Built to Specification and Design standard, as confirmed by the RSSOM Independent Certifier, as contemplated in Section 7.1 of this Schedule 45.
- 1.15** “**Critical RSSOM Infrastructure Works Completion Date**” has the meaning given in Section 7.1(a)(iv) of this Schedule 45.
- 1.16** “**Critical RSSOM Infrastructure Works Completion Deficiency List**” has the meaning given in Section 7.1(a)(iii) of this Schedule 45.
- 1.17** “**Critical RSSOM Infrastructure Works Completion Notice**” has the meaning given to it in Section 7.1(a)(i) of this Schedule 45.
- 1.18** “**Critical RSSOM Infrastructure Works Completion Target Date**” has the meaning given in Section 7.1(a)(i) of this Schedule 45.
- 1.19** “**Critical RSSOM Infrastructure Works Deadline**” means, in respect of any Critical RSSOM Infrastructure Works, the applicable date set out in the column titled “Critical RSSOM Infrastructure Works Deadline” in Part B of Appendix B to this Schedule 45.
- 1.20** “**Critical RSSOM Infrastructure Works Deficiency Identification Deadline**” has the meaning given in Section 7.1(a)(iii) of this Schedule 45.
- 1.21** “**Critical RSSOM Infrastructure Works Inspection**” has the meaning given in Section 7.1(a)(i) of this Schedule 45.
- 1.22** “**Critical Works**” means, in respect of a Project Co Infrastructure Section, the Works identified by reference to such Project Co Infrastructure Section in the column titled “Critical Works” in Part D of Appendix A to this Schedule 45.
- 1.23** “**Critical Works Complete**” means, in respect of any Critical Works, that such Critical Works are built in accordance with the requirements of the Project Agreement, including the Output Specifications, in the opinion of the Independent Certifier, as contemplated in Section 4.4 of this Schedule 45.
- 1.24** “**Critical Works Completion Notice**” has the meaning given to it in Section 4.4(b) of this Schedule 45.
- 1.25** “**Critical Works Deadline**” means, in respect of any Critical Works, the applicable date set out in the column titled “Critical Works Deadline” in Part D of Appendix A to this Schedule 45, as such date may be amended pursuant to Section 30 (*Delay Events*) of the Project Agreement.
- 1.26** “**Critical Works Inspection**” has the meaning given to it in Section 4.4(b) of this Schedule 45.



- 1.27 “**Current Period Integration Demerit Points**” has the meaning given in Section 3.2(a)(ii) of this Schedule 45.
- 1.28 “**Design and Construction Data**” has the meaning given in Section 5.1(b)(iii) of this Schedule 45.
- 1.29 “**Design Integration Working Group**” has the meaning given to it in the RSSOM Interface Agreement.
- 1.30 “**Design Submittal Review Process**” means the process contemplated in Section 11 of Part A and in Part C of Schedule 10 – Review Procedure.
- 1.31 “**Early Access Noise and Vibration Tests**” means the noise and vibration tests to be conducted by RSSOM Project Co pursuant to and in accordance with Section 6.5.3.2(c)(ii)(II) (*Prediction and Assessment of Operations Noise and Vibration*) of Schedule 17 – Environmental Obligations to the RSSOM Project Agreement.
- 1.32 “**Early Access Tunnel**” means the Infrastructure Sections identified in the following rows of Part A of Appendix A of this Schedule 45: 7b, 14, 15, 21, 22, 28, 29, 35, 36, 42, 43, 49 and 50, in each case prior to Section Substantial Completion occurring in respect thereof.
- 1.33 “**Early Tunnel Access Commencement Date**” has the meaning set out in Section 6.6(b) of this Schedule 45.
- 1.34 “**Early Tunnel Access Period**” has the meaning set out in Section 6.6(b) of this Schedule 45.
- 1.35 “**Elevator Access Period**” has the meaning set out in Section 6.7(b) of this Schedule 45.
- 1.36 “**Handover Data and Equipment**” means, in respect of a Project Co Infrastructure Section, the applicable Design and Construction Data and equipment identified in the Output Specifications as being necessary to achieve Substantial Completion in respect of such Project Co Infrastructure Section.
- 1.37 “**Initial Period Integration Demerit Points**” has the meaning given in Section 3.2(a)(i) of this Schedule 45.
- 1.38 “**Initial Demerit Points Period End Date**” means the day that is [REDACTED] months from Financial Close.
- 1.39 “**Integration Committee**” has the meaning given to it in the RSSOM Interface Agreement.
- 1.40 “**Integration Demerit Event**” means an event identified in the column titled “Integration Demerit Event” in Appendix C to this Schedule 45.
- 1.41 “**Integration Demerit Point Test Period**” means, in respect of the determination of the Integration Demerit Points Incurred at any time of determination, as applicable (i) the period commencing on Financial Close and ending on the Initial Demerit Points Period End Date (or, in respect of any determination made prior to the Initial Demerit Points Period End Date, the date of such determination) or (ii) the 6 month period preceding the date of determination.

- 1.42 “**Integration Demerit Points**” means, in respect of any Integration Demerit Event, the number of points set out in the column titled “Integration Demerit Points” next to such Integration Demerit Event in Appendix C to this Schedule 45.
- 1.43 “**Integration Demerit Points Incurred**” has the meaning given in Section 3.2(a) of this Schedule 45.
- 1.44 “**Integration Demerit Points Threshold**” means (i) in respect of any Integration Demerit Points identified in Part A of the table in Appendix C, the Part A Integration Demerit Point Threshold, (ii) in respect of any Integration Demerit Points identified in Part B of the table in Appendix C, the Part B Integration Demerit Point Threshold, (iii) in respect of any Integration Demerit Points identified in Part C of the table in Appendix C, the Part C Integration Demerit Point Threshold, (iv) in respect of any Integration Demerit Points identified in Part D of the table in Appendix C, the Part D Integration Demerit Point Threshold, (v) in respect of any Integration Demerit Points identified in Part E of the table in Appendix C, the Part E Integration Demerit Point Threshold, and (vi) in respect of any Integration Demerit Points identified in Part F of the table in Appendix C, the Part F Integration Demerit Point Threshold, as applicable.
- 1.45 “**Integration Improvement Workshops**” has the meaning given in Schedule 39 – Form of RSSOM Interface Agreement.
- 1.46 “**No Later Than Date**” means, in respect of a Project Co Infrastructure Section or Project Co Infrastructure Subsection, as applicable, the corresponding date identified in the column titled “No Later Than Date” in Part A of Appendix A to this Schedule 45, as such date may be amended pursuant to Section 30 (*Delay Events*) of the Project Agreement.
- 1.47 “**Part A Integration Demerit Point Threshold**” means, in respect of any applicable Integration Demerit Point Test Period, the number which represents [REDACTED]% (rounded upwards to the nearest whole number) of the aggregate number of Access Ready Inspections and Critical RSSOM Infrastructure Inspections taking place in such Integration Demerit Point Test Period, of which Project Co has received, in each case, at least five (5) Business Days notice from Contracting Authority pursuant to this Schedule 45.
- 1.48 “**Part B Integration Demerit Point Threshold**” means [REDACTED].
- 1.49 “**Part C Integration Demerit Point Threshold**” means [REDACTED].
- 1.50 “**Part D Integration Demerit Point Threshold**” means, in respect of any applicable Integration Demerit Point Test Period, the number which represents [REDACTED]% (rounded upwards to the nearest whole number) of the aggregate number of Integration Works Submittals, DIWG South Civil Integration Works Submittals (as defined in the RSSOM Interface Agreement) and responses to RSSOM Infrastructure Works Submittals (as defined in Schedule 10 – Review Procedure) contemplated in rows 11, 12 and 13 of the table set out in Appendix C to this Schedule 45.
- 1.51 “**Part E Integration Demerit Point Threshold**” means [REDACTED].
- 1.52 “**Part F Integration Demerit Point Threshold**” means [REDACTED].
- 1.53 “**Permitted Elevator Use**” has the meaning set out in Section 6.7(a) of this Schedule 45.

- 1.54** “**Post Completion Access Tunnel**” means the Infrastructure Sections identified in the following rows of Part A of Appendix A of this Schedule 45: 7b, 14, 15, 21, 22, 28, 29, 35, 36, 42, 43, 49 and 50, in each case after Section Substantial Completion has occurred in respect thereof.
- 1.55** “**Post Completion Jet Fan Commissioning**” means the commissioning activities to be conducted by Project Co pursuant to and in accordance with Section 3.1.21.2(d)(viii) (*Fire/Life Safety Systems and Procedures*) of the Output Specifications.
- 1.56** “**Post Completion Tunnel Access Commencement Date**” has the meaning set out in Section 6A.1(b) of this Schedule 45.
- 1.57** “**Post Completion Tunnel Access Period**” has the meaning set out in Section 6A.1(b) of this Schedule 45.
- 1.58** “**Project Co Health and Safety Plan**” means, in respect of any Project Co Infrastructure Subsection or Project Co Infrastructure Section, prior to Section Substantial Completion thereof, the applicable health and safety plan of Project Co.
- 1.59** “**Project Co Infrastructure Section**” means each of the discrete segments of the Project Co Infrastructure listed in the column titled “Infrastructure Section” in Part A of Appendix A to this Schedule 45.
- 1.60** “**Project Co Infrastructure Subsection**” means each of the discrete subsections of the Project Co Infrastructure Sections identified in the column titled ‘Infrastructure Subsection’ in Part A of Appendix A to this Schedule 45.
- 1.61** “**RSSOM Activities**” means, in respect of a Project Co Infrastructure Subsection, the works and activities of RSSOM Project Co identified in the column titled “RSSOM Activities” in Part A of Appendix A to this Schedule 45.
- 1.62** “**RSSOM Independent Certifier**” means the Person appointed as independent certifier under the RSSOM Project Agreement.
- 1.63** “**RSSOM Infrastructure Technical Specifications**” means, the technical specifications applicable to the RSSOM Project Infrastructure contained in Appendix D to this Schedule 45, as may be modified pursuant to Schedule 10 – Review Procedure.
- 1.64** “**South Civil Elevator**” means an elevator located on a Project Co Infrastructure Section in respect of which Section Substantial Completion has not yet occurred.
- 1.65** “**Subsection Access Readiness Notice**” has the meaning given in Section 6.2(a)(i) of this Schedule 45.
- 1.66** “**Subsection Access Ready Target Date**” has the meaning given in Section 6.2(a)(i) of this Schedule 45.
- 1.67** “**Subsection RSSOM Access Date**” has the meaning given in Section 6.2(a)(iv)(A) of this Schedule 45.
- 1.68** “**Subsection RSSOM Access Period**” has the meaning given in Section 6.3(a) of this Schedule 45.

## 2. CONTRACTING AUTHORITY INTEGRATION OBLIGATIONS

### 2.1 RSSOM Design and Construction Data

- (a) Contracting Authority shall provide the Critical RSSOM Infrastructure Data to Project Co on or before the Critical RSSOM Infrastructure Data Deadline applicable thereto. If Contracting Authority fails to provide Critical RSSOM Infrastructure Data on or before the applicable Critical RSSOM Infrastructure Data Deadline then, provided the then applicable Integration Demerit Points Incurred do not exceed the applicable Integration Demerit Point Threshold, Project Co shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be entitled to a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be entitled to a Compensation Event.
- (b) Without prejudice to Section 2.1(a) of this Schedule 45, Contracting Authority shall, upon receipt, provide to Project Co such relevant design and construction related data and information as it receives from RSSOM Project Co in respect of the RSSOM Project and shall update such information from time to time on an ongoing basis upon receipt of such updates from RSSOM Project Co.

### 2.2 Critical RSSOM Infrastructure Works

- (a) Contracting Authority shall cause RSSOM Project Co to complete the Critical RSSOM Infrastructure Works, such that they are Critical RSSOM Infrastructure Works Complete on or before the applicable Critical RSSOM Infrastructure Works Deadline subject to, and in accordance with, Section 7 of this Schedule 45.
- (b) Contracting Authority shall ensure, or cause RSSOM Project Co to ensure, that the Critical RSSOM Infrastructure Works perform in accordance with the RSSOM Project Infrastructure Technical Specifications from the date that Critical RSSOM Infrastructure Works Completion is achieved in respect thereof until Project Co achieves Section Substantial Completion in respect of the applicable Project Co Infrastructure Section. Project Co shall notify the Contracting Authority immediately upon a failure of any Critical RSSOM Infrastructure Works to perform in accordance with the RSSOM Project Infrastructure Technical Specifications.
- (c) Without prejudice to any other right Project Co may have under the Project Agreement, Project Co may, prior to any applicable Critical RSSOM Infrastructure Works Completion Date, request to participate with Contracting Authority in, or conduct, an inspection of, any Critical RSSOM Infrastructure Works. Contracting Authority may determine whether to permit Project Co or any Project Co Party to participate in, or conduct, such an inspection, and shall act reasonably in making such determination where it has received at least five (5) Business Days notice from Project Co of such intended inspection. If Contracting Authority so permits Project Co or a Project Co Party to participate in, or conduct, such an inspection, then Project Co or the applicable Project Co Party shall comply with all instructions provided by Contracting Authority in respect of such inspection. If a requested inspection which has been permitted by Contracting Authority pursuant to this Section 2.2(c) of this Schedule 45 does not take place, Project Co shall reimburse Contracting Authority for any costs incurred in connection with such inspection.

- (d) In the event that,
- (i) a Critical RSSOM Infrastructure Works Completion Date has not occurred on or before the Critical RSSOM Infrastructure Works Deadline applicable to the relevant Critical RSSOM Infrastructure Works, or
  - (ii) the applicable Critical RSSOM Infrastructure Works cease to be Critical RSSOM Infrastructure Works Complete thereafter;

then, provided the then applicable Integration Demerit Points Incurred do not exceed the applicable Integration Demerit Point Threshold, Project Co shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be entitled to a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be entitled to a Compensation Event.

### 2.3 Post Completion Access Tunnels – Jet Fan Commissioning

Contracting Authority shall cause RSSOM Project Co to grant Project Co and any Project Co Party access to each Post Completion Access Tunnel during each applicable Post Completion Tunnel Access Period for the exclusive purpose of conducting Post Completion Jet Fan Commissioning, all in accordance with Section 6A of this Schedule 45, and Contracting Authority shall ensure that RSSOM Project Co and all RSSOM Project Co Parties do not materially interfere with such access.

## 3. INTEGRATION DEMERIT POINT REGIME

### 3.1 Integration Demerit Points

- (a) If, at any time prior to the Substantial Completion Date, an Integration Demerit Event occurs, the corresponding Integration Demerit Points shall accrue and be assessed against Project Co in accordance with this Section 3.1 of Schedule 45.
- (b) For greater certainty, notwithstanding anything to the contrary in the Project Agreement, including this Schedule 45, any Integration Demerit Points shall accrue immediately upon the occurrence of the applicable Integration Demerit Event.

### 3.2 Calculation of Integration Demerit Points Incurred

- (a) The “**Integration Demerit Points Incurred**” at any given time shall be calculated separately in respect of Integration Demerit Points identified in each of Parts A, B, C and D of the table in Appendix C, in each case as the sum of (1) the applicable Initial Period Integration Demerit Points; and (2) the applicable Current Period Integration Demerit Points,

where:

- (i) the applicable “**Initial Period Integration Demerit Points**” (in respect of Integration Demerit Points identified in each of Parts A, B, C and D of the table in Appendix C) means the sum of all applicable Integration Demerit Points incurred from Financial Close to the Initial Demerit Points Period End Date (or, in respect of any determination made prior to the Initial Demerit Points Period End Date, incurred up to the date of such determination); and

- (ii) the applicable “**Current Period Integration Demerit Points**” (in respect of Integration Demerit Points identified in each of Parts A, B, C and D of the table in Appendix C) means the sum of all applicable Integration Demerit Points incurred by Project Co during the previous six (6) months provided that:
  - (A) on or prior to the Initial Demerit Point Period End Date, the applicable Current Period Integration Demerit Points shall be equal to zero; and
  - (B) at any time on or before the day that is six (6) months following the Initial Demerit Point Period End Date, the applicable Current Period Integration Demerit Points shall equal the sum of all applicable Integration Demerit Points incurred by Project Co since the Initial Demerit Point Period End Date.

### 3.3 Reporting of Integration Demerit Points

Project Co shall track and set out the Integration Demerit Points incurred in each monthly Works Report (both on a month by month basis and as a running total), on a separate basis in respect of all Integration Demerit Points identified in Parts A, B, C, D of the table in Appendix C. If Contracting Authority disagrees with any calculation of the Integration Demerit Points set out by Project Co in any Works Report, then Contracting Authority shall notify Project Co and the Independent Certifier of such disagreement. If the matter(s) cannot be resolved within fifteen (15) Business Days after Contracting Authority’s notification of disagreement (or such other period as may be otherwise agreed by the Parties), then such matter shall be subject to the binding determination of the Independent Certifier, and the Independent Certifier’s decision shall be final and shall not be subject to resolution pursuant to Schedule 27 – Dispute Resolution Procedure.

### 3.4 Relief From Integration Demerit Points.

Subject to Project Co meeting the obligations set out in Section 30.2 (*Consequences of a Delay Event*) and Section 30.3 (*Mitigation*) of the Project Agreement, if any applicable Integration Demerit Points,

- (i) have been assessed in accordance with Section 3 and Appendix C of this Schedule 45; and
- (ii) have arisen from an Integration Demerit Event that has been directly caused by one or more of the events set out in Section 30.1(a) (*Delay Events – Definition*) of the Project Agreement, whether or not such event constitutes a Delay Event or have been caused or contributed to by the Contracting Authority or a Contracting Authority Party;

such Integration Demerit Points shall not be included in the calculation of Integration Demerit Points Incurred in accordance with this Section 3 of Schedule 45.

#### 4. CRITICAL DATA AND CRITICAL WORKS

##### 4.1 Project Co to Provide Critical Data

Project Co shall provide Contracting Authority with the Critical Data on or before the applicable Critical Data Deadline.

##### 4.2 Failure to Provide Critical Data

If Project Co does not provide Contracting Authority with the Critical Data on or before the applicable Critical Data Deadline then it shall be liable to pay liquidated damages to Contracting Authority as set out in Section 5.1 (*Failure to Achieve Section Substantial Completion, Subsection RSSOM Access Date or Deliver Critical Data or Critical Works on Time*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime.

##### 4.3 Other Information

Project Co shall provide such other information as Contracting Authority may reasonably require in order to facilitate the development of an integrated Ontario Line Subway System.

##### 4.4 Project Co to Complete Critical Works

- (a) Project Co shall complete the Critical Works, such that they are Critical Works Complete on or before the applicable Critical Works Deadline.
- (b) Project Co shall provide to Contracting Authority and the Independent Certifier notice (the “**Critical Works Completion Notice**”) twenty-five (25) Business Days prior to the date on which it anticipates the Critical Works will be completed in compliance with the requirements of the Project Agreement, including the Output Specifications. The Critical Works Completion Notice shall include particulars of a scheduled inspection by the Independent Certifier of the applicable Critical Works (the “**Critical Works Inspection**”) which shall take place no earlier than five (5) Business Days after the date of the Critical Works Completion Notice.
- (c) On the date specified in the Critical Works Completion Notice Project Co shall participate, together with Contracting Authority and the Independent Certifier, in the Critical Works Inspection of the Critical Works, with a view to determining whether they have achieved Critical Works Completion. It is acknowledged that pursuant to the RSSOM Project Agreement, RSSOM Project Co shall participate in the Critical Works Inspection.
- (d) Contracting Authority shall notify Project Co and the Independent Certifier within ten (10) Business days of the completion of the Critical Works Inspection whether it is of the opinion that the Critical Works are completed in compliance with the requirements of the Project Agreement, including the Output Specifications. In determining whether the Critical Works are completed in compliance with the requirements of the Project Agreement, Contracting Authority may, but shall not be obligated to, take account of the views of Project Co expressed during the Critical Works Inspection.
- (e) Within five (5) Business Days after Project Co’s receipt of Contracting Authority’s opinion pursuant to Section 4.4(d) of this Schedule 45 the Parties shall cause the Independent Certifier to determine whether the Critical Works are completed in compliance with the

requirements of the Project Agreement, including the Output Specifications, having regard to the opinions of both Project Co and Contracting Authority.

- (f) If the Independent Certifier determines that the Critical Works are completed in compliance with the requirements of the Project Agreement, including the Output Specifications, the Critical Works shall be deemed Critical Works Complete on the date confirmed by the Independent Certifier, provided that the Independent Certifier may have regard to such confirmation, but shall not be bound by it, for purposes of determining if Substantial Completion has occurred and for purposes of the issuance of the Substantial Completion Certificate pursuant to Section 25 (*Commissioning and Completion*) of the Project Agreement (provided further that the Independent Certifier shall be bound by such confirmation to the extent no change has occurred since the date thereof).
- (g) If the Independent Certifier determines that the Critical Works are not completed in compliance with the requirements of the Project Agreement, including the Output Specifications, the Critical Works Notice shall be deemed rescinded and Project Co may provide a subsequent Critical Works Notice pursuant to Section 4.4(b) of this Schedule 45.
- (h) Project Co shall ensure that all Critical Works are compliant with and function in accordance with all requirements of the Project Agreement, including the Output Specifications, at all times from and after the date that such Critical Works are Critical Works Complete until Substantial Completion.

#### **4.5 Failure to Provide Critical Works on Time**

If the Critical Works are not Critical Works Complete on or before the applicable Critical Works Deadline or if at any time after they are Critical Works Complete but prior to Substantial Completion the Critical Works do not meet the requirements of the Project Agreement, then Project Co shall be liable to pay liquidated damages to Contracting Authority as set out in Section 5.1(d) (*Failure to Achieve Section Substantial Completion, Subsection RSSOM Access Date or Deliver Critical Data or Critical Works on Time*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime.

### **5. SECTION SUBSTANTIAL COMPLETION**

#### **5.1 Section Substantial Completion**

- (a) Project Co shall achieve Section Substantial Completion in respect of each Project Co Infrastructure Section on or before the No Later Date applicable thereto, in accordance with, the provisions of the Project Agreement including this Schedule 45.
- (b) Without limiting Project Co's obligations under the Project Agreement, for each Project Co Infrastructure Section, Project Co shall, on or before the applicable Section Substantial Completion Date:
  - (i) vacate the applicable Project Co Infrastructure Section and corresponding Lands (except as expressly contemplated pursuant to the terms of the Project Agreement);
  - (ii) provide Contracting Authority with all Handover Data and Equipment in respect of the applicable Project Co Infrastructure Section; and



- (iii) provide Contracting Authority with the most recent versions of all design and construction data required to be delivered by Project Co in respect of such Project Co Infrastructure Section pursuant to the Output Specifications (the “**Design and Construction Data**”) in respect of the applicable Project Co Infrastructure Section (and provide final versions of such Design and Construction Data as soon as reasonably practicable thereafter).
- (c) In the event that Section Substantial Completion does not occur on or before the No Later Than Date applicable to the relevant Project Co Infrastructure Section, then Project Co shall be liable to pay liquidated damages to Contracting Authority as set out in Section 5.1 (*Failure to Achieve Section Substantial Completion, Subsection RSSOM Access Date or Deliver Critical Data or Critical Works on Time*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime.
- (d) Project Co acknowledges that Contracting Authority shall share with RSSOM Project Co copies of the Section Commissioning Commencement Notices, Section Substantial Completion Notices, IC Section Completion Deliverables Confirmations and Section Substantial Completion Certificates delivered pursuant to the Project Agreement and will grant RSSOM Project Co an opportunity to opine whether the applicable Project Co Infrastructure Sections have met the requirements for Section Substantial Completion. Project Co acknowledges that Contracting Authority may at its discretion take such opinion from RSSOM Project Co into consideration in confirming to the Independent Certifier whether it is of the opinion that the Project Co Infrastructure Section has met the requirements for Section Substantial Completion pursuant to the Project Agreement and may, but shall not be obligated to, provide to Project Co and/or the Independent Certifier any deficiency list in respect thereof received by Contracting Authority from RSSOM Project Co.
- (e) Project Co acknowledges that upon Section Substantial Completion being achieved in respect of a Project Co Infrastructure Section, such Project Co Infrastructure Section and all Project Co Infrastructure thereon shall form part of the RSSOM Project Infrastructure and the Ontario Line Subway.

## **6. RSSOM PROJECT CO ACCESS TO PROJECT CO INFRASTRUCTURE SUBSECTIONS, EARLY ACCESS TUNNELS AND SOUTH CIVIL ELEVATORS**

### **6.1 Access Readiness of Project Infrastructure Subsections**

- (a) Project Co shall cause each Project Co Infrastructure Subsection to be Access Ready, as determined in accordance with the procedure set out in Section 6.2 of this Schedule 45, on or before the applicable No Later Than Date.
- (b) In the event that a Subsection RSSOM Access Date does not occur on or before the No Later Than Date applicable to the relevant Project Co Infrastructure Subsection, then Project Co shall be liable to pay liquidated damages to Contracting Authority as set out in Section 5.1 (*Failure to Achieve Section Substantial Completion, Subsection RSSOM Access Date or Deliver Critical Data or Critical Works on Time*) of Schedule 19 – Liquidated Damages and Construction Enforcement Regime.

### **6.2 Determination of Project Co Infrastructure Subsection Access Readiness**

- (a) The Parties shall determine whether a Project Co Infrastructure Subsection is Access Ready in accordance with the following procedure and subject to Section 6.3 of this Schedule 45:
- (i) Project Co shall provide Notice to Contracting Authority and the Independent Certifier (the “**Subsection Access Readiness Notice**”) of the date on which each applicable Project Co Infrastructure Subsection shall be ready to be accessed by RSSOM Project Co for purposes of RSSOM Project Co performing the applicable RSSOM Activities (the “**Subsection Access Ready Target Date**”) no later than twenty five (25) Business Days prior to such Subsection Access Ready Target Date which Notice shall include particulars of a scheduled inspection by the Independent Certifier of the Project Co Infrastructure Subsection (the “**Access Ready Inspection**”) which shall take place no earlier than five (5) Business Days after the date of the Subsection Access Readiness Notice.
  - (ii) Upon the Subsection Access Readiness Notice being provided to Contracting Authority, Contracting Authority and Independent Certifier shall conduct the Access Ready Inspection of the Project Co Infrastructure Subsection, with a view to determining whether the Project Co Infrastructure Subsection is Access Ready. Pursuant to the RSSOM Project Agreement, Contracting Authority shall invite RSSOM Project Co to participate in such Access Ready Inspection.
  - (iii) If Contracting Authority is of the opinion that the Project Co Infrastructure forming part of the Project Co Infrastructure Subsection is not built in compliance with the requirements of the Project Agreement including the Output Specifications in respect of any Access Ready Requirements, it shall provide to Independent Certifier a list of deficiencies (the “**Access Readiness Deficiency List**”) no later than fifteen (15) Business Days after the date of the Access Ready Inspection. Project Co acknowledges that any Access Readiness Deficiency List provided by Contracting Authority may be informed by input received by the Contracting Authority from RSSOM Project Co pursuant to the RSSOM Project Agreement.
  - (iv) Project Co and Contracting Authority shall cause the Independent Certifier to consider any Access Readiness Deficiency List provided by Contracting Authority pursuant to Section 6.2(a)(iii) of this Schedule 45, if any, and determine, and notify Project Co and Contracting Authority within twenty-five (25) Business Days of the date of the Subsection Access Readiness Notice whether
    - (A) all Project Co Infrastructure forming part of the Project Co Infrastructure Subsection is built in compliance with the requirements of the Project Agreement, including the Output Specifications in respect of all Access Ready Requirements in which case the Project Co Infrastructure Subsection shall be deemed Access Ready and the date on which RSSOM Project Co shall be deemed to be granted access to such Project Co Infrastructure Subsection in order to carry out the applicable RSSOM Activities (the applicable “**Subsection RSSOM Access Date**”) shall be the date of the notice provided by Independent Certifier pursuant to this Section 6.2(a)(iv) of this Schedule 45, or
    - (B) the relevant Project Co Infrastructure forming part of the Project Co Infrastructure Subsection is not built in compliance with the requirements

of the Project Agreement, including the Output Specifications, in respect of any Access Ready Requirements, in which case the Subsection Access Readiness Notice shall be deemed rescinded.

- (b) The Independent Certifier may have regard to its determination pursuant to Section 6.2(a)(iv) of this Schedule 45 but shall not be bound by it for purposes of determining if Section Substantial Completion has occurred in respect of any applicable Project Co Infrastructure Section and for purposes of the issuance of a Section Substantial Completion Certificate or the Substantial Completion Certificate pursuant to Section 23 (*Commissioning and Completion*) of the Project Agreement (provided the Independent Certifier shall be bound by such determination to the extent no change has occurred since the date thereof).
- (c) A determination by the Independent Certifier pursuant to Section 6.2(a)(iv)(A) of this Schedule 45 that all Project Co Infrastructure forming part of the Project Co Infrastructure Subsection is built in compliance with the requirements of the Project Agreement, including the Output Specifications in respect of all the Access Ready Requirements shall in no way limit the obligations of Project Co under the Project Agreement including in respect of the applicable Project Co Infrastructure Subsection or any applicable Project Co Infrastructure Section including but not limited to, its obligations in respect of any defects, deficiencies or items of outstanding works existing or discovered prior to or after the date of such determination.
- (d) Project Co acknowledges that RSSOM Project Co will be granted an opportunity to consider and opine on whether all Project Co Infrastructure forming part of the Project Co Infrastructure Subsection is built in compliance with the requirements of the Project Agreement, including the Output Specifications in respect of all Access Ready Requirements, and that if in RSSOM Project Co's opinion it does not meet such requirements then Contracting Authority may take such opinion into consideration when exercising its rights pursuant to Section 6.2(a)(iii) of this Schedule 45.
- (e) If, for the purposes of this Section 6.2, Project Co disagrees with a determination by the Independent Certifier that Project Co Infrastructure forming part of a Project Co Infrastructure Subsection is not built in compliance with the Project Agreement in respect of any Access Ready Requirements, Project Co may, no later than five (5) Business Days after receipt of Independent Certifier's confirmation under 6.2(a)(iv) of this Schedule 45, bring a Dispute in respect thereof. Project Co acknowledges and agrees that if it does not initiate a Dispute within such timeframe with respect thereto, it shall be deemed to waive any claim in relation thereto for purposes of determining whether the applicable Subsection was Access Ready and/or whether RSSOM Access Date has occurred (but for clarity not for any other purposes under this Schedule 45 or the Project Agreement).
- (f) The process contemplated in Sections 6.2(a)(i)-(iv) of this Schedule 45 shall be repeated in respect of a Project Co Infrastructure Subsection until such time as a Subsection RSSOM Access Date is determined in respect thereof.

### 6.3 RSSOM Project Co Access to Project Co Infrastructure Subsections

- (a) Project Co shall grant RSSOM Project Co access to each Project Co Infrastructure Subsection from the applicable Subsection RSSOM Access Date up to the Section

Substantial Completion Date applicable to such Project Co Infrastructure Subsection (the “**Subsection RSSOM Access Period**”) between 7:00 a.m. and 7:00 p.m. each Business Day for the exclusive purpose of performing the applicable RSSOM Activities and shall ensure that Project Co and all Project Co Parties do not materially interfere with such access, all subject to Contracting Authority complying with its obligations pursuant to Section 6.4 of this Schedule 45.

- (b) Project Co shall grant RSSOM Project Co access to
- (i) a Project Co Infrastructure Subsection in respect of which a Subsection RSSOM Access Date has not yet occurred, or
  - (ii) a Project Co Infrastructure Section in respect of which a Section Substantial Completion Date has not yet occurred,

in each case where such access is required by RSSOM Project Co in order to access (or bring equipment on site to) a Project Co Infrastructure Subsection in respect of which a Subsection RSSOM Access Date has occurred, or a Project Co Infrastructure Section in respect of which a Section Substantial Completion Date has occurred.

#### 6.4 Conditions of Access by RSSOM Project Co

- (a) Contracting Authority shall ensure that RSSOM Project Co and any RSSOM Project Co Party, in connection with accessing any Project Co Infrastructure Subsection, Early Access Tunnel or South Civil Elevator, as applicable, and the performance of any applicable RSSOM Activities, or Early Access Noise and Vibration Tests, as applicable, and in connection with accessing any Project Co Infrastructure as contemplated in Section 6.3(b) of this Schedule 45, shall agree in the RSSOM Project Agreement to:
- (i) comply with the Project Co Health and Safety Plan that is applicable to the Project Co Infrastructure Subsection, Early Access Tunnel, South Civil Elevator or Project Co Infrastructure Section (as applicable) and comply with all directions of Project Co in respect of any matter regarding health and safety at the applicable Project Co Infrastructure Subsection, Early Access Tunnel or South Civil Elevator, as applicable, including but not limited to
    - (A) ensuring all employees, contractors, subcontractors and other RSSOM Project Co Parties report to Project Co to receive the necessary health and safety training on, or prior to, arrival at the Project Co Infrastructure Section that the Project Co Infrastructure Subsection, Early Access Tunnel or South Civil Elevator is comprised in; and
    - (B) complying with all applicable health and safety plans and directions of Project Co when accessing a Project Co Infrastructure Subsection or RSSOM Project Infrastructure via any applicable Project Co Infrastructure Section that is still under the care and control of Project Co;
  - (ii) coordinate with Project Co the means of access to the applicable Project Co Infrastructure Subsection, Early Access Tunnel, South Civil Elevator or applicable

RSSOM Project Infrastructure (or to any Project Co Infrastructure Section to which RSSOM Project Co may require access solely for the purpose contemplated pursuant to Section 6.3(b) of this Schedule 45);

- (iii) keep the Project Co Infrastructure Subsection, Early Access Tunnel or South Civil Elevator, as applicable, and all Project Co Infrastructure thereon in a safe and orderly state in accordance with Good Industry Practice;
- (iv) not materially interfere with or delay the work of Project Co or any Project Co Parties, and not do anything that causes Project Co to be in contravention of its obligations under the *Occupational Health and Safety Act (Ontario)*, and cause RSSOM Project Co to promptly cease and desist any activity that results or has a likelihood in resulting in such interference or delay or causes such contravention;
- (v) without derogating from the generality of the foregoing, not interfere with or delay Project Co, any Project Co Party or the Independent Certifier in carrying out commissioning activities in respect of a Project Co Infrastructure Section in which such Project Co Infrastructure Subsection, Early Access Tunnel or South Civil Elevator, as applicable, is comprised; and
- (vi) not cause any damage or destruction to the applicable Project Co Infrastructure Subsection, Early Access Tunnel or South Civil Elevator, as applicable, and any Project Co Infrastructure contained therein, and comply with any directions of Project Co as may be required to protect such Project Co Infrastructure Subsection, Early Access Tunnel, South Civil Elevator or Project Co Infrastructure from damage or destruction.

#### **6.5 Protection of Project Co Infrastructure Subsection During Subsection RSSOM Access Period**

- (a) During the Subsection RSSOM Access Period Project Co shall remain responsible for protecting the Project Co Infrastructure Subsection pursuant to Section 11.10 (*Protection of Works and Property and Reinstatement Work*) of the Project Agreement.
- (b) If any damage to or destruction of Project Co Infrastructure during a Subsection RSSOM Access Period, Early Tunnel Access Period or Elevator Access Period, as applicable, was caused by RSSOM Project Co or a RSSOM Project Co Party then:
  - (i) if such damage or destruction results in, or could reasonably be expected to result in, a serious threat to the health and safety or security of any person, Contracting Authority shall require RSSOM Project Co to follow the reasonable directions of South Civil Project Co in respect of health and safety compliance and to vacate the Project Co Infrastructure Subsection, Early Access Tunnel or South Civil Elevator and the Lands it is situated on until such time as Project Co provides Notice to Contracting Authority that the health and safety or security issue identified by Project Co has been addressed and RSSOM Project Co may return thereto;
  - (ii) any repair thereof shall be carried out in accordance with Section 11.10 (*Protection of Works and Property and Reinstatement Work*) of the Project Agreement at the cost and expense of Contracting Authority; and

- (iii) Project Co shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be entitled to a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be entitled to a Compensation Event.

## 6.6 Early Access Tunnels – Noise and Vibration Tests

- (a) Project Co shall grant RSSOM Project Co and each RSSOM Project Co Party access to each Early Access Tunnel during the applicable Early Tunnel Access Period between 7:00 p.m. on each Business Day and 7:00 a.m. on the next following Business Day, for the exclusive purpose of conducting Early Access Noise and Vibration Tests, and shall ensure that Project Co and all Project Co Parties do not materially interfere with such access, all subject to Contracting Authority complying with its obligations pursuant to Section 6.4 of this Schedule 45.
- (b) Contracting Authority shall provide Notice to Project Co of the date on which RSSOM Project Co requires access to an Early Access Tunnel for the purpose of conducting Early Access Noise and Vibration Tests (the “**Early Tunnel Access Commencement Date**”) provided the Early Tunnel Access Commencement Date shall be no earlier than ninety (90) days prior to the No Later Than Date applicable to the relevant Early Access Tunnel as identified in Appendix A of this Schedule 45 and the applicable period (the “**Early Tunnel Access Period**”) commencing on such date during which such access is required, provided such Notice shall be provided to Project Co no later than sixty (60) days prior to the Early Tunnel Access Commencement Date identified therein.
- (c) Contracting Authority may refer the determination of the Early Tunnel Access Commencement Date and the Early Tunnel Access Period for consideration at the next following meeting of the Integration Committee pursuant to the RSSOM Interface Agreement, in accordance with the terms of Section 3 (*Integration Committee*) of the RSSOM Interface Agreement, in which case it shall take into consideration any determination thereof made by the Integration Committee, provided that the Early Tunnel Access Commencement Date may in no event be earlier than ninety (90) days prior to the applicable No Later Than Date.
- (d) If Contracting Authority notifies Project Co that RSSOM Project Co requires access to an Early Access Tunnel for purposes of Early Access Noise and Vibration Tests on a date earlier than the Early Tunnel Access Commencement Date or at a time other than during the Early Tunnel Access Period determined in accordance with this Section 6.6 of this Schedule 45, or if RSSOM Project Co does not vacate the Early Access Tunnel at the end of such Early Tunnel Access Period, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation.

## 6.7 Elevator Access

- (a) Project Co shall grant RSSOM Project Co and any RSSOM Project Co Party access to each South Civil Elevator during each applicable Elevator Access Period, between 7:00 a.m. and 7:00 p.m. on each Business Day, for the exclusive purpose of RSSOM Project Co transporting equipment to Infrastructure Subsections in respect of which the applicable Subsection RSSOM Access Date has occurred or Infrastructure Sections in respect of which the Section Substantial Completion Date has occurred (each a “**Permitted Elevator**”

Use”), and Project Co and all Project Co Parties shall not materially interfere with such access.

- (b) Project Co acknowledges that RSSOM Project Co may, if it requires access to South Civil Elevators for purposes of Permitted Elevator Use, raise such requirements for discussion at the next following meeting of the Construction Integration Working Group pursuant to Section 5 (*Construction Integration Working Group*) of the RSSOM Interface Agreement. If and to the extent Project Co agrees to provide access to RSSOM Project Co to South Civil Elevators for purposes of specified Permitted Elevator Use disclosed by RSSOM Project to the Construction Integration Working Group (which disclosure shall include identification of the equipment intended to be transported). The period for access (the “**Elevator Access Period**”) applicable to such disclosed Permitted Elevator Use shall be the period (if any) agreed to by Project Co and established by the Construction Integration Working Group.
- (c) For clarity, Project Co shall not be required to provide RSSOM Project Co with access to South Civil Elevators outside of the applicable Elevator Access Period or for any purpose other than Permitted Elevator Use disclosed to the Construction Integration Group in respect thereof.
- (d) Contracting Authority shall cause RSSOM Project Co to comply with the terms of Section 6.4 at all times while accessing a South Civil Elevator during an applicable Elevator Access Period.

## 6A. ACCESS TO POST COMPLETION ACCESS TUNNELS

### 6A.1 Access to Post Completion Access Tunnels

The applicable Post Completion Tunnel Access Commencement Date and Post Completion Tunnel Access Period during which Project Co shall be granted access pursuant to Section 2.3 of this Schedule 45 to each Post Completion Access Tunnel for purposes of carrying out Post Completion Jet Fan Commissioning, shall be determined in the following manner:

- (a) Project Co shall provide to Contracting Authority Notice of the proposed date on which Project Co requires access to the applicable Post Completion Access Tunnel for purposes of performing the Post Completion Jet Fan Commissioning (which date shall be no earlier than two-hundred and ten (210) days after the Critical RSSOM Infrastructure Works Deadline applicable to the relevant Post Completion Access Tunnel) and the proposed time period for access commencing on such date. For clarity, more than one (1) Notice may be provided to Contracting Authority in respect of a Post Completion Access Tunnel pursuant to this Section 6A.1(a) of this Schedule 45, provided that no more than twelve (12) Notices in aggregate may be provided by Project Co pursuant to this Section 6A.1(a).
- (b) Contracting Authority shall, no later than thirty (30) Business Days after receipt of Notice pursuant to Section 6A.1(a) of this Schedule 45, confirm by Notice to Project Co the access period (the “**Post Completion Tunnel Access Period**”) and commencement date thereof (the “**Post Completion Tunnel Access Commencement Date**”) in respect of Post Completion Jet Fan Commissioning to be conducted in such Post Completion Access Tunnel (which, for clarity, may be the same as, or different from, those proposed by Project Co in its Notice provided pursuant to Section 6A.1(a) of this Schedule 45).

- (c) Contracting Authority may refer the determination of the Post Completion Tunnel Access Commencement Date and the Post Completion Tunnel Access Period for consideration at the next following meeting of the Integration Committee pursuant to the RSSOM Interface Agreement, in accordance with the terms of Section 3 (*Integration Committee*) of the RSSOM Interface Agreement, in which case it shall take into consideration any determination made in respect thereof by the Integration Committee, provided that the Post Completion Tunnel Access Commencement Date may in no event be earlier than two-hundred and ten (210) days after the Critical RSSOM Infrastructure Works Deadline applicable to the relevant Post Completion Access Tunnel.

## 7. CRITICAL RSSOM WORKS COMPLETION PROCEDURE

### 7.1 Critical RSSOM Infrastructure Works Completion

- (a) Critical RSSOM Infrastructure Works Completion shall be determined in respect of any Critical RSSOM Infrastructure Works in accordance with the following procedure:
- (i) Contracting Authority shall provide to Project Co notice (the “**Critical RSSOM Infrastructure Works Completion Notice**”) of the date on which Contracting Authority expects the Critical RSSOM Infrastructure Works to be Critical RSSOM Infrastructure Works Complete (the “**Critical RSSOM Infrastructure Works Completion Target Date**”), no later than two (2) Business Days after receipt of notice of same from RSSOM Project Co, which notice shall include particulars of a scheduled inspection by the RSSOM Independent Certifier of the applicable Critical RSSOM Infrastructure Works (the “**Critical RSSOM Infrastructure Works Inspection**”) which shall take place no earlier than three (3) Business Days after the date of the Critical RSSOM Infrastructure Works Completion Notice.
  - (ii) Upon the Critical RSSOM Infrastructure Works Completion Notice being provided to Project Co, Project Co shall participate, together with RSSOM Independent Certifier, in the Critical RSSOM Infrastructure Works Inspection of the Critical RSSOM Infrastructure Works, with a view to determining (to the extent possible from a visual inspection carried out by a competent person in a manner consistent with Good Industry Practice) whether they have achieved Critical RSSOM Infrastructure Works Completion.
  - (iii) If Project Co is of the opinion that the Critical RSSOM Infrastructure Works are not Built to Specification and Design it shall provide to Contracting Authority a list of deficiencies (the “**Critical RSSOM Infrastructure Works Completion Deficiency List**”) no later than ten (10) Business Days after the date of the Critical RSSOM Infrastructure Works Inspection (the “**Critical RSSOM Infrastructure Works Deficiency Identification Deadline**”). Project Co acknowledges that Contracting Authority may at its discretion take the Critical RSSOM Infrastructure Works Completion Deficiency List into consideration in confirming to the RSSOM Independent Certifier and/or RSSOM Project Co whether it is of the opinion that the Critical RSSOM Infrastructure Works are Built to Specification and Design and may, but shall not be obligated to, provide the Critical RSSOM Infrastructure Works Completion Deficiency List to RSSOM Project Co and/or the RSSOM Independent Certifier.



In respect of each deficiency identified on the Critical RSSOM Infrastructure Works Completion Deficiency List Project Co shall:

- (A) explain why it constitutes a non conformance to the Built to Specification and Design standard, and identify the modifications required to be made to the applicable Critical RSSOM Infrastructure Works to remove such non-conformance, with specific reference to the applicable requirements of the RSSOM Infrastructure Technical Specifications; and
  - (B) set out any modifications which Project Co considers necessary to the definition of Built to Specification and Design, including the applicable RSSOM Infrastructure Technical Specifications, in the event that such deficiency is not corrected.
- (iv) Contracting Authority shall notify Project Co within twenty-five (25) Business Days of the date of the Critical RSSOM Infrastructure Works Notice whether the RSSOM Independent Certifier has opined that (1) the Critical RSSOM Infrastructure Works are built in compliance with the requirements of the RSSOM Project Agreement in which case the Critical RSSOM Infrastructure Works shall be deemed Critical RSSOM Infrastructure Works Complete on the date (the applicable “**Critical RSSOM Infrastructure Works Completion Date**”) so confirmed by the RSSOM Independent Certifier and notified by the Contracting Authority, or (2) the relevant Critical RSSOM Infrastructure Works are not built in compliance with the requirements of the RSSOM Project Agreement, in which case the Critical RSSOM Infrastructure Works Completion Notice shall be deemed rescinded.
- (v) If, notwithstanding Project Co has delivered a Critical RSSOM Infrastructure Works Deficiency List pursuant to Section 7.1(a)(iii) of this Schedule 45 Contracting Authority proceeds to issue a notice pursuant to Section 7.1(a)(iv)(1) above hereof confirming that Critical RSSOM Infrastructure Works Completion has occurred, Project Co may, no later than five (5) Business Days after receipt of such notice from the Contracting Authority, bring a Dispute in respect thereof. Project Co acknowledges and agrees that if it does not initiate a Dispute within such timeframe with respect to any non conformance to the Built to Specification and Design standard that is identified in the Critical RSSOM Infrastructure Works Deficiency List, it shall be deemed to waive any claim in relation thereto. If such Dispute is resolved in favour of Project Co, Project Co shall be entitled to a Variation subject to and in accordance with Schedule 22 – Variation Procedure. Such Dispute, if applicable, shall not affect the Critical RSSOM Infrastructure Works Completion Date established pursuant to Section 7.1(a)(iv)(1) of this Schedule 45.
- (vi) Subject to Section 7.1(a)(v) of this Schedule 45, Project Co may not make any claim or commence any Dispute asserting that any Critical RSSOM Infrastructure Works are not Critical RSSOM Infrastructure Works Complete at any time after the Critical RSSOM Infrastructure Works Deficiency Identification Deadline unless (i) such deficiency is included in a Critical RSSOM Infrastructure Works Deficiency List delivered on or prior to the Critical RSSOM Infrastructure Works Deficiency Identification Deadline or (ii) such deficiency could not reasonably be

ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Critical RSSOM infrastructure Works if such inspection took place on the Critical RSSOM Infrastructure Works Deficiency Identification Deadline.

- (vii) The process contemplated in Sections 7.1(a)(i)-(v) of this Schedule 45 shall be repeated in respect of any Critical RSSOM Infrastructure Works until such time as a Critical RSSOM Infrastructure Works Completion Date is determined in respect thereof.

**APPENDIX A TO SCHEDULE 45**

**SUBSECTION RSSOM ACCESS, SECTION SUBSTANTIAL COMPLETION,  
CRITICAL DATA AND CRITICAL WORKS**

See attached.

**APPENDIX B TO SCHEDULE 45**

**CRITICAL RSSOM INFRASTRUCTURE DATA**  
**AND CRITICAL RSSOM INFRASTRUCTURE WORKS**

See attached.

**APPENDIX C TO SCHEDULE 45**

**INTEGRATION DEMERIT EVENTS AND POINTS**

[REDACTED]

**APPENDIX D TO SCHEDULE 45**

**RSSOM INFRASTRUCTURE TECHNICAL SPECIFICATIONS**

[REDACTED]

**APPENDIX A TO SCHEDULE 45**

**SUBSECTION RSSOM ACCESS, SECTION SUBSTANTIAL COMPLETION, CRITICAL DATA AND CRITICAL WORKS**

[REDACTED]

**APPENDIX B TO SCHEDULE 45**

**CRITICAL RSSOM INFRASTRUCTURE DATA AND CRITICAL RSSOM INFRASTRUCTURE WORKS**

[REDACTED]



## SCHEDULE 46

## TTC STATION WEEKEND CLOSURES

## 1. DEFINITIONS

In this Schedule 46, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 46) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (i) “**Additional TTC Weekend Closure**” has the meaning given to it in Section 2(b).
- (ii) “**Final Annual TTC Station Weekend Closures Schedule**” has the meaning given to it in Section 3(e).
- (iii) “**Initial Annual TTC Station Weekend Closures Schedule**” has the meaning given to it in Section 3(a).
- (iv) “**Initial TTC Station Weekend Closures**” has the meaning given to it in Section 2(a).
- (v) “**Proposed Final Annual TTC Station Weekend Closures Schedule**” has the meaning given to it in Section 3(b).
- (vi) “**TTC Station – Weekend Full Station Closure**” means the full closure of public access and operation of the Queen TTC subway station or the Osgoode TTC subway station from 2 a.m. Saturday through 5 a.m. Monday, including the cessation of TTC subway passenger trains through such closed TTC subway station.
- (vii) “**TTC Station – Weekend Station Bypass Closure**” means the full closure of public access and operation of the Queen TTC subway station or the Osgoode TTC subway station from 2 a.m. Saturday through 5 a.m. Monday, with TTC subway passenger trains operating during normal operating hours through such closed station, without stopping at such station.
- (viii) “**TTC Station Weekend Closure**” means either a TTC Station – Weekend Full Station Closure or a TTC – Weekend Station Bypass Closure.
- (ix) “**TTC Station Weekend Closures Schedule**” means the schedule for Project Co’s TTC Station Weekend Closures in the form set out in Appendix B to this Schedule 46.
- (x) “**TTC Station Weekend Closures Target Letter**” means the letter attached to Appendix A of this Schedule 46.

## 2. TTC STATION WEEKEND CLOSURES - GENERAL

- (a) Project Co shall be entitled to the number and type of TTC Station Weekend Closures set out in the TTC Station Weekend Closures Target Letter (the “**Initial TTC Station Weekend Closures**”).

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- (b) Subject to Section 2(c), Project Co may, as part of an Initial Annual TTC Station Weekend Closures Schedule, request TTC Station Weekend Closures in addition to Initial TTC Station Weekend Closures (each, an “**Additional TTC Weekend Closure**”). Project Co shall pay Contracting Authority \$[REDACTED] for each Additional TTC Weekend Closure.
- (c) Prior to Substantial Completion, Project Co may have, in the aggregate, a maximum of [REDACTED] TTC Station Weekend Closures in the aggregate to facilitate the Works at the Queen TTC subway station and the Osgoode TTC subway station, provided that:
- (i) a maximum of [REDACTED] of the TTC Station Weekend Closures may be TTC Station – Weekend Full Station Closures;
  - (ii) Project Co shall be entitled to a maximum of [REDACTED] TTC Station Weekend Closures in any calendar year;
  - (iii) the Queen TTC subway station and the Osgoode TTC subway station shall not be the subject of a TTC Station Weekend Closure during the same weekend;
  - (iv) no TTC Station Weekend Closure of the Queen TTC subway station and Osgoode TTC subway station shall be permitted after the Section Substantial Completion of Queen Station and Osgoode Station, respectively; and
  - (v) no TTC Station Weekend Closure shall be permitted on the following weekends or during the following events:
    - (A) Toronto marathon;
    - (B) Scotiabank run;
    - (C) Becel Ride for Heart;
    - (D) Don Valley Parkway/Gardiner Expressway spring and fall weekend clean-up closures;
    - (E) Pride weekend;
    - (F) Canada Day long weekend;
    - (G) Honda Indy weekend;
    - (H) Caribbean Carnival;
    - (I) Santa Claus Parade;
    - (J) Nuit Blanche;
    - (K) New Year’s Eve;
    - (L) Canadian National Exhibition;

- (M) St. Patrick’s Parade weekend;
  - (N) FIFA World Cup – for the duration of tournament in June and July 2026; or
  - (O) the Toronto International Film Festival.
- (d) All TTC Station Weekend Closures shall be performed in accordance with the Output Specifications.

### 3. SCHEDULING AND CANCELLING TTC STATION WEEKEND CLOSURES

- (a) On or before January 1 of each year prior to the year in which Project Co plans for a TTC Station Weekend Closure, Project Co shall submit to Contracting Authority a TTC Station Weekend Closures Schedule for such subsequent year (the “**Initial Annual TTC Station Weekend Closures Schedule**”). Each Initial Annual TTC Station Weekend Closures Schedule shall also including the following information:
- (i) the total number of TTC Station Weekend Closures set out in the TTC Station Weekend Closures Target Letter;
  - (ii) the total number of TTC Station Weekend Closures to be used within the applicable Initial Annual TTC Station Weekend Closures Schedule including by type of TTC Station Weekend Closure;
  - (iii) the total aggregate number of TTC Station Weekend Closures used to date including by type of TTC Station Weekend Closure;
  - (iv) the total remaining TTC Station Weekend Closures set out in the TTC Station Weekend Closures Target Letter;
  - (v) the total number of Additional TTC Station Weekend Closures be used within the applicable Initial Annual TTC Station Weekend Closures Schedule including by type of TTC Station Weekend Closure; and
  - (vi) the total aggregate number of Additional TTC Station Weekend Closures used to date including by type of TTC Station Weekend Closure.
- (b) On or before June 1 of the year prior to the year in which Project Co plans for a TTC Station Weekend Closure, Project Co shall submit to Contracting Authority a proposed final TTC Station Weekend Closures Schedule for such subsequent year (the “**Proposed Final Annual TTC Station Weekend Closures Schedule**”). Project Co may cancel or reschedule any TTC Station Weekend Closure set out in the Initial Annual TTC Station Weekend Closures Schedule provided that such cancellation or rescheduling meets the requirements set out in Section 2 of this Schedule 46. Each Proposed Final Annual TTC Station Weekend Closures Schedule shall also including the following information:
- (i) the total number of TTC Station Weekend Closures set out in the TTC Station Weekend Closures Target Letter;

- (ii) the total number of TTC Station Weekend Closures to be used within the applicable Proposed Final Annual TTC Station Weekend Closures Schedule including by type of TTC Station Weekend Closure;
  - (iii) the total aggregate number of TTC Station Weekend Closures used to date including by type of TTC Station Weekend Closure;
  - (iv) the total remaining TTC Station Weekend Closures set out in the TTC Station Weekend Closures Target Letter;
  - (v) the total number of Additional TTC Station Weekend Closures be used within the applicable Proposed Final Annual TTC Station Weekend Closures Schedule including by type of TTC Station Weekend Closure; and
  - (vi) the total aggregate number of Additional TTC Station Weekend Closures used to date including by type of TTC Station Weekend Closure.
- (c) Project Co shall, as part of the submissions required in Sections 3(a) and 3(b) of this Schedule 46, include a TTC Station Weekend Closures Schedule for all TTC Station Weekend Closures that Project Co is then planning until the Substantial Completion Date.
- (d) Contracting Authority shall review the Initial Annual TTC Station Weekend Closures Schedule and Proposed Final Annual TTC Station Weekend Closures Schedule in accordance with Schedule 10 – Design Review and shall accept any proposed TTC Station Weekend Closures that meet the requirements of Section 2(c). Contracting Authority may reject any proposed TTC Station Weekend Closure that does not meet the requirements of Section 2(c). Project Co may resubmit a Proposed Final Annual TTC Station Weekend Closures Schedule on or before June 1 of the year prior to the year in which Project Co plans for a TTC Station Weekend Closure. For greater certainty, Contracting Authority shall be under no obligation to accept any proposed TTC Station Weekend Closure that was not included in a Proposed Final Annual TTC Station Weekend Closures Schedule submitted after June 1 of the year prior to the year in which Project Co plans for a TTC Station Weekend Closure.
- (e) Once a Proposed Final Annual TTC Station Weekend Closures Schedule has been accepted pursuant to Section 3(d) it shall be deemed to be a “**Final Annual TTC Station Weekend Closures Schedule**”.
- (f) Contracting Authority may, but shall not be obligated, to review and comment on the additional TTC Station Weekend Closures Schedule submitted by Project Co pursuant to Section 3(c).
- (g) Project Co may, at any time, request to reschedule a TTC Station Weekend Closure included in a Final Annual TTC Station Weekend Closures Schedule and Contracting Authority may accept or reject such request in its sole discretion.
- (h) If Project Co no longer requires a TTC Station Weekend Closure that is included in a Final Annual TTC Station Weekend Closures Schedule, it shall promptly cancel such TTC Station Weekend Closure by providing written notice to Contracting Authority. For greater certainty, any cancelled TTC Station Weekend Closure that is not subsequently rescheduled shall not count towards the

number of Initial TTC Station Weekend Closures set out in Section 2(a) or the maximum number of TTC Station Weekend Closures set out in Section 2(c).

- (i) If Project Co cancels a TTC Station Weekend Closure that was included in a Final Annual TTC Weekend Closures Schedule less than thirty (30) weeks but more than twenty (20) weeks in advance of the date set out in the applicable Final Annual TTC Station Weekend Closures Schedule Project Co shall pay Contracting Authority liquidated damages in the amount of \$[REDACTED] for each such cancelled TTC Station Weekend Closure.
- (j) If Project Co cancels a TTC Station Weekend Closure that was included in a Final Annual TTC Weekend Closures Schedule less than 20 weeks in advance of the date set out in the applicable Final Annual TTC Station Weekend Closures Schedule, Project Co shall pay Contracting Authority liquidated damages in the amount of \$[REDACTED] for each such cancelled TTC Station Weekend Closure.
- (k) Contracting Authority may, at any time, on or before the day that is ten (10) weeks prior to a TTC Station Weekend Closure included in a Final Annual TTC Station Weekend Closures Schedule, change the dates of such TTC Station Weekend Closure to dates that are either one week before or one week after such Scheduled TTC Station Weekend Closure, and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (l) Contracting Authority may cancel or reschedule a TTC Station Weekend Closure included in a Final Annual TTC Station Weekend Closures Schedule in which case Project Co shall, subject to and in accordance with Section 30 (*Delay Events*) of the Project Agreement, be entitled to a Delay Event and, subject to and in accordance with Section 31 (*Compensation Events*) of the Project Agreement, be entitled to a Compensation Event except:
  - (i) where such rescheduling is in accordance with Section 3(k); or
  - (ii) to the extent such cancellation or rescheduling arises, directly or indirectly, out of, or in consequence of, or involve or relate to, any breach of the Project Agreement by Project Co or any Project Co Party.

#### **4. LIQUIDATED DAMAGES**

- (a) Except as expressly provided herein, nothing in this Schedule 46 shall restrict, limit, prejudice or in any other way impair the rights or remedies of the Parties under any other provision of this Project Agreement.
- (b) Project Co acknowledges and agrees that all liquidated damages set out in this Schedule 46 shall be payable whether or not Contracting Authority incurs or mitigates these damages, and that Contracting Authority shall not have an obligation to mitigate these damages.
- (c) Project Co agrees that it is, and shall be, estopped from alleging that any liquidated damages set out in this Schedule 46 are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such damages were not incurred.
- (d) If liquidated damages are incurred by Project Co in accordance with this Schedule 46, Contracting Authority may, in its sole discretion and at any time, subject to Section 4(e),

deduct the amount of those liquidated damages, as calculated and determined by Contracting Authority in accordance with this Schedule 46, from any amount due to Project Co by Contracting Authority.

- (e) Contracting Authority shall not deduct liquidated damages from any Milestone Payment.
- (f) The Parties agree that the liquidated damages set out in this Schedule 46 are not a penalty but represent a genuine and reasonable pre-estimate of, all costs and losses, including TTC's preparatory and mobilization costs, in circumstances where Project Co cancels a TTC Station Weekend Closure.

**APPENDIX A TO SCHEDULE 46**

**TTC STATION WEEKEND CLOSURES TARGET LETTER**

[REDACTED]

**APPENDIX B TO SCHEDULE 46**

**FORM OF TTC STATION WEEKEND CLOSURES SCHEDULE**

[REDACTED]



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**SCHEDULE 47****PRICE ADJUSTMENT PROCEDURE****1. PREAMBLE AND REPRESENTATION AND WARRANTY****1.1 Background**

- (a) The Parties acknowledge and agree that circumstances of this Project are unique, including:
- (i) the length and timing of the Project Term;
  - (ii) the supply chain challenges and economic circumstances prevailing at the time of the Request for Proposals as a result of the COVID-19 pandemic; and
  - (iii) the unique risk profile of this Project with requirements for integration of this Project with the RSSOM Project and the North Civil Project.
- (b) Due to the unique circumstances of this Project, Contracting Authority has determined that limited and targeted adjustments in Project Co's pricing will be permitted after Financial Close for this Project to the extent expressly set out herein, subject to and in accordance with the provisions of this Schedule 47.

**1.2 Representation and Warranty**

- (a) Project Co represents and warrants to Contracting Authority that as of Commercial Close the scheduled cost values (in Inflation Base Date prices) for any Cost Category and the weighting of any Price Escalation Index for any Cost Category and Construction Year:
- (i) are generally consistent with Project Co's current Project Works Schedule (pursuant to the requirements of Schedule 12 – Works Schedule Requirements);
  - (ii) are generally consistent with Project Co's projection of the Cost of the Works as set out in the Financial Model; and
  - (iii) do not include any purchases previously made or costs incurred by Project Co or any Project Co Party on or before Commercial Close.

**2. DEFINITIONS**

- 2.1** In this Schedule 47, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 47) shall have the meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Aggregate Price Adjustment”** means the sum of the Price Adjustments for all Cost Categories and all Construction Months applicable to the relevant Price Adjustment Review.

- (b) **“Construction Month”** means a calendar month during the Project Term, except with respect to:
- (i) the first Construction Month of the Project Term which runs from the day of Financial Close until the end of the calendar month in which Financial Close was achieved; and
  - (ii) the final Construction Month of the Project Term, which runs from the first day of the calendar month in the which the Scheduled Substantial Completion Date falls until the Scheduled Substantial Completion Date.
- (c) **“Construction Year”** means the period of twelve (12) calendar months that commences on April 1<sup>st</sup> of each calendar year and ends March 31<sup>st</sup> of the next ensuing calendar year, provided that:
- (i) the first Construction Year shall be the period that commences on the day of Financial Close and ends on the next ensuing March 31<sup>st</sup>; and
  - (ii) the final Construction Year shall be the period that commences on April 1<sup>st</sup> that precedes the Scheduled Substantial Completion Date.
- (d) **“Cost Category”** means the following level one Standard Cost Categories established by the Federal Transit Administration of the United States Department of Transportation, as set out in the Financial Model in worksheet “Part 2 – Cost Category”:
- (i) SCC 10 (Guideway and Track Elements);
  - (ii) SCC 20 (Stations, Stops, Terminals, Intermodal);
  - (iii) SCC 40 (Sitework and Special Conditions); and
  - (iv) SCC 50 (Systems).
- (e) **“CPI-XFET”** means the Consumer Price Index excluding food, energy, and the effect of indirect taxes for Canada, as reported by Statistics Canada.
- (f) **“Inflation Base Date”** means April 1, 2022.
- (g) **“Lower Price Adjustment Threshold”** is described in Section 3.3(a)(ii) and denoted as “PAT<sub>lower,m</sub>”.
- (h) **“Maximum Upper Price Adjustment Threshold”** is described in Section 3.3(b)(i) and denoted as “MaxPAT<sub>upper,m</sub>”
- (i) **“Minimum Lower Price Adjustment Threshold”** is described in Section 3.3(b)(ii) and denoted as “MinPAT<sub>lower,m</sub>”
- (j) **“Price Adjustment”** means a positive or negative amount for each relevant Cost Category for each Construction Month applicable to a relevant Price Adjustment Review as calculated in accordance with Section 3.4(a).

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- (k) **“Price Adjustment Factor”** has the meaning given in Section 3.2(a).
- (l) **“Price Adjustment Report”** has the meaning given in Section 3.1(b).
- (m) **“Price Adjustment Review”** means the application of this Price Adjustment Review Procedure in respect of any Price Adjustment Review Period, subject to and in accordance with the provisions of this Schedule 47.
- (n) **“Price Adjustment Review Date”** means the annual effective date of each Price Adjustment Review commencing on [REDACTED], being the end of Construction Month [REDACTED], and occurring annually thereafter on each anniversary of the first Price Adjustment Review Date.
- (o) **“Price Adjustment Review Period”** means the twelve (12) calendar month period beginning on Financial Close and each subsequent twelve (12) calendar month period commencing on each anniversary of Financial Close except for the last Price Adjustment Review Period, which shall be a period of twelve (12) calendar months or less ending three (3) months prior to the Scheduled Substantial Completion Date.
- (p) **“Price Adjustment Review Procedure”** means the procedure required for a Price Adjustment as set out in this Schedule 47.
- (q) **“Price Adjustment Threshold”** means the Upper Price Adjustment Threshold or the Lower Price Adjustment Threshold.
- (r) **“Price Adjustment Variation”** means a Variation for which Contracting Authority issues a Variation Confirmation in the amount of the Aggregate Price Adjustment in respect of any Price Adjustment Review.
- (s) **“Price Escalation Index”** or **“PEI”** means each of the following product and labour indices:
- (i) the following major product group level indices of the industrial product price index, by major product group, for Canada, Table 18-10-0265-01, as reported by Statistics Canada and referenced accordingly in Appendix A to this Schedule 47 and each of which, for clarity, is a separate Price Escalation Index:
    - (A) Plastic and rubber products [P32];
    - (B) Lumber and other wood products [P41];
    - (C) Energy and petroleum products [P51];
    - (D) Primary ferrous metal products [P61];
    - (E) Primary non-ferrous metal products [P62];
    - (F) Fabricated metal products and construction materials [P63];
    - (G) Machinery and equipment [P72]; and

- (H) Cement, glass, and other non-metallic mineral products [P81]; and
- (ii) the industrial aggregate excluding unclassified businesses index for Canada of the fixed-weighted index of average hourly earnings for all employees, by industry, Table 14-10-0213-01, as reported by Statistics Canada and referenced as “Industry Labour” in Appendix A to this Schedule 47.
- (t) **“Price Escalation Index Aggregate Limit”** means the value assigned to the applicable Price Escalation Index for an applicable Cost Category as set out in the column titled “PEI AL” in Appendix A to this Schedule 47 and represents the maximum aggregate assigned weight that is permitted for an applicable Price Escalation Index for an applicable Cost Category, where the aggregate assigned weight for an applicable Price Escalation Index for an applicable Cost Category is calculated as the average of the assigned weights from all Construction Years for such Price Escalation Index and Cost Category.
- (u) **“Price Escalation Index Construction Year Limit”** means the value assigned to the applicable Price Escalation Index for an applicable Cost Category as set out in the column titled “PEI CYL” in Appendix A to this Schedule 47 and represents the maximum assigned weight that is permitted for an applicable Price Escalation Index for an applicable Cost Category in any Construction Year.
- (v) **“Reprofiling”** has the meaning given in Section 3.6(a)(i).
- (w) **“Revised Price Adjustment Report”** has the meaning given in Section 3.1(d).
- (x) **“Revision”** has the meaning given in Section 3.6(a)(ii).
- (y) **“Supplementary Evidence”** has the meaning given in Section 3.5(a).
- (z) **“Target Index”** is described in Section 3.3(c) and denoted as “TI”.
- (aa) **“Target Index Factor”** is described in Section 3.3(b) and denoted as “TIF”.
- (bb) **“Threshold Factor”** is described in Section 3.3(a) and denoted as “TF”.
- (cc) **“Unassigned”** means the value not assigned to the Price Escalation Indices as set out in Appendix A to this Schedule 47.
- (dd) **“Upper Price Adjustment Threshold”** is described in Section 3.3(a)(i) and denoted as “PAT<sub>upper,m</sub>”.

### 3. PRICE ADJUSTMENT REVIEW

#### 3.1 Price Adjustment Review

- (a) Project Co shall be entitled to an annual Price Adjustment Review beginning no earlier than the first Price Adjustment Review Date and thereafter on each subsequent Price Adjustment Review Date as follows:

Price Adjustment Review Date	Price Adjustment Review Period
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

- (b) No later than twenty (20) Business Days after an annual Price Adjustment Review Date, Project Co shall submit a report to Contracting Authority (a “**Price Adjustment Report**”) which shall contain the following:
- (i) the calculation of the Price Adjustment Factor for each relevant Cost Category, including detailed calculations of each Price Escalation Index for each Construction Month subject to the relevant Price Adjustment Review and evidence satisfactory to Contracting Authority, acting reasonably, in support of the Price Adjustment Factor;
  - (ii) the calculation of the Price Adjustment Thresholds for each Construction Month subject to the relevant Price Adjustment Review and evidence satisfactory to Contracting Authority, acting reasonably, in support of the Price Adjustment Thresholds;
  - (iii) the calculation of the Price Adjustment for each relevant Cost Category for each Construction Month subject to the relevant Price Adjustment Review;
  - (iv) the Aggregate Price Adjustment for the relevant Price Adjustment Review;
  - (v) any set-off or deduction to be made in respect of any prior Price Adjustment Review pursuant to Section 3.4(e);
  - (vi) a summary and the cumulative total of Aggregate Price Adjustments from prior Price Adjustment Reviews, if applicable; and
  - (vii) supplementary evidence in support of the Price Adjustment Factor for each relevant Cost Category for each Construction Month subject to the relevant Price Adjustment Review pursuant to Section 3.5, if applicable.
- (c) Contracting Authority shall within fifteen (15) Business Days of receipt of a Price Adjustment Report provide notice to Project Co of:

- (i) Contracting Authority’s acceptance of such Price Adjustment Report; or
- (ii) Contracting Authority’s refusal to accept such Price Adjustment Report if, in Contracting Authority’s reasonable opinion, such Price Adjustment Report fails to satisfy the requirements of Section 3.1(b) (including if Contracting Authority is of the view that any of the calculations submitted by Project Co are incorrect) together with a summary of the reasons why such Price Adjustment Report fails to satisfy such requirements.
- (d) If Contracting Authority provides notice to Project Co that a Price Adjustment Report failed to satisfy the requirements of Section 3.1(b), then Project Co shall have fifteen (15) Business Days from the receipt of such notice to submit a revised Price Adjustment Report (a “**Revised Price Adjustment Report**”) that satisfies the requirements of Section 3.1(b).
- (e) In the event Project Co fails to submit a Price Adjustment Report or a Revised Price Adjustment Report before the expiry of the period set out in Sections 3.1(b) and 3.1(d), as applicable, Contracting Authority shall, in its sole discretion, be permitted to calculate the Aggregate Price Adjustment in accordance with the requirements of the Price Adjustment Report or Revised Price Adjustment Report, as applicable, for the relevant Price Adjustment Review Period on behalf of Project Co and provide notice of such calculation to Project Co.
- (f) If Contracting Authority calculates the Aggregate Price Adjustment for a relevant Price Adjustment Review Period pursuant to Section 3.1(e) and such Aggregate Price Adjustment is:
- (i) a positive amount, Project Co shall not be entitled to the Aggregate Price Adjustment for such Price Adjustment Review Period, unless Project Co submits a Price Adjustment Report or Revised Price Adjustment Report, in accordance with Sections 3.1(b) or 3.1(d), as applicable, within one (1) year of the notice provided by Contracting Authority under Section 3.1(e), in which event Project Co shall only be entitled to the lesser of the amount determined in accordance with Section 3.1(e) and the amount determined pursuant to such Price Adjustment Report or Revised Price Adjustment Report, as applicable; or
- (ii) a negative amount, Contracting Authority shall be entitled to deduct such amount from the Substantial Completion Payment or to set-off or deduct such amount in respect of any subsequent Price Adjustment Review pursuant to Section 3.4(e).

### 3.2 Price Adjustment Factor

- (a) The Price Adjustment Factor for each relevant Cost Category for each Construction Month applicable to the relevant Price Adjustment Review shall be calculated in accordance with the following formula:

$$PAF_{CC,m} = \frac{\left( \sum_{PEI_m} \frac{(PEI_m * W_{PEI,n})}{(PEI_o)} \right)}{P_{CC,n}}$$

Where:

$PAF_{CC,m}$  Means the Price Adjustment Factor for the relevant Cost Category for Construction Month  $m$ ;

$\sum_{PEI_m}$  Summation of all Price Escalation Indices for each relevant Cost Category for Construction Month  $m$ ;

$PEI_m$  Means the value of the relevant Price Escalation Index for Construction Month  $m$  which shall be equal to a three (3) month average, calculated as the average value of the relevant Price Escalation Index of the calendar month of the relevant Construction Month  $m$  and the two (2) calendar months immediately preceding the relevant Construction Month  $m$ , 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;

$PEI_0$  Means the value of the relevant Price Escalation Index for the calendar month in which the Inflation Base Date falls, 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;

$W_{PEI,n}$  Means the assigned weight for the relevant Price Escalation Index for the relevant Construction Year  $n$  as set out in Appendix A of this Schedule 47; and

$P_{CC,n}$  Means the total percentage of the relevant Cost Category with an assigned weight to a Price Escalation Index in Construction Year  $n$ , denoted as “ $P_{CC,n}$ ” in Appendix A to this Schedule 47.

- (b) For the purposes of the formula in Section 3.2(a), where  $P_{CC,n}$  is equal to [REDACTED],  $PAF_{CC,m}$  shall also be equal to [REDACTED].

### 3.3 Price Adjustment Thresholds

- (a) The Price Adjustment Thresholds for each Construction Month applicable to the relevant Price Adjustment Review shall be calculated in accordance with this Section 3.3(a) or determined in accordance with Section 3.3(d):
- (i) Subject to Section 3.3(d), the Upper Price Adjustment Threshold for the relevant Construction Month  $m$  is equal to:

$$PAT_{upper,m} = \frac{(CPI_m)}{(CPI_0)} + TF$$

- (ii) Subject to Section 3.3(d), the Lower Price Adjustment Threshold for the relevant Construction Month  $m$  is equal to:

$$PAT_{lower,m} = \frac{(CPI_m)}{(CPI_o)} - TF$$

Where:

$PAT_{upper,m}$  Means the Upper Price Adjustment Threshold for the relevant Construction Month  $m$ ;

$PAT_{lower,m}$  Means the Lower Price Adjustment Threshold for the relevant Construction Month  $m$ ;

$CPI_m$  Means the value of CPI-XFET for Construction Month  $m$  which shall be equal to a three (3) month average, calculated as the average value of CPI-XFET of the calendar month of the relevant Construction Month  $m$  and the two (2) calendar months immediately preceding the relevant Construction Month  $m$ , 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 for the calendar month in which the Inflation Base Date falls, 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; and

$TF$  Means the Threshold Factor and is equal to [REDACTED] %.

(b) The maximum and minimum values of the Price Adjustment Thresholds for each Construction Month applicable to the relevant Price Adjustment Review shall be calculated as follows:

(i) The Maximum Upper Price Adjustment Threshold for the relevant Construction Month  $m$  is equal to:

$$MaxPAT_{upper,m} = TI_m + TIF + TF$$

(ii) The Minimum Lower Price Adjustment Threshold for the relevant Construction Month  $m$  is equal to:

$$MinPAT_{lower,m} = TI_m - TIF - TF$$

Where:

$MaxPAT_{upper,m}$  Means the Maximum Upper Price Adjustment Threshold for the relevant Construction Month  $m$ ;



- $MinPAT_{lower,m}$  Means the Minimum Lower Price Adjustment Threshold for the relevant Construction Month  $m$ ;
- $TI_m$  Means the value of the Target Index for the relevant Construction Month  $m$  calculated in accordance with Section 3.3(c);
- $TIF$  Means the Target Index Factor and is equal to [REDACTED]%; and
- $TF$  Means the Threshold Factor and is equal to the value in Section 3.3(a).

- (c) The value of the Target Index for each Construction Month applicable to the relevant Price Adjustment Review shall be calculated as follows:

$$TI_m = ((1 + i)^{(1/12)})^x$$

Where:

- $TI_m$  Means the value of the Target Index for the relevant Construction Month  $m$ ;
- $i$  Means the annual inflation rate for the Target Index and is equal to [REDACTED]%; and
- $x$  Is equal to the number of calendar months from the Inflation Base Date to the relevant Construction Month  $m$ .

- (d) The Price Adjustment Thresholds, calculated in Section 3.3(a), shall be adjusted, if applicable, for each Construction Month applicable to the relevant Price Adjustment Review as follows:

Value of $PAT_{upper,m}$ and $PAT_{lower,m}$	Adjustment to Price Adjustment Thresholds
If $PAT_{upper,m} > MaxPAT_{upper,m}$ , then:	$PAT_{upper,m}$ shall equal $MaxPAT_{upper,m}$
If $PAT_{lower,m} < MinPAT_{lower,m}$ , then:	$PAT_{lower,m}$ shall equal $MinPAT_{lower,m}$
If $PAT_{upper,m} \leq MaxPAT_{upper,m}$ then:	No adjustment to $PAT_{upper,m}$
If $PAT_{lower,m} \geq MinPAT_{lower,m}$ then:	No adjustment to $PAT_{lower,m}$
If $PAT_{upper,m} < TI_m$ then:	$PAT_{upper,m}$ shall equal $TI_m$
If $PAT_{lower,m} > TI_m$ then:	$PAT_{lower,m}$ shall equal $TI_m$

**3.4 Price Adjustment and Aggregate Price Adjustment**

(a) The Price Adjustment for each relevant Cost Category for each Construction Month applicable to the relevant Price Adjustment Review shall be calculated in accordance with the following formulas:

(i) If  $PAF_{CC,m}$  is greater than  $PAT_{upper,m}$ , the Price Adjustment is equal to:

$$PA_{CC,m} = (CC_m \times P_{CC,n}) \times (PAF_{CC,m} - PAT_{upper,m})$$

or,

(ii) If  $PAF_{CC,m}$  is less than  $PAT_{lower,m}$ , then the Price Adjustment (which, for clarity, will be a negative amount) is equal to:

$$PA_{CC,m} = -(CC_m \times P_{CC,n}) \times (PAT_{lower,m} - PAF_{CC,m})$$

Where:

$PA_{CC,m}$  Means the Price Adjustment for the relevant Cost Category for Construction Month  $m$ ;

$CC_m$  Means the scheduled cost value (in Inflation Base Date prices) for the relevant Cost Category in Construction Month  $m$  as set out in the Financial Model in worksheet “Part 2 – Cost Category” or as otherwise amended pursuant to Section 3.6;

$P_{CC,n}$  Means the total percentage of the relevant Cost Category with an assigned weight to a Price Escalation Index in Construction Year  $n$ , denoted as “ $P_{CC,n}$ ” in Appendix A to this Schedule 47;

$PAF_{CC,m}$  Means the Price Adjustment Factor for the relevant Cost Category in Construction Month  $m$  calculated in accordance with Section 3.2(a);

$PAT_{upper,m}$  Means the Upper Price Adjustment Threshold in Construction Month  $m$  calculated in accordance with Section 3.3(a)(i) or determined in accordance with Section 3.3(d); and

$PAT_{lower,m}$  Means the Lower Price Adjustment Threshold in Construction Month  $m$  calculated in accordance with Section 3.3(a)(ii) or determined in accordance with Section 3.3(d).

(b) The Aggregate Price Adjustment for the relevant Price Adjustment Review shall be equal to the sum of the Price Adjustments for all Cost Categories and all Construction Months applicable to the relevant Price Adjustment Review calculated in accordance with Section 3.4(a).

(c) If the Aggregate Price Adjustment is a positive amount, then Project Co shall be entitled to a Price Adjustment Variation, subject to and in accordance with Schedule 22 – Variation

Procedure. For certainty, Project Co shall not be entitled to any Direct Costs for a Price Adjustment Variation and Project Co's sole entitlement to any compensation, payment or other relief in respect of any Price Adjustment shall be the positive amount of any Aggregate Price Adjustment calculated in accordance with this Schedule 47, as set out in the Variation Confirmation issued in respect of such Price Adjustment Variation.

- (d) If the Aggregate Price Adjustment is a negative amount, then Contracting Authority shall be entitled to a Price Adjustment Variation, subject to and in accordance with Schedule 22 – Variation Procedure, and Project Co shall elect, by written notice to Contracting Authority, for any relevant Aggregate Price Adjustment, if:
  - (i) the Substantial Completion Payment shall be reduced by the negative amount of any Aggregate Price Adjustment calculated in accordance with this Schedule 47, as set out in the Variation Confirmation issued in respect of such Price Adjustment Variation; or
  - (ii) Project Co intends to make a payment to Contracting Authority equal to the negative amount of any Aggregate Price Adjustment calculated in accordance with this Schedule 47, as set out in the Variation Confirmation issued in respect of such Price Adjustment Variation, in which case Section 3.4(h) shall apply to such payment.
- (e) In the case of the final Price Adjustment Review, Section 3.4(d)(i) shall not apply and, if applicable, Project Co shall be required to make a payment to Contracting Authority equal to the negative amount of any Aggregate Price Adjustment in accordance with Section 3.4(h).
- (f) For clarity, Project Co will not be required to obtain financing in accordance with Schedule 22 – Variation Procedure for any Aggregate Price Adjustment amount.
- (g) At any time or times prior to Substantial Completion in respect of any Price Adjustment Review, Contracting Authority shall also be permitted to set-off against or deduct from any Aggregate Price Adjustment amount owed to Project Co, as a result of any prior Price Adjustment Review pursuant to Section 3.4(c), any amount that Contracting Authority is permitted to deduct from the Substantial Completion Payment pursuant to Section 3.4(d)(i).
- (h) Amounts owed to Project Co from Contracting Authority, pursuant to Section 3.4(c), or amounts owed to Contracting Authority from Project Co, pursuant to Section 3.4(d)(ii), shall be paid no later than sixty (60) days after the finalization and issuance of a Variation Confirmation in respect of any Price Adjustment Variation.

### 3.5 Supplementary Evidence

- (a) Contracting Authority may require Project Co to provide additional information, details, evidence, verification and proper documentation, such as invoices and proof of payments (collectively, “**Supplementary Evidence**”) in respect of a Price Adjustment Variation, subject to Section 3.5(b).
- (b) If the Price Adjustment Factor for any relevant Cost Category for any Construction Month applicable to the relevant Price Adjustment Review is greater than [REDACTED]% above the Upper Price Adjustment Threshold or greater than [REDACTED]% below the Lower Price Adjustment Threshold for the any Cost Category for the relevant Construction Month,

Project Co shall provide Supplementary Evidence satisfactory to Contracting Authority, acting reasonably, demonstrating actual costs incurred in the relevant Cost Category and relevant Construction Month generally reflect a Price Adjustment Factor that is greater than the Upper Price Adjustment Threshold or the Lower Price Adjustment Threshold by the value set out in this Section 3.5(b).

### 3.6 Periodic Adjustments

(a) At the time of each annual Price Adjustment Review, and once more annually at any time between each Price Adjustment Review, after the first Price Adjustment Review Date, Project Co may request one or both of the following:

- (i) to reprofile the scheduled cost value (in Inflation Base Date prices) for any Cost Category (a “**Reprofiling**”); and
- (ii) to revise the weighting of any Price Escalation Index for any Cost Category and Construction Year (a “**Revision**”),

provided that at such time, on a forward looking basis, there is a material misalignment in the scheduled cost value (in Inflation Base Date prices) for any Cost Category or the weighting of any Price Escalation Index for any Cost Category and Construction Year, as applicable.

(b) Any Reprofiling or Revision shall:

- (i) be on a forward-looking basis from the proposed date of such Reprofiling or Revision, and the Revision of the weighting of any Price Escalation Index shall not include any Revision to the current Construction Year;
- (ii) take into account:
  - (A) any relevant Variation Confirmation;
  - (B) the material effects of any event set out in Section 30 (*Delay Events*) of the Project Agreement, whether or not such event constitutes a Delay Event; and
  - (C) any other material changes to the scheduled cost value (in Inflation Base Date prices) for any Cost Category and the weighting of any Price Escalation Index for any Cost Category and Construction Year,

that have not been accounted for in a previous Reprofiling or Revision;

- (iii) in the case of a Reprofiling, ensure that the cumulative total of reprofiled scheduled cost values (in Inflation Base Date prices) for any Cost Category across all Construction Months does not exceed the original cumulative total of scheduled cost values (in Inflation Base Date prices) for the same Cost Category across all Construction Months as set out in the Financial Model in worksheet “Part 2 – Cost Category”;

- (iv) in the case of a Revision, ensure that the revised weighting of any Price Escalation Index for any Cost Category and Construction Year shall not exceed both the Price Escalation Index Construction Year Limit and the Price Escalation Index Aggregate Limit set out for such Cost Category in Appendix A to this Schedule 47;
  - (v) be generally consistent with Project Co's then current Project Works Schedule (pursuant to the requirements of Schedule 12 – Works Schedule Requirements);
  - (vi) be generally consistent with the Cost of the Works completed to date as set out in any construction progress report certified by the Lenders' Consultant; and
  - (vii) not include any purchases previously made or costs incurred by Project Co or any Project Co Party on or before the date of the proposed Reprofilng or Revision.
- (c) Project Co shall provide any evidence satisfactory to Contracting Authority, acting reasonably, in support of the need for the Reprofilng or Revision or in respect of any of the requirements set out Section 3.6(b).
  - (d) Contracting Authority may, acting reasonably, accept or reject a request for Reprofilng or Revision provided that Contracting Authority shall be deemed to be acting reasonably if it rejects such request on the basis that the proposed Reprofilng or Revision does not satisfy the requirements set out in Section 3.6(b).
  - (e) If Contracting authority accepts a request for Reprofilng or Revision, then Project Co shall provide a representation and warranty on the same basis as set out in Section 1.2 of this Schedule 47 as of the date of the acceptance of such Reprofilng or Revision.

### 3.7 Variations

- (a) Notwithstanding Section 3.6(a), following a Variation Confirmation that has material effect on the scheduled cost value (in Inflation Base Date prices) for any Cost Category or the weighting of any Price Escalation Index for any Cost Category and Construction Year, Project Co may make a request for a Reprofilng or Revision subject to and in accordance with Section 3.6.
- (b) Notwithstanding any other provision of the Project Agreement, including Section 39 (*Variations*) and Schedule 22 – Variation Procedure of the Project Agreement, Project Co shall not be entitled to include in any Project Co Variation Notice or Estimate pursuant to a Variation Enquiry any claim or amount, including for any Direct Costs, that duplicates any claim or amount for which Project Co is entitled to request a Variation or other relief under this Schedule 47.

### 3.8 Contracting Authority Request

- (a) Contracting Authority may, at any time, request a Reprofilng or Revision where it is reasonably of the view that at such time, on a forward looking basis, there is a material misalignment in the scheduled cost value (in Inflation Base Date prices) for any Cost Category or the weighting of any Price Escalation Index for any Cost Category and Construction Year, as applicable.

- (b) Where Contracting Authority has made a request pursuant to Section 3.8(a), Project Co shall prepare a proposed Reprofiting or Revision, as applicable, on the same basis and in accordance with Section 3.6.
- (c) The Parties shall, acting reasonably, agree upon a Reprofiting or Revision in accordance with Section 3.6.

### **3.9 Limitation**

- (a) Project Co's sole right to payment for any amount relating to a Price Adjustment shall be as set out in this Schedule 47.
- (b) Notwithstanding any other provision of the Project Agreement, including Section 30 (*Delay Events*) and Section 31 (*Compensation Events*) of the Project Agreement, Project Co shall not be entitled to seek compensation for or in respect of any amount for which Project Co is entitled to request a Price Adjustment, a Price Adjustment Variation or other relief under this Schedule 47.
- (c) Nothing in this Schedule 47 limits any obligation of Project Co to mitigate any loss under the provisions of the Project Agreement, including Section 52.4 (*General Duty to Mitigate*) of the Project Agreement.

APPENDIX A TO SCHEDULE 47

**PRICE ESCALATION INDEX WEIGHTINGS**

**Table 1: Cost Category – SCC 10 (Guideway and Track Elements)**

Price Escalation Index	Construction Year <i>n</i>								PEI CYL	PEI AL
	1	2	3	4	5	6	7	8		
Plastic and rubber products [P32]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Lumber and other wood products [P41]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Energy and petroleum products [P51]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Primary ferrous metal products [P61]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Primary non-ferrous metal products [P62]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Fabricated metal products and construction materials [P63]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Machinery and equipment [P72]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Cement, glass, and other non-metallic mineral products [P81]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Industry Labour	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
<b>Total Assigned Weight (“P<sub>cc,n</sub>”)</b>	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	N/A	N/A
Unassigned	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	N/A	N/A
<b>Total (must equal 100%)</b>	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	N/A	N/A

**Table 2: Cost Category – SCC 20 (Stations, Stops, Terminals, Intermodal)**

Price Escalation Index	Construction Year <i>n</i>								PEI CYL	PEI AL
	1	2	3	4	5	6	7	8		
Plastic and rubber products [P32]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Lumber and other wood products [P41]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Energy and petroleum products [P51]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Primary ferrous metal products [P61]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Primary non-ferrous metal products [P62]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%

Fabricated metal products and construction materials [P63]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Machinery and equipment [P72]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Cement, glass, and other non-metallic mineral products [P81]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Industry Labour	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
<b>Total Assigned Weight (“P<sub>cc,n</sub>”)</b>	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	N/A	N/A
Unassigned	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	N/A	N/A
<b>Total (must equal 100%)</b>	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	N/A	N/A

**Table 3: Cost Category – SCC 40 (Sitework and Special Conditions)**

Price Escalation Index	Construction Year <i>n</i>								PEI CYL	PEI AL
	1	2	3	4	5	6	7	8		
Plastic and rubber products [P32]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Lumber and other wood products [P41]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Energy and petroleum products [P51]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Primary ferrous metal products [P61]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Primary non-ferrous metal products [P62]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Fabricated metal products and construction materials [P63]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Machinery and equipment [P72]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Cement, glass, and other non-metallic mineral products [P81]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Industry Labour	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
<b>Total Assigned Weight (“P<sub>cc,n</sub>”)</b>	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	N/A	N/A
Unassigned	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	N/A	N/A
<b>Total (must equal 100%)</b>	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	N/A	N/A

**Table 4: Cost Category – SCC 50 (Systems)**

Price Escalation Index	Construction Year <i>n</i>								PEI CYL	PEI AL
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	1	2	3	4	5	6	7	8		
Plastic and rubber products [P32]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Lumber and other wood products [P41]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Energy and petroleum products [P51]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Primary ferrous metal products [P61]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Primary non-ferrous metal products [P62]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Fabricated metal products and construction materials [P63]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Machinery and equipment [P72]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Cement, glass, and other non-metallic mineral products [P81]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Industry Labour	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
<b>Total Assigned Weight (“P<sub>cc,n</sub>”)</b>	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	N/A	N/A
Unassigned	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	N/A	N/A
<b>Total (must equal 100%)</b>	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	N/A	N/A

**APPENDIX B TO SCHEDULE 47**

**PRICE ADJUSTMENT REVIEW EXAMPLES**

[REDACTED]